

PUBLIC UTILITIES

(a)

BOARD OF PUBLIC UTILITIES

All Utilities

Proposed Amendments: N.J.A.C. 14:3-1.1, 3A.4, 3A.5, 3A.6, 3A.9, 8.5, and 8.6

Proposed New Rules: N.J.A.C. 14:3-2.9 and 2.10

Authorized By: New Jersey Board of Public Utilities, Joseph L. Fiordaliso, President, Mary-Anna Holden, Dr. Zenon Christodoulou, Christine Guhl-Sadovy, and Marian Abdou, Commissioners.

Authority: N.J.S.A. 48:2-13; 48:2-16, 16.1 through 16.4, 17, 20, 23, 24, 25, and 27; 48:3-2.3, 3, 4, and 7.8; 48:3-17.11 through 17.14; and 48:19-17.

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

BPU Docket Number: AX22090613.

Proposal Number: PRN 2023-084.

The deadline for public comments on this matter is 5:00 P.M. on October 20, 2023. Please submit comments directly by using the Board's Public Document Search tool, search for the specific docket listed above and post by utilizing the "Post Comments" button. Written comments may also be submitted. Please include subject matter and docket number and submit to:

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All comments are considered "public documents" for purposes of the State's Open Public Records Act. Commenters may identify information that they seek to keep confidential by submitting it in accordance with the confidentiality procedures set forth at N.J.A.C. 14:1-12.3.

The agency proposal follows:

Summary

The Board of Public Utilities (Board) is proposing amendments at N.J.A.C. 14:3, which governs all utilities, a summary of which follows. The changes include the following:

1. The extension of the Winter Termination Program to water and wastewater residential customers, pursuant to P.L. 2021, c. 317, sec. 7;
2. Changes made to comply with legislation, which requires public utilities and municipalities to give each other notice of infrastructure projects and coordinate schedules, pursuant to P.L. 2021, c. 263; and
3. Adding a requirement that water and wastewater utilities use the same methodology that gas and electric utilities are required to use to gross up for taxes the deposits and non-refundable contributions collected for extensions to provide regulated services, if the deposits or non-refundable contributions become taxable in the future.

Winter Termination Program

The Board is proposing amendments to the Winter Termination Program, N.J.A.C. 14:3-3A.5, to clarify that the mandatory "up to 25 percent" down payment requirement does not apply to water and wastewater residential customers, pursuant to P.L. 2021, c. 317, sec. 7, effective December 21, 2021; and that applicants of the Low Income Household Water Assistance Program or any other State, local, or utility program that provides assistance or discounted rates specifically to help eligible customers pay sewer or water bills that exist at the time are automatically eligible for the Winter Termination Program.

Notice of Infrastructure Projects

The Board is proposing an amendment at N.J.A.C. 14:3-1.1 and new rules at N.J.A.C. 14:3-2.9 and 2.10, which require public utilities, local utilities, and local units, as defined in a proposed amendment at N.J.A.C. 14:3-1.1, to provide reciprocal notification prior to initiating public utility infrastructure projects and local infrastructure projects, pursuant to the provisions at P.L. 2021, c. 263 (N.J.S.A. 48:3-17.11 et seq.). P.L. 2021, c. 263, was enacted on November 8, 2021, became operative on May 7, 2022, and directs the Board to adopt such rules and regulations in consultation with the New Jersey Department of Community Affairs. The notification must include a summary of the purpose and scope of the infrastructure project, a project schedule, and a map of the project location. The local unit, local utility, and public utility shall coordinate with each other to provide timely notification of any changes to their respective project plans or schedules and, when feasible, to jointly establish a timeframe for scheduled work. The benefits of enhanced coordination may include less disruption to roads and infrastructure and faster recovery from excavation and other work necessary for public utilities to provide safe, adequate, and proper service.

A stakeholder meeting on this change was previously held on May 10, 2022, under Board Docket No. AX22030133. Comments received on or before June 9, 2022, were considered and are a part of this rulemaking.

