

TITLE 14

BOARD OF PUBLIC UTILITIES

CHAPTER 1

RULES OF PRACTICE

Authority

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

Source and Effective Date

R.1997 d.264, effective May 28, 1997.
See: 29 N.J.R. 1259(b), 29 N.J.R. 2838(a).

Executive Order No. 66(1978) Expiration Date

Chapter 1, Rules of Practice, expires on May 28, 2002.

Chapter Historical Note

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

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

Pursuant to Executive Order No. 66(1978), Chapter 1 was readopted as R.1997 d.264, effective May 28, 1997. See: Source and Effective Date. See, also, section annotations.

Law Reviews and Journal Commentaries

Clearing procedural hurdles at the BPU. R. William Potter, 150 N.J.L.J. 828 (1997).

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SUBCHAPTER 1. GENERAL PROVISIONS

14:1-1.1 Scope

These rules shall govern practice and procedure before the Board of Public Utilities.

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

14:1-1.2 Construction and amendment

(a) These rules shall be liberally construed to permit the Board to effectively carry out its statutory functions and to secure just and expeditious determination of issues properly presented to the Board.

(b) In special cases and for good cause shown, the Board may, unless otherwise specifically stated, relax or permit deviations from these rules.

1. The Board shall, in accordance with the general purposes and intent of its rules, waive section(s) of its rules if full compliance with the rule(s) would adversely affect the ratepayers of a utility, the ability of said utility to continue to render safe, adequate and proper service, or the interests of the general public;

2. Any person or entity seeking waiver of any of the Board's rules or parts thereof, shall apply in writing to the Secretary of the Board. A written request for waiver shall include the following:

i. The specific rule(s) or part(s) thereof for which waiver is requested;

ii. The reasons for the request of waiver, including a full statement setting forth the type and degree of hardship or inconvenience that would result if full compliance with the rule(s) would be required; and

iii. Documentation to support the request for waiver.

3. The Board reserves the right to request additional information before reaching a determination regarding the application for waiver.

(c) The rules may be amended by the Board from time to time.

Amended by R.1997 d.264, effective July 7, 1997.
See: 29 N.J.R. 1259(b), 29 N.J.R. 2838(a).
Added (b)1 through 3.

Case Notes

Board of Public Utilities failed to adequately articulate basis for waiving bidding regulations. Petition of Hackensack Water Co. to Watershed Property Review Bd., 249 N.J.Super. 164, 592 A.2d 250 (A.D.1991), certification denied 127 N.J. 551, 606 A.2d 364, on remand.

14:1-1.3 Definitions

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

"Board" means the Board of Public Utilities.

"Commissioner" means a member of the Board of Public Utilities.

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

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

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

14:1-1.4 Offices

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

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

14:1-1.5 Hours

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

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

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

14:1-1.6 Communications

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

(b) All such pleadings and correspondence shall be deemed to be officially received when delivered at the office of the Board, but a Commissioner or the Secretary or an Assistant Secretary of the Board may in his or her discretion receive papers and correspondence for filing.

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

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

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

14:1-1.7 Official records

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

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

SUBCHAPTER 5. PETITIONS

14:1-5.1 Form and content

(a) All petitions shall comply with the provisions of N.J.A.C. 14:1-4 to the extent applicable; shall clearly and concisely state the facts and relief sought; shall cite by appropriate reference the statutory provision or other authority under which the Board's action is sought; and in addition, shall contain such information or statements as are required by provision of the statute and the applicable provision of these rules, or such other rules or orders adopted by the Board pertaining to certain petitions, or as may be required by the Board in a particular proceeding.

(b) Special requirements with respect to certain types of petitions are set forth in N.J.A.C. 14:1-5.5.

(c) Petitions directed to particular respondents shall conclude with a direction that the respondent satisfy the prayer of the petition or file and serve an answer within 20 days in accordance with these rules.

Case Notes

Interim policy for the purchase of power from PURPA Qualifying Facilities. In the Matter of the Consideration and Determination of Cogeneration and Small Power Production Standards, 94 N.J.A.R.2d (BRC) 141.

Cogenerator's petition to compel electric and gas company to enter into a long term contract to purchase energy from the petitioner denied. In the Matter of the Petition of MidAtlantic Gogen, Inc. for an Order Directing Public Service Electric and Gas Co., 94 N.J.A.R.2d (BRC) 119.

Reconsideration of Board of Regulatory Commissioners' decision approving the construction of distribution substation denied; "prudent avoidance/prudent field management" test. In the Matter of the Appeal of Atlantic City Electric Company, 94 N.J.A.R.2d (BRC) 85.

