

PUBLIC UTILITIES

(a)

BOARD OF PUBLIC UTILITIES

Distribution System Improvement Charge

Proposed Amendments: N.J.A.C. 14:9-10

Proposed New Rule: N.J.A.C. 14:9-10.7

Authorized By: New Jersey Board of Public Utilities, Richard S. Mroz, President, Dianne Solomon, Joseph L. Fiordaliso, Mary-Anna Holden, and Upendra Chivukula, Commissioners.

Authority: N.J.S.A. 48:2-13, 20 and 24.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

BPU Docket Number: WX16111083.

Proposal Number: PRN 2017-010.

Comments may be submitted through March 18, 2017, by e-mail in **Microsoft Word format**, or in a format that can be easily converted to Word, to: rule.comments@bpu.state.nj.us or on paper to:

Irene Kim Asbury, Secretary
New Jersey Board of Public Utilities
ATTN: BPU Docket Number: WX16111083
44 S. Clinton Ave., 3rd Floor, Suite 314
PO Box 350
Trenton, NJ 08625-0350

The agency proposal follows:

Summary

The Board is proposing to delete N.J.A.C. 14:9-10.1(e). The Board has determined that the Distribution System Improvement Charge (DSIC) rules provide a mechanism for water utilities to accelerate the level of investment needed to promote the timely rehabilitation and replacement of certain non-revenue producing, critical water distribution components, which enhance safety, reliability, and/or conservation and to speed the rate of renewal of this aging infrastructure, and should, therefore, remain in effect.

In addition to proposed technical amendments to N.J.A.C. 14:9-10, the Board is proposing the following substantive amendments:

The Board is proposing to amend the definition of "base spending" to more clearly define it and to specify the inclusion of dead end looping. The Board is also proposing to add definitions for "in service," to clarify its use in the rules and "restoration costs," to define their eligibility.

Proposed new N.J.A.C. 14:9-10.3(c) sets forth the requirements for the recovery of restoration costs.

The proposed amendments to N.J.A.C. 14:9-10.4 add a requirement for two additional project lists to separate different project types for ease of review; add a requirement for project substitution and clarify certain filing requirements; and add language allowing carryover of projects between Foundational Filings under certain circumstances. The updated filing requirements for DSIC project information and foundational filings include a list of projects that were initiated under a prior Foundational Filing, placed in service, but not recovered in base rates or were not in-service at the time the DSIC rates were reset to zero, and a list of previously unrecovered restoration costs.

The proposed amendments to N.J.A.C. 14:9-10.5 add filing requirements for ease of review and modify the filing review period from 60 to 45 days.

Proposed new N.J.A.C. 14:9-10.6(c) is relocated from the first sentence of N.J.A.C. 14:9-10.4(b)6.

Proposed new N.J.A.C. 14:9-10.7 addresses the treatment of costs carried forward from one Foundational Filing to the next, which permits the recovery of projects previously ineligible for recovery through DSIC and clarifies which, and when, project costs are and are not eligible for recovery through DSIC.

The proposed amendment to recodified N.J.A.C. 14:9-10.8 addresses the treatment of DSIC projects if the rules were to expire at some future date and remove the references to N.J.A.C. 14:9-10.1(e).

The Board is also proposing technical changes to various cross references within the rules to be consistent with proposed rule amendments.

As the Board has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed amendments and new rule will have a positive social impact for New Jersey by improving and simplifying the implementation of the original subchapter, which enables regulated water utilities to continue accelerating the replacement and rehabilitation of aging infrastructure, thereby preserving the integrity of the water distribution system for customers.

Economic Impact

The proposed amendments will not have any further economic impact, because the amendments and new rule allow for the continued application of the DSIC charge, which was, and is, capped by calculating five percent of the water utility's total revenues as established in the most recent base rate decision.

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 rules exceeding any Federal standards or requirements to include in the rulemaking document a Federal standards analysis. The proposed amendments have no Federal analogue and are 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 the proposed amendments and new rule.

