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**THE NEW JERSEY BOARD OF PUBLIC UTILITIES,  
Joseph L. Fiordaliso, President, Mary-Anna Holden, Dianne Solomon, Upendra J. Chivukula, and Robert M. Gordon, Commissioners.**

**Discontinuance of Service, Medical Assistance**

**Adopted Amendments: NN.J.A.C. 14:3-3 et seq.**

Proposed: December 2, 2019, at 51 N.J.R. 1755(a).

Adopted: June 26, 2020, by the Board of Public Utilities.

Filed: \_\_\_\_\_, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 48:2-1 et seq., in particular 48:2-13, 48:3-51, and 48:3-87; and P.L. 2019, c. 154.

Effective Date:

Expiration Date:

**Summary of Public Comments and Agency Responses:**

The official comment period ended January 3, 2020. The Board received comments from the following individuals:

The following persons submitted timely comments on the proposal:

1. Andrew J. McNally, Atlantic City Electric Company (ACE);
2. Christine Soares, New Jersey American Water (NJAW);
3. Joshua R. Eckert, Jersey Central Power & Light (JCP&L);
4. Andrew K. Dembia, NJ Natural Gas Company (NJNG)
5. Stefanie A. Brand, Division of Rate Counsel (DRC);

1. COMMENT: The Board proposes the deletion of paragraph N.J.A.C. 14:3-

3A.2(i)3 and the right for the utilities to request recertification as to the “continuing nature of the medical emergency”. Although the Company understands that after the expiration of the 90-day period, the customer must submit a request in writing to the Board, including an updated medical certificate, the proposed regulations suggest that the Company would not then be permitted to participate in that process or object to the grant of an extension by the Board. Additionally, the utility may have information relevant to the request that could inform the Board’s decision. As such, New Jersey-American Water respectfully requests that the Board specify the process under which the utility may participate, such as the informal complaint process set forth under N.J.A.C. 14:1-5.13. Additionally, the Board should remove the ambiguity regarding when the grant of an additional 30-day extension begins to run. The proposed regulations do not address it and thus, it is unclear whether an additional extension granted to the customer by the Board would begin on the date of the grant, or on the day that the prior 90-day extension expires. (NJAW)

RESPONSE: The extension granted for good cause pursuant to N.J.A.C. 14:3-3A.2(j) would begin on the day that the prior 90-days expired. At that point the customer would notify Board Staff of the request for an extension and Board Staff would notify the utility. Additionally, the utility may provide the Board with further information regarding the requested extension for good cause, but the final decision would be up to Board Staff, who would then notify the utility of the decision.

2. COMMENT: The proposed regulation at N.J.A.C. 14:3-3A.4(e) requires that “all utilities shall develop customer outreach plans that educate the public and customers on the

procedures and guidelines to qualify and apply for medical certification status to be distributed to all customers quarterly.” New Jersey-American Water requests that the Board provide more guidance in the regulations as to (i) how the utility should educate the “public” versus “customers” and by what means; (ii) whether the utility must submit such outreach plans to the Board for approval; and (iii) whether the outreach plans to educate customers can be accomplished via bill insert or through other channels. (NJAW) Similarly, JCP&L commented that this amendment expands beyond the scope of Linda’s Law by requiring the EDCs to create customer outreach plans to educate customers and the public about an undefined “medical certification status.” The Board should amend this provision to clarify that it is not intended to expand the scope of the requirements of Linda’s Law. JCP&L offers the following suggested language for such an amendment.

(e) All utilities shall develop customer outreach plans to educate the public and customers on the procedures and guidelines to qualify and apply for medical certification status protection as a customer with life-sustaining equipment, to be distributed to all customers quarterly. (JCP&L)

RESPONSE: The utilities are required to create their own outreach procedures and/or programs. Some potential options include, but are not limited to, emails, statements on bills, or separate mailings. The Board appreciates the utility’s comments, but the Board’s intent is to provide additional protections consistent with the law and to strengthen its rules regarding additional protections consistent with the law and in order to better address consumer needs.

