

TITLE 14

BOARD OF PUBLIC UTILITIES

**CHAPTER 1
RULES OF PRACTICE**

Authority

N.J.S.A. 48:2-12, 48:2-13, 48:2-24 and 48:3-60.

Source and Effective Date

R.2002 d.337, effective September 19, 2002.
See: 34 N.J.R. 1769(a), 34 N.J.R. 3639(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 1, Rules of Practice, expires on March 17, 2008. See: 39 N.J.R. 4551(a).

Chapter Historical Note

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

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

Pursuant to Executive Order No. 66(1978), Chapter 1, Rules of Practice, was readopted as R.1997 d.264, effective May 28, 1997. See: 29 N.J.R. 1259(b), 29 N.J.R. 2838(a).

Chapter 1, Rules of Practice, was readopted as R.2002 d.337, effective September 19, 2002. See: Source and Effective Date. See, also, section annotations.

Law Review and Journal Commentaries

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

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. GENERAL PROVISIONS

- 14:1-1.1 Scope
- 14:1-1.2 Construction and amendment
- 14:1-1.3 Definitions
- 14:1-1.4 Offices
- 14:1-1.5 Hours
- 14:1-1.6 Communications
- 14:1-1.6A Submittal of comments on rule proposals, pilot study for electronic submittal
- 14:1-1.7 Official records
- 14:1-1.8 Cameras and recording devices

SUBCHAPTER 2. FEES AND CHARGES

- 14:1-2.1 Amount of fees and charges
- 14:1-2.2 Payment of fees and charges

SUBCHAPTER 3. APPEARANCE BEFORE THE BOARD

- 14:1-3.1 Appearances
- 14:1-3.2 Ethical conduct
- 14:1-3.3 Former employees

SUBCHAPTER 4. PLEADINGS

- 14:1-4.1 Pleadings enumerated and defined
- 14:1-4.2 Number of copies
- 14:1-4.3 Attachments to pleadings

- 14:1-4.4 Defective pleadings
- 14:1-4.5 Service and notice of proceedings
- 14:1-4.6 Verification
- 14:1-4.7 Changes in facts or circumstances

SUBCHAPTER 5. PETITIONS

- 14:1-5.1 Form and content
- 14:1-5.2 Applications to other regulatory bodies
- 14:1-5.3 Joinder of requests for relief
- 14:1-5.4 Procedures of Board on filing of petition
- 14:1-5.5 Petitions for approval of franchises or consents
- 14:1-5.6 Petitions for the approval of the sale or lease of property
- 14:1-5.7 Petitions for authority to change depreciation rates
- 14:1-5.8 Petitions for authority to exercise power of eminent domain
- 14:1-5.9 Petitions for authority to issue stocks, bonds, notes, other evidence of indebtedness or to execute mortgages
- 14:1-5.9A Criteria for proposed security issues
- 14:1-5.10 Petitions for authority to transfer capital stock
- 14:1-5.11 Tariff filings which do not propose increases in charges to customers
- 14:1-5.12 Tariff filings or petitions which propose increases in charges to customers
- 14:1-5.12A Changes to adjustment clause rates
- 14:1-5.13 Informal complaint in lieu of petition
- 14:1-5.14 Petitions for approval of a merger or consolidation
- 14:1-5.15 Petitions for permission to keep books and records outside the State of New Jersey

SUBCHAPTER 6. ANSWERS AND REPLIES

- 14:1-6.1 Form and content
- 14:1-6.2 Time for filing

SUBCHAPTER 7. CONFERENCES

- 14:1-7.1 Purposes
- 14:1-7.2 Initiation of conferences
- 14:1-7.3 Stipulation of conference results
- 14:1-7.4 Authority of Board-designated officers

SUBCHAPTER 8. CONTESTED CASE HEARINGS

- 14:1-8.1 Contested case procedures
- 14:1-8.2 Argument on exceptions
- 14:1-8.3 Review of initial decision by the Board on its own motion
- 14:1-8.4 Method of reopening
- 14:1-8.5 Motions to reopen
- 14:1-8.6 Rehearing, reargument or reconsideration
- 14:1-8.7 Motions and answers on rehearing

SUBCHAPTER 9. UNCONTESTED CASE PROCEEDINGS

- 14:1-9.1 Uncontested case proceedings
- 14:1-9.2 Designation
- 14:1-9.3 Filing
- 14:1-9.4 Cameras and recording devices
- 14:1-9.5 Appearances
- 14:1-9.6 Service
- 14:1-9.7 (Reserved)

SUBCHAPTER 10. COMPLIANCE WITH ORDERS, DECISIONS AND RECOMMENDATIONS

- 14:1-10.1 Orders and decisions
- 14:1-10.2 Recommendations
- 14:1-10.3 Extension of time limits
- 14:1-10.4 Answers to communications

SUBCHAPTER 11. PUBLIC UTILITY TARIFFS

- 14:1-11.1 Scope
- 14:1-11.2 General
- 14:1-11.3 Arrangement and form of filed schedules
- 14:1-11.4 Selection of rate schedule
- 14:1-11.5 Forms

SUBCHAPTER 12. PROCEDURES FOR DETERMINING THE CONFIDENTIALITY OF SUBMITTED INFORMATION

- 14:1-12.1 Scope
- 14:1-12.2 Definitions
- 14:1-12.3 Procedure for making a confidentiality claim
- 14:1-12.4 Designation by claimant of a designee for notices and inquiries
- 14:1-12.5 Correspondence, inquiries and notices
- 14:1-12.6 Time for making confidentiality determinations
- 14:1-12.7 Notice of pending confidentiality determination
- 14:1-12.8 Substantiation of confidentiality
- 14:1-12.9 Final confidentiality determination
- 14:1-12.10 Treatment of information pending confidentiality determination
- 14:1-12.11 Availability of information to the public after determination that information is not confidential
- 14:1-12.12 Disclosure of confidential information to other public agencies
- 14:1-12.13 Disclosure of confidential information to contractors
- 14:1-12.14 Disclosure to alleviate an imminent and substantial danger
- 14:1-12.15 Disclosure by consent
- 14:1-12.16 Incorporation of confidential information into accumulations of data
- 14:1-12.17 Confidentiality agreements
- 14:1-12.18 Payment for copies