Jobs Impact

The Board believes that maintaining the DSIC program will continue to encourage investment in infrastructure projects, which will have a positive jobs impact.

Agriculture Industry Impact

The Board does not expect any agriculture industry impact from the proposed amendments and new rule.

Regulatory Flexibility Statement

The proposed amendments and new rule will not impose any recordkeeping, reporting, or other compliance requirements on small businesses. A small business, as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., is a business that has fewer than 100 full-time employees. The proposed amendments and new rule will have an impact on regulated water utilities that are small businesses, only to the extent that they choose to participate in the program. Even with the impacted utilities, there are no additional requirements, only an alteration to presently required information.

Housing Affordability Impact Analysis

The proposed amendments and new rule will have no impact on the affordability of housing in New Jersey and will not evoke a change in the average costs associated with housing because the scope of the rules is limited to the implementation of a DSIC for water utilities.

Smart Growth Development Impact Analysis

The proposed amendments and new rule should not have any significant impact on smart growth, and there is an extreme unlikelihood that the proposed amendments and new rule would evoke a change in the housing production in Planning Areas 1 or 2, or within the designing centers, under the State Development and Redevelopment Plan in New Jersey because the proposed new rules concern implementation of a DSIC for water utilities.

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

SUBCHAPTER 10. DISTRIBUTION SYSTEM IMPROVEMENT
CHARGE

14:9-10.1 Purpose, scope, and general provisions

(a)-(d) (No change.)

(e) The initial term of the DSIC, in the absence of explicit Board action, shall end on June 4, 2017.]

[(f)] (e) (No change in text.)

14:9-10.2 Definitions

For the purposes of this subchapter, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise. Additional definitions that apply to this subchapter can be found at N.J.A.C. 14:3-1.1.

“Base spending” means the level of investment equal to the water utility’s depreciation expense for utility plant accounts: 343 (Transmission & Distribution Mains), 345 (Services), and 348 (Hydrants), as reported in the water utility’s most recent annual report to the Board, at the time the [foundational filing] **Foundational Filing** is submitted. **The investments eligible for inclusion in base spending are the same as set forth in N.J.A.C. 14:9-10.3(a) and additional dead end looping projects.**

“DSIC period” means the period of time between the effective date of the [foundational filing] **Foundational Filing** and the rate effective date of the next base rate case.

“DSIC revenue requirement recovery amount” means the total eligible amount to be recovered through the DSIC charge as calculated pursuant to N.J.A.C. 14:9-[10.8]**10.9**.

“In-service” means when a DSIC-eligible project has been replaced/rehabilitated and is functioning in its intended purpose. It is in use (that is, not under construction) and useful (that is, actively helping the utility provide efficient service).

“Restoration costs” means costs necessary to restore construction to preconstruction condition or as dictated by State, Federal, or municipal laws, rules, ordinances, orders, or regulations, including, but not limited to, paving, sidewalks, curbing, landscaping, and traffic control costs for DSIC-eligible projects approved in a **Foundational Filing**.

14:9-10.3 Investments eligible for recovery under a DSIC

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

(c) **Restoration costs associated with an eligible project as set forth in (a) above and approved through a water utility’s Foundational Filing, may be recovered if incurred prior to or within 18 months of the project’s in-service date and timely included in a normally scheduled semi-annual DSIC filing.**

14:9-10.4 DSIC [foundational filing] **Foundational Filing**

(a) (No change.)

(b) To obtain authorization to implement a DSIC, the water utility shall submit a [foundational filing] **Foundational Filing** to the Board. Whether filed separately or concurrently with a base rate case, the water utility shall submit with the [foundational filing] **Foundational Filing**, certain information, described below:

1. (No change.)