Main Extensions

The Board is proposing amendments to the existing main extension rules, N.J.A.C. 14:3-8 to reflect tax changes that affect water and wastewater utilities. Contributions in aid of construction (CIACs) received by gas and electric utilities for main extensions became taxable for Federal income tax (FIT) and State income tax (SIT) purposes with the passage of the Tax Reform Act of 1986 (TRA-86). CIACs received by water and wastewater utilities for main extensions became taxable for FIT purposes with the passage of the Tax Cuts and Jobs Act of 2017 (Tax Act). Water and wastewater utilities do not pay SIT because they pay gross receipts and franchise taxes. The Federal Infrastructure Investment and Jobs Act, P.L. 117-58 (Nov. 15, 2021) (IIJA), reinstated the special rule for CIACs received by water and wastewater utilities that existed prior to passage of the Tax Act. As a result, CIACs to water and wastewater utilities made after December 31, 2020, are presently exempt from Federal taxation. The existing rules include a template that the gas and electric utilities are required to follow to calculate the gross up for FIT and SIT for main extension CIACs, deposits, and refunds. The proposed rules would require water and wastewater utilities to also follow this template to calculate the gross up for taxes for main extension CIACs, deposits, and refunds if: 1. the utility collects a deposit or non-refundable CIAC that is taxable in whole, or in part, pursuant to the Internal Revenue Code; and 2. the utility includes in the deposit or non-refundable CIAC collected from an applicant for a main extension, the associated tax consequences incurred by the regulated entity pursuant to the Internal Revenue Code. Water and wastewater utility CIACs are not presently subject to SIT. If water and wastewater utility CIACs become taxable for FIT purposes in the future, but remain not taxable for SIT purposes, they would be required to use the template, under the above circumstances, but would enter zero as the SIT rate. The BPU proposes to change all references in the existing main extension rules and the template from TRA-86 to Internal Revenue Code (IRC), so that they would apply to all gas, electric, water, and wastewater utilities whose CIACs are taxable without referencing which law made them taxable. This will allow the main extension rule to remain current regardless of whether or not a law is passed in the future that again changes the taxability of CIACs to water or wastewater utilities.

A stakeholder meeting on this change was previously held on April 29, 2021, under Board Docket No. AX19050615. Comments received on or before May 13, 2021, were considered and are a part of this proceeding.

A stakeholder meeting for all three sections, the Winter Termination Program, the Notice of Infrastructure Projects, and Main Extensions, was also held on November 14, 2022.

A summary of the proposed amendments follows:

Subchapter 1. Definitions and General Provisions

N.J.A.C. 14:3-1.1 sets forth definitions of general applicability. Definitions for “local infrastructure project,” “local unit,” “local utility,” and “public utility infrastructure project” have been added and are based on the provisions at P.L. 2021, c. 263 (N.J.S.A. 48:3-17.11 et seq.).

Subchapter 2. Plant

Proposed new N.J.A.C. 14:3-2.9 requires a public utility to timely notify a local unit and local utility of any public utility infrastructure project that the public utility plans to undertake within the borders of that local unit and local utility service area. Additionally, the proposed new section requires the notified local unit or local utility to examine any underground utility facilities owned or operated by the local unit or local utility, notify the public utility whether any of these facilities require repair or replacement and if the local unit or local utility intends to undertake a local infrastructure project within the public utility infrastructure project’s scope, and coordinate with the public utility regarding their respective project plans and schedules.

Proposed new N.J.A.C. 14:3-2.10 requires a local unit and local utility to timely notify each public utility that provides service within the borders of a local unit and local utility service area of any local infrastructure project that the local unit or local utility plans to undertake. Additionally, the proposed new section requires the notified public utility to examine any underground utility facilities owned or operated by the public utility within the borders of the local unit, notify the local unit and local utility whether any of these facilities require repair or replacement and if the public utility intends to undertake a public utility infrastructure project within the local infrastructure project’s scope, and coordinate with the local unit and local utility regarding their respective project plans and schedules.

Subchapter 3A. Discontinuance and Restoration of Service

N.J.A.C. 14:3-3A.4 provides additional notice requirements for discontinuance of residential and special customers. The reference to “electric and gas customers” at subsection (i) has been expanded to apply to water and wastewater customers. Subsection (j) has been changed to include water and wastewater customers and references to “Statement of Customer’s Rights” has been changed to “Utility Customer Bill of Rights.” New subsection (k) provides that each public utility shall provide in any communication to a residential customer, in connection with an overdue utility bill information, about the availability of the Winter Termination Program and other utility assistance programs.

N.J.A.C. 14:3-3A.5 sets forth the conditions of the Winter Termination Program applicable to residential gas, electric, water, and wastewater service. New paragraph (a)8 adds, as eligible customers of the Winter Termination Program, applicants of the Low Income Household Assistance Program or any other water or wastewater utility bill assistance programs. Recodified paragraph (a)9 clarifies and adds language to specify residential customers may self-certify regarding Winter Termination Program eligibility. The words “water” and “wastewater” are deleted from subsection (b) to eliminate the requirement of a down payment for such eligible Winter Termination Program customers during the current heating season. New subsection (c) provides residential water and wastewater customers whose service has been discontinued for non-payment and not reconnected as of November 15, and who provide proof to the public utility that they have submitted an application for assistance pursuant to the Low Income Household Water Assistance Program or any other utility assistance program that helps eligible customers pay wastewater or water bills, shall be reconnected before such application has been approved, denied, or withdrawn, unless there is a utility emergency, and shall not be required to make a down payment on the outstanding balance as a condition of receiving water and wastewater service during the current heating season. Recodified subsection (k), which requires a down payment of the outstanding balance for the unauthorized restoration of service by a customer during the heating season as a precondition of continued service, has been extended to apply to water and wastewater customers.

