

PUBLIC UTILITIES

BOARD OF PUBLIC UTILITIES

Rules of Practice, All Utilities

Adopted Amendments: N.J.A.C. 14:3-1.1, 3A.3, 3A.4 and 7.1

Proposed: September 8, 2009 at 41 N.J.R. 3204(a).

Adopted: August 18, 2010 by the Board of Public Utilities, Lee A. Solomon, President;
Jeanne M. Fox, Joseph L. Fiordaliso, Nicholas Asselta, and Elizabeth Randall,
Commissioners.

Filed: August 24, 2010 as R.2010 d.200, **with substantive and technical changes** not
requiring additional public notice and comment (See N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 48:2-13, 23 and 24 and 48:3-2.3 and 3.

BPU Docket Number: AX09060447.

Effective Date: September 20, 2010.

Expiration Date: April 10, 2013.

The New Jersey Board of Public Utilities is herein adopting amendments to its rules at N.J.A.C. 14:3, which address all utilities. These rules provide basic requirements for all utilities regulated by the Board, which include water, wastewater, electricity, gas and telephone utilities. The amendments were proposed on September 8, 2009 and were subject to a 60-day comment period.

The amendments adopted herein implement minor process improvements that the Board has determined are necessary based on Board staff's experience in implementing these rules.

Summary of Public Comments and Agency Responses:

The following persons submitted timely comments on the notice of proposal:

1. Carolyn Torre, New Jersey State Nurses Association (NJSNA);
2. Suzana Duby, New Jersey American Water (NJAW);
3. John F. Stanziola, South Jersey Gas (SJG);
4. Michael J. Filippone, Jersey Central Power & Light (JCP&L);

General Comments

1. COMMENT: The Board proposes to change N.J.A.C. 14:3-1.1 to reflect that normal business hours do not include days upon which the Board is closed for business, including but not limited to State holidays. The Board should clarify that closure for business is limited to closures similar to the example of temporary lay-off actions, as the Board's summary states, and does not apply to emergencies that result in the Board's temporary closing for business. (JCP&L)

RESPONSE: The Board believes that the definition as written is sufficiently clear, and that a common sense interpretation will not result in the confusion suggested by the commenter.

2. COMMENT: Advance notice of planned lay-off actions should be provided to the

utilities by posting on the Board's website and the Board's existing "listserv" communications channels. Any closing of the Board's offices impacts the scheduling and performance of some utility activities. To the extent feasible, advance notice of non-holiday related closings would allow us to better plan and schedule such activities and hence, better manage any associated costs. (JCP&L)

RESPONSE: The Board will, when possible, make its best efforts to post notice of closures on its website as far in advance as possible. However, the Board has not included this provision in the rules, as the situations in which this arises may vary and are not easily assigned a particular deadline.

3. COMMENT: N.J.A.C. 14:3-1.1. The proposed revision to this rule includes the phrase "days upon which the Board of Public Utilities is closed for business, including, but not limited to, New Jersey State holidays." We request that the Board provide advance notice of closures that are not the result of State holidays (for example, closures due to mandatory furlough) as soon as practicable for the upcoming calendar year or that period of the year affected by such closings (depending upon when the Board itself is made aware of such closings). Such notice may be provided on the BPU's website in the form of a schedule indicating the days when the BPU would not be open. Should the Board be unable to post in advance a schedule of such closures, 48 hours' notice, posted on the BPU's website homepage, would be adequate. (NJAW)

RESPONSE: Please see the Response to Comment 2 above.

4. COMMENT: In N.J.A.C. 14:3-1.1, the definition of "normal business hours" is

proposed to be amended to clarify that a day upon which the New Jersey State government is closed for business is not a “normal business day,” even if the reason the State government is closed is not a State holiday. We are in agreement with the proposed change and commend the Board for providing additional clarity to the existing regulation. (SJG)

RESPONSE: The Board appreciates this comment in support of the amendment.

5. COMMENT: N.J.A.C. 14:3-7.1(f), which requires that every utility bill state the Board’s jurisdiction and include the Board’s telephone number, is proposed for deletion. We are in agreement with this proposed change. (SJG) (JCP&L)

RESPONSE: The Board appreciates this comment in support of the amendments.

6. COMMENT: Recently, an Advanced Practice Nurse, the primary care provider for a very ill individual, submitted a signed form to an electric utility, attesting to the nature and probable duration of a patient’s medical emergency. Her signature was rejected apparently because of N.J.A.C. 14.3-3A.2(i)2, Discontinuance of Service, which uses the phrase “physician’s statement.” Advanced Practice Nurses (APNs) are statutorily authorized by N.J.S.A. 45:11-59 (sic) to assess and manage patients with both acute and chronic illness, to make diagnostic decisions and to initiate treatments and referrals based on those decisions. APNs are increasingly the primary care provider of choice for many New Jersey consumers. Medicare, Medicaid and many managed care plans credential APNs as primary care providers

and regulatory bodies in New Jersey have been steadily modifying language to include them over the past 16 years. We are often unaware of the unintentionally restrictive nature of a rule until, as in this case, a signature is rejected. We ask that N.J.A.C. 14.3-3A.2(i)2 and 3 include the phrase “advanced practice nurse” after the word physician in both sentences. Making this change would enable some of New Jersey’s most fragile citizens to remain in their own homes without a delay or disruption in life-sustaining services. (NJSNA)

RESPONSE: The Board does not believe the commenter’s suggested change is necessary to protect customers who need utility service for medical devices. While it is true that the Advanced Practice Nurse Certification Act, N.J.S.A. 45:11-45 et seq., authorizes APNs to prescribe medical devices in outpatient settings, that authority is limited and requires significant collaboration with a physician.

