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PUBLIC UTILITIES

BOARD OF PUBLIC UTILITIES

PROVISIONAL RATE INCREASE IMPLEMENTATION

Proposed Amendments: *N.J.A.C. 14:1-5.12 (e) – (k)*

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

Authority: *N.J.S.A.* _____

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

BPU Docket Number: AX17050468

Proposal Number: PRN 2017-____

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

Irene Kim Asbury, Secretary

New Jersey Board of Public Utilities

ATTN: BPU Docket Number: AX17050468

44 S. Clinton Ave., 3rd Floor, Suite 314

PO Box 350

Trenton, NJ 08625-0350

The agency proposal is as follows:

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Summary

The Board of Public Utilities (Board) is hereby proposing amendments to *N.J.A.C. 14:1-5.12* to allow for the implementation of provisional rates after the “suspension periods” have elapsed pursuant to *N.J.S.A. 48:2-21(d)*, but prior to the Board’s final decision in a base rate case. Currently, the Board may order two (2) four (4) month suspension periods pending a hearing and determination on a base rate case matter filed by a utility. However, there have been base rate cases that were not completed before the suspension periods have elapsed. The proposed amendments permit the implementation of a provisional rate increase equal to the full amount requested in the base rate case, or a lesser amount, following the expiration of the suspension periods, subject to refund with interest. Importantly, however, these amendments shall not be construed to establish or endorse a provisional rate as final, and nothing within the proposed amendments shall in any way limit or restrict the Board’s authority to approve final rates at the conclusion of a utility’s base rate case.

In addition to a technical amendment recodifying the current *N.J.A.C. 14:1-5.12(e)* as *N.J.A.C. 14:1-5.12(k)*, the Board is proposing the following substantive amendments:

Proposed new *N.J.A.C. 14:1-5.12(e)* establishes general provisions regarding a utility’s implementation of a provisional rate increase.

Proposed new *N.J.A.C. 14:1-5.12(f)(1)* details notice requirements, including written service upon identified entities at least thirty (30) days in advance of the provisional rate increase, but not earlier than seventy-five (75) days in advance of the provisional rate increase.

Proposed new *N.J.A.C. 14:1-5.12(f)(2)* requires the utility to file with the Board and serve

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on the Director of Rate Counsel a copy of the utility's proposed tariff.

Proposed new *N.J.A.C. 14:1-5.12(f)(3)* states that the utility must file with the Board and serve on the Director of Rate Counsel a plan detailing the utility's method for providing any refunds and interest owed to ratepayers.

Proposed new *N.J.A.C. 14:1-5.12(f)(4)* requires that the utility file with the Board and serve on the Director of Rate Counsel a certification that the utility has complied with the requirements set forth in paragraphs (f)(1) through (f)(3) at least twenty (20) days in advance of the provisional rate increase.

Proposed new *N.J.A.C. 14:1-5.12(g)* provides that a utility may implement the provisional rate increase on the date noticed by the utility, unless Board Staff transmits written objections to the utility after filing the certification required under (f)(4). Proposed new *N.J.A.C. 14:1-5.12(g)* further provides that any such objections shall address only the utility's compliance with subsection (f) above, and shall be transmitted to the utility not later than five (5) days in advance of the provisional rate increase.

Proposed new *N.J.A.C. 14:1-5.12(h)* establishes the methods by which the utility shall calculate interest owed to customers in the event the utility recovers excess funds through a provisional rate increase.

Proposed new *N.J.A.C. 14:1-5.12(i)* provides that a utility shall not be required to implement provisional rates upon the expiration of the applicable suspension periods.

As the Board has provided a sixty (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*.

Proposed new *N.J.A.C. 14:1-5.12(j)* provides that nothing contained herein shall be

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construed as establishing or endorsing a provisional rate as final, nor shall the amendments be construed in any way to limit or restrict the Board’s authority to approve final rates at the conclusion of a utility’s base rate case.

Social Impact

The proposed amendments will have a non-appreciable social impact as the amendments are technical and are particular to utilities.

Economic Impact

The proposed amendments will have a negligible, economic impact, if any, on utility ratepayers, in that provisional rates cannot ultimately exceed a Board-approved rate increase entered at the conclusion of a base rate case. If, upon conclusion of the base rate case, the amount of the provisional rate increase is greater than the rate increase approved by the Board, the utility shall be bound by the proposed amendments to refund the excess charges, with interest, to ratepayers. The amendments will have a net positive impact on utilities as the amendments provide relief from economic loss due to a delay in the implementation of an otherwise just and proper rate increase beyond the applicable suspension periods.

Federal Standards Statement

No Federal standards analysis is required because the proposed new rule is not being proposed in order to implement, comply with, or participate in any program established under Federal law or under a State law that incorporates or refers to Federal law, standards, or requirements.

Jobs Impact

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It is not anticipated that the proposed amendments will result in the creation of new jobs or the loss of existing jobs. The proposed amendments will not have an impact on any other sector of the economy of the State of New Jersey.

