

**CHAPTER 3
ALL UTILITIES**

Authority

N.J.S.A. 48:2-13, 48:2-16, 48:2-17, 48:2-20, 48:2-24, 48:2-27, 48:2-76, 48:3-3, 48:3-7.8, 48:3-12, 48:13A-1 and 48:19-17.

Source and Effective Date

R.2002 d.280, effective July 31, 2002.
See: 34 N.J.R. 992(a), 34 N.J.R. 3216(b).

Chapter Expiration Date

Chapter 3, All Utilities, expires on July 31, 2007.

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 by 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 Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. DEFINITIONS

14:3-1.1 Definitions

The following words and terms, when used in N.J.A.C. 14:3 through 14:10, shall have the following meanings unless clearly indicated otherwise:

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

"Customer" means the person identified in the account records of a utility as the person responsible for payment of the utility bill. A customer may or may not be an end user, as defined herein.

"Days" means calendar days unless specified otherwise.

"End user" means a person who receives, uses, or consumes electricity, gas, telephone, water or wastewater service. An end user may or may not be a customer, as defined herein.

“Person” means an individual, firm, joint venture, partnership, copartnership, corporation, association, State, county, municipality, public agency or authority, bi-state or interstate agency or authority, public utility, regulated entity, cable television company, cooperation association, or joint stock association, trust, limited liability company, governmental entity, or other legal entity, and includes any trustee, receiver, assignee, or personal representative thereof.

“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 public utility, as defined in this section.

“Regulated service” means a service subject to regulation by the Board.

“Residential customer” means a customer who receives utility service for use in a residence.

“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.1991 d.221, effective May 6, 1991.

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

Internal reference cite corrected, “Board” definition updated.

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

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

Added “Residential customer”.

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

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

Added definition for “Days”.

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

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

Amended “Customer” and “Residential customer”; added “End user” and “Person”.

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

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

Added “Regulated entity” and “Regulated service”.

Case Notes

Definition of utility; Board jurisdiction over municipally owned and operated utilities found only by specific statutory grant. Freehold Boro. v. Freehold Twp., 193 N.J.Super. 724, 475 A.2d 691 (App.Div. 1984).

4. The accuracy of the meter;

5. A record of the tests of each meter and action taken regarding same.

(b) All the records required in this Section shall be kept for a period of six years or to the date of the last test, whichever period is the longer.

14:3-4.10 Meter replacement

(a) A utility shall not make any charge for replacing a meter where such replacement is requested by a customer, unless the meter first referred to has been in use less than two years, in which case a charge, which shall not exceed the cost of making the replacement, may be made. No charge shall be made for replacing a meter for test purposes, or for replacing a meter necessitated by a change in service characteristics which conform to the provisions of these regulations, or for replacing a defective meter, unless the defect is due to the negligence of the customer in which case a charge which shall not exceed the cost of making the replacement may be made.

(b) A meter of a customer who has a complaint filed with the Board reflecting on the accuracy or performance of the meter shall not be removed from service by the utility during the pendency of said complaint or during the following 30 days unless otherwise authorized by the Board's staff.

Amended by R.1997 d.39, effective February 3, 1997.
See: 28 N.J.R. 1810(a), 29 N.J.R. 449(a).

SUBCHAPTER 5. OFFICES

14:3-5.1 Location

(a) Each utility shall maintain an office in its New Jersey service area, the current location of which shall be furnished to the Board's Division of Customer Assistance, where applications for service, complaints, service inquiries, bill payments, and so forth, will be received.

1. Each utility shall annually provide the Board, with a list of its in-person business offices, setting forth the location of and functions performed at each office; and

2. The utility shall file written notice with the Board of any proposed change in the functions of one or more of these offices at least 14 business days prior to the change being made.

(b) Each utility shall furnish the Board with the current location of the offices where maps and records covering the various service areas are available to supply, upon reasonable request, information to customers, governmental bodies, other utilities and contractors.