Specifically, N.J.S.A. 45:11-49c(2) states that an APN may prescribe devices subject to the condition that “the prescription is written in accordance with standing orders or joint protocols developed in agreement between a collaborating physician and the advanced practice nurse, or pursuant to the specific direction of a physician.” The APN’s authority to prescribe is further conditioned on the collaborating physician being “present or readily available through electronic communications.” (See N.J.S.A. 45:11-49c(5)). Finally, the joint protocols under which an APN may prescribe must be reviewed and signed annually by the collaborating physician (See N.J.S.A. 45:11-49c(7)). It is clear that, even when an APN is the primary caregiver, the collaborating physician must also be significantly involved with decisions regarding prescribing devices, and in fact must always be

“readily available.” Therefore, the collaborating physician will be available if it becomes necessary to provide a certification of medical necessity to a utility, and there is no need to delegate this authority to others.

7. COMMENT: N.J.A.C. 14:3-3A.3(b) through (d) are reorganized and rephrased to clarify the two-stage process a utility must go through before discontinuing a customer’s service. We are in agreement with the proposed change and believe the notice of proposal does provide additional clarity to the process. (SJG)

RESPONSE: The Board appreciates this comment in support of the amendments.

8. COMMENT: N.J.A.C. 14:3-3A.3(b) through (d) - Notice of Discontinuance for nonpayment. The proposed rewording could confuse customers with respect to differences between outstanding current bills, which are not past due at the time a notice of discontinuance is issued, and outstanding past due bills to which the notice of discontinuance applies. The commenter supplied the following suggested phrasing (additions in boldface):

“(b) Before sending a notice of discontinuance to the customer **for nonpayment of an outstanding past due bill**, a utility shall **have allowed** the customer an initial period of at least 15 days to pay the bill after the **original** postmark date of the outstanding bill, except for a water utility customer with fire protection or multiuse service under N.J.A.C. 14:3-3A.4(j). Each notice of discontinuance shall meet all of the following criteria: ...

3. The notice shall be postmarked no earlier than 15 days after the **original**

postmark date of the outstanding **past due** bill. In the absence of a postmark for the outstanding **past due** bill, the burden of proving the **original** mailing date of the bill shall be upon the utility ...

(c) The notice of discontinuance for nonpayment shall provide the customer with an additional period of at least 10 days to pay the outstanding **past due** bill. The 10 days shall begin on the postmark date of the notice of discontinuance.

(d) A new notice shall be served by the utility each time it intends to discontinue service for nonpayment of **an outstanding past due** bill, except that no additional notice shall be required when, in response to a notice of discontinuance, a customer pays the **outstanding past due** bill by check and the check is subsequently dishonored. Each new notice of discontinuance shall meet the same requirements that apply under this section to the initial notice of discontinuance.” (JCP&L)

RESPONSE: The Board agrees that the provision could cause confusion between past due charges on an initial bill and charges due for service delivered after the past due bill was issued. The Board has clarified the rules upon adoption as suggested by the commenter.

9. COMMENT: The Board should provide examples of the types of evidence a utility may use to prove the date of initial mailing in the absence of a postmark, since in most cases the postmark will be in the possession of the customer. We suggest the following language be placed at the end of N.J.A.C. 14:3-3A.3(b)3: “Evidence of the original mailing date shall include but not be limited to the utility's regularly maintained and relied upon electronic data and other records regarding the processing and mailing of such bills.” (JCP&L)

RESPONSE: The Board's historic practice has been for staff to work with the parties to determine what constitutes adequate proof in each particular case. There are many types of evidence that could suffice to document mailing dates. Therefore, the Board has not added examples, and will continue to review documentation on a case-by-case basis.

10. COMMENT: N.J.A.C. 14:3-3A.4(j)2. Should the name and e-mail of the manager of the Insurance Services Office, Customer Service Department, Eastern Regional Processing Center change, notice of said change and new contact information should be posted on the BPU website homepage. (NJAW)

RESPONSE: If the contact information in this provision changes, the Board will publish a notice in the New Jersey Register to modify the information, and shall post the change on its webpage.

Federal Standards Statement

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-22 through 24 require State agencies that adopt, readopt or amend State rules that exceed any Federal standards or requirements to include in the rulemaking document a Federal standards analysis. These amendments 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 incorporate 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 these amendments.

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

SUBCHAPTER 3A. Discontinuance and restoration of service

14:3-3A.3 Notice of discontinuance for nonpayment

(a) (No change.)

(b) Before sending a notice of discontinuance to the customer ***for nonpayment of an outstanding past due bill***, a utility shall ***[allow]*** ***have allowed*** the customer an initial period of at least 15 days to pay the bill after the ***original*** postmark date of the outstanding bill, except for a water utility customer with fire protection or multi-use service under N.J.A.C. 14:3-3A.4(j). Each notice of discontinuance shall meet all of the following criteria:

1. – 2. (No change from proposal.)
3. The notice shall be postmarked no earlier than 15 days after the ***original*** postmark date of the outstanding bill. In the absence of a postmark for the outstanding ***past due*** bill, the burden of proving the ***original*** mailing date of the bill shall be upon the utility.

(c) The notice of discontinuance for nonpayment shall provide the customer with an additional period of at least 10 days to pay the outstanding ***past due*** bill. The 10 days shall begin on the postmark date of the notice of discontinuance.

(d) A new notice shall be served by the utility each time it intends to discontinue service for nonpayment of *[a]* ***an outstanding past due*** bill , except that no additional notice shall be required when, in response to a notice of discontinuance, a customer pays the ***outstanding past due*** bill by check and the check is subsequently dishonored. Each new notice of discontinuance shall meet the same requirements that apply under this section to the initial notice of discontinuance.

(e) - (g) (No change.)