

TITLE 14

BOARD OF PUBLIC UTILITIES

CHAPTER 1

RULES OF PRACTICE

Authority

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

Source and Effective Date

R.1992 d.224, effective June 1, 1992.
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Chapter 1, Rules of Practice, expires on June 1, 1997.

Chapter Historical Note

Chapter 1, Rules of Practice, expired February 14, 1991 and was adopted as new rules by R.1992 d.224, effective June 1, 1992. See: Source and Effective Date.

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SUBCHAPTER 1. GENERAL PROVISIONS

14:1-1.1 Scope

These rules shall govern practice and procedure before the Board of Regulatory Commissioners.

14:1-1.2 Construction and amendment

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

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

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

Case Notes

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

14:1-1.3 Definitions

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

“Board” means the Board of Regulatory Commissioners.

“Commissioner” means a member of the Board of Regulatory Commissioners.

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

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

14:1-1.4 Offices

The statutory office of the Board and the office of the Secretary of the Board are located at 44 South Clinton Avenue, CN 350, Trenton, New Jersey 08625.

14:1-1.5 Hours

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

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

14:1-1.6 Communications

(a) All pleadings, correspondence and other papers should be addressed to the Secretary, Board of Regulatory Commissioners, 44 South Clinton Avenue, CN 350, Trenton, New Jersey 08625.

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

14:1-1.7 Official records

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

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

14:1-1.8 Cameras and recording devices

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

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

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

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

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

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

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

SUBCHAPTER 2. FEES AND CHARGES

14:1-2.1 Amount of fees and charges

The Board has been empowered, authorized and required by law to charge and collect fees and charges more particularly set forth in N.J.S.A. 48:2-56.

14:1-2.2 Payment of fees and charges

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

(b) All checks for payment of such fees and charges shall be made payable to the order of "Treasurer, State of New Jersey" and delivered or mailed to the Secretary of the Board, 44 South Clinton Avenue, CN 350, Trenton, New Jersey 08625.

SUBCHAPTER 3. APPEARANCE BEFORE THE BOARD

14:1-3.1 Appearances

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

14:1-3.2 Ethical conduct and ex parte communications

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

14:1-3.3 Former employees

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

SUBCHAPTER 4. PLEADINGS

14:1-4.1 Pleadings enumerated and defined

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

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

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

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

14:1-4.2 Number of copies

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

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

Case Notes

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

14:1-4.3 Attachments to pleadings

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

Case Notes

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

14:1-4.4 Defective pleadings

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

14:1-4.5 Service and notice of proceedings

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

1. A petition filed on behalf of a public utility shall be served by such utility or its agent or attorney upon each respondent named in such petition;
2. A petition originating a proceeding filed by a party other than a public utility shall be served by the Secretary

of the Board upon each respondent named in such petition;

3. Every other pleading, including all answers, replies, notices, briefs and other papers, shall be served by the party filing the same, whether a utility or not, on all other parties of record concurrently with or prior to the filing thereof; and

4. Whenever public notice is required, the same shall be at the expense of the party directed to give such notice.

Case Notes

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

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

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

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

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

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

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

14:1-4.6 Verification

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

14:1-4.7 Changes in facts or circumstances

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

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

SUBCHAPTER 5. PETITIONS

14:1-5.1 Form and content

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

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

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

Case Notes

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

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

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

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

14:1-5.2 Applications to other regulatory bodies

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

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

14:1-5.3 Joinder of requests for relief

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

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

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

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

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

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

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

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

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

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

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

1. A certified copy of the franchise or consent involved including the terms and conditions relating thereto;
2. Proof that all statutory requirements relating to the obtaining of the franchise or consent have been met; and

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

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

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

Case Notes

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

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

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

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

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

1. Twenty copies of a separate sheet or sheets designated Schedule "A" containing a description of the property;
 - i. For real property, the location by municipality and county, a metes and bounds or other adequate

description of the property, together with a description of the property and rights, if any, reserved by the utility shall be shown;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Where the Board's approval of sale or lease is required by law and the property has a net book cost or fair market value of more than \$100,000, the property shall be advertised for sale or lease at least twice, one week apart, in a daily newspaper published or circulated in the county in which the property is located, within 90 days immediately prior to the filing of the petition for the approval of the sale or lease, except that advertising shall not be required for sales or leases of property for public utility purposes to another public utility or other person or company subject to any jurisdiction of this Board. The advertisement shall contain the following:

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

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

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

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

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

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

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

(d) In addition to any other transactions which on their merits may be deemed to be in the ordinary course of business, the sale, lease, encumbrance or other disposition by any utility of such of its property or an interest therein as is set forth in (d)1 through 3 below, may be consummated without petition to the Board for approval, provided, however, that the utility shall have given written notice thereof to the Board, to be received not less than 15 days prior to the effective date of the proposed sale, lease, encumbrance or other disposition of such property. The transactions which may be completed without petition to the Board are as follows:

1. The sale of personal property having a net book cost and sale price not in excess of \$50,000 and which is no longer used by or useful to the utility;
2. Except as provided in this section, the lease or permission to use or occupy real property or any interest therein having a net book cost not in excess of \$100,000 and a net rental not in excess of \$10,000 per annum; and
3. The sale or release of real property, or any interest therein, not used by or useful to the utility and having a net book cost and sale price not in excess of \$100,000.

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

1. The name of transferee or lessee, the consideration or rental and method of payment thereof, and rights, if any, reserved by the transferor or lessor;
2. A copy of the agreement or lease and a map of the real property;
3. A statement that the proposed consideration or rental represents the fair market value of the property to be conveyed, or the fair rental value of the property to be leased, giving the basis for the conclusion reached;
4. A statement of any relationship between the parties other than that of transferor and transferee, or lessor and lessee, or a statement that there is no such other relationship, as the case may be;

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

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

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

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

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

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

Case Notes

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

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

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

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

Case Notes

Utility company did not meet its burden of showing that use of accelerated depreciation resulted in tax savings to customers. Prince-

ton Meadows Utility Company, Inc. v. Board of Regulatory Commissioners, 94 N.J.A.R.2d (BRC) 71.

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

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

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

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

Case Notes

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

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

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

1. A statement of the amount and terms of the proposed issue including the nature of the security therefor, if any; the purposes for which the proceeds are to be used; and the nature of all rights and limitations applicable to the security;
2. Where one of the purposes is the acquisition of property, a general description of the property, the name of the transferor, and a copy of the contract, if any, for such acquisition. In the case of property to be acquired for right-of-way purposes, a general description of the proposed route and a map or plot plan will be sufficient;
3. Where one of the purposes is the construction, completion, extension or improvement of facilities, a general description of the work proposed to be done, and an estimate of the cost thereof in reasonable detail. Where one of the purposes is the improvement or maintenance of service, there shall be included a description of the existing service as well as of the improvements, or betterments proposed;
4. Where one of the purposes is the refunding of securities, a description of the securities and obligations to be refunded, including the kind, amount, date of issue and date of maturity, together with the terms of refunding and all other material facts affecting the same must be set out;
5. Where one of the purposes is the issuance of capital stock based upon the investment of earnings in plant which might have been distributed in dividends, a complete and reasonably detailed enumeration of petitioner's property, priced at original cost, or estimated if not known. The petitioner shall produce evidence at the hearing in support of such enumeration and pricing;
6. Where one of the purposes is to reimburse the treasury for expenditures not theretofore capitalized by the issuance of securities, the petitioner shall also show the exact period and amount for which reimbursement is desired; comparative financial statements which shall include, as a minimum, balance sheets and utility plant by accounts as at the beginning and end of the period, as well as changes in the period, and, in the case of utility plant, additions and retirements shall be stated separately for each year; a statement indicating the source and application of funds during the period; a statement indicating the manner in which petitioner proposes to use the proceeds from the security issue; and the necessity and reasonableness of the proposed transaction;

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

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

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

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

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

- vii. A detailed list of organization expenditures;
- viii. A copy of a pro forma balance sheet giving effect to the issuance of the proposed securities;
- ix. A copy of a pro forma income statement giving effect to the issuance of the proposed securities; and
- x. The effective rate of interest or of the cost of money to the petitioner and the reasonableness thereof, if authority is requested to issue stocks, bonds, notes or other evidence of indebtedness by means of private placement and not at a public offering, and the finan-

cial sources that the petitioner has contacted in this connection. The petitioner shall submit information as to the computation of the effective rate of interest or of the cost of money as distinguished from the nominal rates which may be indicated;