(c) In the event that a utility desires to close or relocate an office, the utility shall comply with the following procedures:

1. At least 60 days prior to the closing or relocation of an office described in (a) or (b) above, a utility shall apply for approval with the Board, demonstrating that such closure or relocation is not unreasonable and will not unduly prejudice the public interest, and setting forth the means, upon Board approval of the application, by which customers and other interested parties will be adequately notified of the closing or relocation and alternatives available in the case of a closed office.

2. The utility shall simultaneously notify its customers and the clerk of each affected municipality of the pending application for permission to relocate or close the subject office by means of posting notice at the office location and, within three days of application, by placing notice of the office closing or relocation in the newspaper(s) serving the affected area.

i. The notice shall inform customers of their right to present to the Board, in writing, any objections they may have to the office closure or relocation; and

ii. The notice shall specify a date certain for submission of comments which date shall not be less than 20 nor more than 30 days after publication and posting.

3. An office shall not be closed or relocated until the utility has been informed, in writing, that the Board has approved such request.

(d) Utilities shall maintain and provide toll free or local exchange telephone numbers for use by the general public and customers affected by an office closing or relocation for billing, service and sales inquiries. This toll free number or local exchange number shall be posted on any notice at the office location as well as in the notice placed in the newspaper(s), pursuant to (c) above, serving the affected area.

(e) Each utility shall advise the Division not less than 60 days prior to the relocation of its customer call center(s) located in New Jersey.

Amended by R.1993 d.298, effective June 21, 1993.
See: 24 N.J.R. 2132(a), 25 N.J.R. 2699(a).

Amended by R.1997 d.39, effective February 3, 1997.
See: 28 N.J.R. 1810(a), 29 N.J.R. 449(a).

In (a), deleted "or within reasonable proximity of" following "shall maintain in".

Amended by R.2002 d.280, effective September 16, 2002.
See: 34 N.J.R. 992(a), 34 N.J.R. 3216(b).

Rewrote (a); added (e).
Amended by R.2004 d.12, effective January 5, 2004.
See: 35 N.J.R. 91(a), 36 N.J.R. 200(b).

Rewrote (a).

Case Notes

Change in bill format rejected; determination of complex rate increase petition. In re: Public Service Electric & Gas Co., 6 N.J.A.R. 633 (1981).

14:3-5.2 Personnel to be contacted

(a) Each utility shall furnish to the Board and keep current a list of names, addresses and telephone numbers of responsible officials to be contacted in connection with routine matters during normal working hours.

(b) Each utility shall also furnish to the Board and keep current a list of names, addresses, and telephone numbers of responsible officials who may be contacted in event of emergency during other than normal working hours.

14:3-5.3 Emergency telephone numbers

(a) Each public utility shall establish and prominently display on all customer bills after present supplies are exhausted, a current telephone number which may be used by customers and others to report emergencies to the public utility.

(b) In addition, each public utility shall maintain a listed emergency number in appropriate telephone directories, and file same with police departments, fire departments, municipal clerks and other appropriate governmental agencies.

(c) These numbers shall be tended in order that calls can be answered on a 24 hour basis, with assurance that, within a reasonable period of time, a company official will be contacted.

(d) Electric, gas, telephone and Class A water utilities shall have available, on a 24 hour per day basis, representatives or agents to accept emergency telephone calls from customers. Said representatives or agents shall be able to contact appropriate utility personnel in the event of an emergency situation. If used by a utility, an Automatic Response Unit (ARU) must provide an escape option to allow a customer to speak to the next available operator.

(e) Each utility shall respond to an emergency or shut-off complaint from the Board's Division of Customer Assistance within one hour of receiving such complaints by acknowledging receipt of the complaint by e-mail or facsimile to the member of the Board staff who forwarded the complaint. The purpose of the acknowledgement is to inform staff that the complaint has been received and that the process for the implementation of any appropriate corrective action has been initiated.