2. DSIC project information for the upcoming DSIC period that includes the following:

i. (No change.)

ii. **A list of projects that were initiated under a prior Foundational Filing that were in-service, but not recovered in base rates as an eligible DSIC project or were not in-service at the time the DSIC rates were reset to zero pursuant to N.J.A.C. 14:9-10.6(c) and to which the utility will seek recovery of DSIC-eligible expenses under the new Foundational Filing;**

iii. **A list of projects placed in-service during a prior Foundational Filing and where previously unrecovered restoration costs may be sought in a current Foundational Filing;**

Recodify existing ii.-vii. as iv.-ix. (No change in text.)

3. The expected amount of base spending for the water utility, including underlying detail adequate to document that the base spending has been made on the appropriate types of infrastructure including, a proposed DSIC assessment, calculated in accordance with N.J.A.C. 14:9-[10.8]**10.9** and work papers showing the detailed calculations supporting the proposed assessment schedule.

4. A public notice and hearing, at a minimum, are required in the DSIC [foundational filing] **Foundational Filing**. The hearing notice shall include the maximum dollar amount allowable for recovery between rate cases, as well as an estimated rate impact for the entire period on customers.

5. After a [foundational filing] **Foundational Filing** has been approved by the Board, a water utility may request that a different DSIC-eligible project be substituted for one already approved by the Board. The water utility shall submit written notice to the Board and the Division of Rate Counsel, identifying the project and detailing the reason(s) for the requested change, for approval[.] **prior to the planned initiation of the project through: a semi-annual DSIC filing or, if necessary, with at least 30 days prior notice. Unreimbursed utility relocation costs associated with relocations required by governmental entities, the details of which are not known or knowable at the time of the Foundational Filing shall be submitted as a substitution project.**

6. [DSIC rates shall be rolled into base rates during a water utility’s subsequent base rate case. All new foundational filing must be approved before new DSIC investment and DSIC rate recovery may occur.] A Foundational [filing] **Filing** may be [made as part of the] **filed concurrently with a base rate proceeding.**

(c) No DSIC [foundational filing] **Foundational Filing** shall be approved unless a water utility has had its base rates set by the Board within the past three years **and any prior DSIC rate was reset to zero through the current, or prior, base rate case.** A DSIC [foundational filing] **Foundational Filing** may be approved concurrently with the setting of base rates. The Board has [90] **120** days from the date of a complete filing **or, if filed concurrent with a base rate case or during the pendency of a base rate case, until the effective date of the Board’s approval of a base rate case, whichever is later,** to act on the proposed DSIC [foundational filing] **Foundational Filing** petition.

(d) When a water utility has its DSIC rate reset to zero, a new [foundational filing] **Foundational Filing** must be approved before new DSIC investments and DSIC Rate recovery may occur.

(e) If within three years after the effective date of a [foundational filing] **Foundational Filing**, a water utility has not filed a petition in accordance with the Board’s rules for the setting of its base rates, all interim charges collected under the DSIC rate shall be deemed an over-recovery, and shall be credited to customers in accordance with this subchapter. A water utility may seek recovery of such projects in the ordinary course through its next base rate case. Notwithstanding the above, a water utility may continue to collect a DSIC charge during a pending rate case filed in accordance with this section.

14:9-10.5 DSIC filing requirements

(a) Each DSIC filing made by a water utility shall include the following:

1. A detailed description of all DSIC-eligible projects [completed and] placed in service **clearly identifying any projects that are carried over from a prior DSIC period or from a prior DSIC recovery period and any restoration costs sought for projects placed in-service, as well as the in service date of the project associated with the restoration costs;**

2. **Aggregate information capturing blanket-type, DSIC-eligible infrastructure, to be rehabilitated or replaced (that is, number of valves, hydrants, or service lines) and the actual annual cost of such blanket-type replacement programs.**

[2.] 3. A schedule comparing the:

i. Total spending on DSIC-eligible projects to date, during the DSIC recovery period, including the base-project spending and DSIC-project spending by [foundational filing] **Foundational Filing** project identification number or blanket-project category;

ii. Actual cost of completed DSIC-eligible projects for the DSIC recovery period with the estimated costs for the projects contained in the most recent [foundational filing] **Foundational Filing** or amendment thereto;

iii. In-service date of completed DSIC-eligible projects versus estimated in-service date of DSIC-eligible projects as set forth in the [foundational filing] **Foundational Filing**; and

iv. (No change.)

