

NEW JERSEY BOARD OF PUBLIC UTILITIES

Readoption With Amendments of N.J.A.C. 14:1

Rules of Practice

March 10, 2008

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PUBLIC UTILITIES

BOARD OF PUBLIC UTILITIES

Rules of Practice

Readoption with Amendments:	N.J.A.C. 14:1
Repeals:	N.J.A.C. 14:1-11
Proposed:	November 5, 2007, at 39 N.J.R. 4551(a).
Adopted:	February 27, 2008, by the New Jersey Board of Public Utilities, Jeanne M. Fox, President; Frederick F. Butler, Joseph L. Fiordaliso, and Christine V. Bator, Commissioners.
Filed:	February 29, 2008 with substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).
Authority:	N.J.S.A. 48:2-12, N.J.S.A. 47:1A-1 et seq., and N.J.S.A. 52:27F-18.

BPU Docket Number: AX07070510

Effective date: February 29, 2008, Readoptions
April 7, 2008, Amendments and Repeals

Expiration date: April 7, 2013

The New Jersey Board of Public Utilities (“Board”) is readopting with amendments its rules of practice, found at N.J.A.C. 14:1. These rules govern practice and procedure before the Board, which includes all pleadings, petitions and filings; fees and charges; appearances and motions in both contested and uncontested cases. The rules also cover the disclosure of information claimed as confidential pursuant to the Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

The readoption was proposed on November 5, 2007, at 39 N.J.R. 4551(a). Comments were accepted through January 4, 2008. Four commenters submitted approximately sixteen comments.

Summary of Public Comments and Agency Responses:

The following persons submitted timely comments on the proposal:

1. Dante DiPirro, New Jersey Cable Telecommunications Association (NJCTA).
2. Tracey Thayer, New Jersey Natural Gas, Inc. (NJNG).
3. Paul E. Flanagan, Division of Rate Counsel, New Jersey Department of the Public Advocate (RC).
4. Richard A. Chapkis, Verizon New Jersey, Inc. (VNJ).

Summary of Public Comments and Agency Responses:

General Comments:

1. **COMMENT:** We support the Board’s continued efforts to clarify and streamline its practice and procedures. (NJCTA)
- RESPONSE:** The Board appreciates this comment in support of the rules.

Electronic Filings:

2. **COMMENT:** We fully support the recent implementation by the New Jersey Board of Public Utilities (“BPU”) of the pilot program allowing comments on rules to be filed electronically in accordance with N.J.A.C. 14:1-6A. Such an approach allows both the utilities and the Staff of the BPU to greatly reduce reliance on printed copies of documents. (NJNG) (NJCTA)
- RESPONSE:** The Board appreciates this comment in support of the rules.
3. **COMMENT:** We support the expansion of the use of electronic filing as much as possible since that material can then be posted on the BPU website, making it more

readily available to interested parties and reducing the number of hard copies printed. (NJNG)

RESPONSE: Please see the response to comment 7 below.

- 4. COMMENT:** We favor expanding the acceptable forms of communication as the most effective and efficient way to improve the Board's practices and procedures. The Board has recognized the utility of electronic filings in its amendment to N.J.A.C. 14:1-1.7(d) allowing the Board to supplement official records and documents electronically. We recommend that the Board consider adopting an electronic filing system similar to the one in use by the State of Connecticut's Department of Public Utility Control, which provides a way to file documents by use of the internet. A user merely registers and selects an ID and password. The system can be accessed by commonly available web browsers. Text documents can be accepted in Word, Excel, PowerPoint, and Adobe Acrobat formats. The use of electronic documents does away with the filing, transmission and storage of multiple paper copies of pleadings and other filings. The use of such a system by the Board would benefit the Board, regulated entities, consumers, and taxpayers alike because it is: quick; environmentally friendly; easy to store, search, retrieve, copy and send; and provides better proof of sending and receipt than regular mail. Electronic filing should also be used for requesting Board action on a complaint under N.J.A.C. 14:1-1.5 (NJCTA)

RESPONSE: Please see the response to comment 7 below.

- 5. COMMENT:** We oppose the Board's proposal to add language to N.J.A.C. 14:1-1.6(c) stating that documents received electronically will neither be date/time stamped as formally received by the Board nor be entered into the case or rulemaking record. The Board's rules should permit electronic filing. Electronic filing would reduce administrative burdens on the Board and companies making filings. It would enable the Board to reach the goals of transparency, administrative efficiency, and customer service set forth in the most recent version of the Board's Strategic Plan. Further, it would facilitate the efficient and timely exchange of information among interested parties. (VNJ)

RESPONSE: Please see the response to comment 7 below.