R.1973 d.187, effective July 11, 1973.
See: 4 N.J.R. 196(e), 5 N.J.R. 292(b).
Amended by R.1997 d.39, effective February 3, 1997.
See: 28 N.J.R. 1810(a), 29 N.J.R. 449(a).
Added (d).
Amended by R.2002 d.280, effective September 16, 2002.
See: 34 N.J.R. 992(a), 34 N.J.R. 3216(b).
Added (e).

SUBCHAPTER 6. RECORDS

14:3-6.1 Location and examination

Each utility shall notify the Board, upon request, of the office or offices at which various records are kept. These records shall be open for examination by the Board's inspectors.

14:3-6.2 Plant and operating

(a) Each utility shall maintain, readily available, adequate maps and/or records reflecting the latest available information and data concerning the size, type, location and date of installation of its major units of property.

(b) Each utility owning or operating pumping, treatment facilities or power stations or other production facilities for the purpose of furnishing service to customers shall keep for a period of one year a record of the time of starting and shutting down of all principal units of such equipment, as well as a record of pertinent related operating statistics. Each such utility shall maintain and keep in operating condition one or more graphic recording devices at central points where continuous records shall be made of the pressure or voltage at that point.

(c) Each utility shall keep for a period of one year, a record of complaints in regard to service received at its office or offices, which shall include the name and address of the customer, the date, the nature of complaint and the disposition. The record shall be available for inspection by the Board's inspectors.

(d) By June 18, 2005, each regulated entity shall submit to the Board a procedure for the regulated entity to determine, at the time of receipt of an application for service, whether the requested extension will serve development in a designated growth area or an area not designated for growth, as defined at N.J.A.C. 14:3-8.2. This subsection shall not apply to a regulated entity that is a cable television operator.

(e) Each regulated entity shall keep detailed records of all deposits, refunds, and expenditures on extensions, as defined at N.J.A.C. 14:3-8.2, with sufficient detail to enable the regulated entity to demonstrate compliance with this chapter to the Board. This subsection shall not apply to a regulated entity that is a cable television operator.

(f) The regulated entity shall make the records required under this section available to Board staff for inspection during regular business hours upon request.

(g) Each regulated entity shall maintain, for each calendar year, the following records:

1. The amount of trench which it has shared with other regulated entity lines or cables; and
2. The number of subdivisions, the number of lots and the number of buildings or structures, both residential and nonresidential, for which service was provided. The regulated entity shall identify whether these are in designated growth areas or areas not designated for growth. This paragraph shall not apply to a regulated entity that is a cable television operator.

Amended by R.2004 d.462, effective December 20, 2004.
See: 36 N.J.R. 276(a), 36 N.J.R. 5928(a).

Added (d) through (g).

14:3-6.3 Periodic reports

(a) Every utility shall file with the Board on or before March 31 of each year, or on or before the due date noted on the report form, a summary of its finances and operations for the preceding calendar year on forms prescribed and furnished by the Board. In special instances utilities may be required to submit reports quarterly and monthly as directed by the Board. Other periodic reports shall be filed on or before the due date noted on the report form.

(b) A utility may request the Board's Secretary for an extension of up to 30 days for the filing of the report required in (a) above. The request shall state the reason for the extension.

(c) Any additional extensions of the date for the filing of the report shall require the submission of separate requests as provided for in (b) above.

(d) Should the Board Secretary deem it appropriate to deny a request for the extension of time for filing the report, the request shall be brought before the Board for final consideration.

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

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

Reference to due dates noted on report forms, added.

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

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

Designated existing paragraph as (a) and added (b) through (d).

14:3-6.4 Accidents

(a) Each utility shall keep a record of and report to the Board all accidents which come within the meaning of reportable accidents, as hereinafter defined, occurring in connection with the operation of the utility's plant, property or facilities within the State.