[3.] **4.** A proposed DSIC schedule outlining the DSIC charge, determined in accordance with this subchapter, and detailed information demonstrating that the proposed DSIC charge meets the requirements at N.J.A.C. 14:9-[10.8]**10.9**. The schedule shall include either, a proposed schedule for returning to customers any over-recovery in the prior DSIC recovery period, including interest at the adjusted weighted average cost of capital or, a proposed schedule for recovering from customers any under-recovery in the prior DSIC recovery period. The over-recovery, including interest, or under-recovery, shall be credited or charged to customers during the next DSIC recovery period. This information shall support the DSIC charge calculation, with documentation, detailed financial analyses, and other relevant information, showing all assumptions and calculations. All supporting financial information shall be presented in such a way as to allow the Board to evaluate whether the calculations meet the requirements of this subchapter; and

[4.] **5.** (No change in text.)

(b) DSIC filings shall be filed with the Board on a semi-annual basis, commencing approximately six months after the effective date of the [foundational filing] **Foundational Filing**. A water utility must submit its semi-annual DSIC filing within 15 days of the end of the DSIC recovery period. DSIC filings shall be reviewed by Board staff and the Division of Rate Counsel. In the event that Board staff or the Division of Rate Counsel identifies a particular project or projects **or restoration costs associated with a project** of concern contained in the DSIC filing, the water utility shall remove the project **or restoration costs** from the list of DSIC-eligible projects. If the water utility objects to the removal of a project **or restoration costs** from the list of DSIC-eligible projects, the water utility may file a petition with the Board seeking inclusion of the project **or restoration costs** as a DSIC-eligible project. The water utility may recover the interim surcharge associated with the DSIC-eligible projects closed **or restoration costs** during the DSIC recovery period not objected to by Board staff or the Division of Rate Counsel beginning [60] **45** days after the [end of the DSIC recovery period] **receipt of the complete semi-annual DSIC filing**, subject to refund at the Board's discretion.

(c) The semi-annual DSIC filings may include changes or updates to information provided in the [foundational filing] **Foundational Filing** provided the information is material and relevant and the water utility has a reasonable expectation that the change will occur during the DSIC recovery period.

14:9-10.6 DSIC-eligible plant investments during a base rate case

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

(c) **DSIC rates shall be rolled into base rates during a water utility's subsequent base rate case and the DSIC rate shall be reset to zero.**

14:9-10.7 Carry over between DSIC Foundational Filings

(a) **All carry over costs permitted by this section and included in a DSIC rate shall be included in the calculation of the DSIC cap.**

(b) **Notwithstanding N.J.A.C. 14:9-10.4(d), a DSIC-eligible project begun, but not in-service within one Foundational Filing can be considered a valid DSIC project in a subsequent Foundational Filing that was filed with the Board prior to the resetting of rates within the Foundational Filing where the DSIC-eligible project began.**

(c) **Costs of projects, authorized by a Board Order approving a Foundational Filing and placed in-service by a water utility between the close of the test year and the effective date of rates in the base**

rate case may be recovered in the first normally scheduled semi-annual DSIC filing under the Board's new Foundational Filing Order and included in the DSIC cap.

(d) **Unrecovered restoration costs of a project that was placed in-service during one Foundational Filing may be carried over and recovered in a subsequent Foundational Filing and included in a timely semi-annual filing, where the restoration costs would otherwise be within the timeframe set forth in N.J.A.C. 14:9-10.3(c).**

(e) **Notwithstanding (a) through (d) above, if, a water utility has not requested approval of a new Foundational Filing concurrently with or during the pendency of a base rate case where a prior DSIC rate was reset to zero pursuant to N.J.A.C. 14:9-10.6 or, if the Board does not approve such Foundational Filing, no project or restoration costs undertaken by the water utility that were not recovered through the resetting of base rates will be eligible for DSIC recovery and a water utility must seek recovery in a future base rate case.**

14:9-[10.7]**10.8** Rate limitation

(a) The water utility shall stop assessing a DSIC charge at the earlier of the following:

1.-2. (No change.)