SUBCHAPTER 1. GENERAL PROVISIONS

14:1-1.1 Scope

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

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

14:1-1.2 Construction and amendment

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

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

1. The Board shall, in accordance with the general purposes and intent of its rules, waive section(s) of its rules if full compliance with the rule(s) would adversely affect the ratepayers of a utility or other regulated entity, the ability of said utility or other regulated entity to continue to

render safe, adequate and proper service, or the interests of the general public;

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

- i. The specific rule(s) or part(s) thereof for which waiver is requested;
- ii. The reasons for the request of waiver, including a full statement setting forth the type and degree of hardship or inconvenience that would result if full compliance with the rule(s) would be required; and
- iii. Documentation to support the request for waiver.

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

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

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

Added (b)1 through 3.
Amended by R.2005 d.424, effective December 5, 2005.
See: 37 N.J.R. 2837(a), 37 N.J.R. 4558(b).

In (b)1, added "or other regulated entity" following "utility" throughout.

Case Notes

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

14:1-1.3 Definitions

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

"Board" means the Board of Public Utilities.

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

"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, joint stock association, trust, limited liability company, governmental entity, or other legal entity, and includes any trustee, receiver, assignee, or personal representative thereof. A person may or may not be a regulated entity.

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

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

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

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

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

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

Amended “Board” and “Commissioner”.

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

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

Added definitions “Regulated entity” and “Utility.”

Amended by R.2006 d.354, effective October 2, 2006.

See: 37 N.J.R. 3621(a), 38 N.J.R. 4236(c).

Added definition “Person”.

14:1-1.4 Offices

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

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

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

14:1-1.5 Hours

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

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

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

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

In (b), inserted “State recognized”.

14:1-1.6 Communications

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

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

(c) If the Board receives a document via fax, the document will neither be date/time stamped as formally received by the Board nor be entered into the case or rulemaking record. Such documents shall only be distributed to the addressee.

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

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

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

Amended by R.2006 d.354, effective October 2, 2006.

See: 37 N.J.R. 3621(a), 38 N.J.R. 4236(c).

In (a), inserted “communications, including”; and rewrote (b) and (c).

14:1-1.6A Submittal of comments on rule proposals, pilot study for electronic submittal

(a) This section governs submittal of comments on all rule proposals published by the Board in the New Jersey Register. This section also establishes an 18-month pilot study to test the efficacy of Board acceptance of rule proposal comments in electronic form.

(b) The pilot study authorized under this section shall begin upon the publication date of the first rule proposal published by the Board in the New Jersey Register after October 2, 2006. The pilot study shall continue until April 2, 2008.

(c) Comments on rule proposals shall be submitted by e-mail, hand delivery, or regular mail, on or before the date identified in the rule proposal published in the New Jersey Register. If no e-mail address for comments is provided in the proposal, the Board shall not accept or make part of the rulemaking record a comment submitted by e-mail.

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

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

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

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

(g) Within six months after the completion of the pilot study authorized by this section, the Board shall publish rule amendments. The rule amendments shall briefly summarize

the results of the pilot study and shall continue, modify, or end the acceptance of rule proposal comments in electronic form.

New Rule, R.2006 d.354, effective October 2, 2006.
See: 37 N.J.R. 3621(a), 38 N.J.R. 4236(c).

14:1-1.7 Official records

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

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

14:1-1.8 Cameras and recording devices

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

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

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

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

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

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

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

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

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

SUBCHAPTER 2. FEES AND CHARGES

14:1-2.1 Amount of fees and charges

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

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

Added second sentence.

14:1-2.2 Payment of fees and charges

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

(b) All checks for payment of such fees and charges shall be made payable to the order of "Treasurer, State of New Jersey" and delivered or mailed to the Secretary of the Board, Two Gateway Center, Newark, New Jersey 07102.

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

SUBCHAPTER 3. APPEARANCE BEFORE THE BOARD

14:1-3.1 Appearances

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

14:1-3.2 Ethical conduct

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

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

14:1-3.3 Former employees

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

SUBCHAPTER 4. PLEADINGS

14:1-4.1 Pleadings enumerated and defined

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

1. "Petition" means the pleading filed to initiate a proceeding invoking the jurisdiction of the Board;
2. "Answer" means the pleading filed by a respondent or other party against whom a petition is directed or who is affected by the filing of a petition; and
3. "Reply" means the pleading filed by the petitioner or others in response to an answer.

14:1-4.2 Number of copies

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

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

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

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

Case Notes

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

14:1-4.3 Attachments to pleadings

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

Case Notes

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

14:1-4.4 Defective pleadings

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

14:1-4.5 Service and notice of proceedings

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

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

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

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

Case Notes

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

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

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

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

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

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

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

14:1-4.6 Verification

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

14:1-4.7 Changes in facts or circumstances

(a) Whenever, subsequent to the date of a pleading, there is any significant change in respect to matter contained in

such pleading, the party who filed the pleading shall promptly file an amendment showing or explaining the changed facts or circumstances.

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

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

5. The reason for the proposed transfer;

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

- i. The board of directors;
- ii. Officers and active managers; and
- iii. Company policies with respect to its operations, financing, accounting, capitalization, rates, depreciation, maintenance, services and any other matters affecting the public interest; and

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

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

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

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

Case Notes

Unilateral rate discount requested by a customer over the objection of a utility denied. In the Matter of the Petition for Expedited

Decision and Order Approving Proposed Tariff, 94 N.J.A.R.2d (BRC) 143.