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

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

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

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

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

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

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

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

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

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

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

12. If no contract, agreement or arrangement has been made for the sale or other disposition of the securities proposed to be issued, the proposed method of sale or other disposition must be set forth together with an affidavit of a competent person showing the amount

which can probably be realized from the sale and disposition thereof, and the reasons for the opinion of the affiant;

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

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

Case Notes

Water company authorized to issue and sell debentures through competitive bidding, with the inclusion of a "negative pledge". In the Matter of the Petition of Elizabethtown Water Co. for Authority to Issue and Sell up to \$50,000 of Debentures, 94 N.J.A.R.2d (BRC) 45.

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

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

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

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

1. The name and address of the proposed transferor and transferee;
2. A description of the proposed transferee including information as to whether the proposed transferee is a public utility, a holding company either separately or by affiliation in a utility holding company system, or a person or other domestic or foreign corporation;
3. A description of the capital stock proposed to be transferred including the class of shares, number of shares and the par or stated value thereof;
4. The percent in interest of the outstanding voting capital stock of the public utility which the proposed transfer, either by itself or in connection with other previous sales or transfers, will vest in the transferee;

5. The reason for the proposed transfer;
6. Details and explanation of any changes expected to be made, if the petition is approved, in:
 - i. The board of directors;
 - ii. Officers and active managers; and
 - iii. Company policies with respect to its operations, financing, accounting, capitalization, rates, depreciation, maintenance, services and any other matters affecting the public interest; and
7. The qualifications and the business or technical experience of the proposed officers, directors and stockholders, or other principal management and operating personnel with particular respect to their ability to carry out the utility's obligation to render safe, adequate and proper service.

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

(a) Tariff filings for the purpose of making effective initial tariffs or revisions, changes or alterations of existing tariffs and which are not filed because of the need for additional revenue from products or services covered by existing tariffs and which do not propose increases in charges to customers, shall conform to the provisions of N.J.A.C. 14:1-4 and N.J.A.C. 14:1-5.1 through 5.4, to the extent applicable, and shall in the body thereof, or in attached exhibits, also provide the following information:

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

Case Notes

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

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

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

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

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

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

1. A comparative balance sheet for the most recent three-year period (calendar year or fiscal year);
2. A comparative income statement for the most recent three-year period (calendar year or fiscal year);
3. A balance sheet at the most recent date available;
4. A statement of the amount of revenue derived in the calendar year last preceding the institution of the proceedings from the intrastate sales of the product supplied, or intrastate service rendered, the rates, tolls, fares or charges for which are the subject matter of the filing;
5. A pro forma income statement reflecting operating income at present and proposed rates and an explanation of all adjustments thereon, as well as a calculation showing the indicated rate of return on the average net investment for the same period as that covered by the pro forma income statement, that is, investment in plant facilities plus supplies and working capital to the extent claimed, less the reserve for depreciation and advances and contributions for facilities;
6. If the request for rate relief is based upon N.J.S.A. 48:2-21.2, there shall be included, in lieu of the requirements of (a)5 above, a statement showing that the facts of the particular situation meet the statutory requirements;
7. Whenever a telephone company seeks to increase its rates, it shall include in its petition or attachments thereto information demonstrating the principles of rate design employed in the proposed tariff revisions. Such information shall identify the approximate percentage of

increased revenue requirement, should the Board determine a lesser additional revenue requirement than that sought by the company, at which it would derive a different proportion of revenue requirement from each of the major classes of service whose prices are sought to be increased, and the revenue requirement by class at each such level. The information shall include a statement of the amount and percentage of increase which would be raised from each such class of service if relief of approximately one-third the request were approved by the Board;

8. In providing the information required by (a)5, 6 and 7 above, a company may also file, in addition to the new rates proposed to become effective, alternative rate changes designed to produce the full revenue request, which alternatives are illustrative of the application of other possible rate designs to the filing;

9. An itemized schedule showing all payments or accruals to affiliated companies or organizations and to those who own in excess of five percent of the utility's capital stock regardless of the form or manner in which such charges are paid or accrued and an explanation of the service performed for such charges; and

10. A copy of the form of notice to customers.

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

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

2. Serve a notice of the filing and two copies of the petition or tariff on the Department of Law and Public Safety, 124 Halsey Street, P.O. Box 45029, Newark, New Jersey 07102 and on the Director, Division of Rate Counsel, Department of the Public Advocate; and

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

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

hearing, in newspapers published and circulated in the utility's service area.