Electric utility authorized to sell \$450 million of new securities and to redeem various first mortgage bonds. Petition of Jersey Central Power & Light Company, 92 N.J.A.R.2d (BRC) 65.

14:1-5.2 Applications to other regulatory bodies

(a) Where the relief sought in a petition also requires the approval or authorization of any other State or Federal regulatory body, the petition to the Board shall so state and include the following:

1. The current status of such application;
2. If the application to the other regulatory body or bodies has already been filed, a copy of each such application shall be attached to the petition to the Board, together with a copy of any order or certificate issued relating thereto; and
3. If such an application or amendment thereof is filed with another State or Federal regulatory body subsequent to the date of filing with the Board but prior to its determination, three copies of such application or amendment thereof, together with three copies of any order or

certificate issued relating thereto, shall be filed with the Board and served upon other parties of record.

14:1-5.3 Joinder of requests for relief

(a) A petitioner may join in a single petition more than one independent or alternative request for relief subject, however, to the payment of the statutory filing fees applicable to each of the approvals sought.

(b) The Board may in its discretion sever matters so joined for hearing and determination or take such other action as may be in the public interest.

14:1-5.4 Procedures of Board on filing of petition

(a) If in the opinion of the Board the petition complies substantially with these rules and appears on its face to state a matter within this Board's jurisdiction, and necessary copies have been received and fees paid, the Secretary of the Board shall file same.

(b) If after review the Board determines that a petition is deficient, the Board may refuse to consider and may issue an order dismissing said petition. In the case of a petition proposing increases in charges to customers, the time frame for Board decision set forth in N.J.S.A. 48:2-21(d) shall not begin to run until a complete petition has been filed with the Board.

(c) Unless otherwise directed by the Board, petitions and subsequent pleadings shall be served by the parties as provided for in N.J.A.C. 14:1-4.5.

(d) If within the time allowed for answer, the respondent makes an offer of satisfaction which is accepted by the petitioner, such offer and acceptance signed by the parties or their attorneys shall be filed with the Board and if not disapproved by the Board within 20 days, the petition shall be deemed satisfied and the proceedings closed without further action.

(e) When the respondent has not satisfied the petition, the Board may schedule a hearing thereon and issue such decision or order as the facts and circumstances appear to require.

Administrative correction to (c).
See: 24 N.J.R. 4410(b).

14:1-5.5 Petitions for approval of franchises or consents

(a) Petitions for approval of a franchise or consent shall conform to the provisions of N.J.A.C. 14:1-4 and N.J.A.C. 14:1-5.1 through 5.4, to the extent applicable. The following information shall also be supplied in the body of the petition or in attached exhibits:

1. A certified copy of the franchise or consent involved including the terms and conditions relating thereto;

2. Proof that all statutory requirements relating to the obtaining of the franchise or consent have been met; and

3. The reason why petitioner believes that the franchise or consent is necessary and proper for the public convenience and will properly conserve the public interest.

(b) In cases where the petition involves a new water or sewer company, the petition shall, in addition to the requirements of (a) above, also provide the following information:

1. A certified copy of the certificate of incorporation;
2. Details of plant as to type, capacity, cost, status of plant construction, construction schedule and estimated number of customers to be served;
3. A map showing the location and size, in acres or square feet, of the franchise area and the composition, diameter, length and location of pipes to be initially installed; and
4. A statement as to status of petitioner's application to the Division of Water Policy of the Department of Environmental Protection for the diversion of water and approval of the proposed facilities. If the Department of Environmental Protection approval has not yet been given, the petitioner shall obtain and submit with the petition a copy of a letter from said Department expressing intent to approve the operation of the plant as it is proposed to be constructed.

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

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

In (b)4, amended Department references.

Case Notes

Request to limousine service operator to file petition for Certificate of Public Convenience and Necessity improper as such service not under jurisdiction of Board of Public Utilities. In re: Application of Wilmer's Livery Service, Inc., 159 N.J.Super. 226, 387 A.2d 1202 (App.Div.1978).

Necessary methods and procedures to apportion funding between interexchange and local exchange telephone companies. In the Matter of the Funding of the New Jersey Statewide Dual Party Relay System, 94 N.J.A.R.2d (BRC) 33.

The Board lacked authority to prohibit natural gas utility from selling or repairing appliances. In Matter of Petition of New Jersey Natural Gas Company for Permission to Revise Rates for Appliance Service, 93 N.J.A.R.2d (BRC) 19.