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

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

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

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

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

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

7. Whenever a telephone company seeks to increase its rates, it shall include in its petition or attachments thereto information demonstrating the principles of rate design employed in the proposed tariff revisions. Such information shall identify the approximate percentage of increased revenue requirement, should the Board determine a lesser additional revenue requirement than that sought by the company, at which it would derive a different proportion of revenue requirement from each of the major classes of service whose prices are sought to be increased, and the revenue requirement by class at each such level. The information shall include a statement of the amount and percentage of increase which would be raised from each such class of service if relief of approximately one-third the request were approved by the Board;

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

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

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

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

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

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

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

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

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

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

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

Case Notes

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14:1-5.12A Changes to adjustment clause rates

(a) Unless otherwise ordered or permitted by the Board, in every instance where a utility, subject to the jurisdiction of the Board, has filed or may hereafter file, with the approval of the Board, a clause in its tariff providing for an adjustment to its rates for a utility service or product based upon changes in the cost of a basic raw material (sometimes known as a levelized energy adjustment clause or a levelized gas adjustment clause or a purchased gas adjustment clause), it shall conform to the following requirements whenever an adjustment would become effective thereunder which would result in charges being imposed for the utility service or product that would differ from the basic rates:

1. Not less than seven days prior to the date upon which the initial or any subsequent adjustment is to become effective, a supplemental tariff sheet shall be filed setting forth the amount of the adjustment for each classification of service and the proposed effective date thereof.

2. The filing of the supplemental tariff sheet as provided in paragraph 1 of this subsection shall be accompanied by a detailed calculation showing for each class of service the calculation by which the proposed adjustment was derived, the amount by which the said adjustment will increase or decrease utility operating revenues on an annual basis, and the amount by which the change in the basic raw material cost will increase or decrease operating revenue deductions on an annual basis.

3. The filing of the supplemental tariff sheet referred to in paragraph 1 of this subsection shall also be accompanied by any additional information which the Board may have required in any order or other authorization by which the adjustment clause was permitted to be filed, or which the Board may hereafter require with respect to such a filing.

(b) The adjustment clauses and requirements set out in (a) above do not pertain to Purchase Water Adjustment Clauses or Purchased Sewerage Treatment Adjustment Clauses as the criteria for these clauses are specifically addressed in N.J.A.C. 14:9-7 and 14:9-8, respectively.

Recodified from N.J.A.C. 14:11-1.13 and amended by R.1998 d.84, effective February 2, 1998.

See: 29 N.J.R. 4250(b), 30 N.J.R. 563(a).

Added (b).

14:1-5.13 Informal complaint in lieu of petition

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

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

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

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

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

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

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

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

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

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

14:1-5.14 Petitions for approval of a merger, consolidation, acquisition and/or change in control; standard of review

(a) A petition for approval of any of the following shall conform to the provisions of N.J.A.C. 14:1-4 and 14:1-5.1 through 5.4 and 5.9 to the extent applicable:

1. A merger or consolidation of one public utility of New Jersey with that of another public utility;
2. A merger or consolidation of one public utility of New Jersey with a parent holding company of another

public utility or with any other corporate or business entity; or

3. The acquisition of a public utility of New Jersey and/or a change in control of the public utility.

(b) A petition for approval of any of the actions listed at (a) above shall contain in the petition, or as attached exhibits, the following information:

1. A copy of the agreement of merger, consolidation, acquisition and/or change in control;

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, consolidated, acquired and/or changed 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, consolidation, acquisition and/or change in control;

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, consolidation, acquisition and/or change in control to the public, the municipalities being served by the companies to be merged, consolidated, acquired and/or changed, 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, consolidation, acquisition and/or change in control and the accounting disposition to be made thereof on the books of the surviving corporation.

(c) The Board shall not approve a merger, consolidation, acquisition and/or change in control unless it is satisfied that positive benefits will flow to customers and the State of New Jersey and, at a minimum, that there are no adverse impacts on any of the criteria delineated in N.J.S.A. 48:2-51.1.

(d) The petitioners seeking merger, consolidation, acquisition and/or change in control of a public utility shall have the burden of proving to the Board, by a preponderance of the evidence, that the requirements of this section are met.

Amended by R.2002 d.337, effective October 21, 2002.

See: 34 N.J.R. 1769(a), 34 N.J.R. 3639(a).

In (a), deleted “, as well as N.J.A.C. 14:11-1.3” preceding “to the extent applicable”.

Amended by R.2006 d.165, effective May 1, 2006.

See: 37 N.J.R. 4887(a), 37 N.J.R. 1854(b).

Rewrote (a); in (b), rewrote the first sentence, in 1; deleted “or” following “merger” and inserted “, acquisition and/or change in control”, in 5 and 12, inserted “, consolidated, acquired and/or changed” and in 10, 12 and 14; inserted “consolidation, acquisition and/or change in control”; and added (c) and (d).

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 and, if acceptable, shall be adopted as its own order.

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

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 Procedure Act, N.J.S.A. 52:14B-1 and 52:14F-1, the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1, and the Board of Public Utilities Rules of Special Applicability, N.J.A.C. 1:14.

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

Case Notes

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 section 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 Public Utilities Rules of Special Applicability, N.J.A.C. 1:14.

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

14:1-9.2 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 (Reserved)

Repealed by R.1997 d.264, effective July 7, 1997.
See: 29 N.J.R. 1259(b), 29 N.J.R. 2838(a).
Section was "Motions".

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.

(b) All tariffs legally filed with the Board and now in effect, including tariffs approved by the Board and tariffs for which Board approval is not required, shall continue in force until legally changed. All tariffs and amendments thereto, hereafter filed, shall conform to this subchapter. The Board may direct the reissue or modification, as to form, of any tariff or any part thereof at any time.