3. A BRLTS customer shall be given a period of at least 15 days for payment after the postmark date indicated on the envelope in which the bill was transmitted. If payment is not received, in accordance with this section, the payment shall be deemed in arrears. In the absence of a postmark, the burden of proving the date of mailing shall be upon the utility.

(c) Termination of nonbasic residential local telephone service shall be as follows:

1. When a residential customer's charges for nonbasic telephone services are more than \$20.00 in arrears, a provider of BRLTS may deny or block those services, at no additional charge to the residential customer, subject to the notice requirements in this section. Customers who select the residential credit limit option set forth in (d) below shall not be blocked until such time as their limit is met.

2. In accordance with N.J.A.C. 14:3-7.12, before a BRLTS provider denies or blocks any nonbasic telephone service, the residential customer shall be given at least 10 days written notice of its intention to discontinue such service. A notice shall be served by the BRLTS provider (or other appropriate billing agent) whenever it intends to deny or block a nonbasic telephone service for nonpayment, except that no additional notice shall be required when, in response to a notice of discontinuance, a check submitted in payment is subsequently dishonored. The notice shall indicate that payments on the bill shall be applied as set forth in (f) below.

3. A BRLTS customer shall be given a period of at least 15 days for payment after the postmark date indicated on the envelope in which the bill was transmitted. If payment is not received, in accordance with this section, the payment shall be deemed in arrears. In the absence of a postmark, the burden of proving the date of mailing shall be upon the utility.

(d) A residential credit limit option may be offered to customers, as follows:

1. A provider of BRLTS and/or nonbasic residential telephone service may offer residential customers a credit limit option for an amount of not less than \$200. This option pertains exclusively to services other than BRLTS. Pursuant to this option, a customer may incur unpaid charges for services other than BRLTS, up to the amount of the credit limit option. A customer who selects the credit limit option shall not be required to submit to the service provider the customer deposit required by N.J.A.C. 14:10-4.6. Every provider of basic or nonbasic residential local telephone service shall offer a deferred payment arrangement pursuant to (e) below to any customer who exceeds the customer's credit limit option. In the event that the credit limit is reached for a customer selecting the credit limit option, the provider of service may block or otherwise restrict access by the customer to services other than BRLTS. In such event, and notwithstanding other

provisions of the tariff, no additional tariff charge for blocking or service restoral shall apply, nor shall a separate notice of discontinuance be sent by the telephone service provider.

2. Every provider of basic or nonbasic residential local telephone service, upon customer selection of the credit limit option, shall confirm said selection with the customer in writing, which confirmation shall include, but not be limited to, the following information:

- i. The amount of the credit limit option;
- ii. That nonbasic services may be disconnected without further notice should the customer exceed the selected credit limit;
- iii. The customer's right to a reasonable deferred payment arrangement in order to allow the customer to maintain or restore telephone services; and
- iv. A toll-free number which the customer may call either for additional information about the credit limit option or to advise the provider that the credit limit option is no longer desired, or to obtain the amount of credit used.

(e) Payment arrangements shall be made as follows:

1. Every BRLTS provider that bills a residential customer shall offer the customer a reasonable deferred payment arrangement that considers the customer's financial circumstances in order to allow a residential customer to maintain or restore telephone services.

2. Should it become necessary for a provider to implement a denial or block of BRLTS or nonbasic residential telephone service, the BRLTS provider shall allow the BRLTS customer the opportunity to make a reasonable payment agreement to fulfill the obligation of the outstanding balance billed by the BRLTS provider in order to prevent the denial or block of service or to have the denied or blocked service(s) restored.