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

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

Case Notes

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14:1-5.13 Informal complaint in lieu of petition

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

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

(c) While no form of informal complaint is prescribed, to be considered by the Board such informal complaint must

be signed and state the name and address of the complainant and the party complained of as well as the essential facts upon which the complaint is based, including the dates of acts or omissions complained of.

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

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

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

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

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

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

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

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

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

7. The percentage, and the manner in which, if any, the presently outstanding capital stock of the corporations involved will be exchanged for the new stock of the surviving corporation;

8. Whether any franchise cost is proposed to be capitalized on the books of the surviving corporation, and, if so, the reasons therefor, and in what manner and over what period the items are proposed to be amortized;

9. The names and addresses of the new officers, directors and principal stockholders and the number of shares to be held by each in the surviving corporation;

10. The various benefits to the public and the surviving corporation which will be realized as the result of the merger;

11. Proposed changes, if any, by the surviving corporation, in company policies with respect to finances, operations, accounting, rates, depreciation, operating schedules, maintenance and management affecting the public interest;

12. Proof of service of notice of the proposed merger to the public, the municipalities being served by the companies to be merged, and the public utilities serving in the area, pursuant to N.J.A.C. 14:1-4.5;

13. Proof of compliance with rules, regulations and statutes requiring approval from other State and Federal regulatory agencies having jurisdiction in the matter; and

14. A statement of the fees and expenses to be incurred in connection with the merger and the accounting disposition to be made thereof on the books of the surviving corporation.

Case Notes

Communication company authorized to acquire part interest in telephone utility. In Matter of Petition of Teleport Communications, 92 N.J.A.R.2d (BRC) 42.

14:1-5.15 Petitions for permission to keep books and records outside the State of New Jersey

(a) Petitions for authority to keep books, records, accounts, documents and other writings outside the State of New Jersey, filed with the Board, as required under N.J.S.A. 48:3-7.8, shall conform to the provisions of N.J.A.C. 14:1-4 and N.J.A.C. 14:1-5.1 through 5.4, to the extent applicable, and shall in the body thereof, or in attached exhibits, also provide the following information:

1. A complete description of the specific books, records, accounts, documents and other writings proposed to be kept outside the State of New Jersey;
2. The exact location where the books and records will be kept;
3. If all books and records will not be kept outside the State, what remaining records will be kept at the New Jersey location;

4. The reason for proposing to keep its books and records at a location outside the State;

5. The availability of adequate required space, facilities and experienced personnel at the new location;

6. The cost to the petitioner of maintaining the books and records at the new location as compared with that of maintaining the records at the New Jersey location;

7. The extent of the financial advantage to the customers and other benefits to the public utility which will result from keeping the books and records outside the State;

8. Whether the books and records which will be kept at the location outside the State will be, on notice in writing of the Board, produced at such time and place within this State as the Board may designate;

9. Whether the petitioner will pay to the Board any reasonable expenses or charges incurred by the Board for any investigation or examination, if the Board grants said permission;

10. The location where the petitioner will continue to maintain an office within the State of New Jersey for the convenience of its customers to pay bills, file complaints and conduct other business with the utility; and

11. The name and address of the petitioner's statutory agent.

SUBCHAPTER 6. ANSWERS AND REPLIES

14:1-6.1 Form and content

(a) Any party against whom a petition is directed and who desires to contest the same or make any representation to the Board in connection therewith shall file an answer in writing thereto with the Board.

(b) The answer shall be so drawn as to apprise the parties and the Board fully and completely of the nature of the defense and shall admit or deny specifically and in detail all material allegations of the petition.

(c) Matters alleged by way of affirmative defense shall be separately stated and numbered.

(d) Answers shall not be required in any rate proceeding instituted by a public utility.