N.J.A.C. 14:3-3A.6 governs the discontinuance of electric, gas, water, and wastewater service to tenants. Subsections (a) and (b) change the

length of time of the required notice of discontinuance of service to tenants from 15 days to 30 days.

N.J.A.C. 14:3-3A.9 provides conditions for restoration of service after discontinuance. The proposed amendments at subsection (e) clarify that the subsection applies to non-Winter Termination Program customers and Winter Termination Program customers outside the Winter Termination Program period of November 15 to March 15. Paragraph (e)1 has been clarified to apply to any other State, local, or utility assistance programs that help eligible customers pay their utility bills, in addition to certain specified programs. Existing paragraph (e)2 has been deleted. Recodified paragraph (e)2 has been clarified to accept a down payment of up to 25 percent of the outstanding balance from those residential customers who prove they do not have the ability to pay and allow the utility to accept a lesser amount.

New subsection (f) provides reconnection of service pursuant to subsection (e) is limited to once per calendar year per utility service.

Subchapter 8. Extensions to Provide Regulated Services

N.J.A.C. 14:3-8.5 sets forth general provisions that apply to the costs of extensions. References to “Tax Reform Act of 1986” have been replaced with “Internal Revenue Code.”

N.J.A.C. 14:3-8.6 addresses deposits or non-refundable contributions that are taxable. References to “Tax Reform Act of 1986” have been replaced with “Internal Revenue Code” throughout this section. The words, “gross up for income taxes” have been added to the heading for this section to clarify the purpose of this section. Language at (c)3 concerning “a gas or electric regulated entity” has been changed to “gas, electric, water or wastewater regulated entity.” This change extends to water and wastewater utilities the requirement to use the Board’s template to calculate the gross up factor for income taxes on CIACs when those CIACs are taxable for FIT purposes. The website link at paragraph (c)3 has been updated. Language at subsection (f) that states, “No later than January 10, 2016” has been changed to “As of (14 days after the effective date of this rulemaking).” This change requires each gas, electric, water, wastewater, and telecommunications utility, whose CIACs are taxable for FIT purposes, to file with the Board, their respective gross up factor for income taxes on CIACs using the Board’s template by no later than 14 days after the effective date of this rulemaking.

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

Social Impact

The proposed amendments and new rules will have a beneficial social impact because they will continue to improve basic requirements that ensure that New Jersey utility consumers receive safe, adequate, and proper service at reasonable rates. The primary thrust of most of the proposed amendments is to ensure adequate customer service and consumer protection. The proposed amendments will result in clearer rules that will improve consumer protection and increase public safety. For example, the primary purpose of the proposed amendments and new rules authorized pursuant to P.L. 2021, c. 263, is to ensure that public utilities, local utilities, and local units give adequate notification to each other in advance of infrastructure projects and, when feasible, jointly establish a timeframe for coordinating scheduled work. The benefits of enhanced coordination may include less disruption to roads and infrastructure and faster recovery from excavation and other work necessary for public utilities to provide safe, adequate, and proper service.

Economic Impact

The proposed amendments and new rules are not likely to have a significant economic impact, in that they continue existing requirements that ensure that public utilities provide safe, adequate, and proper service at a reasonable rate. Any utility costs incurred in complying with the proposed amendments and new rules, if determined to be reasonable, are recognized by the Board for ratemaking treatment and the utility will, therefore, recoup these costs through customer charges. The Board believes that the obligations imposed by the proposed amendments and new rules are reasonable and necessary to ensure that utilities continue to provide safe, adequate, and proper service, both on near-term and long-term bases. While the Board may incur some costs in monitoring

compliance with the rules, the proposed amendments and new rules will have no adverse economic impact on the Board.

Federal Standards Analysis

N.J.S.A. 52:14B-1 et seq., requires 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. The proposed amendments and new rules are not promulgated pursuant to the authority of, or in order to implement, comply with, or participate in any program established pursuant to Federal law or under a State statute that incorporates or refers to Federal law, Federal standards, or Federal requirements. Accordingly, the proposed amendments and new rules do not exceed the standards or requirements imposed by Federal law and are not promulgated to comply with a Federal requirement. The proposed amendments do replace references to the Tax Reform Act of 1986 with references to the current Internal Revenue Code so that the rules regarding deposits or non-refundable contributions for main extensions will apply to utilities whose deposits or non-refundable contributions are taxable under current tax law regardless of which specific tax law made the deposits or non-refundable contributions taxable.