(c) All new tariffs submitted to the Board, including tariffs submitted for approval and tariffs for which Board approval is not required, shall be filed to conform with the format and language as outlined in N.J.A.C. 14:1-11.3 and 11.4.

Amended by R.1990 d.5, effective January 2, 1990.
See: 21 N.J.R. 2704(b), 22 N.J.R. 48(a).

New (c) added requiring conformation of format and language.
Amended by R.1993 d.95, effective March 1, 1993.
See: 24 N.J.R. 1684(b), 25 N.J.R. 999(a).

In (c), deleted all references to tariffs, except 7.3 and 7.4.
Amended by R.1998 d.84, effective February 2, 1998.
See: 29 N.J.R. 4250(b), 30 N.J.R. 563(a).

In (a), inserted " , approved by the Board, and tariffs for which Board approval is not required" following "tariffs" in the first sentence; in (b), inserted " , including tariffs approved by the Board and tariffs for which Board approval is not required," following "effect" in the first sentence; and rewrote (c).

SUBCHAPTER 11. PUBLIC UTILITY TARIFFS

Subchapter Historical Note

Subchapter 11, Public Utility Tariffs, was recodified from N.J.A.C. 14:11-7 by R.1998 d.84, effective February 2, 1998. See: 29 N.J.R. 4250(b), 30 N.J.R. 563(a).

14:1-11.1 Scope

This subchapter shall govern the arrangement, filing and posting of tariffs (that is, complete systems of schedules), schedules, rates, tolls and other charges, including standard terms and conditions, and special contracts, by public utilities.

Amended by R.1987 d.116, effective February 17, 1987.
See: 18 N.J.R. 2425(b), 19 N.J.R. 365(a).

Deleted text "other than transportation common carriers".

Case Notes

Limitation of liability clause in telephone company's filed tariff did not limit its liability to non-customer amusement pier owner who sustained damage due to failure of fire alarm system to operate due to telephone company circuitry. *Abel Holding Co., Inc. v. American District Telegraph Co.*, 147 N.J.Super. 263, 371 A.2d 111 (App.Div. 1977).

14:1-11.2 General

(a) Every public utility shall file with the Board and keep open to public inspection in each office where applications for service may be made, tariffs, approved by the Board and tariffs for which Board approval is not required, which are applicable to its affected service area, showing all rates and charges made, established, or enforced, or to be charged or enforced, all rules and regulations relating to rates and charges or services used or to be used, and all general privileges and facilities granted or allowed. The same shall be readily accessible to the public at all times during office hours, and on demand by any person shall be produced for examination immediately.

Case Notes

Operator was liable for certain taxes and escrow accounts on solid waste disposed in its facilities under joint order issued by Department of Environmental Protection and Board of Public Utilities requiring landfill to remain open beyond intended closing date and requiring operator to extend credit to cash-based haulers in amount of rate increase. *Edgeboro Disposal, Inc. v. Division of Taxation*, 284 N.J.Super. 208, 664 A.2d 942 (A.D.1993).

Utility subject to Board's supervision concerning hours of operation. *Public Utilities Bd. v. Helen Kramer Sanitary Landfill*, 171 N.J.Super. 500, 410 A.2d 70 (App.Div.1979).

Telephone user charged with knowledge of tariff; company need not advise user of loss of charitable discount upon switching phone systems, as failure to advise not intentionally misleading; company decision not to extend charity discount to users of new systems found non-discriminatory. *Essex Cty. Welfare Bd. v. New Jersey Bell Telephone Co.*, 126 N.J.Super. 417, 315 A.2d 40 (App.Div.1974).

Operator of sanitary landfill was liable for certain taxes and escrow accounts on solid waste disposed in its facilities and accepted pursuant to joint order issued by Department of Environmental Protection and Board of Public Utilities that required landfill to remain open beyond its intended closing date. *Edgeboro Disposal, Inc. v. Division of Taxation, Dept. of Treasury*, 15 N.J.Tax 139 (A.D.1993).

14:1-11.3 Arrangement and form of filed schedules

(a) All sheets of schedules shall be clearly printed, mimeographed, typewritten or reproduced by any photographic process on hard finished, durable paper of 8½ x 11 inches in size, except that, with the approval of the Board, the requirement as to size of sheet may be modified where the content and arrangement of material are not readily adaptable to the size specified. Reproductions by hectograph or similar process shall not be used for filing with the Board or for public inspection. The left-hand margin of each sheet shall be sufficiently wide that when the binder containing the sheets is open, all printed material is clearly in view.

All sheets shall be bound in loose-leaf form so that changes can be made by substituting or inserting a single sheet.

(b) The first tariff or series of schedules issued by a utility in conformity with the requirements of this subchapter for each kind of utility service supplied, shall be designated B.P.U. No. 1—(electricity, gas, and so forth). This designation shall appear as part of the caption of each schedule sheet, directly under the company name at the upper left-hand corner. When a tariff is refiled in toto it should be given the next consecutive number.

(c) Each tariff shall consist of:

1. A standard title page;
2. A table of contents;
3. Municipalities or territories served;
4. The standard terms and conditions governing service; and
5. The set of rate schedules.

i. All rates which a given kind of service, such as electric, gas, and so forth, is available throughout the service area of a utility shall be included in a single tariff. General exchange, local exchange and toll service, and so forth, may be regarded as a separate kind of utility service for the purposes of this provision. The rates for each separate and distinct class of service rendered by a utility shall be filed as a separate schedule and shall whenever feasible and practical begin on a separate sheet.

(d) The schedule of rates for each separate and distinct class of service shall have assigned to it a schedule number, descriptive initials, or other appropriate designation, which shall be assigned so as to facilitate reference to the rate schedules.