3. No deferred payment arrangement shall require a BRLTS customer to pay as a down payment, more than 25 percent of the total outstanding bill due at the time the agreement is reached. Such agreements which extend for more than two months shall be confirmed in writing by the service provider, and sent to the customer. Such confirmation shall provide that a residential customer, who is presently unable to pay an outstanding debt for telephone service, may make reasonable periodic payments until the debt is paid while continuing payment of current bills. The billing provider may offer more than one payment agreement in a year. The Board may also order the billing provider to accept more than one deferred payment agreement in a year if said action is reasonable.

4. A deferred payment arrangement shall be available to all basic local residential customers, including those who select the credit limit option referenced in (d) above.

(f) Application of payments shall be made as follows:

1. Upon receipt of a partial payment from a telephone service residential customer, the billing provider shall apply the payment as follows:

i. The partial payment shall first be applied to BRLTS.

ii. Upon satisfaction of the charges identified in (f)1i above, any residual or subsequent payment received during the same billing period shall be applied to the charges for nonbasic telephone service.

iii. In the event a customer fails to pay a bill and a customer notifies the BRLTS provider that slamming, as defined in N.J.A.C. 14:10-10.2 and 10.5(c) and (g), has allegedly occurred, that portion of the bill that relates to the alleged slamming shall be considered in dispute pursuant to N.J.A.C. 14:3-7.13, and the BRLTS provider shall neither apply residual or partial payments to the customer's charges for the slammed service nor discontinue the customer's slammed service because of nonpayment.

2. At the time a customer subscribes to BRLTS, the provider of BRLTS shall inform the customer as to the partial payment allocation rules in (f)1, above.

3. Notice of the partial payment allocation rules in (f)1 above shall be printed in the Customer Guide Section of the directory of the provider of BRLTS.

New Rule, R.2000 d.84, effective March 6, 2000 (operative September 6, 2000).

See: 31 N.J.R. 740(a), 32 N.J.R. 815(b).

SUBCHAPTER 8. EXTENSIONS TO PROVIDE REGULATED SERVICES

Authority

N.J.S.A. 48:2-13, 48:2-16, N.J.S.A. 48:2-27, and 48:2-23.

Source and Effective Date

R.2005 d.462, effective December 20, 2004 (operative March 20, 2005).
See: 36 N.J.R. 276(a), 36 N.J.R. 5928(a).

Subchapter Historical Note

Subchapter 8, Extensions to Provide Regulated Services, was repealed and adopted as new rules by R.2004 d.462, effective December 20, 2004 (operative March 20, 2005). See: Source and Effective Date.

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 service 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 only applies to cable television companies in the following manner. Cable television companies shall comply with the provisions of N.J.A.C. 14:3-8.1, 8.2 through 8.5, 8.6(b), 8.8 and 8.13 only; and

2. 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 nonresidential.

(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 service, 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.

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 Keansburg Water Co.*, 6 N.J.A.R. 210 (1980).

14:3-8.1A Waiver request, operative date

(a) If a regulated entity requests a waiver of one or more requirements in this subchapter (as effective December 20, 2004) in accordance with N.J.A.C. 14:1-1.2(b), the waiver shall include documentation that the requirements of N.J.A.C. 14:1-1.2(b)1 and 2 are met. Specifically, the waiver request shall demonstrate how full compliance with the requirement(s) of this subchapter would adversely affect ratepayers and the ability of the regulated entity to render safe, adequate and proper service in an environmentally responsible manner; and shall demonstrate that the regulated entity's proposed alternative will meet the purposes and intent of this subchapter at least as effectively as the requirements that will be waived. Any such waiver request shall be submitted by January 19, 2005, and the Board shall act on the waiver request within 180 days after receipt of a complete waiver petition.

(b) This subchapter (as effective December 20, 2004) shall become operative on March 20, 2005, except for this section and N.J.A.C. 14:3-8.1B, which shall become operative on December 20, 2004.

New Rule, R.2004 d.462, effective December 20, 2004.
See: 36 N.J.R. 276(a), 37 N.J.R. 5928(a).