14:1-5.6 Petitions for the approval of the sale or lease of property

(a) Petitions for the approval of the sale, conveyance or lease of real or personal property, or the granting of an easement, or like interest therein as required by law shall conform to the provisions of N.J.A.C. 14:1-4 and N.J.A.C. 14:1-5.1 through 5.4 to the extent applicable, and shall in the body thereof, or in attached exhibits, also provide the following information:

1. Ten copies of a separate sheet or sheets designated Schedule "A" containing a description of the property;

i. For real property, the location by municipality and county, a metes and bounds or other adequate description of the property, together with a description of the property and rights, if any, reserved by the utility shall be shown;

ii. For personal property, sufficient information to identify the property adequately shall be included;

2. The name of transferee or lessee, the consideration or rental and method of payment thereof, and rights reserved by the transferor or lessor;

3. A copy of the written agreement, if any; if there is no written agreement, it shall be so stated;

4. A certified copy of the resolution of the board of directors or other authority authorizing the transfer or lease;

5. The purpose for which the property was originally acquired, the date of acquisition, the use made of the property for utility purposes, the date when and circumstances under which it ceased to be useful for such purposes, the present use, the possible prospective use and the identity of the official or officials who determined that the property is not now or prospectively required or useful for utility purposes. Any utility requesting to convey land utilized for the protection of a public water supply to a corporation or other entity which is not subject to the jurisdiction of the Board shall submit to the Board a detailed explanation of the prospective use or uses of the land to be conveyed and an assessment of the impact that the conveyance, and the prospective use or uses of the land conveyed, would have on the water quality of the affected public water supply;

6. The basis of the price or rental: assessed valuation, appraisal, comparable sales, or other basis; whether it is the best price or rental attainable; an appraisal, if any, shall be attached as exhibit;

7. Whether the proposed consideration or rental represent the fair market value of the property to be conveyed or leased;

8. What steps were taken to put this property on the market and accomplish its sale or lease; if bids were solicited, the names of bidders and the consideration or rental offered shall be included;

9. Whether there is any relationship between the parties other than that of transferor and transferee, or lessor and lessee;

10. The actual cost at date of acquisition, and the cost and nature of any improvements;

11. The amount at which the property is now carried on the utility's books;

12. Copies of proposed journal entries to record the transaction when the consideration is more than \$20,000;

13. If property is income producing, details, such as carrying charges, taxes, and assessed valuation, shall be included;

14. If the property is encumbered by any mortgage, describe the mortgage, the amount thereof, and the time required to obtain a release, shall be included; and

15. When the property to be sold or leased has a net book cost or fair market value of more than \$100,000, the petitioner must attach to the petition copies of the advertisement required by (b) below, and proof of publication.

(b) Where the Board's approval of sale or lease is required by law and the property has a net book cost or fair market value of more than \$500,000, the property shall be advertised for sale or lease at least twice, one week apart, in a daily newspaper published or circulated in the county in which the property is located, within 90 days immediately prior to the filing of the petition for the approval of the sale or lease, except that advertising shall not be required for sales or leases of property for public utility purposes to another public utility or other person or company subject to any jurisdiction of this Board. The advertisement shall contain the following:

1. A description of the property to be sold or leased and improvements thereon. In the case of land, this shall include the street address, if any, and a description sufficient to identify the location of the property and its approximate size, which may be a description by metes and bounds or lot and block numbers;

2. The place where the property is located or may be inspected, together with the street address, if any;

3. Conditions of the sale or lease, if any, together with a provision that the utility may reject any or all bids;

4. A statement that the sale or lease is subject to the approval of the Board of Public Utilities;

5. A statement of the place and final date for submitting sealed bids which shall not be less than ten days after publication of the second advertisement together with a statement of the time and place of the opening of said bids, which shall not be more than five days following the final date for submitting bids, at a place in New Jersey; and

6. A sealed bid, in accordance with the requirements of (b)5 above, must be submitted by a prospective purchaser or lessee. However, an offer or agreement to purchase or lease in writing received by the utility or executed before the first date of advertising and still in effect at such date, shall be considered as if it were a sealed bid, provided such offer or agreement in writing meets all other conditions of sale or lease, if any, included within the advertising.

(c) In addition to any other transactions not requiring approval or which on their merits may be deemed to be in the ordinary course of business, any lease, grant or permission by a utility to occupy or use its real property or any interest therein which is terminable at the option of the utility upon notice not to exceed 90 days, and any release, by quit claim deed or otherwise by any utility of any lease, easement, or permission to occupy or use real property, shall be deemed to be in the ordinary course of its business. Neither notice to the Board nor petition for its approval shall be required with respect thereto.