3. Upon reaching the date [set forth in N.J.A.C. 14:9-10.1(e)] **upon which this chapter has expired**, except that a water utility may continue to assess the DSIC charge for any DSIC investments included in an approved [foundational filing] **Foundational Filing** and made prior to the date [set forth in N.J.A.C. 14:9-10.1(e)] **this chapter expires**.

(b)-(d) (No change.)

(Agency Note: The table in recodified N.J.A.C. 14:9-10.9 is proposed without change; those portions appearing in boldface are intended to be so permanently.)

14:9-[10.8]**10.9** Calculating the DSIC rate

(a) The revenues to be recovered through the DSIC rate shall not exceed the DSIC cap, and shall be calculated as follows:

1.-2. (No change.)

3. The DSIC revenue requirement recovery amount shall be divided by the number of meter equivalents, weighted by meter capacity ratio, to arrive at the DSIC rate by meter size.

DSIC Formula (example numbers shown are for illustrative purposes only)

Eligible Investment	
(Qualified DSIC Additions to Utility Plant in Service (UPIS) During DSIC Period)	\$ 15,000,000 (A)
Less: Accumulated Depreciation	\$ (93,750) (B)
Less: Deferred Tax	<u>\$ (19,688) (C)</u>
Eligible Net Investment	
(net DSIC Additions to UPIS During DSIC Period)	\$ 14,886,562
Times Pre-Tax Rate of Return	<u>x 11.1509% (D)</u>
Pre-Tax Return on Investment	\$ 1,659,986
Add Depreciation	<u>\$ 375,000</u>
Revenue Recovery	\$ 2,034,986
Revenue Factor	<u>x 1.170858 (E)</u>
DSIC Revenue Requirement	
Recovery Amount	\$ 2,382,680 (F)

(A) Includes six months actual DSIC-eligible projects closed to UPIS during DSIC Period

(B) Accumulated Depreciation:

DSIC-eligible projects closed to UPIS	\$15,000,000
Composit Depreciation rate	<u>2.5%</u>
Depreciation Expense	\$ 375,000
½ Year Convention (for first 6 months)	\$ 93,750

(C) Deferred Taxes:

DSIC-eligible projects closed to UPIS	\$15,000,000
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MACRS rate for 1st year water plant	4%
Tax Depreciation 1st year	\$ 150,000
Book Depreciation	\$ 93,750
Tax Depreciation Greater than Book	\$ 56,250
Deferred Taxes at 35%	\$ 19,688

(D) Pre-Tax Rate of Return

	Ratios	Cost Rate	Weighted AVG Cost of Capital	Pre-Tax Rate of Return
Long Term Debt	48.98%	6.26%	3.07%	3.066%
Common Equity	51.02%	10.30%	5.26%	8.08%
Subtotal Rate on Rate Base			8.23%	11.1509%

Revenue Factor:	
Dollar of Revenue	\$ 1.00000
Less: GRT Tax	(0.1376004) (per most recent base rate case)
Less: Bad Debts and Reg. Assessments	(0.0066000) (per most recent base rate case)
Less: BPU Assessment	(0.0014328) (per most recent assessment)
Less: DRC Assessment	(0.0002926) (per most recent assessment)

Revenue Remaining after taxes, bad debts, and assessments	\$.854074
(E) Revenue (Gross-up Factor)	\$ 1.170858
(F) Revenue Requirement Recovery Amount	

The DSIC Revenue Requirement Recovery Amount is limited by the DSIC cap defined in [N.J.A.C. 14:9-10.8(a)2] (a)2 above. For example, if the Company's annual revenues established in their last base rate case were \$100,000,000, then the DSIC cap would be calculated as follows:

Total annual revenues from most recent base rate case of \$100,000,000 x 5.00% = \$5,000,000
 The Company's DSIC Revenue Requirement Recovery Amount in the above example cannot be greater than \$5,000,000 per year.