14:3-8.1B Submission of modified tariff

Each regulated entity shall submit to the Board a modified tariff that complies with this subchapter as operative March 20, 2005 (see 36 N.J.R. 5928(a)) by January 19, 2005.

New Rule, R.2004 d.462, effective December 20, 2004.
See: 36 N.J.R. 276(a), 36 N.J.R. 5928(a).

14:3-8.2 Definitions

In addition to the definitions at N.J.A.C. 14:3-1.1, 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.

“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 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 either an initial or advanced petition for 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 Department of Community Affairs Office of Smart Growth website at <http://www.nj.gov/dca/osg/>.

“Distribution revenue” means a regulated entity's total revenue, 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 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 assessed in accordance with the electric public utility's tariff.

“Extension” means the construction or installation of plant and/or facilities by a regulated entity to convey service from existing or new plant and/or facilities to one or more new customers, and also means the plant and/or facilities themselves. 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 a private property or private right of way, including the wire, poles of 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, 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. Any piping, fire hydrants and branches, or other water infrastructure (with the exception of the water meter), which is within the boundary or the property or properties to be served, is not included in the extension and is the responsibility of the customer;

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; unless the applicant and the regulated entity make other arrangements;

5. For telecommunications service, the extension ends at the point of demarcation as defined in the regulated entity's tariff; and

6. For cable television service, the extension ends at the pole or pedestal nearest the customer's property once the extension is completed. Any infrastructure costs not included in the extension and necessary for the installation are the responsibility of the customer in accordance with the company's tariff on file with the Board.

"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 or cable television 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 Redevelopment 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.

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

Added 6 to definition "Extension".

14:3-8.3 General requirement to provide extensions

(a) To obtain regulated services to serve new development or new customers, a person 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 in 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.

(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.

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

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

Rewrote (a).

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 or gas service shall be underground in all cases. An extension of cable television service shall be made in accordance with N.J.A.C. 14:18-2.

(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. If underground service is required by this subsection, or an applicant desires underground service where it is not required under (d) or (e) above, the costs shall be distributed as follows:

1. In a designated growth area as defined by N.J.A.C. 14:3-8.2, 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.

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

(g) 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 shall be distributed between the regulated entity and the applicant in the same way as the remainder of the extension costs under this subchapter.

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

(i) 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.

(j) 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.

(k) 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).

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) 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 estimated 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 (h) 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) There may be a case where an applicant requests an extension and the regulated entity wishes to construct additional capacity over that required under N.J.A.C. 14:3-8.3(e). If 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, or may require the applicant to pay for it. However, if any of the additional capacity 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.

(i) 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 service 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.

(j) 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.

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

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(h).

(c) During the three-year phasing out period, a regulated entity may choose not to contribute to an extension or portion thereof, described at (a) above, or may choose to contribute in accordance with the adjusted formula set forth at (e) or (f) below, as applicable.

(d) Beginning March 20, 2005 and ending January 1, 2006, if a regulated entity chooses to contribute to an extension described at (a) above, the regulated entity shall contribute financially to the extension in accordance with N.J.A.C. 14:3-8.7, except that if the suggested formula at N.J.A.C. 14:3-8.10 or 8.11 is applied, each refund to the applicant shall be calculated by multiplying annual distribution revenue from each customer by the following, rather than by 10:

1. For extensions of water service, by 1.5; and
2. For extensions of all other regulated services, by three.

(e) Beginning January 1, 2006 and ending January 1, 2007, if a regulated entity chooses to contribute to an extension described at (a) above, the regulated entity shall contribute financially to the extension in accordance with N.J.A.C. 14:3-8.7, except that if the suggested formula at N.J.A.C. 14:3-8.10 or 8.11 is applied, each refund to the applicant shall be calculated by multiplying annual distribution revenue from each customer by the following, rather than by 10:

1. For extensions of water service, by .75; and
2. For extensions of all other regulated services, by 1.5.

(f) After January 1, 2007, 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 in addition 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.