(e) Each sheet of every tariff shall bear a sheet number, or section and sheet number, which shall be placed in the upper right-hand corner of the sheet in a position opposite the name of the company, except that, where separate sheets are filed for each of a given number of specified areas, designation by area may be used in lieu of a sheet number. Upon the first filing of the sheet it shall be designated as Original Sheet No. ____ or Original Sheet where no number is required. This same sheet number, or section and sheet number, shall appear on all subsequent issues of the sheet, and the revisions of the sheet shall be numbered, as follows:

1. On the first revision of the sheet shall be designated:

FIRST REVISED SHEET NO. ____

SUPERSEDING

ORIGINAL SHEET NO. ____

2. On the second revision of the sheet shall be designated:

SECOND REVISED SHEET NO. ____

SUPERSEDING

FIRST REVISED SHEET NO. ____

3. On all subsequent revisions the sheet shall bear consecutive revision numbers and shall indicate the cancellation of the superseded sheet, tariff, or portion thereof. Revision numbers used on sheets disapproved or rejected by the Board shall not be repeated on refileing, but the next consecutive number shall be used.

4. When a schedule of rates is filed for a class of service not heretofore established, an original sheet number shall be assigned to the sheet on which the new rates appear.

5. In the arrangement of the tariff it will be recognized that it may be necessary in the future to file additional schedules of rates within the established series. To provide a proper place for these subsequent filings in proper relation to schedules, terms and conditions, and so forth, already filed, reservation of sheet numbers may be made at time of original filing.

6. In lieu of this arrangement, the tariff may be divided into numbered sections, and the sheets in each section numbered consecutively beginning with Sheet 1.

7. When tariffs are to be revised in conformity with an order or authorization of the Board, the changes made pursuant thereto shall be established by supplements to or reissues of the tariff or tariff sheets affected, filed and posted as provided in this subchapter. Each page containing rates or provisions established pursuant to such order or authorization shall bear the following notation:

“Filed pursuant to (here insert nature of authorization including docket number if any) of the Board of Public Utilities, State of New Jersey, dated _____”

(f) The title page of each tariff shall show the B.P.U. number, the kind of service for which the tariff is available, the territory or area served, and the complete name and address of the utility and the officer thereof issuing the tariff.

(g) The table of contents of each tariff, except tariffs using the section or area designation method, shall contain a complete and accurate list of contents by schedule number, description of class of service, and sheet numbers. Whenever a new schedule of rates or new sheet not already listed in the table of contents is added, the table of contents shall be revised to show the title of the new sheet, the schedule number and sheet number.

(h) Describe all territory covered by the tariff by naming the cities, villages, towns and hamlets. Indicate the counties and towns in which such places are situated. A map showing the territory to be served is desirable but not required.

(i) Each utility shall include in its filed tariff a complete set of standard terms and conditions relating to the service offered. The subjects which commonly will be covered are suggested by the prescribed form appearing later in this order. Such standard terms and conditions shall be filed on standard sheets consecutively numbered or in consecutive sections with the sheets of each section consecutively numbered, following the Table of Contents.

(j) All schedules of rates shall be filed on standard sheets, arranged substantially in the manner prescribed by the form of rate schedule sheet. For telephone companies the following information shall be given:

1. Exchange rate schedules to include:
 - i. Primary rate schedules;
 - ii. Private branch exchange; rate schedules;
 - iii. Miscellaneous rate schedules;
 - iv. Primary rate area maps;
 - v. Exchange area maps.
2. Toll service rate schedules to include:
 - i. Basic rate schedules;
 - ii. Supplementary rate schedules;
 - iii. List of toll points.

Amended by R.1987 d.116, effective February 17, 1987.
 See: 18 N.J.R. 2425(b), 19 N.J.R. 365(a).
 Changed Utility Commissioners to Utilities; added territories; (j)3 deleted.
 Amended by R.1993 d.95, effective March 1, 1993.
 See: 24 N.J.R. 1684(b), 25 N.J.R. 999(a).
 Changed Board of Public Utilities to Board of Regulatory Commissioners.
 Amended by R.1998 d.84, effective February 2, 1998.
 See: 29 N.J.R. 4250(b), 30 N.J.R. 563(a).

Case Notes

Utility subject to Board's supervision concerning hours of operation. Public Utilities Bd. v. Helen Kramer Sanitary Landfill, 171 N.J.Super. 500, 410 A.2d 70 (App.Div.1979).

14:1-11.4 Selection of rate schedule

Where more than one rate schedule is available to particular customers, each utility shall have at all times the duty to assist such customers in the selection of the rate schedule most favorable for their individual requirements and to make every reasonable effort to insure that such customers are served under the most advantageous schedule. Each such utility shall include among the terms and conditions of its tariff the provision that it will assist such customers in the

selection of the rate schedule most favorable for their individual requirements.

Cross References

Advising customers, alternative services, see also N.J.A.C. 14:10-1.2.

Case Notes

Utility properly billed customer for sewer service. *Deutsch v. New Jersey-American Water Company*, 96 N.J.A.R.2d (BRC) 17.

Telephone circuits running over distribution facilities on utility side of demarcation point were not inside wire for rate purposes. *Monmouth Medical Center v. New Jersey Bell Telephone*, 95 N.J.A.R.2d (BRC) 8.

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.

14:1-11.5 Forms

Forms illustrative of the requirements of this subchapter follow.

Amended by R.1987 d.116, effective February 17, 1987.
 See: 18 N.J.R. 2425(b), 19 N.J.R. 365(a).

Throughout the forms, P.U.C. is changed to B.P.U. and Public Utility Commissioners is changed to Public Utilities.

B.P.U. No.1-WATER

STANDARD WATER COMPANY
 TARIFF
 for
 WATER SERVICE

Applicable in
 STANDARD PARK
 MIDDLESEX COUNTY, NEW JERSEY

Issued: (date)

Effective: (date)

By: John Doe, President
 691 Broadway
 New Brunswick, N.J.