Jobs Impact

The Board anticipates that the proposed amendments and new rules will not result directly in the creation of new jobs or the loss of existing jobs; however, the continued effective and efficient operation of utilities in New Jersey supports thousands of direct, local, in-State jobs. The income that individuals and families earn from these in-State jobs contributes significantly to the New Jersey economy. The proposed amendments and new rules are not expected to have any impact on the number of jobs currently supported by New Jersey utilities. The proposed amendments and new rules will not have an impact on any other sector of the economy of the State of New Jersey.

Agriculture Industry Impact

The rules proposed amendments and new rules will have no impact on the agricultural industry.

Regulatory Flexibility Statement

There are no small businesses, as defined by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., to which the proposed amendments and new rules would apply. Additionally, none of the proposed amendments and new rules impose any additional reporting, recordkeeping, or other compliance requirements on small businesses. The businesses affected all have more than 100 full-time employees and/or are based outside New Jersey. The proposed amendments and new rules apply to public utilities, local utilities, and local units.

Housing Affordability Impact Analysis

The proposed amendments and new rules will not have an impact on the affordability of housing in New Jersey. The proposed amendments and new rules will not evoke a change in the average costs associated with housing since the scope of the rules is limited to the regulation of the public utility industry, local utilities, and local units.

Smart Growth Development Impact Analysis

The proposed amendments and new rules will not have an impact on achieving the goal of smart growth and the implementation of the State Development and Redevelopment Plan in New Jersey. P.L. 2006, c. 83, N.J.S.A. 48:5A-28(h)2 specifically provides that as of November 2, 2006, the Board's smart growth rules no longer apply to cable television companies. As the scope of the rules is limited to the regulation of the utility industry, local utilities, and local units, there is an extreme unlikelihood that the proposed amendments and new rules would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The proposed amendments and proposed new rules will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in New Jersey. Accordingly, no further analysis is required.

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

SUBCHAPTER 1. GENERAL PROVISIONS

14:3-1.1 Definitions

The following words and terms, when used at N.J.A.C. 14:3 through 14:10 and 14:29, shall have the following meanings, unless the context clearly indicates otherwise:

...
“Local infrastructure project” means a project performed by a local unit or a local utility to improve a public road, street, or bridge under the jurisdiction of a local unit or local utility facilities or any work conducted in a public utility right-of-way.

“Local unit” means a county or municipality.

“Local utility” means a sewerage authority created pursuant to the “sewerage authorities law,” P.L. 1946, c. 138 (N.J.S.A. 40:14A-1 et seq.), a utilities authority created pursuant to the “municipal and county utilities authorities law,” P.L. 1957, c. 183 (N.J.S.A. 40:14B-1 et seq.), an entity created pursuant to the “Municipal Shared Services Energy Authority Act,” P.L. 2015, c. 129 (N.J.S.A. 40A:66-1 et al.), or a utility of a local unit, authority, commission, special district, or other corporate entity not regulated by the Board of Public Utilities under Title 48 of the Revised Statutes that provides gas, electricity, heat, power, water, or sewer service to a municipality or the residents thereof.

...
“Public utility infrastructure project” means the construction, reconstruction, installation, demolition, restoration, or alteration of facilities under ownership or control of the public utility that requires approval by the Board pursuant to N.J.A.C. 14:3-2A.1 or 14:7-1.4(a), or a water main or sewer main replacement that requires pre-construction approval of the project through a decision and order issued by the Board; but shall not include traffic control, leak surveying, snow plowing, vegetation management in or around public utility rights-of-way, mark outs, landscaping, meter work, equipment repairs, or other work occurring during an emergency, as that term is defined at N.J.S.A. 48:3-17.11, or small blanket-type infrastructure repair or replacement tasks that are repetitive or routine in nature unless they are performed in conjunction with a main replacement.

SUBCHAPTER 2. PLANT

14:3-2.9 Public utility notification of a planned infrastructure project

(a) A public utility shall notify a local unit and local utility of any public utility infrastructure project that the public utility plans to undertake within the borders of that local unit and local utility service area at least 180 days prior to initiating work on the public utility infrastructure project. The notice shall include a summary of the purpose and scope of the public utility infrastructure project, a public utility infrastructure project schedule, and a map of the public utility infrastructure project location.

(b) Notwithstanding the notification requirements at N.J.A.C. 14:3-2.10(a), within 60 days of the receipt of the notice required pursuant to (a) above, a local unit and local utility shall examine any underground utility facility owned or operated by the local unit or local utility at that project location to the extent feasible and notify the public utility whether such underground utility facility needs repair or replacement and if the local unit or local utility intends to undertake a local infrastructure project within the scope of the public utility infrastructure project. The local unit, local utility, and public utility shall coordinate to provide timely notification of any changes to their respective project plans or schedule and, when feasible, to jointly establish a timeframe for scheduled work.

14:3-2.10 Local unit and local utility notification of an infrastructure project

(a) A local unit and local utility shall notify each public utility that provides service within the borders of a local unit and local utility

service area of any local infrastructure project that the local unit or local utility plans to undertake at least 180 days prior to initiating work on the local infrastructure project. The notice shall include a summary of the purpose and scope of the local infrastructure project, a local infrastructure project schedule, and a map of the local infrastructure project location.