14:1-6.2 Time for filing

(a) Unless otherwise provided in these rules or ordered by the Board, an answer, if made, must be filed within 20 days after the service of the pleading against which it is directed. A party desiring to reply to an answer shall file the same with the Board within 10 days after service of the answer.

(b) Whenever the Board believes the public interest requires expedited procedure, it may shorten the time for any answer or reply.

(c) Upon motion on notice to all parties to the proceeding, the Board may, in its discretion, extend or shorten the time to file an answer or reply.

SUBCHAPTER 7. CONFERENCES

14:1-7.1 Purposes

(a) The purpose of this subchapter is to foster early settlement of cases pending before the Board prior to the case being transmitted to the Office of Administrative Law and to provide a vehicle for the parties to file pre-transmittal motions with the Board for retention and disposition of certain issues. Pre-transmittal settlement conferences of parties or their attorneys may be held to provide opportunity for a settlement, subject to approval of the Board, of a proceeding or any of the issues therein, and for the submission and consideration of facts, argument, offers of settlement or proposals of adjustments, as time, the nature of the proceeding and the public interest may permit.

(b) Pre-transmittal conferences of parties or their attorneys may be held to expedite the disposition of any hearing. At such conferences there may be considered, in addition to the matters set forth in (a) above, the following:

1. Identification and simplification of the issues;
2. Admissions or stipulations of facts;
3. Identification of those matters or issues which should either be retained for disposition by the Board or be transmitted to the Office of Administrative Law; and
4. Such other matters as may be properly dealt with to aid in expediting the proceeding.

Case Notes

Prehearing conferences: discussion of rate proposal process. In re: Revision of Rates by Toms River Water Co., 82 N.J. 201, 412 A.2d 430 (1980).

14:1-7.2 Initiation of conferences

(a) The Board or a Board-designated officer, with or without motion, may direct that a conference be held at any stage prior to transmittal to the Office of Administrative Law or at any time when the Board certifies a case unto itself pursuant to N.J.S.A. 52:14F-8(b).

(b) On motion of a party, the Board-designated officer may direct the parties or their attorneys to appear for a conference to consider the matters set forth in N.J.A.C. 14:1-7.1(b).

14:1-7.3 Stipulation of conference results

(a) Upon conclusion of the pre-transmittal conference, the parties or their attorneys shall reduce the results thereof to the form of a written stipulation reciting the matters agreed upon, and three copies thereof shall be filed with the Board within 10 days of the date of the conference. If no stipulations are reached, the matter shall be immediately transmitted to the Office of Administrative Law.

(b) Such stipulations shall be signed by the parties or their attorneys, may be received in evidence as part of the record and, when so received, shall be binding on the parties with respect to the matters therein stipulated.

(c) Such stipulations are subject to review by the Board at a regularly scheduled agenda meeting.

14:1-7.4 Authority of Board-designated officers

(a) Any Board-designated officer shall have the authority to conduct and preside over pre-transmittal conferences in the interest of fostering resolution of issues.

(b) When appropriate, a Board-designated officer may submit a pre-transmittal order which shall be reviewed by the Board at an agenda meeting, if acceptable, shall be adopted as its own order.

SUBCHAPTER 8. CONTESTED CASE HEARINGS

14:1-8.1 Contested case procedures

The hearing in any matter which is determined by the Board to be a contested case shall be conducted pursuant to the procedures in the Administrative Procedures Act, N.J.S.A. 52:14B-1 and 52:14F-1, the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, and the Board of Regulatory Commissioners Rules of Special Applicability, N.J.A.C. 1:14.

Case Notes

Failure to object to receipt of financial records in evidence part of grounds for denial of motion for further hearings on rate increase; rate increase approved. In re: Petition of Landfill and Development Co., 207 N.J.Super. 5, 503 A.2d 881 (App.Div.1985).

Action to enjoin tree removal on easement by utility is within jurisdiction of Board of Public Utilities for resolution as a contested case. *Boss v. Rockland Electric Co.*, 95 N.J. 33, 468 A.2d 1055 (1983).

Board does not have power to override municipality's refusal to grant private water company a franchise nor municipal authority's refusal to consent to private water company's commencement or extension of operation within the authority's territory. In re: Petition of South Lakewood Water Co., 61 N.J. 230, 294 A.2d 13 (1972).