STANDARD WATER COMPANY
B.P.U. No. 1—WATER

Original Sheet No. 1

STANDARD WATER COMPANY
B.P.U. No. 1—WATER

Original Sheet No. 3

TABLE OF CONTENTS

Territory Served Sheet No. 2
 Standard Terms and Conditions Sheets No. 3 to 7 incl
 (Use as many sheets as required)
 Rate Schedules as listed below

Applicable:

To	For	Rate Schedule	Sheet No.
High Service Area	General Metered	1	8
High Service Area	Fixture Rate	2	10
Low Service Area	General Metered	3	11
Low Service Area	Fixture Rate	4	13

STANDARD TERMS AND CONDITIONS

(a) A full and complete statement of all rules, regulations, terms and conditions relating to rates, charges of service used or to be used which apply generally in connection with the service supplied together with all general privileges and facilities granted or allowed. Each such rule, regulation, etc., shall constitute a separate section or paragraph. The paragraphs shall be numbered consecutively and where possible shall be given appropriate headings such as: 2. Definitions—(Mark sub-paragraphs 2.1, 2.2, 2.3, etc); 3. Applications; 4. Customers' Deposits; etc.

(b) General rules and regulations as to services, meters, wiring, connection and disconnection of service (not including detailed specifications, which may be included in a separate pamphlet and referred to herein).

(c) Such other information in regard to the rates, charges or service, or practices relative thereto as in the opinion of the issuing utility should be published. This information shall be paragraphed and numbered under suitable headings.

Date of Issue: (date) Effective: (date)
 Issued by: John Doe, President
 691 Broadway
 New Brunswick, N.J.

Date of Issue: (date) Effective: (date)
 Issued by: John Doe, President
 691 Broadway
 New Brunswick, N.J.

STANDARD WATER COMPANY Original Sheet No. 2
 B.P.U. No. 1—WATER

TERRITORY SERVED

Describe here all territories covered by the tariff by naming the cities, villages, towns and hamlets. Indicate the counties and towns in which such places are situated. A map showing the territory to be served is described but not required.

Date of Issue (date) Effective: (date)
 Issued by: John Doe, President
 691 Broadway
 New Brunswick, N.J.

STANDARD WATER COMPANY
B.P.U. No. 1—WATER

Original Sheet No. 8

RATE SCHEDULE NO. 1
(or other designation)

Applicable to Use of Service for:
(Here state clearly the use or uses of the service.)

Character of Service:
(Service available at any and all times should be designated "Continuous." When available only at certain specified hours of the day or season of the year, "Limited Period." When to be furnished at such times and in such quantities as producer desires to sell, "Dump." When to be furnished whether continuously or during limited periods for use in conjunction with customer's own plant, "Auxiliary" except in cases of breakdown of customer's plant, in which case it should be designated "Breakdown.")

Rate:
(The base or unit price or prices or series of unit prices used in computing the total charge to customer. If any surcharge applies, that fact should be stated at this point.)

Minimum Charge:
(Here state clearly the amount of minimum charge in dollars, and the period which it covers. If there is no minimum charge, so state. If prompt payment discounts do not apply to minimum charge, the word "net" should be used in connection with such minimum charge.)

Determination of Demand:
(This heading need not be included except in connection with rates in which the demand is an element. In such case, the manner in which the demand is determined must be clearly explained.)

Terms of Payment:
(Here state what discounts or reductions, if any, are allowed on account of payment within a specified period. Care should be used to make perfectly clear how the discount is determined. If no discount be allowed, this may be indicated by the use of the expression "Net Cash.")

Date of Issue: (date) Effective (date)
 Issued by: John Doe, President
 691 Broadway
 New Brunswick, N.J.

STANDARD WATER COMPANY
B.P.U. No. 1—WATER

Original Sheet No. 9

RATE SCHEDULE No. 1 (CONTD.)

Term:
(Here state such requirements as may reasonably apply relative to the discontinuance of the service at the request of the customer.)

Special Provision:
Here state or refer to all special provisions or contract clauses which may be applied to or affect this schedule. Each such provision or contract clause should be lettered "a", "b", "c", etc. Where reference is made to special provisions shown elsewhere than in the rate schedule, such reference must definitely state the sheet on which such provisions appear. General provisions relating to all schedules shall be shown in the Standard Terms and Conditions.

Date of Issue: (date) Effective: (date)
 Issued by: John Doe, President
 691 Broadway
 New Brunswick, N.J.

STANDARD WATER COMPANY
B.P.U. No. 1—WATER

First Revised Sheet No
Cancelling
Original Sheet No

RATE SCHEDULE NO. 1

(Here set forth the new text or rates that will apply after the new effective date.)

(The revised schedule must be complete in itself as the cancelled sheet is removed from the filed tariff.)

Date of Issue: (date) Effective (date)
 Issued by: John Doe, President
 691 Broadway
 New Brunswick, N.J.

Tariff sheets which are revised in accordance with an order or authorization of the Board should carry a footnote in the following style:
 Filed pursuant to decision of Board of Public Utilities in Docket No. 4664, dated January 1, 1952.

**SUBCHAPTER 12. PROCEDURES FOR
 DETERMINING THE CONFIDENTIALITY
 OF SUBMITTED INFORMATION**

Authority
 N.J.S.A. 48:2-12 and 47:1A-1 et seq.

Source and Effective Date
 R.2003 d.290, effective July 21, 2003.
 See: 34 N.J.R. 2271(b), 35 N.J.R. 3368(b).

14:1-12.1 Scope

(a) This subchapter sets forth the procedures for making information received by the Board of Public Utilities in administering its duties available to the public and maintaining confidentiality of certain parts of the information.

(b) Any person or entity required to submit or who does submit to the Board any information pursuant to Titles 48 and 52 of the New Jersey Statutes or Title 14 of the New Jersey Administrative Code, which in the person's or entity's opinion constitutes trade secrets, proprietary commercial or financial information, or information which if disclosed, would be likely to cause damage to either a competitive or bidding position or national security, may assert a confidentiality claim by following the procedures set forth in this subchapter.