- 6. COMMENT:** The current rule provides that a petitioning party must file an original and ten copies of each pleading and the Board's proposed amendment adds a requirement that an electronic version be filed as well. The requirement to file original and ten paper copies is excessive and burdensome because some pleadings are hundreds of pages long (especially when there are voluminous exhibits). We recommend that the Board dispense with the requirement for ten paper copies when an electronic version is provided. Instead, we request that the regulation require one electronic version of a submission and one original in writing. At a minimum, the regulation should provide that any appendix or attachment to a filing, and any copies of the appendix or attachment, may be filed electronically in lieu of paper. (NJCTA) (RC)

RESPONSE: Please see the response to comment 7 below.

7. COMMENT: Proposed N.J.A.C. 14:1-1.6(c) should be replaced with the following: "If the Board receives a document electronically, the document shall be stamped filed as of the date/time of receipt by the Secretary of the Board and returned to the party making the filing. If the document is received after 5:00 PM, the document shall be dated the next business day. Hard copies shall be filed and served to all parties on the filing date. Hard copies shall be mailed to non-parties via overnight mail."
(RC)

RESPONSE: to comments 3 through 7: While the Board recognizes the value of electronic filing, the Board does not currently have a filing system capable of electronically receiving and file stamping documents nor is it capable of making them available electronically. However, the Board has taken note of steps taken by other agencies, including the state and federal judiciary and other state utility commissions regarding electronic filing. The Board is currently working with other State agencies in an attempt to implement an appropriate electronic filing system. The Board has also instituted a pilot program that permits the acceptance of rule comments electronically. Additionally, N.J.A.C. 14:1-1.7 permits the Board to supplement certain documents electronically. Nonetheless, an electronic filing system is not feasible at this time, therefore, the suggested changes to the rules have not been made. The Board looks forward to an upgrade of its computer system in the future.

8. COMMENT: Regarding N.J.A.C. 14:1-4.2, many companies submit the requisite ten copies to the Secretary of the BPU, while also sending copies to specifically designated Staff members who will be active in the matter. As a result, there are often extra copies provided. Accordingly, the original and ten copies should be limited to instances when additional copies are not being provided to relevant Staff members; in all other instances, we suggest that the Secretary's Office receive an original and three copies, or some number sufficient for internal BPU record-keeping. Those needing a copy will now have electronic access also. (NJNG)

RESPONSE: While Staff appreciates receiving courtesy copies of documents, the rules set forth formal filing requirements. Therefore, there is no need to address this in the rules. Nonetheless, the Board notes that, as these courtesy copies do not constitute formal filings, they can be submitted to staff electronically.

9. COMMENT: The word "electronically" should be deleted from N.J.A.C. 14:1-1.6(d). (RC)

RESPONSE: The proposal did not include a provision with this citation. N.J.A.C. 14:1-1.6 ends at (c). If the commenter was referring to 14:1-1.6(c), please see the response to comment 7 above.

Other comments:

10. COMMENT: We suggest that the following requirements for a formal complaint be added at N.J.A.C. 14:1-1.5(b) in addition to the requirement of a petition:

1. Complaint setting forth in detail every issue in the complaint;
2. Sworn Prefiled Testimony from each proposed witness;

3. Testimony filed with the complaint shall include supporting documentation, if applicable, such as depreciation, lead-lag and any other studies, workpapers, spread sheets and other documents which support the complaint.

In addition, the following should be added to N.J.A.C. 14:1-4.4: "Failure to file the required documentation with the petition as set forth N.J.A.C. 14:1-1.5(c) constitutes a substantial defect that warrants striking the petition. After completing the requirement with this rule the petitioner may refile the petition." (RC)

RESPONSE: The general substance of the information requested by the commenter is already required under these rules. To clarify, a cross reference to the existing requirements for a petition have been added to N.J.A.C. 14:1-1.5(b) upon adoption. The Board does not believe it is necessary or appropriate to include in the rules the detail suggested by the commenter. The intent of this section is to inform the reader of the existence of both a formal complaint process and an informal complaint process, and to direct the reader to the requirements for each. The commenter's suggested requirements could discourage the general public's use of the formal complaint process by requiring very specific documentation better understood by legal professionals.