3. COMMENT: It is proposed that the rule further define the types of licensed medical professionals. To this end, ACE recommends that the definition specifically reference physicians, physician assistants, and nurse practitioners as qualifying licensed medical professionals. This modest addition to the definition will provide clarity to both customers and utilities by specifically defining which medical professionals with prescriptive authority would be qualified to provide the medical certifications provided for within the rules. (ACE)

RESPONSE: The Board appreciates the utility's comments and considered the requested approach in its deliberations. In the interest of providing broad access to medical professionals, the Board determined that the term prescriptive authority would assure that individuals with access to nurse practitioners and physician assistants would have greater ability to retain their utility services. The Board sees no need for alteration to the definition at this time.

4. COMMENT: The proposed amendments to N.J.A.C. 14:3A.2(i)(2) do not contain a specific requirement that the licensed medical professional's statement provide information about the medical customer's use of life-sustaining medical equipment powered by electricity and the probable duration of that use, while the governing statute contains that requirement. To better align the rules with Linda's Law, ACE respectfully suggests that the rules require this content from the statute about the medical customer's use of life sustaining equipment to be included within the licensed medical professional's statement. (ACE)

RESPONSE: The Board appreciates the utility's comments, but sees no need to mirror the language within the statute, as the proposed language is well within the Board's general statutory authority, at N.J.S.A. 48:2-13 and N.J.S.A. 48:2-23, to ensure the safe provision of service by public utilities. As such, the Board regulations provide further protection than what is within the statute.

5. COMMENT: ACE recommends that the rules include or make reference to the provision within Linda's Law that excuses utility compliance "in the event of an emergency" or if the customer refuses or fails to provide required information. N.J.S.A. 48:2-29.53. Inasmuch as these provisions are already contained within Linda's Law, including them again in the rules would help to better align the rules with the law, thereby making the rules a more fulsome repository of the rights and responsibilities of customers and utilities alike. (ACE)

RESPONSE: The Board appreciates the utility's comments, and notes that these provisions already exist within N.J.A.C. 14:3-3.7 & N.J.A.C. 14:3-3A.1.

6. COMMENT: The Company suggests that proposed N.J.A.C. 14:3.2A2(k)(2) be amended to require an unknown customer who is disconnected from service, but informs the utility of a medical emergency, to immediately become a customer in order to have service restored. As proposed, N.J.A.C. 14:3.2A2(k)(2) would allow a formerly unknown customer under such circumstances "14 days to apply for service." Unfortunately, ACE's billing systems do not permit the continued extension of service to persons who are not customers, and therefore,

extending service to such persons for a period as long as 14 days presents a significant difficulty. To the best of the Company's knowledge, the State's other electric utilities would face a similar problem. Practically, the Company believes that if an unknown customer is disconnected, and thereafter informs the customer [sic] of a medical emergency that requires electric service to be reconnected, that customer would be able to "apply for service" at the same time the customer informs the utility of the medical emergency (either over the phone or otherwise). Indeed, it would be contradictory to the customer's need for continued electric service if the customer nonetheless refuses to apply for service for 14 days. Accordingly, the Company recommends that proposed N.J.A.C. 14:3.2A(k)(2) be amended to provide that the utility require the customer to immediately apply for service, instead of affording 14 days for the customer under these circumstances to do so. (ACE). JCP&L is concerned with the potential safety issues that may arise from implementation of this amendment as written. JCP&L is also concerned about its billing system preventing the Company (and possibly other EDCs) from establishing a service without a customer of record for the service location. Accordingly, JCP&L recommends the following modifications to the proposed amendment to address these issues.