(d) In addition to any other transactions which on their merits may be deemed to be in the ordinary course of business, the sale, lease, encumbrance or other disposition by any utility of such of its property or an interest therein as is set forth in (d)1 through 3 below, may be consummated without petition to the Board for approval, provided, however, that the utility shall have given written notice thereof to the Board, to be received not less than 30 days prior to the effective date of the proposed sale, lease, encumbrance or other disposition of such property. The transactions which may be completed without petition to the Board are as follows:

1. The sale of personal property having a net book cost and sale price not in excess of \$100,000 and which is no longer used by or useful to the utility;

2. Except as provided in this section, the lease or permission to use or occupy real property or any interest therein having a net book cost not in excess of \$500,000 and a net rental not in excess of \$25,000 per annum; and

3. The sale or release of real property, or any interest therein, not used by or useful to the utility and having a net book cost and sale price not in excess of \$500,000.

(e) On expiration of the notice period and on payment of the statutory fee, the Secretary will certify on a true copy of the notice to be furnished to the Board that such sale, lease or release is deemed by the Board to be in the ordinary course of business and within the statutory provision. Such notice shall contain, to the extent applicable, the following:

1. The name of transferee or lessee, the consideration or rental and method of payment thereof, and rights, if any, reserved by the transferor or lessor;

2. A copy of the agreement or lease and a map of the real property;

3. A statement that the proposed consideration or rental represents the fair market value of the property to be conveyed, or the fair rental value of the property to be leased, giving the basis for the conclusion reached;

4. A statement of any relationship between the parties other than that of transferor and transferee, or lessor and lessee, or a statement that there is no such other relationship, as the case may be;

5. The amount at which the property is carried on the utility's books;

6. A statement as to whether or not the property is income producing and, if so, details as to whether the petitioner pays all carrying charges, including taxes. In addition, such statement shall include the assessed valuation of the property;

7. A statement, in the case of a proposed sale, that the property is not used by or useful to the utility, and in the case of a proposed lease, grant or permission, that the transaction will not compromise the ability of the utility to render service;

8. A verification by a properly authorized officer, partner or proprietor of the statements contained in the notice; and

9. A blank space of three inches shall be provided at the bottom of the first page of the notice for the Board's certification.

(f) The Board may, within the aforesaid 15-day notice period, or at any time prior to the actual consummation of the transaction, suspend the provisions of this rule and require the filing of a petition for the approval of the sale, lease, encumbrance or other disposition.

(g) Upon written request by a utility and in accordance with the general purposes and intent of this section, the Board shall grant said utility a waiver to the advertising requirement set out in (b) above if:

1. The waiver shall not adversely affect the public interest;

2. The subject property is no longer used or useful for utility purposes;

3. There is no prospective use of the property for utility purposes or no other likely prospective purchaser;

4. The sale of the property shall not affect the ability of the utility to render safe, adequate and proper service;

5. The selling price represents the fair market value of the property to be sold based on a current independent appraisal;

6. There is no relationship between the parties other than that of transferor and transferee, or lessor and lessee; and

7. The request states the reasons of the utility in seeking the waiver which may include, but are not limited, to the following:

i. The subject property is unique and requires an unusual sales contract or represents an unusual transaction;

ii. The advertising and bidding shall not result in a higher sales price;

iii. The advertising and bidding shall be detrimental to the sale of the property;

iv. The unlikelihood of the existence of other bona fide purchasers who could meet the requirements of the proposed sales contract;

v. The development of the property for private use will require extensive environmental permitting due to an existing contamination condition; and

vi. The inability of any other bidder to obtain the necessary permitting authorization to develop the property.

(h) The Board reserves the right to request additional information and documentation in support of a request for a waiver of the advertising requirement as set out in (g) above.

(i) For the purposes of this subchapter, the term "ordinary course of business" shall include, in addition to any other transaction which on its merits may be deemed to be in the ordinary course of business:

1. Any transaction involving the sale or other disposition of a utility's surplus personal property or equipment no longer used or useful to the utility, where there is no prospective use of the property for utility purposes and the sale or other disposition of the property will not affect the utility's ability to continue to provide safe, adequate and proper service; or

2. Any quit claim deed to resolve an ambiguity or dispute, corrective deed, exchange of personal property with comparable market values, or the exchange of contiguous real property where such exchange does not compromise the needs of the utility and the affected properties have comparable market values.

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

In (a)1, substituted "Ten" for "Twenty"; in (b), substituted "\$500,000" for "\$100,000"; in (b)4, amended Board name; in (d), changed written notice deadline from 15 days to 30 days; in (d)1, substituted "\$100,000" for "\$50,000"; in (d)2 and 3, substituted "\$500,000" for "\$100,000 and in (d)2, substituted "\$25,000" for "\$10,000; and added (g).