(c) With regard to any determination related to a request for the confidential treatment of information, the provisions

of N.J.A.C. 17:44-5.1, 5.2 and 5.4 shall be taken into consideration.

(d) This subchapter is only one of several legal mandates which govern the public release of information submitted to the Board. Because the Board is an agency in but not of the Department of Treasury, pursuant to N.J.S.A. 52:18A-2.1, the Board will apply the Department of Treasury's OPRA rules in addition to the provisions of this subchapter. In addition, some provisions of OPRA and other applicable statutes, which apply to the confidentiality of submitted information, may apply but are not repeated in these rules. Executive Orders No. 21 and 26 (2002) also apply to the Board's treatment of submitted information.

(e) Nothing in this subchapter shall limit the Board's authority to make a confidentiality determination within the context of a hearing or other proceeding or with regard to any other matter the Board may deem appropriate.

14:1-12.2 Definitions

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

"Claimant" means any person who submits a confidentiality claim under this subchapter.

"Confidential copy" means a record (or copy thereof) submitted to or obtained by the Board or the custodian, containing information which the claimant asserts is confidential information.

"Confidential information" means information which the custodian and/or the Board determines, in accordance with the procedures of this subchapter, to have satisfied the substantive criteria in this subchapter and/or in applicable law described at N.J.A.C. 14:1-12.1(d). Information may be claimed confidential by the person who submitted it, or the Board may on its own initiative determine information to be confidential.

"Confidentiality claim" or "claim" means, with respect to information that a person is required either to submit to the Board or to allow the Board to obtain, an assertion in accordance with this subchapter that the information is entitled to be exempt from public disclosure under applicable law.

"Confidentiality determination" means a determination by the custodian that the asserted confidential information is or is not confidential information.

"Contract" means an agreement between the Board and a contractor, for which the Board has determined it is necessary for the contractor to have access to confidential information to enable the contractor to perform the duties required by such agreement.

"Contractor" means a person other than an employee of the Board, who has entered into a contract, as defined herein, with the Board to perform services or to provide goods for the Board.

"Custodian" means the officer officially designated by the Board to oversee the public's access to government records pursuant to N.J.S.A. 47:1A-1 et seq.

"Designee" means the person designated by a claimant in accordance with N.J.A.C. 14:1-12.4 to receive notices and other communications relating to confidentiality claims from the custodian under these rules.

"Final public copy" means a copy of a record submitted to or obtained by the Board, identical to the confidential copy except that any confidential information has been blacked out; however, if the record is not in a form in which the confidential information can be concealed by blacking out, the "final public copy" shall be a copy of such record from which such confidential information has been deleted, containing notations stating where deletions have been made.

"Preliminary public copy" means a copy of a record held by the Board, identical to the confidential copy except that any asserted confidential information has been blacked out; however, if the record is not in a form in which the confidential information can be concealed by blacking out, the "preliminary public copy" shall be a copy of such record from which such confidential information has been deleted, containing notations stating where deletions have been made.

"Requester" means a person who has made a request to the Board to inspect or copy records which the Board possesses or controls.

"Substantiation" means information which a claimant submits to the custodian in support of a confidentiality claim made pursuant to N.J.A.C. 14:1-12.8.

14:1-12.3 Procedure for making a confidentiality claim

(a) Any person or entity required to submit or who does submit to the Board information pursuant to Titles 48 and 52 of the New Jersey Statutes or Title 14 of the New Jersey Administrative Code, which such person believes in good faith to constitute confidential information, may assert a confidentiality claim by following the procedures set forth in this subchapter.

(b) A claimant shall submit to the custodian a confidential copy and a preliminary public copy, as those terms are defined at N.J.A.C. 14:1-12.2, of any record containing asserted confidential information. The preliminary public copy shall carry a notation, in a form to be developed by the custodian, stating that confidential information has been blacked out or deleted. The custodian may disclose the preliminary public copy to any person, without restriction or limitation.

(c) The claimant shall label the first page of the confidential copy "CONFIDENTIAL COPY." At the top of each page of the confidential copy which contains information that the claimant asserts is confidential, the claimant shall place a boldface heading reading "CONFIDENTIAL." The claimant shall clearly underscore or highlight all information in the confidential copy which the claimant asserts to be confidential, in a manner which shall be clearly visible on photocopies of the confidential copy.

(d) The claimant shall seal the confidential copy in an envelope displaying the word "CONFIDENTIAL" in bold type or stamp on both sides. This envelope shall be enclosed in another envelope for transmittal to the custodian. The outer envelope shall bear no markings indicating the confidential nature of the contents.

(e) The claimant shall send the package containing the confidential copy to the custodian by certified mail, return receipt requested, or by other means providing receipt for delivery.

(f) The claimant shall include in the package a written designation of a person to receive notices and other communications. The designation shall include the information required pursuant to N.J.A.C. 14:1-12.4.

(g) The claimant shall include in the package substantiation of the confidentiality claim as described in N.J.A.C. 14:1-12.8.

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

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

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

14:1-12.5 Correspondence, inquiries and notices

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

1. Notices of requests submitted to the Board for the confidential information that was submitted by the claimant; and

2. Notices of the Board's denial of the confidentiality claims.

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

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

14:1-12.6 Time for making confidentiality determinations

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

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

2. The requester consents to a reasonable extension of time; or

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

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

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

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

14:1-12.7 Notice of pending confidentiality determination

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

1. A copy of the request form, with any information that is exempt from public disclosure under N.J.S.A. 47:1A-1 et seq. removed; and

2. The earliest date that the information may be made available to the public under this chapter, if the asserted confidential information is determined not to be confidential.