(k) When a public utility disconnects service to an unknown account for non-payment and the utility is notified that a medical emergency exists in the residential premises, the utility shall:

1. Restore service immediately, except in the event that an issue exists preventing the safe restoration of service, including, but not limited to, the discovery of tampering at the service location or the need for an inspection by an appropriate authority

2. Allow 14 days to apply for service; Establish an account for service at the residential premises with an occupant at the residence, or another person upon that person's request, as the customer of record; and

3. Allow seven additional days following the service activation date or 21 days following the date the utility is notified of a medical emergency, whichever date is later, to submit a medical certification to the utility written by a licensed medical professional in accordance with (i)2 above. (JCP&L);

RESPONSE: The Board appreciates the utilities' comments, but feels that a 14-day period of time may be necessary for an individual within this situation to adequately apply for service in compliance with each utility's policies and procedures. Customer safety with regard to medical situations outweighs the utilities' concerns. Furthermore, N.J.A.C. 14:3-3A.1 already contains provisions regarding the concerns expressed by the utility in this comment.

7. COMMENT: NJNG interprets this rule to be specific to situations where an active service was turned off at the request of the former account holder. However, the rule proposes to now allow a bona fide new tenant/owner, who is unknown to the utility, who has moved into the premises, to contact the utility for service claiming a medical emergency for immediate turn on, rather than a scheduled turn-on. While NJNG is cognizant of the fact that this rule is being promulgated to minimize the health impacts to an individual, a concern arises in cases where the new customer owes a previous bad debt to the utility, or subsequent to a disconnection of the

active service for non-payment the current customer claims to be a new occupant with a medical emergency. It is unclear what occurs if their application for service is rejected in accordance with NJNG's tariff (2.13 – Service to Former Customers). (NJNG)

RESPONSE: The Board appreciates the utility's comment. In this situation, the service would remain on pending outcome of dispute. Please note that the intention of this rule is to maintain service when a medical emergency exists.

8. COMMENT: If the Board requires the utility to provide service to a rejected applicant because the applicant claimed a medical emergency, the rule should be clarified to limit that service to the 21-day period. NJNG recommends the following additional clarifying language. If no medical certification is submitted to the utility within the time allowed, disconnection by the utility is no longer prohibited. (NJNG)

RESPONSE: The Board appreciates the utility's comment. If no medical certification is submitted within the allotted timeframe, the utility is within its rights to proceed with normal collection activity.

9. COMMENT: Given the number of seasonal customers in NJNG's service territory, NJNG recommends that Section (k) specifically excludes a premise where natural gas was not active due to the premises previously being turned off or has disconnected meters and the meter and/or service line was previously removed. Therefore, NJNG recommends the following



sentence be added. The immediate turn on requirement excludes a premise where gas was not active due to having been previously turned off, or has a disconnected meter(s) and meter and/or service line was previously removed. (NJNG)

RESPONSE: The Board appreciates the utility's comment. The intention of this rule is to maintain service when a medical emergency exists.

10. COMMENT: NJNG is not aware of any life-sustaining gas powered equipment a customer would use. Therefore, NJNG recommends that gas utilities also be exempted, along with water, wastewater, or telecommunications public utilities. (NJNG)

RESPONSE: The Board appreciates the utility's comments. The discontinuance of gas service within a residence can have a direct negative effect on an individual's health.

11. COMMENT: Section (k)3 fails to provide what is the next course of action by the utility if the applicant does not provide the required medical certification after the medical notification date (seven days or 21 days). For an accepted applicant this is not an issue. Any subsequent account delinquency would follow NJNG's normal escalation processes. However, if the Board requires the utility to provide service to a rejected applicant because the applicant claimed a medical emergency, the rule should be clarified to limit that service to the 21-day period. NJNG recommends the following additional clarifying language to Section(k) by adding a fourth provision: 4. If no medical certification is submitted to the utility within the time allowed,

disconnection by the utility is no longer prohibited. (NJNG)

RESPONSE: The Board appreciates the utility's comment. If no medical certification is submitted within the allotted timeframe, the utility is within its rights to proceed with normal collection activity.