14:9-[10.9]10.10 DSIC billing

(a) If a water utility has a Board-approved DSIC, the water utility shall identify and list the amount owed by the customer, based on the DSIC rate calculated in accordance with N.J.A.C. 14:9-[10.8]10.9, separately on customer bills. The DSIC rate will be reflected in bills issued on and after the effective date of the first DSIC filing and can be adjusted on the basis of subsequent DSIC filings no more frequently than every six months, up to an amount not to exceed the DSIC cap over the DSIC period.

(b) Customer bills shall reflect the DSIC rate calculated as set forth in N.J.A.C. 14:9-[10.8(a)3]10.9(a)3.

TRANSPORTATION

(a)

**DIVISION OF MULTIMODAL SERVICES
OFFICE OF MARITIME RESOURCES**

I BOAT NJ Program

Proposed Readoption with Amendments: N.J.A.C. 16:63

Authorized By: Richard T. Hammer, Commissioner, Department of Transportation.

Authority: N.J.S.A. 12:7-34.47 and 27:1A-5, 6, and 75 et seq., specifically 78, 80, 82, and 85.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2017-021.

Submit comments by March 18, 2017, to:

Paul F. Sprewell
 Administrative Practice Officer
 New Jersey Department of Transportation
 PO Box 600
 Trenton, New Jersey 08625-0600
 Fax: (609) 530-4638
 Submit electronically at njdotRules@dot.state.nj.us.

This rule may be viewed or downloaded from the Department's website at <http://www.state.nj.us/transportation/about/rules/proposals.shtm>.

The agency proposal follows:

Summary

In accordance with N.J.S.A. 52:14B-5.1.c and Executive Order No. 66 (1978), N.J.A.C. 16:63, I BOAT NJ Program, was scheduled to expire on November 20, 2016. As the Department of Transportation (Department) filed this notice on the next business day, November 21, 2016, the expiration date is extended 180 days to May 19, 2017, pursuant to N.J.S.A. 52:14B-5.1.c(2) and N.J.A.C. 1:30-6.4(g). The Department has reviewed the rules and determined that they remain necessary, reasonable, and proper for the purposes for which they were originally promulgated. The Department proposes to readopt this chapter with amendments as set forth below. As the Department has provided a 60-day comment period, this notice is excepted from the rulemaking calendar requirement of N.J.A.C. 1:30-3.3(a)5.

This chapter establishes the eligibility criteria and application procedures for the I BOAT NJ Program within the Office of Maritime Resources. The program benefits the boating public by promoting, improving, and enhancing the marine industry in New Jersey through grant funding financed by boat registration fees.

The chapter is summarized as follows:

Subchapter 1, General Provisions, provides the purpose and scope of the rules, the definitions used throughout the rules, and outlines the standards and prerequisites for project funding and grants.

Subchapter 2, Project Eligibility, outlines the general requirements for eligibility.

Subchapter 3, Grant Application Process, outlines the grant application process and establishes criteria for the formal written proposal process.

Subchapter 4, Project Selection, describes the process by which project proposals are selected by the Department.

Subchapter 5, Contracts, provides for the contractual procedures.

Subchapter 6, Audit and Recordkeeping Requirements, establishes the procedures that grantees must follow regarding audits and record retention.

The proposed amendments are as follows:

N.J.A.C. 16:63-6.1(a)1 is proposed for amendment to correct the citation related to the OMB audit circular. N.J.A.C. 16:63-6.1(a)2 is proposed for amendment to clarify that audits will now be performed within 12 months of receipt of the final State payment. Language has also been added to establish that additional audits may be required per