(b) Notwithstanding the notification requirements at N.J.A.C. 14:3-2.9(a), within 60 days of the receipt of the notice required pursuant to (a) above, a public utility shall examine any underground utility facility owned or operated by the public utility within the borders of a local unit at that project location to the extent feasible and notify the local unit and any relevant local utility whether an underground utility facility needs repair or replacement and if the public utility intends to construct a public utility infrastructure project within the scope of the local infrastructure project. The local unit, local utility, and public utility shall coordinate to provide timely notification of any changes to their respective project plans or schedule and, when feasible, to jointly establish a timeframe for scheduled work.

SUBCHAPTER 3A. DISCONTINUANCE AND RESTORATION OF SERVICE

14:3-3A.4 Additional notice requirements for discontinuance of residential and special customers

(a)-(h) (No change.)

(i) On all notices of discontinuance to residential electric, [and] gas, water, and wastewater customers there shall be included, in addition to the other information required [under] pursuant to this subchapter, all of the following:

1.-3. (No change.)

(j) The statements required to be included on notices of discontinuance of electric, [and] gas, water, and wastewater customers pursuant to (h) and (i) above shall be printed on the back of the notice under the headline (in boldface) “[STATEMENT OF CUSTOMER’S] UTILITY CUSTOMER BILL OF RIGHTS.” The headline shall be printed in type no less than one-half inch in height (36 points). The [individual statements] **Utility Customer Bill of Rights** shall be printed in type no less than 1/6 inch in height (12 points). [No] **Nothing** other [matter] **than the Utility Customer Bill of Rights** shall be printed [upon] on the back of the notice. On the front of the notice shall appear a statement in boldface type[,] indicating that important information regarding the customer’s rights is found on the back of the notice.

(k) Each public utility shall provide in any communication to a residential customer, in connection with an overdue utility bill, information about the availability of the Winter Termination Program and utility assistance from any of the following programs that may exist at the time: the Universal Service Fund, the Low Income Home Energy Assistance Program, the Low Income Household Water Assistance Program, or any other utility assistance program administered by the State. Such information regarding the Winter Termination Program shall be provided to customers November 15 through March 15.

[(k)] (l) (No change in text.)

14:3-3A.5 Winter Termination Program

(a) Electric, gas, water, and wastewater utilities shall not discontinue service during the period from November 15 through March 15 (referred to in this section as the “heating season”), unless otherwise ordered by the Board, to those residential customers who demonstrate at the time of the intended termination that they are:

1.-6. (No change.)

7. Recipients of the Universal Service Fund (USF); [or]

8. Applicants of the Low Income Household Water Assistance Program or any other State, local, or utility program that provides assistance or discounted rates specifically to help eligible customers pay wastewater or water bills that may exist at that time; or

[8.] **9. [Persons] Residential customers who are unable to pay their utility bills because of circumstances beyond their control.** Such circumstances shall include, but shall not be limited to, unemployment, illness, medically related expenses, recent death of an immediate family

member, and any other circumstances, which might cause financial hardship. **These residential customers shall be permitted to self-certify to the utility or Division of Customer Assistance of the Board of an inability to pay their public utility bill.**

(b) Residential electric[,] and gas[, water, and wastewater] customers whose service has been discontinued for non-payment and not reconnected as of November 15, and who are otherwise eligible for protection under the Winter Termination Program, shall be required to make a down payment of up to 25 percent of the outstanding balance as a condition of receiving electric[,] and gas[, water, and wastewater] service during the current heating season. The customer shall be notified, at the time of enrollment in a budget billing plan, as required pursuant to [(c)] (d) below, that the down payment shall represent a maximum required amount and is not to be regarded as a minimum required payment. The utility shall consider the customer’s ability to pay in determining the appropriate level of the required down payment, but in no instance shall such required payment exceed 25 percent of the outstanding balance. The utility shall refer to the Board for resolution[,] of all disputes regarding the appropriate amount of a down payment[s].

(c) Residential water and wastewater customers whose service has been discontinued for non-payment and not reconnected as of November 15, and who provide proof to the public utility that they have submitted an application for assistance under the Low Income Household Water Assistance Program or any other State, local, or utility program that provides assistance or discounted rates specifically to help eligible customers pay wastewater or water bills, shall be reconnected before such application has been approved, denied, or withdrawn, unless there is a utility emergency, and shall not be required to make a down payment on the outstanding balance as a condition of receiving water and wastewater service during the current heating season. Upon request, the residential customer shall provide the utility with an update on the status of the application.

Recodify existing (c)-(g) as **(d)-(h)** (No change in text.)