Utility Company's request for withdrawal of request for proposal was properly granted. *Jersey Central Power and Light Company Request for Proposal for Short Term Capacity and Energy*, 94 N.J.A.R.2d (BRC) 106.

The Board adopted revenue requirement settlement; however, rate design provisions currently in effect in utility tariffs were ordered to remain in effect until the Board rendered final determination in other pending base rate proceedings. In *Matter of Petition of Jersey Central Power & Light Company*, 93 N.J.A.R.2d (BRC) 39.

The Board required public utilities and parent holding companies to answer Executive Compensation Questionnaire. In *Matter of Board's Review of Executive Compensation Policies*, 93 N.J.A.R.2d (BRC) 16.

Public disclosure required of electric utility's settlement agreement. In *Matter of Westinghouse Electric Corporation Motion for Protective Order*, 92 N.J.A.R.2d (BRC) 73.

Stipulations in rate petition proceedings are to be binding. In re: *Public Service Electric & Gas Co.*, 6 N.J.A.R. 633 (1981).

Determination of approval and denial of petitions for Certificates. In re: *White Bus Co.*, 6 N.J.A.R. 535 (1983).

14:1-8.2 Argument on exceptions

After receipt of the initial decision, the exceptions and answers thereto, if any, will be disposed of by the Board based on the exceptions, answers and briefs filed unless the Board, in its discretion, requires or permits oral argument, in which case the Board will schedule the matter for argument before it.

14:1-8.3 Review of initial decision by the Board on its own motion

The Board may institute on its own motion a review of any aspect of the initial decision and it may call for oral argument, the filing of briefs, or both, or the taking of additional testimony.

14:1-8.4 Method of reopening

(a) At any time after the conclusion of a hearing in a proceeding or adjournment thereof sine die, but before the entering and issuance by the Board of its final decision or order, any party to the proceeding may file with the Board a motion to reopen the hearing for the purpose of taking additional evidence. Such motion shall set forth clearly the reasons for reopening of the hearing, including any material changes of fact or of law alleged to have occurred since the last hearing.

(b) If, after the hearing in a proceeding, the Board shall have reason to believe that conditions of fact or of law have so changed as to require, or that the public interest requires, the reopening of such hearing, the Board will issue an order for the reopening of same.

14:1-8.5 Motions to reopen

(a) After issuance of the final decision, a party may file for the reopening of the proceeding. Upon filing by any party of a motion for the reopening of a proceeding, appropriate notice thereof shall be given forthwith by the moving party to all other parties, or their attorneys of record, by service of a copy of the motion for reopening.

(b) Within 10 days following the service of a motion to reopen, any party to the proceeding may serve upon the

moving party and file with the Board an answer thereto, and in default thereof shall be deemed to have waived any objection to the granting of such motion.

(c) As soon as practicable after the filing of answers to a motion to reopen or default thereof, as the case may be, the Board will grant or deny such motion. The action by the Board may be conditioned on reasonable terms.

14:1-8.6 Rehearing, reargument or reconsideration

(a) A motion for rehearing, reargument or reconsideration of a proceeding may be filed by any party within 15 days after the issuance of any final decision or order by the Board.

1. Such motion shall state in separately numbered paragraphs the alleged errors of law or fact relied upon and shall specify whether reconsideration, reargument, rehearing or further hearing is requested and whether the ultimate relief sought is reversal, modification, vacation or suspension of the action taken by the Board or other relief.

2. Where opportunity is also sought to introduce additional evidence, the evidence to be adduced shall be stated briefly together with reasons for failure to previously adduce said evidence.

(b) The Board at any time may order a rehearing, reargument or reconsideration on its own motion and extend, revoke or modify any decision or order made by it.

Case Notes

Modification of public utility's power purchase agreement was appropriate. In the Matter of Competitive Bidding Solicitations of Jersey Central Power & Light Co., 94 N.J.A.R.2d (BRC) 108.

Denial of joint motion for reconsideration was appropriate; compensation levels; failure to present new arguments or analysis. In the Matter of the Petition of MCI, AT & T and Sprint Communications Companies, 94 N.J.A.R.2d (BRC) 93.