Case Notes

Cogeneration limited partnership sales of steam and electricity; jurisdiction of Board of Regulatory Commissioners. In Matter of Petition of Vineland Cogeneration Limited Partnership, 93 N.J.A.R.2d (BRC) 22.

14:1-5.7 Petitions for authority to change depreciation rates

(a) Petitions for the approval of change or variation in the rates of depreciation used shall conform to the provisions of N.J.A.C. 14:1-4 and N.J.A.C. 14:1-5.1 through 5.4, to the extent applicable, and shall in the body thereof, or in attached exhibits, also provide the following information:

1. The existing and proposed rates of depreciation;
2. The existing and proposed methods of calculating or determining the rates of depreciation;
3. The calculations or studies supporting the proposed change in depreciation rates;
4. The effect of the proposed changes on operating revenue deductions and operating income; and
5. A statement as to the date when it is proposed to make the changes in depreciation rates effective, which date shall not be earlier than 90 days after the filing of a petition under this rule.

Case Notes

Utility company did not meet its burden of showing that use of accelerated depreciation resulted in tax savings to customers. *Princeton Meadows Utility Company, Inc. v. Board of Regulatory Commissioners*, 94 N.J.A.R.2d (BRC) 71.

14:1-5.8 Petitions for authority to exercise power of eminent domain

(a) Petitions for authority to exercise the power of eminent domain shall conform to the requirements of N.J.A.C. 14:1-4 and 14:1-5.1 through 5.4, to the extent applicable, and shall in the body thereof, or in attached exhibits, also provide the following information:

1. The names, and addresses if known, of the owners of the property to be condemned or of any interest therein, with a specification of the interest of each such owner;
2. The names of such owner or owners whose whereabouts or address is unknown;
3. A map or plot plan. In addition, there shall be filed with the petition 20 copies of a separate sheet, designated Schedule "A", which shall contain a proper metes and bounds description of the property to be acquired;
4. A brief description of the improvements thereon, if any, and the present and potential character and uses of the property;
5. Allegations that the property desired is reasonably necessary for the service, accommodation, convenience and safety of the public, and that the taking of such property is not incompatible with the public interest, and would not unduly injure the owners of private property;
6. A statement of the reasons why the property cannot be purchased by negotiation; and
7. Where the petitioner has, after diligent search, been unable to determine the name and address of the owner of the property to be condemned or of any interest therein, such facts must be stated in an affidavit of inquiry prepared in the manner provided for in the Rules Governing the Courts of the State of New Jersey.

(b) Where the petitioner has, after diligent search, been unable to determine the name and address of any respondent, the petitioner shall publish notice of hearing, addressed to such respondent by name, or other appropriate designation if the name is unknown. Such publication shall be made twice in consecutive calendar weeks, once in each week, in a newspaper published in the county where the property is situated, or if none be published therein, then in a newspaper published in this State and circulating in said county, the second such publication to be made not less than 20 days prior to the hearing date. Said publication shall contain a description of the property to be condemned. Sworn proof of publication must be filed at least five days prior to the hearing date.

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

Case Notes

Water company entitled to exercise eminent domain in order to acquire easements for installation of underground water transmission main. *Middlesex Water Company v. City of Perth Amboy*, 93 N.J.A.R.2d (BRC) 23.

14:1-5.9 Petitions for authority to issue stocks, bonds, notes, other evidence of indebtedness or to execute mortgages

(a) Petitions for authority to issue any stocks, bonds, notes, or other evidence of indebtedness, payable in more than one year from the date thereof, and to execute mortgages shall conform to the provisions of N.J.A.C. 14:1-4 and 14:1-5.1 through 5.4, to the extent applicable, and shall in the body thereof, or in the attached exhibits, provide the following information:

1. A statement of the amount and terms of the proposed issue including the nature of the security therefor, if any; the purposes for which the proceeds are to be used; and the nature of all rights and limitations applicable to the security;
2. Where one of the purposes is the acquisition of property, a general description of the property, the name of the transferor, and a copy of the contract, if any, for such acquisition. In the case of property to be acquired for right-of-way purposes, a general description of the proposed route and a map or plot plan will be sufficient;
3. Where one of the purposes is the construction, completion, extension or improvement of facilities, a general description of the work proposed to be done, and an estimate of the cost thereof in reasonable detail. Where one of the purposes is the improvement or maintenance of service, there shall be included a description of the existing service as well as of the improvements, or betterments proposed;
4. Where one of the purposes is the refunding of securities, a description of the securities and obligations to be refunded, including the kind, amount, date of issue and date of maturity, together with the terms of refunding

and all other material facts affecting the same must be set out;