[(h)] (i) An electric, gas, water, and wastewater utility may terminate service to a residential customer who is eligible for the Winter Termination Program in accordance with [(i)] (j) and [(j)] (k) below, if said customer connects, disconnects, or otherwise tampers with the meters, pipes, wires, or conduits of the utility for the purpose of obtaining electric, gas, water, and wastewater service without payment.

[(i)] (j) No discontinuance shall occur at [(h)] (i) above until the customer has been afforded all reasonable due process considerations, including an opportunity to be heard. To this end, electric, gas, water, and wastewater utilities shall comply with the following requirements prior to discontinuing service to any residential customer who has allegedly tampered with the meter or other utility facilities:

1.-4. (No change.)

[(j)] (k) A customer, otherwise eligible for the Winter Termination Program, whose electric, [or] gas, water, or wastewater service had been discontinued prior to the start of the heating season and who has subsequently caused the unauthorized restoration of said service shall, when said unauthorized service has been registered on the meter, be required to make a down payment of up to 25 percent of the outstanding account balance as of the most current meter reading as a pre-condition for the continuation of service during the heating season.

14:3-3A.6 Discontinuance of service to tenants

(a) Electric, gas, water, and wastewater public utilities shall make every reasonable attempt to determine when a landlord-tenant relationship exists at premises being serviced. If such a relationship is known to exist, and if the tenants are not the customers of record but are end-users, as these terms are defined at N.J.A.C. 14:3-1.1, discontinuance of service is prohibited unless the utility has, notwithstanding the time periods [in] at N.J.A.C. 14:3-3A.5, given a [15-day] **30-day** written notice to the owner of the premises or to the customer of record to whom the last preceding bill was rendered. Further, the utilities shall use their best efforts to determine the names and addresses of each tenant, in order to provide such notice, for example, through mailings to landlords requesting a list of tenants. The utility shall use its best efforts to provide copies of the discontinuance notice to all tenants. In addition, the utility shall provide the tenant(s) with a [15-day] **30-day** written notice, which shall be hand-

delivered, mailed, or posted in a conspicuous area of the premises and in the common areas of multiple family premises.

(b) If a utility uses posting as the method of notice, each utility shall use its best efforts to also place a copy of the notice on each tenant's car windshield or under the door of each tenant's dwelling. In the case of tenants of [single] **single-** and two-family dwellings, each tenant shall also be provided with a [15-day] **30-day** individual notice. Each utility shall offer the tenant(s) continued service to be billed to the tenant(s) unless the utility demonstrates that such billing is not feasible. The continuation of service to a tenant shall not be conditioned upon payment by the tenant of any outstanding bills due upon the account of any other person. The utility shall not be held to the requirements of this provision if the existence of a landlord-tenant relationship could not be reasonably ascertained.

(c)-(e) (No change.)

14:3-3A.9 Basis for restoration

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

(e) [A] **For non-Winter Termination Program customers and Winter Termination Program customers outside the Winter Termination Program period of November 15 through March 15, a residential electric, gas, water, or wastewater customer who has been disconnected[,] shall have their service reconnected, upon request, if [all of] the following conditions are met:**

1. They can demonstrate that they have applied to one of the following [eligible] assistance programs **that may exist at the time:** Universal Service Fund, Low Income Home Energy Assistance, Payment Assistance for Gas and Electric, [or] the Low-Income Household Water Assistance program(s), **or any other State, local, or utility program that provides assistance or discounted rates specifically to help eligible customers pay their utility bills; and**

[2. The residential customer was not enrolled in any of the assistance programs listed above during the prior year; and]

[3.] **2.** They have made a down payment of up to 25 percent of the outstanding balance, [consistent with N.J.A.C. 14:3-3A.5(b)] **except that the utility shall accept a lesser amount from those customers who prove they do not have the ability to pay.**

(f) Reconnection of service pursuant to (e) above is limited to once per calendar year per utility service.

SUBCHAPTER 8. EXTENSIONS TO PROVIDE REGULATED SERVICES

14:3-8.5 General provisions regarding costs of extensions

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

(f) If a regulated entity requires that the applicant pay a deposit or non-refundable contribution, the regulated entity shall first provide the applicant with all of the following information, in writing:

1.-3. (No change.)

4. If any portion of a deposit or non-refundable contribution is taxable pursuant to **the Internal Revenue Code [(TRA-86)],** and the regulated entity has decided to include the [Tax Reform Act of 1986 (TRA-86)] **Internal Revenue Code** tax consequences in the deposit or non-refundable contribution:

i.-iv. (No change.)

(g)-(j) (No change.)