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

14:1-12.8 Substantiation of confidentiality

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

1. Measures taken by the claimant to prevent disclosure of the information to others;

2. Whether the information is contained in materials which are routinely available to the general public, including, without limitation, initial and final orders in contested case adjudications, press releases, copies of speeches, pamphlets and educational materials;

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

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

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

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

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

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

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

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

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

14:1-12.9 Final confidentiality determination

(a) If, after review of all the information submitted pursuant to this subchapter, the custodian determines that the asserted confidential information is not confidential information, the custodian shall as quickly as feasible:

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

2. Provide written notice that meets the requirements of (b) below to the claimant's designee by certified mail, return receipt requested.

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

1. The date on which the disclosure was made;

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

3. A brief description of the information disclosed;

4. The basis for the determination; and

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

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

1. Treat such information as confidential;

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

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

4. Send notice to the claimant by certified mail, return receipt requested, if applicable.

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

14:1-12.10 Treatment of information pending confidentiality determination

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

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

If the custodian has received a request for asserted confidential information in accordance with this subchapter, and has determined that the information is not confidential, the custodian may disclose such information to any person on the seventh business day following the request for the confidential information.

14:1-12.12 Disclosure of confidential information to other public agencies

(a) The custodian may disclose confidential information to any other State agency or to a Federal agency if:

1. The custodian notifies the other agency of any pending confidentiality claim concerning the requested information, or of any confidentiality determination regarding the requested information; and
2. The custodian receives a written request for disclosure of the information from a duly authorized officer or employee of the requesting agency, stating that the other agency has adopted regulations or operates under statutory authority that would allow it to preserve confidential information from unauthorized disclosure, and agrees in writing to refrain from further disclosure, unless:
 - i. The requesting agency has statutory authority both to compel production of the information and to disclose it; or
 - ii. The claimant has consented to the disclosure of the information to the requesting agency.

14:1-12.13 Disclosure of confidential information to contractors

(a) The custodian may disclose confidential information to a contractor, if the custodian complies with the procedure under (b) below, and if:

1. The custodian determines that such disclosure is necessary in order for the contractor to perform the work required by the contract;
2. The contract provides that the contractor and the contractor's employees shall use the confidential information only for the purpose of performing the duties required by the contract, shall refrain from disclosing the confidential information to anyone other than the custodi-

an, shall store all records containing the confidential information in locked cabinets in secure rooms, and shall return to the custodian all originals and all copies of the information (and any abstracts or extracts therefrom, or any records containing any of the confidential information) when the confidential information is no longer necessary to enable the contractor to perform its obligations under the contract, or at any time upon the request of the custodian; and

3. At the request of the claimant, the contractor contracts with the claimant to refrain from further disclosure of the confidential information.

(b) Before disclosing confidential information to a contractor under (a) above, the custodian shall notify the claimant of the proposed disclosure in writing, delivered by certified mail, return receipt requested, at least 14 days before making the disclosure. The notice shall state the information to be provided, the identity of the contractor and the scheduled date of disclosure. If, at least three working days before the scheduled date of disclosure, the claimant delivers to the custodian information sufficient to establish, to the custodian's satisfaction, that the proposed disclosure involves trade secrets, proprietary commercial or financial information or would likely cause damage to either a competitive or bidding position or national security, the custodian shall refrain from making the disclosure.

14:1-12.14 Disclosure to alleviate an imminent and substantial danger

(a) If the custodian finds that disclosure of confidential information would serve to alleviate an imminent and substantial danger to public health, safety or the environment, the custodian shall:

1. Immediately disclose the confidential information to any person whose role in alleviating the danger to public health and the environment makes such disclosure necessary; and
2. Limit any disclosure pursuant to this paragraph to that information necessary to enable the person to whom it is disclosed to carry out the activities necessary to alleviate the danger.

(b) Any disclosure made pursuant to (a) above shall not be deemed a waiver of a confidentiality claim and shall not be grounds for any determination that information is no longer confidential information.

14:1-12.15 Disclosure by consent

(a) The custodian may disclose confidential information in accordance with the written consent of the claimant.

(b) A claimant's consent to a particular disclosure shall not operate as a waiver of a confidentiality claim with regard to further disclosures, unless the authorized disclo-

sure is of such nature that the disclosed information is no longer confidential information.

14:1-12.16 Incorporation of confidential information into accumulations of data

Nothing in this subchapter shall be construed as prohibiting the incorporation of confidential information into accumulations of data subject to disclosure as public records, provided that after consultation with the claimant, the custodian has determined that such disclosure is not in a form that would foreseeably allow persons, not otherwise having knowledge of such confidential information, to deduce from it the confidential information or the identity of the person who supplied it to the custodian.

14:1-12.17 Confidentiality agreements

(a) The provisions of this subchapter shall supersede the provisions of any agreement imposing any duties of confidentiality or nondisclosure upon the Board, custodian or any employee, or contractor or agent thereof. This section does not govern Board orders, which are not superseded by this subchapter.

(b) Provisions of an agreement imposing confidentiality or nondisclosure duties upon the Board or any employee, contractor or agent thereof shall be of no force or effect.

(c) The Board shall presume that the submitter of any information subject to a previous agreement imposing duties of confidentiality or nondisclosure upon the Board would like the information kept confidential. Therefore, if the Board receives a request for public disclosure of such information, the Board will notify the submitter in accordance with N.J.A.C. 14:1-12.7, in order to provide the submitter with an opportunity to submit substantiation in accordance with N.J.A.C. 14:1-12.8. The Board recommends that any person who has submitted such information in the past submit updated contact information to the custodian to ensure that the custodian can contact them in the event of a request for public disclosure of the information.

14:1-12.18 Payment for copies

(a) When copies of a record have been requested, payment will be expected at the time the records are picked up, or if the requester would prefer the copies to be mailed, receipt of payment including the cost of mailing the copies by the custodian must occur before the records will be mailed.

(b) For the convenience of the requester, payment may be made in cash or by check or money order.