5. Where one of the purposes is the issuance of capital stock based upon the investment of earnings in plant which might have been distributed in dividends, a complete and reasonably detailed enumeration of petitioner's property, priced at original cost, or estimated if not known. The petitioner shall produce evidence at the hearing in support of such enumeration and pricing;

6. Where one of the purposes is to reimburse the treasury for expenditures not theretofore capitalized by the issuance of securities, the petitioner shall also show the exact period and amount for which reimbursement is desired; comparative financial statements which shall include, as a minimum, balance sheets and utility plant by accounts as at the beginning and end of the period, as well as changes in the period, and, in the case of utility plant, additions and retirements shall be stated separately for each year; a statement indicating the source and application of funds during the period; a statement indicating the manner in which petitioner proposes to use the proceeds from the security issue; and the necessity and reasonableness of the proposed transaction;

7. Where one of the purposes is for the issuance of common capital stock in connection with the organization of a new corporation to operate as a public utility, the petition must contain the following:

- i. A copy of the certificate of incorporation;
- ii. The names and addresses of the elected or proposed officers, directors and stockholders of the company and the number of shares of capital stock to be held by each;
- iii. The required number of stockholders and directors and the state in which they reside pursuant to the statute under which the corporation will be organized;
- iv. A corporate resolution or proposed resolution of the directors of the utility authorizing the issuance of the stock;
- v. A copy of a pro forma balance sheet of the new corporation and copy of a pro forma income statement of estimated operating results anticipated for the first two years of its proposed operations, unless a different period is specified by the Board;
- vi. The name of the municipality and the street and number therein;

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

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

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

vii. A detailed list of organization expenditures;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In (a)9vi and vii, substituted "calendar year" for "fiscal year".

Case Notes

Water company authorized to issue and sell debentures through competitive bidding, with the inclusion of a "negative pledge". In the

Matter of the Petition of Elizabethtown Water Co. for Authority to Issue and Sell up to \$50,000 of Debentures, 94 N.J.A.R.2d (BRC) 45.

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

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

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

(a) Petitions for authority to transfer upon the books and records of any public utility, pursuant to N.J.S.A. 48:3-10, any share or shares of its capital stock, shall conform to the provisions of N.J.A.C. 14:1-4 and N.J.A.C. 14:1-5.1 through 5.4, to the extent applicable, and shall in the body thereof, or in attached exhibits, also provide the following information:

1. The name and address of the proposed transferor and transferee;

2. A description of the proposed transferee including information as to whether the proposed transferee is a public utility, a holding company either separately or by affiliation in a utility holding company system, or a person or other domestic or foreign corporation;

3. A description of the capital stock proposed to be transferred including the class of shares, number of shares and the par or stated value thereof;

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

5. The reason for the proposed transfer;

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

i. The board of directors;

ii. Officers and active managers; and

iii. Company policies with respect to its operations, financing, accounting, capitalization, rates, depreciation, maintenance, services and any other matters affecting the public interest; and

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

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

(a) Tariff filings for the purpose of making effective initial tariffs or revisions, changes or alterations of existing tariffs and which are not filed because of the need for additional revenue from products or services covered by

existing tariffs and which do not propose increases in charges to customers, shall conform to the provisions of N.J.A.C. 14:1-4 and N.J.A.C. 14:1-5.1 through 5.4, to the extent applicable, and shall in the body thereof, or in attached exhibits, also provide the following information:

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

Case Notes

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

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

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

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

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

(a) Tariff filings or petitions for the purpose of making effective or making revisions, changes or alterations of existing tariffs which propose to increase any rate, fare, toll, rental or charge or so to alter any classification, practice, rule or regulation as to result in such an increase, other than filings to effectuate the operation of an existing fuel or raw materials adjustment clause, shall conform to the provisions of N.J.A.C. 14:1-4 and N.J.A.C. 14:1-5.1 through 5.4, to the extent applicable, and shall in the body thereof, or in attached exhibits, contain all applicable information and data set forth in N.J.A.C. 14:1-5.11 and, in addition, shall contain the following information and financial statements which shall be prepared in accordance with the applicable Uniform System of Accounts:

1. A comparative balance sheet for the most recent three-year period (calendar year or fiscal year);
2. A comparative income statement for the most recent three-year period (calendar year or fiscal year);
3. A balance sheet at the most recent date available;
4. A statement of the amount of revenue derived in the calendar year last preceding the institution of the proceedings from the intrastate sales of the product supplied, or intrastate service rendered, the rates, tolls, fares or charges for which are the subject matter of the filing;
5. A pro forma income statement reflecting operating income at present and proposed rates and an explanation of all adjustments thereon, as well as a calculation showing the indicated rate of return on the average net investment for the same period as that covered by the pro forma income statement, that is, investment in plant facilities plus supplies and working capital to the extent claimed, less the reserve for depreciation and advances and contributions for facilities;
6. If the request for rate relief is based upon N.J.S.A. 48:2-21.2, there shall be included, in lieu of the requirements of (a)5 above, a statement showing that the facts of the particular situation meet the statutory requirements;
7. Whenever a telephone company seeks to increase its rates, it shall include in its petition or attachments thereto information demonstrating the principles of rate design employed in the proposed tariff revisions. Such information shall identify the approximate percentage of increased revenue requirement, should the Board determine a lesser additional revenue requirement than that sought by the company, at which it would derive a different proportion of revenue requirement from each of the major classes of service whose prices are sought to be increased, and the revenue requirement by class at each such level. The information shall include a statement of the amount and percentage of increase which would be raised from each such class of service if relief of approximately one-third the request were approved by the Board;
8. In providing the information required by (a)5, 6 and 7 above, a company may also file, in addition to the new rates proposed to become effective, alternative rate changes designed to produce the full revenue request, which alternatives are illustrative of the application of other possible rate designs to the filing;
9. An itemized schedule showing all payments or accruals to affiliated companies or organizations and to those who own in excess of five percent of the utility's capital stock regardless of the form or manner in which such charges are paid or accrued and an explanation of the service performed for such charges; and
10. A copy of the form of notice to customers.

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

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

2. Serve a notice of the filing and two copies of the petition or tariff on the Department of Law and Public Safety, 124 Halsey Street, P.O. Box 45029, Newark, New Jersey 07101 and on the Director, Division of the Ratepayer Advocate, 31 Clinton Street, P.O. Box 46005, Newark, New Jersey 07101;

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

(c) Each utility that makes a filing under (a) above shall, after being advised by the Board of the time and place fixed for hearing, if any and unless otherwise ordered or permitted by the Board, serve notice at least 20 days prior to such time on those persons specified in (b)1 and 2 above; and shall give such notice to those persons designated in (b)3 above as current customers billed on a recurring basis, by bill insert or by publication 20 days prior to the date set for hearing, in newspapers published and circulated in the utility's service area.

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

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

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

Case Notes

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

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

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

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

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

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

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

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

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

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

Sewage company was denied additional rate revenues. In the Matter of the Petition of Valley Road Sewage Company for an Approval of an Increase in its Rates, 94 N.J.A.R.2d (BRC) 79.

Denial of water company's proposed rate increase to cover cost of new project was proper. In the Matter of the Petition of New Jersey American Water Company for an Increase in Rates, 94 N.J.A.R.2d (BRC) 60.

Utility company's rate and tax increases were appropriate. In the Matter of the Petition of Jersey Central Power & Light Company, 94 N.J.A.R.2d (BRC) 49.

Power and light company's proposal to offer services and equipment to protect sensitive electronic equipment from power disturbances approved. In the Matter of Jersey Central Power & Light Co.'s Petition for Authorization to Implement a Conditioned Power Service Program, 94 N.J.A.R.2d (BRC) 41.

Power and light company's economic recovery tariff riders and programs approved. In the Matter of the Petition of Jersey Central Power & Light Company for Approval of Economic Recovery Tariff Riders, 94 N.J.A.R.2d (BRC) 39.

Board rejected Rate Counsel's proposals to modify telephone company's plan for an alternative form of regulation because the plan comported with the Board's prior decision and order. In the Matter of New Jersey Bell Telephone Company's Application for Approval of Its Plan for an Alternative Form of Regulation, 94 N.J.A.R.2d (BRC) 26.

Attempt to reopen a challenge to water and sewage billing practices and rates denied. Holiday Lake, Inc., et al. v. Montague Water Company, 94 N.Y.A.R.2d (BRC) 23.

Rate increase proposed by public utility company to cover reasonable remediation costs for manufactured gas plant sites would be granted. In the Matter of the Petition of Public Service Electric and Gas Company for Approval of an Increase in Rates, 94 N.J.A.R.2d (BRC) 1.

Electric utility was not entitled to recover interest related to Nuclear Performance Standard penalty incurred as result of substandard performance of nuclear generating units. In Matter of Motion of Public Service Electric and Gas Company, 93 N.J.A.R.2d (BRC) 149.