12. COMMENT: Rate Counsel recommends clarifying that the Rule Proposal protects premises with either a "medical customer" who uses life-sustaining electrical equipment or a customer with a "medical emergency" that would be aggravated by the discontinuance of utility service (referred to collectively herein as "medically vulnerable customers"). (DRC)

RESPONSE: The Board feels the current regulations found at N.J.A.C. 14:3-3A.2(i), as modified by the proposed Rule, address this concern.

14. COMMENT: Rate Counsel recommends extending the protection from disconnection for non-payment from 60 days to 90 days afforded to electric customers under the law to customers of gas and water utilities as well. (DRC)

RESPONSE: The Board feels the current regulations found at N.J.A.C. 14:3-3A.2(i), as modified by the proposed Rule, address this concern.

15. COMMENT: Rate Counsel recommends requiring water utilities, and electric and gas

utilities as well, to solicit information on customers who use life-sustaining electrical equipment.

(DRC)

RESPONSE: The Board recognizes that Rate Counsel makes a valid point and will consider this in a future rule making proceeding.

16. COMMENT: Rate Counsel recommends allowing a “licensed medical professional with prescriptive authority” or his or her designated agent to provide a written statement of the existence of a medical emergency or the use of life-sustaining electrical equipment, its estimated duration and that discontinuance of service will aggravate the condition. (DRC)

RESPONSE: The Board disagrees with this recommendation and the proposed language shall remain.

17. COMMENT: If public utilities are allowed to demand disclosure of a person’s medical diagnosis, the Board should require through formal rulemaking that utilities first implement confidentiality safeguards of customers’ “individually identifiable health information.” The disclosure of a person’s medical diagnosis without such safeguards could result in that disclosure being deemed a HIPAA violation or could inhibit the provision of medical documentation necessary to protect the customer. It may be less burdensome for the public utility to receive information from the licensed medical professional merely stating that their patient / utility customer has a medical emergency that would be aggravated by the loss of utility service or

relies on life-sustaining equipment, without providing that individual's specific diagnosis. This level of information would comply with the Rule as currently proposed. (DRC)

RESPONSE: The Board feels that this concern is already addressed within HIPAA, along with the utilities' current procedures to protect the customer's confidential information.

18. COMMENT: Rate Counsel recommends providing notice to medically vulnerable customers when electric, gas or water utility service is discontinued for any reason, planned or unplanned, so they can make necessary arrangements.

RESPONSE: The Board feels this recommendation is already covered within the current rules. N.J.A.C. 14:3-3A.3 & 14:3-3A.4

**Summary of Agency Initiated Changes:**

The Board of Public Utilities ("BPU" or "Board") is proposing amendments at N.J.A.C. 14:3-1.1, 3A.2 and 3A.4, to provide greater clarity that all utilities regulated by the Board are prohibited from discontinuing service to customers using life-sustaining equipment upon the utility receiving proper verification that life-sustaining equipment is in use in the customer's residential premises. In addition, the proposed amendments broaden the requirements for restoring service when an unknown account or master meter is disconnected and a medical emergency exists.

Governor Murphy signed Linda's Law, P.L. 2019, c. 154, which strengthened the procedural requirements before a utility can cease providing service to a customer who needs electricity to support life-sustaining equipment on which he or she is dependent. Among other things, Linda's Law: increases the period of time before service can be discontinued for nonpayment from 60 days to 90 days; directs utilities to seek information from customers about the presence of critical equipment quarterly, rather than semi-annually; and expands the number of medical professionals who can provide a statement verifying that the loss of electrical power to the equipment will aggravate the customer's condition.

These proposed amendments implement process improvements that the Board has determined are necessary based on Board staff's experience in applying the rules. N.J.A.C. 14:3-1.1 is proposed for amendment to set forth definitions for "unknown accounts" and "licensed medical professional."

#### **Federal Standards Statement**

A Federal standards analysis is not required because there are no applicable Federal laws or standards.

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