Agriculture Industry Impact

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

Regulatory Flexibility Statement

The proposed amendments 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 one-hundred (100) full-time employees. With regard to impacted utilities, large or small, the amendments will only impose requirements if a utility chooses to file a petition for provisional rates.

Housing Affordability Impact Analysis

The proposed amendments 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 amendments are voluntary and specific to provisional utility rates.

Smart Growth Development Impact Analysis

The proposed amendments should not have any significant impact on smart growth.

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

14:1-5.12 Tariff filings or petitions which propose increases in charges to customers

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

(e) **A proposed increase in base rates may be implemented on a provisional basis, subject to refund with interest, after the expiration of the suspension periods pursuant to *N.J.S.A. 48:2-21(d)*. In implementing a provisional rate increase pursuant to this subchapter, provided all the conditions of this subchapter are met, a utility:**

- 1. May implement a provisional rate increase equal to the full amount of the rate increase requested by the utility within the subject base rate case, or a lesser amount, following the expiration of the suspension periods, subject to refund with interest; and**
- 2. Shall apply an equal percentage increase to all rate classes using the existing rate design for the utility approved by the Board.**

(f) **Unless otherwise ordered by the Board, a utility that seeks to implement a provisional rate increase shall:**

- 1. Serve written notice of the intended provisional rate increase at least thirty (30) days in advance of the provisional rate increase, but not earlier than seventy-five (75) days in advance of the provisional rate increase, upon:**
 - i. the Board;**

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- ii. **the Director, Division of Rate Counsel, 140 East Front Street, 4th Floor, P.O. Box 003, Trenton, New Jersey 08625;**
 - iii. **the Department of Law and Public Safety, Public Utilities Section, 124 Halsey Street, P.O. Box 45029, Newark, New Jersey 07101;**
 - iv. **the Municipal Clerk of each municipality where the utility renders service;**
 - v. **the Clerk of the Board of Chosen Freeholders of each county where the utility renders service;**
 - vi. **if applicable, the Executive Officer of each county where the utility renders service;**
 - vii. **all intervenors or participants in the pending rate case;**
 - viii. **the Administrative Law Judge presiding over the rate case, if applicable; and**
 - ix. **all customers who are billed on a recurring basis and who will be affected by the rate increase, where such notice may be made by bill insert.**
2. **File with the Board and serve on the Director of the Division of Rate Counsel a copy of the utility’s proposed tariff, at least thirty (30) days in advance of the provisional rate increase, but not earlier than seventy-five (75) days in advance of the provisional rate increase;**
3. **File with the Board and serve on the Director of the Division of Rate Counsel a plan detailing the utility’s method for providing any refunds**

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and interest owed to ratepayers, to account for the potential that the Board's final order in the subject rate case includes a determination of over recovery by the utility, at least thirty (30) days in advance of the provisional rate increase; and

4. File with the Board and serve on the Director of the Division of Rate Counsel a certification that the utility has complied with the requirements set forth in (f)(1) through (f)(3) above at least twenty (20) days in advance of the provisional rate increase.
- (g) After filing the certification required under (f)(4) above, a utility may implement the provisional rate increase permitted by these rules on the date noticed by the utility, unless Board Staff transmits written objections to the utility. Any such objections shall address only the utility's compliance with subsection (f) above, and shall be transmitted to the utility no later than five (5) days in advance of the provisional rate increase.
- (h) Upon conclusion of a rate case, a utility shall determine whether it owes interest to customers due to excess funds recovered through provisional rates pursuant to this subchapter. The utility shall return any over-recovery, plus interest, to customers in the next billing cycle. In determining interest owed under this subchapter:
1. Interest shall not be due to the utility as a result of a final order in the rate case;
 2. A utility, except an electric utility, shall calculate the amount of interest owed in accordance with *N.J.A.C. 14:3-13.3(c)-(g)*, as applicable, except that in lieu of the "over-recovered gas cost balance" or "the over-

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recovery amount determined under N.J.A.C. 14:9-7.4”, the utility shall utilize the amount recovered through provisional rates in excess of the amount approved by the Board in its final order in the utility’s base rate case;

3. An electric utility shall calculate the amount of interest owed in the manner prescribed for a gas utility; and
4. The calculation of the amount of interest owed to customers shall cover the applicable period, which shall be the period between when the utility implemented provisional rates and the rate effective date of the Board’s final order in the proceeding.

(i) Nothing contained herein shall require a utility to implement provisional rates upon the expiration of the applicable suspension periods.

(j) Nothing contained herein shall be construed as establishing or endorsing a provisional rate as final, nor shall this subchapter be construed in any way to limit or restrict the Board’s authority to approve final rates at the conclusion of a utility’s base rate case.

[(e)] (k) Where notice is prescribed under this rule, it shall be at the cost and expense of the party obligated to give or serve the notice.