Increased gross receipts and franchise tax payments warranted grant to electric utility of rate increase. In Matter of Petition of Atlantic City Electric Company, 93 N.J.A.R.2d (BRC) 117.

Electric utility entitled to rate of return of 10.28 percent based upon allowed return on equity of 12.2 percent. In Matter of Petition of Jersey Central Power & Light Company, 93 N.J.A.R.2d (BRC) 85.

Settlement stipulation adopted in water utility rate proceedings; 4.863 percent increase in annual revenues over present pro forma revenues granted. In Matter of Petition of Elizabethtown Water Company, 92 N.J.A.R.2d (BRC) 81.

Electric utility rate proceeding stipulation substantially adopted; \$5.1 million dollar annual revenue increase approved. In Matter of Petition of Rockland Electric Company, 92 N.J.A.R.2d (BRC) 61.

Implementation of 1991 amendments to Gross Receipts and Franchise Tax statutes. In Matter of Implementation of P.L. 1991, C. 184, 92 N.J.A.R.2d (BRC) 53.

Consolidated tax adjustment and rate proceeding stipulation adopted. In Matter of Petitions of New Jersey Gas Company, 92 N.J.A.R.2d (BRC) 49.

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

Contract between water utility and state water supply authority was prudent; interim rate adopted as permanent with slight reduction. In Matter of Petition of Adelphia Water Company, Inc., 92 N.J.A.R.2d (BRC) 16.

Electric utility sought energy adjustment and hotel casino service adjustment, sought to retain portion of fuel and energy savings resulting from purchase power agreement, and sought recovery of interest paid due to exclusion of power plant deferral and nuclear performance standard penalty amount from fuel underrecovery balance; partially denied and partially deferred. In Matter of Atlantic City Electric Company Tariff PUC NJ. No 9, 92 N.J.A.R.2d (BRC) 7.

Rate increase for sewer and water customers was reasonable. In Matter of Petition of New Jersey American Water Company, 92 N.J.A.R.2d (BRC) 1.

14:1-5.13 Informal complaint in lieu of petition

(a) In lieu of filing a petition, an informal complaint may be made by letter or other writing.

(b) Matters thus presented may be taken up by the Board with the parties affected by correspondence or otherwise, in an endeavor to bring about an adjustment of the subject matter of the complaint without formal hearing order.

(c) While no form of informal complaint is prescribed, to be considered by the Board such informal complaint must be signed and state the name and address of the complainant and the party complained of as well as the essential facts upon which the complaint is based, including the dates of acts or omissions complained of.

(d) Informal complaints are usually assigned to the Board's appropriate operating division which deals with the subject matter involved. This division then brings the matter to the attention of the utility and directs the latter to submit information deemed to be pertinent as well as a statement of its position.

(e) Following a study and review of the complainant's and utility's positions and supporting data and after such informal conferences as may be held, an attempt is made to affect an amicable adjustment of the dispute.

(f) A letter is then forwarded to the complainant with a copy to the utility reflecting the results, if any, of the processing of the informal complaint.

(g) Informal complaints shall be without prejudice to the right of any party to file a petition or of the Board to institute a formal proceeding.

(h) While informal complaints are recommended wherever practicable as a method designed for amicable adjustment of disputes, no mandatory or prohibitory order will be issued on an informal complaint.

(i) A party desiring a decision on order of the Board must file a petition.

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

14:1-5.14 Petitions for approval of a merger or consolidation

(a) Petitions for approval of a merger or consolidation of one public utility of New Jersey with that of another public utility shall conform to the provisions of N.J.A.C. 14:1-4 and N.J.A.C. 14:1-5.1 through 5.4 and 5.9, as well as N.J.A.C. 14:11-1.7, to the extent applicable, and shall contain in the petition, or as attached exhibits, the following information:

1. A copy of the agreement of merger or consolidation;
2. Copies of corporate resolutions of the stockholders of each of the corporations authorizing the transaction;
3. Copies of recent balance sheets of each company and a pro forma balance sheet of the continuing company;
4. Copies of recent income statements of the operation of each of the companies involved and a pro forma income statement of the continuing corporation, in sufficient detail;
5. Copies of certificates of incorporation of each corporation to be merged and amendments thereto, if not heretofore filed with the Board;
6. The total number of shares of each of the various classes of capital stock proposed to be issued, if any, by the surviving corporation; the par or stated value per share; and the total amount of new capital stock to be issued;
7. The percentage, and the manner in which, if any, the presently outstanding capital stock of the corporations involved will be exchanged for the new stock of the surviving corporation;

14:1-10.3 Extension of time limits

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

14:1-10.4 Answers to communications

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