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 prior to construction from an applicant in any case where the regulated entity is not expected to receive a substantial portion of the revenue from the extension within the first five years after the extension is

constructed. The deposit shall be refunded 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.

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 (c) 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. A project already in progress as of March 20, 2005, as described in (g) below;
5. A project that will provide a significant public good, as described in (h) below; and
6. A project for which compliance would cause extraordinary hardship, as described in (i) below.

(b) An exemption described at (a)1 through 4 above shall not require prior written approval from the Board. An exemption described at (a)5 or 6 above shall require prior written approval from Board staff.

(c) 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.

(d) An extension with the sole purpose of serving an agricultural building or structure whose sole use is the production, storage, packing or processing of agricultural or horticultural products, provided that a majority of these products were produced 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. 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 has begun prior to March 20, 2005, or if a regulated entity has committed in writing to pay for or financially support the extension, prior to March 20, 2005, the extension shall be exempt.

(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 other State agencies; and

3. There is no practicable alternative means of providing the benefit while still complying with this subchapter.

(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;

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 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) 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 a project 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 (j)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.
36 N.J.R. 5655(a), 37 N.J.R. 3046(b).
Added new (a)1 and new (c).

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

(a) Board staff will 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; and

3. Either the regulated entity or the applicant for service submits a request to Board staff 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 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 under N.J.A.C. 14:3-8.4(h).

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 SGIIP 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> <ul style="list-style-type: none"> 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: <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; iii. Subtract ii from i above, resulting in a difference of \$210.00; and iv. 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> <ul style="list-style-type: none"> 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

End of year two	Two years have passed since deposit was provided	<p>Regulated entity gives applicant second annual refund, based on customers that were served for all of year two. Refund is calculated as follows:</p> <ul style="list-style-type: none"> 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: <ul style="list-style-type: none"> • 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
Year three	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
End of year three	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> <ul style="list-style-type: none"> 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: <ul style="list-style-type: none"> • 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. <p>Since \$3,300 exceeds the remaining deposit, the regulated entity gives the applicant the remainder of the deposit (\$2,700).</p> <p>Transaction is complete.</p>	\$ 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. If the year two distribution revenue is less than the year one distribution revenue, the regulated entity is not required to provide a refund. If the year two distribution revenue exceeds the year one distribution revenue, the regulated entity shall provide a refund to the applicant. The amount of the refund shall be the difference between the year one distribution revenue and the year two distribution revenue, multiplied by 10.

(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

<u>When?</u>	<u>Action</u>	<u>Amount</u>
Before construction	Applicant gives deposit, determined as follows, to regulated entity: 1. Estimate total cost of extension (\$7,500);	\$ 2,500

2. Estimate annual distribution revenue (\$500.00);
3. Multiply annual distribution revenue by 10 (\$5,000); 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.

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

Two years after customer comes on-line

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 first year distribution revenue (\$525.00), regulated entity gives second refund to applicant. Refund is determined as follows:
 1. Subtract first year distribution revenue (\$525.00) 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

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

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

(a) This section sets forth the process by which the Board may authorize coverage of 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.

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. GENERAL PROVISIONS

14:3-9.1 Rules not retroactive

The rules of this Chapter shall not be construed to be retroactive with respect to the reconstruction of facilities or the maintenance of records in accordance with those standards prescribed in this Chapter which were not in force when such facilities were installed or constructed or when the maintenance of such records commenced. However, the Board reserves the right to deal with specific cases as the particular conditions require.

Amended by R.1997 d.39, effective February 3, 1997.
See: 28 N.J.R. 1810(a), 29 N.J.R. 449(a).

14:3-9.2 Deviation and modification

(a) Should conditions exist where a deviation from any of these rules should be made to suit such conditions, petition may be made to the Board for such deviation.

(b) These rules may be amended or modified by the Board from time to time.