14:3-8.6 Deposits, contributions, and refunds—Internal Revenue Code **gross up for income taxes**

(a) This section applies to a regulated entity that:

1. Collects a deposit or non-refundable contribution that is taxable in whole, or in part, pursuant to the Internal Revenue Code [(TRA-86)]; and
2. Includes in the deposit or non-refundable contribution the associated tax consequences incurred by the regulated entity [under TRA-86] **pursuant to the Internal Revenue Code.**

(b) If a regulated entity includes in a deposit or non-refundable contribution the tax consequences incurred [under TRA-86] **pursuant to the Internal Revenue Code,** all deposit refunds shall also include the associated tax consequences incurred [under TRA-86. Effective January 20, 2016, these] **pursuant to the Internal Revenue Code. These** tax consequences shall be determined in accordance with this section.

(c) The [TRA-86] **Internal Revenue Code** gross-up factor shall be:

1.-2. (No change.)

3. For a gas, [or] electric, **water, or wastewater** regulated entity, calculated using the [TRA-86] **Internal Revenue Code (IRC)** Gross-up Factor Template posted on the Board's website, [<https://www.bpu.state.nj.us/>] <https://www.nj.gov/bpu/about/divisions/energy/>.

(d) To determine the amount of a deposit or non-refundable contribution that includes the associated tax consequences incurred [under TRA-86] **pursuant to the Internal Revenue Code,** the regulated entity shall:

1. Determine the base amount of the deposit or non-refundable contribution, before including the tax consequences of [TRA-86] **the Internal Revenue Code;**

2. Determine the portion of the base deposit or non-refundable contribution that is taxable [under TRA-86] **pursuant to the Internal Revenue Code.** This is the "taxable amount";

3. Multiply the taxable amount determined [under] **pursuant to (d)2** above by the regulated entity's [TRA-86] **Internal Revenue Code** gross-up factor determined [under] **pursuant to (c)** above. The result is the "grossed up" portion of the deposit or non-refundable contribution;

4. Add the grossed up amount determined [under] **pursuant to (d)3** above to any non-taxable portion of the base deposit or non-refundable contribution. The result is the total deposit or non-refundable contribution that the applicant will pay, inclusive of the regulated entity's associated tax consequences incurred [under TRA-86] **pursuant to the Internal Revenue Code;** and

5. To determine the dollar amount of the regulated entity's associated tax consequences incurred [under TRA-86] **pursuant to the Internal Revenue Code,** subtract the base amount of the deposit or non-refundable contribution, determined [under] **pursuant to (d)1** above, from the total deposit or non-refundable contribution that the applicant will pay, determined [under] **pursuant to (d)4** above.

(e) In determining the amount of a refund associated with a deposit that includes the associated tax consequences incurred [under TRA-86] **pursuant to the Internal Revenue Code,** the regulated entity shall ensure that the percentage of the refund that is grossed up for taxes shall be equal to the percentage of the deposit that was grossed up for taxes. To do this, the regulated entity shall:

1. Determine the base amount of the refund (before considering the tax consequences of [TRA-86] **the Internal Revenue Code**), using the suggested formula at N.J.A.C. 14:3-8.9 or 8.11, as applicable;

2. (No change.)

3. Multiply the percentage [from] **determined at (e)2** above by the base amount of the refund [from] **determined at (e)1** above. The result is the dollar amount of the refund that must be grossed up to include the tax consequences that the regulated entity incurred [under TRA-86] **pursuant to the Internal Revenue Code;**

4. Multiply the dollar amount determined [under] **pursuant to (e)3** above by the same gross-up factor that was applied to the original deposit when it was collected, regardless of [whether] **when** the deposit was collected [before January 20, 2016]. The result is the grossed up portion of the refund; and

5. Add the grossed up amount determined [under] **pursuant to (e)4** above to the remainder of the base refund amount, that is, the amount that was not grossed up for the tax consequences of [TRA-86] **the Internal Revenue Code.** The sum is the refund amount.

(f) Each regulated entity that collects deposits and non-refundable contributions that are taxable [under TRA-86] **pursuant to the Internal Revenue Code** shall comply with all of the following:

1. [No later than January 10, 2016] **As of (14 days after the effective date of this rulemaking),** each regulated entity that utilizes electric and/or gas depreciation rates shall calculate its [TRA-86] **Internal Revenue Code** gross-up factor pursuant to (c) above and file this factor, along with the completed [TRA-86] **IRC** Gross-up Factor Template, with the Board Secretary and the Director of the Board's Division of Energy. A regulated entity that utilizes both electric and gas depreciation rates shall file both of its gross-up factors and accompanying completed templates;

2. [No later than January 10, 2016] **As of (14 days after the effective date of this rulemaking),** each regulated entity that utilizes water and/or wastewater depreciation rates shall calculate its [TRA-86] **Internal**

Revenue Code gross-up factor pursuant to (c) above and file this factor, along with [a detailed calculation of this factor] **the completed IRC Gross-up Factor Template**, with the Board Secretary and Director of the Board's Division of Water;

3. [No later than January 10, 2016] **As of (14 days after the effective date of this rulemaking)**, each regulated entity that utilizes telecommunication depreciation rates shall calculate its [TRA-86] **Internal Revenue Code** gross-up factor pursuant to (c) above and file this factor along with a detailed calculation of this factor with the Board Secretary and Director of the Board's Division of Telecommunications; and

4. If a regulated entity's [TRA-86] **Internal Revenue Code** gross-up factor changes, for example, if the capital structure, tax rates, or depreciation rates change, the regulated entity shall calculate its new [TRA-86] **Internal Revenue Code** gross-up factor pursuant to (c) above and file this factor along with the template or detailed calculation, as applicable, within 14 calendar days of the change.