11. COMMENT: N.J.A.C. 14:1-5.6 should be modified to streamline the review and approval process for companies operating under a plan of alternative regulation (PAR). This regulation ensures that companies operating under rate of return regulation (ROR) obtain the best sale price or rental fees for their property, as any under-recovery resulting from the sale or lease of the property must be absorbed by the ratepayers. However, it is not necessary for a PAR company to submit detailed information or detailed procedures in connection with the sale or lease of property because alternative regulation completely severs the link between sale proceeds and utility rates. Therefore we recommend that N.J.A.C. 14:1-5.6 allow such companies to file a notice in lieu of a petition with the minimum information of: (1) address of the property; (2) the sale price and a copy of a written agreement of sale, lease, conveyance within twenty days after the execution of a contract sale, lease, or conveyance of property. Furthermore, within fifteen days after the above mentioned notice is filed, the sale, lease, or conveyance should be deemed approved unless the Board or Board staff issues a letter to the company stating that the proposed sale, lease, or conveyance is subject to further Board review. Within ten days after the issuance of the Board letter, the Board should advise the company of any additional information required in connection with the proposed sale, lease, or conveyance. The Board should then approve or deny the proposed transaction within thirty days of the receipt of all requested information. In the event the Board fails to take action within thirty (30) days, the transaction should be deemed approved. (VNJ)

RESPONSE: The commenter's suggestions do not consider the effect of the transaction on the quality and continuity of service to customers. Additionally, the rules already permit a utility to sell property without a petition if the market price is below the threshold set forth in the regulation. Above the threshold, the Board has determined that it must monitor the telephone utility's property sales to ensure that the utility's customers continue to receive reliable, safe and quality service. The Board is not aware that there has been any problem with these petitions being proc-

essed in a timely manner. Furthermore, the commenter's suggested mechanism and compressed timeline, if accepted, would not allow a proper forum and sufficient time to evaluate the proposed sale or lease of the property.

12. COMMENT: Subparagraph 1 of N.J.A.C. 14:1-5.12A(a)1 should be replaced with the following: "Not less than 7 days before the effective date of a rate increase or 5 days before the effective date of a rate decrease in the BGSS, the utility shall file a supplemental tariff sheet stating the adjustment for each service classification and the proposed effective date." (RC)

RESPONSE: The Board has simplified the provision in accordance with the general intent of the alterations suggested by the commenter. Punctuation and cross references are also corrected in N.J.A.C. 14:1-5.12A(a)2 and 3.

13. COMMENT: N.J.A.C. 14:1-5.13(f) should provide that whenever the Board directs a regulated entity to take an action as the result of an informal complaint, the Board directive shall be in writing. The in-writing requirement is necessary to provide the regulated entity with the needed clarity and certainty with regard to the directive (i.e. what is directed, when and why) – these are matters too important to be left to an oral communication over the phone. (NJCTA)

RESPONSE: N.J.A.C. 14:1-5.13(f) has been modified upon adoption to clarify that, if the result of the Board's processing of an informal complaint results in a requirement that a regulated entity act (or refrain from acting), Board staff must inform the entity in writing, whether through an e-mail or a letter.

14. COMMENT: N.J.A.C. 14:1-6.2(c) would allow the Board Secretary the discretion to extend or shorten the time to file an answer or reply. We do not object to this in light of the fact that nothing in this amendment would prohibit one of our member companies from seeking relief when it feels that a scheduling decision of the Board Secretary would be onerous or prejudicial under the circumstances." (NJCTA)

RESPONSE: The Board appreciates this comment in support of the rules. There is no prohibition against filing for any relief from the Board.

15. COMMENT: Although the Board does not propose to amend N.J.A.C. 14:1-8.6, we believe that extending the 15-day period to file a motion for reconsideration is necessary, both with regard to the duration of the period and when it begins to run. Fifteen days has proven too short a time to adequately assess and draft a motion for reconsideration, especially when complex matters are at issue. In addition, because the 15-day period begins to run from "issuance of the order," the time it takes to receive service of the order invariably cuts down on the time to respond. The time period for the filing of the motion should commence upon service of the order or decision, not upon "issuance" of the order as currently provided. This would comport with the practice of the New Jersey Superior Court, where the times to file a motion for reconsideration and to file an appeal of an agency action run from the date of service. R. 4:49-2; R. 2:4-1(b). In addition, the time period to file a motion for reconsideration should be enlarged. Title 48 gives the Board wide discretion to reconsider its orders. The Board should use of this authority to give movants 20 days rather than

15 days to file a motion for reconsideration. Extending the time period to 20 days would also give movants in Board proceedings the same time as movants in the New Jersey Superior Court system. (NJCTA)

RESPONSE: These requirements have been in effect for many years, during which the Board has found that it strikes an appropriate and practicable balance between the interest of moving cases forward and allowing parties to prepare appropriate motions.