14:1-8.7 Motions and answers on rehearing

(a) A copy of the motion shall be served by the moving party upon all other parties or their attorneys of record, forthwith upon the filing hereunder. The moving party shall also give such notice, as the Board may direct, of the filing of the motion to all other persons to whom notice of the original hearing had been given.

(b) Any answer to the motion shall be filed within 10 days following the service of the motion. Failure to file an answer shall be deemed to be a waiver of any objection to the granting of the motion.

(c) Any motion hereunder which is not granted or otherwise expressly acted upon by the Board within 60 days after the filing thereof, shall be deemed denied.

(d) The filing or granting of any motion under this rule shall not operate as a stay of the Board's decision or order. A stay will be granted only for good cause shown.

Case Notes

Cogeneration association's request for a stay of further proceedings pending Federal court complaint was denied because the burden and expense in defending itself before the Board was not "good cause shown". Application of Jersey Central Power and Light Co. for Approval of the Power Purchase Agreement, 94 N.J.A.R.2d (BRC) 144.

SUBCHAPTER 9. UNCONTESTED CASE PROCEEDINGS

14:1-9.1 Uncontested case proceedings

This subchapter applies only to a matter which the Board determines to constitute an uncontested case. Where the Board determines to hold a hearing in an uncontested case, said hearing shall be conducted pursuant to this subchapter and, in the absence of a specific provision herein, pursuant to the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, and the Board of Regulatory Commissioners Rules of Special Applicability, N.J.A.C. 1:14.

14:1-9.2 Designation

The Board may by general order in writing designate as a presiding officer such person or persons, as provided by statute, as its representative or representatives in and on its behalf to conduct any hearing in any uncontested proceeding now or hereafter pending before the Board.

Case Notes

Person seeking intervenor status must show he will be substantially and specifically affected by proceeding; competitors did not have right to intervene; no requirement for showing or finding that existing service inadequate. In re: Application for Certificate of Public Convenience and Necessity. 134 N.J.Super. 500, 342 A.2d 219 (App.Div. 1975).

14:1-9.3 Filing

Pleadings, correspondence or other documents pertaining to an uncontested case shall be filed pursuant to N.J.A.C. 14:1-6. Copies of such correspondence shall be filed with the presiding officer and with the parties of record.

14:1-9.4 Cameras and recording devices

Cameras or recording devices may be used at uncontested case proceedings in accordance with the standards and procedures of N.J.A.C. 14:1-1.8.

14:1-9.5 Appearances

Any person appearing in a representative capacity in any uncontested case proceeding shall conform to the requirements of N.J.A.C. 14:1-3.

14:1-9.6 Service

Whenever a party has the right or is required to do some act within a prescribed period after the serving of a notice or other paper upon said party, and the notice or paper is served upon said party by mail, three days from the date of mailing shall be added to the prescribed period.

14:1-9.7 Motions

All motions shall be deemed denied if not decided within 60 days after the filing thereof, whether referred to the Board or to be decided by the presiding officer. The Board or presiding officer may waive this rule on their own motion or for good cause shown by a party.

SUBCHAPTER 10. COMPLIANCE WITH ORDERS, DECISIONS AND RECOMMENDATIONS

14:1-10.1 Orders and decisions

Upon issuance of an order or decision of the Board, the party to whom the same is directed must notify the Board on or before the date specified in said order or decision whether or not compliance has been made in conformity therewith.

Case Notes

Public notice of Certificate hearings may be required by Board; competitors did not have right to intervene; no requirement for showing or finding that existing service inadequate. In re: Application

for Certificate of Public Convenience and Necessity. 134 N.J.Super. 500, 342 A.2d 219 (App.Div.1975).

14:1-10.2 Recommendations

Upon the making of any recommendation by the Board, the party to whom the same is directed must within 15 days after the making of the recommendation, unless otherwise specifically required, notify the Board of the acceptance or rejection thereof. Failure to comply with this rule will be deemed an acceptance of the recommendation.

Case Notes

Certificate hearings open to public; competitors did not have right to intervene; no requirement for showing or finding that existing service inadequate. In re: Application for Certificate of Public Convenience and Necessity. 134 N.J.Super. 500, 342 A.2d 219 (App.Div.1975).

14:1-10.3 Extension of time limits

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

14:1-10.4 Answers to communications

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