

**PUBLIC UTILITIES**

**(a)**

**BOARD OF PUBLIC UTILITIES**

**Notice of Action on Petition for Rulemaking  
Miscellaneous**

Petitioner: Eagle One Resources, LLC.

Take notice that on October 28, 2016, the Board of Public Utilities (Board) received a petition for rulemaking from Eagle One Resources, LLC seeking amendments to the current rules to establish a set rate to be charged for the review of a plan filed by a utility to cross a railway corridor.

The petitioner states that utilities and communication companies need access to public right of ways in order to provide their services, which they claim is a straightforward process in most instances. However, the petitioner asserts that the process is unnecessarily lengthy and expensive when they seek access to cross a railroad corridor. The petitioner maintains that utilities and communication companies are willing to pay reasonable actual costs incurred by the railroads for the review of the connection plans for these crossings and seek a rulemaking to set an established rate.

In accordance with the provisions of N.J.A.C. 1:30-4.2 and 14:1-5.16, the Board mailed to the petitioner and filed with the Office of Administrative Law, a notice of receipt of the petitioner’s request. Notice of the Board’s receipt of the petition was published in the December 5, 2016 issue of the New Jersey Register at 48 N.J.R. 2640(b).

Take further notice that, at its open public session on December 12, 2016, the Board denied the petition. The Board has no jurisdiction over railroads, pursuant to N.J.S.A. 48:2-13, as amended by the Reorganization Plan for the Board of Public Utilities and the Department of Transportation of 1978. See, for example, *In re Complaint of Five Mile Beach Elec. Ry. Co., Inc.*, 342 N.J. Super. 52, 62-63 (App. Div. 2001). Therefore, due to the Board’s lack of jurisdiction, the petition for rulemaking must be denied.

A copy of this notice has been mailed to the petitioner consistent with the requirements of N.J.A.C. 1:30-4.2.

**(b)**

**BOARD OF PUBLIC UTILITIES**

**Notice of Waiver**

**N.J.A.C. 14:9-10.1(e) and 10.7(a)3**

Take notice that effective December 22, 2016, the Board of Public Utilities (Board) signed an order waiving the provisions of N.J.A.C. 14:9-10.1(e) and 10.7(a)3. The order is set forth below.

	<u>WATER</u>
IN THE MATTER OF THE	) ORDER WAIVING
BOARD’S WAIVER OF	) N.J.A.C. 14:9-10.1(e) and 14:9-
N.J.A.C. 14:9-10.1(e) AND	) 10.7(a)3)
14:9-10.7(a)3)	)
	) DOCKET NO. WW16111080

**Party of Record:**

**Stefanie A. Brand, Esq., Director**, New Jersey Division of Rate Counsel

**BY THE BOARD:**

By this Order, the Board of Public Utilities (“Board”) waives N.J.A.C. 14:9-10.1(e), which states that the initial term of the rules governing the Distribution System Improvement Charge (“DSIC”) at N.J.A.C. 14:10.1 *et seq.*, will expire on June 4, 2017 in the absence of explicit Board action, and N.J.A.C. 14:9-10.7(a)3 limiting utilities’ ability to collect a DSIC surcharge after the date set forth in N.J.A.C. 14:9-10.1(e). On December 12, 2016, the Board proposed amendments

to N.J.A.C. 14:9-10.1 *et seq.*, to continue use of the DSIC and to include the proposed repeal of N.J.A.C. 14:9-10.1(e) and modification of N.J.A.C. 14:9-10.7(a)3. While the Board believes this rule proposal constitutes ‘explicit board action’ allowing the rules to continue, the Board has determined to waive the relevant rules to be clear that the DSIC rules will continue.

**BACKGROUND**

In June 2012, the Board established for water utilities in New Jersey, a voluntary DSIC, an initiative which creating a regulatory mechanism that enables the accelerated level of investment needed to promote the timely rehabilitation and replacement of certain non-revenue producing, critical water distribution components that enhance safety, reliability, water quality, system flows and pressure, and/or conservation. Through a DSIC, after approval of the foundational filing, water utility charges customers, up to the DSIC cap amount, for the costs of rehabilitating, improving, or replacing water distribution infrastructure.

Since implementation, the DSIC has incentivized water companies to replace worn infrastructure, as it was designed to do. On December 12, 2016, the Board proposed a rulemaking to continue the DSIC program in order to benefit New Jersey. Notwithstanding the Board’s specific action and proposal to continue the DSIC program, pending that rulemaking process, the Board is concerned that N.J.A.C. 14:9-10.1(e) and 10.7(a)3 may be read to limit the program pending the outcome of the rulemaking.

**DISCUSSION AND FINDINGS**

In considering whether to waive N.J.A.C. 14:9-10.1(e) and 10.7(a)3, the Board applies the two-pronged test set forth at N.J.A.C. 14:1-1.2(b)1): first, whether the request is in accord with the general purposes and intent of the rules; and second, whether full compliance with the rules would adversely affect ratepayers, the utility, or the public interest.

To determine the general purpose and intent of its rules, the Board looks to the policy underlying the rule(s) in question. The purpose of N.J.A.C. 14:9-10.1(e) and 10.7(a)3 was to establish the DSIC rules on an interim basis to allow the Board to evaluate whether the program was successful and deserving of continuing. Pursuant to the DSIC rules, the water companies have quickened the replacement rate of the State’s aging water infrastructure. The old and worn infrastructure is being replaced regularly by the water companies who typically file projects about every six months with the Board, seeking DSIC treatment. In contemplating proposing amendments to the DSIC rules, Board staff had a public process with relevant stakeholders. The Board, by approving the notice of proposal on December 12, 2016 to amend N.J.A.C. 14:9-10.1 *et seq.* has determined that the DSIC program shall remain in effect. Nonetheless, in accordance with the APA, a final determination whether to remove the time limit contained in N.J.A.C. 14:9-10.1(e) will be removed, should be reviewed by the Board after a public comment period. As such, by waiving N.J.A.C. 14:9-10.1(e) and 10.7(a)3 the Board is allowing the status quo to continue, pending the outcome of the rulemaking proposed on December 12, 2016. Therefore, the Board **FINDS** that the waiver complies with the general purpose and intent of these rules.

The Board also considers whether full compliance with the rule would adversely affect the interest of the public. See N.J.A.C. 14:1-1.2(b)1). DSIC is a surcharge to rate-payer’s water bills that can be recovered by the companies; roughly seven and a half months after the projects are in the ground and useful. This expedited rate recovery incentivizes utilities to make additional investments in infrastructure. Additionally, if future DSIC projects were suspended by operation of N.J.A.C. 14:9-10.1(e) and 10.7(a)3, this would not eliminate the current DSIC surcharge. The practical effect of allowing the DSIC to lapse would be that new projects which are benefiting ratepayers through improved infrastructure would be halted pending the rulemaking process. Given that the DSIC program has promoted the timely rehabilitation and replacement of certain non-revenue producing and critical water distribution components which create jobs enhance safety, reliability and/or conservation and speeds the rate of renewal of this aging infrastructure, failing to waive these rules will adversely affect the