16. COMMENT: N.J.A.C. 14:1-8.7 would provide that a motion is deemed denied "unless the parties are otherwise notified by the Board or its Secretary." There may be times when the Board may wish to extend its time to act on a motion beyond 60 days. However, any extension of time should be accompanied by a written statement as to the basis for the extension and a clear indication of the length of the extension. (NJCTA)

RESPONSE: The provision has been clarified to indicate that any extension of the 60-day time period for filing a motion for reconsideration in N.J.A.C. 14:1-8.7 will be provided in writing.

17. COMMENT: The Board should detariff non-rate regulated services. The companies should be permitted to cancel individual tariffs by advice letter at any time during an 18-month transition period. (VNJ)

RESPONSE: First, it should be noted that Chapter 1 addresses the form of certain petitions for the approval of tariffs and tariff amendments, but no longer sets forth the basic requirement to file a tariff or tariff amendment. This was proposed for repeal as part of this rulemaking (see proposal at 39 N.J.R. 4551(a), at 4552), in order to facilitate relocation of these provisions to N.J.A.C. 14:3 (see 39 N.J.R. 4077(b)). Regarding the commenter's substantive point, N.J.S.A. 48:2-21.19e(3) expressly permits tariffs for competitive services, and the Board believes that it is necessary to exercise this authority in order to ensure that customers receive adequate service.

Federal Standards Statement

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. require State agencies that adopt, readopt or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal Standards Analysis. N.J.A.C. 14:1 is not promulgated under the authority of, or in order to implement, comply with or participate in any program established under Federal law or under a State statute that incorporates or refers to Federal law, Federal standards, or Federal requirements. Accordingly, Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. do not require a Federal Standards Analysis for this readoption with amendments.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*):

CHAPTER 1. RULES OF PRACTICE

SUBCHAPTER 1. GENERAL PROVISIONS

14:1-1.5 Requesting Board action on a complaint

- (a) (No change from proposal.)
- (b) A formal complaint requesting a formal hearing shall consist of a petition to the Board which meets the applicable requirements of N.J.A.C. 14:1-4 and 5, accompanied by the appropriate fee in the amount and in the manner prescribed in N.J.A.C. 14:1-2.1 and 14:1-2.2.
- (c) An informal complaint or filing, requesting Board action without a formal Board proceeding can may be made by letter, telephone call, e-mail, fax or other writing, in accordance with N.J.A.C. 14:1-5.13.

14:1-1.6 Communications

- (a) - (b) (No change.)
- (c) In a formal proceeding, If the Board receives a document submitted via fax or electronically, the document will neither be date/time stamped as formally received by the Board nor be entered into the case or rulemaking record, except as provided under N.J.A.C. 14:1-6A. Such documents shall only be distributed to the addressee.

14:1-5.12A Changes to levelized energy adjustment clause rates, basic generation service rates, or basic gas supply service pricing 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 a utility that files a request for an adjustment to its levelized energy adjustment clause rates or its basic generation service clause rates, or its basic gas supply service pricing clause rates, it shall conform to the following requirements whenever the adjustment would result in an increase or decrease in the rate or rates. .

1. Not less than seven days prior to the date upon which the initial or any subsequent effective date of the adjustment is to become effective , or five days prior in the case of a decrease to the periodic basic gas supply service pricing clause rate, 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 (a)1 above 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 ; and

3. The filing of the supplemental tariff sheet referred to in *[paragraph 1 of this subsection]* *(a)1 above* 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) (No change from proposal.)

14:1-5.13 Informal complaint in lieu of petition

(a) - (e) (No change.)

(f) Depending upon the type of informal complaint initiated, Board staff shall telephone, e-mail or send a letter to the complainant, *[along with a copy]* *and shall e-mail or send a letter* to the regulated entity reflecting the results, if any, of the processing of the informal complaint.

(g)-(i) (No change.)

SUBCHAPTER 8. CONTESTED CASE HEARINGS

14:1-8.7 Motions and answers on rehearing

(a)-(b) (No change.)

(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, unless the parties are otherwise notified *in writing* by the Board or its Secretary.

(d) (No change.)