Amended by R.1997 d.39, effective February 3, 1997.
See: 28 N.J.R. 1810(a), 29 N.J.R. 449(a).

14:3-9.3 Tariffs

(a) Where these rules are in conflict with any terms and conditions contained in any utility tariff, these rules shall govern unless otherwise authorized by the Board.

(b) A utility's tariff shall not be construed to be in conflict with these rules if said tariff provides for more liberal treatment of customers than that provided for in these rules.

Amended by R.1997 d.39, effective February 3, 1997.
See: 28 N.J.R. 1810(a), 29 N.J.R. 449(a).

14:3-9.4 Authority

These rules are promulgated pursuant to authority vested in the Board by the New Jersey Statutes Annotated, and shall be construed in conformity with, and not in derogation of, such statutes.

Amended by R.1997 d.39, effective February 3, 1997.
See: 28 N.J.R. 1810(a), 29 N.J.R. 449(a).

14:3-9.5 Prior rules

Except as otherwise provided in this Chapter, rules and standards heretofore promulgated with respect to the subject matter encompassed by these rules are hereby superseded and revoked.

Amended by R.1997 d.39, effective February 3, 1997.
See: 28 N.J.R. 1810(a), 29 N.J.R. 449(a).

14:3-9.6 Rates; difference from filed tariffs

(a) In every instance where a utility, subject to the jurisdiction of the Board, enters into a contract or agreement with a customer for the sale of its service at rates different from those provided in the existing tariffs of the utility on file with the Board, it shall file four copies of such contract or agreement, with amendments and supplements, if any, not less than 30 days prior to the effective date thereof.

(b) The filing shall be accompanied by a detailed statement as to the:

1. Type of agreement; for example, firm or interruptible service;

2. Detailed costs to the utility associated with delivery and sale of the service;
3. Rates and other charges to the customer;
4. Effect on the company's income of such sale;
5. Reasons for the contract or agreement.

R.1973 d.157, effective June 19, 1973.
 See: 5 N.J.R. 123(b), 5 N.J.R. 240(a).
 Amended by R.1997 d.39, effective February 3, 1997.
 See: 28 N.J.R. 1810(a), 29 N.J.R. 449(a).

Historical Note

Formerly Administrative Order 14:283.

Case Notes

Municipalities required to enter into solid waste disposal contracts only after advertising for competitive bids; Public Contracts Law did not repeal municipal public bidding for scavenger services statute; such contracts are not "schedules of charges" or "tariffs" to permit bidding exemption. In re: Application of Saddle River Boro., 71 N.J. 14, 362 A.2d 552 (1976).

Attempt to eliminate competition warranted revocation of solid waste authority and debarment order. Matter of Allegations, Cicalese, 95 N.J.A.R.2d (EPE) 217, certification denied 143 N.J. 319, 670 A.2d 1061.

Revocation of solid waste disposal company license was appropriate. In the Matter of Allegations of Violations of Law and Administrative Code by A. Fiore & Sons, Inc., 94 N.J.A.R.2d (EPE) 193.

Solid waste utility; loss of license; order to pay penalties and refunds. In the Matter of Industrial & Commercial Refuse Removal Service, Inc., 94 N.J.A.R.2d (EPE) 149.

Charge computation in assumed contract should have been submitted to Board for review as inconsistent with tariff. Board of Public Utilities v. Hamm's Sanitation, Inc., 2 N.J.A.R. 59 (1979).

SUBCHAPTER 10. TARGETED REVITALIZATION INCENTIVE PROGRAM (TRIP)

Authority

N.J.S.A. 48:2-13, 48:2-16, N.J.S.A. 48:2-27, and 48:2-23.

Source and Effective Date

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).

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.

(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.

(f) This subchapter shall become operative on March 20, 2005.

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 infra-

structure 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 a petition for approval or adjustment of a TRIP charge 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. Removal of existing depreciated infrastructure;

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.

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;