TRANSPORTATION

(a)

DIVISION OF MULTIMODAL SERVICES

BUREAU OF AERONAUTICS

Licensing of Aeronautical Facilities

Proposed Readoption with Amendments: N.J.A.C. 16:54

Authorized By: Diane Gutierrez-Scaccetti, Commissioner,
Department of Transportation.

Authority: N.J.S.A. 6:1-29, 6:1-44, 27:1A-5, and 27:1A-6.

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

Proposal Number: PRN 2023-082.

Submit written comments by October 20, 2023, to:

Alexander C. Owen
Administrative Practice Officer
New Jersey Department of Transportation
PO Box 600
Trenton, NJ 08625-0600
Fax: (609) 963-1909
Submit electronically at NJDOTRules@dot.nj.gov

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, N.J.A.C. 16:54 was scheduled to expire on July 12, 2023. As the Department of Transportation (Department) submitted this notice of proposal to the Office of Administrative Law prior to that date, the expiration date was extended 180 days to January 8, 2024, pursuant to N.J.S.A. 52:14B-5.1.c(2). 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 the amendments set forth below. This notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5, since the Department has provided a 60-day comment period for this notice of proposal.

The rules at N.J.A.C. 16:54 govern aeronautical facilities required to be licensed in the State of New Jersey. Upon review, the Department has determined that amendments are necessary to clarify text, delete unnecessary language, update Federal Aviation Administration (FAA) Advisory Circulars, update language to be more consistent with FAA Advisory Circulars, and update website references. Language relating to vertiports was deleted from this chapter in 2016. Currently, there is an

increase in drone technology and the introduction of vertical transport vehicles that the FAA is in the process of regulating. As a result of FAA studies and the need for the FAA to regulate the new technology, the language is being readopted at N.J.A.C. 16:54 to keep current with technology and future technologies.

The chapter is summarized as follows:

Subchapter 1 provides the purpose, scope, and applicability of types of aeronautical facilities required to be licensed by the State of New Jersey.

Subchapter 2 provides the definitions found in this chapter.

Subchapter 3, Application for License, establishes the requirements and application forms for permanent facilities.

Subchapter 4, Licenses, establishes the requirements of renewals, transfers, abandonment, deactivation, and surrender of licenses.

Subchapter 5, General Requirements, establishes the requirements for all aeronautical (public, restricted, and special use) facilities.

Subchapter 6, Design Standards, establishes the design standards for all aeronautical (public, restricted, and special use) facilities.

Subchapter 7, Operational Standards, establishes the general operating standards for aeronautical (public, restricted, and special use) facilities.

Subchapter 8, Temporary Aeronautical Facilities, establishes the licensing, general requirements, design standards, and operating standards for temporary aeronautical facilities.

Subchapter 9, Airparks, establishes requirements for airparks.

Subchapter 10, Aeronautical Facility Security, establishes requirements for aeronautical facility security.

Subchapter 11, Waivers and Exemptions, provides all facets of waivers and exemptions.

Subchapter 12, Violations and Penalties, provides guidelines for compliance and penalties for violations.

Subchapter 13, Suspensions and Revocations, establishes the provisions for suspensions, revocations, and appeals.

Subchapter 14, Informal Hearings and Contested Cases, establishes the guidelines for informal, contested, and uncontested cases of denial, exemption, suspension, revocation of application, petition, or license.

N.J.A.C. 16:54 Appendix A is a public notice.

The proposed amendments are as follows:

N.J.A.C. 16:54-1.3(a)2 and 5 are proposed for amendment to add vertiports.

N.J.A.C. 16:54-2.1 is proposed for amendment to add vertiport to the definition of "aeronautical facility" and to update the definition of "Notice to Airmen (NOTAM)" with the correct title of "Notice to Air Mission." Definitions are added for vertiport and VTOL.

N.J.A.C. 16:54-3.1(a) is proposed for amendment to delete redundant language that is also codified at N.J.A.C. 16:54-4.3(a) and to update the Department website. N.J.A.C. 16:54-3.1(a)1ii is proposed for deletion to remove unnecessary language regarding a waiver for resubmission of required documents. Recodified N.J.A.C. 16:54-3.1(a)1v(1) through (4) are proposed for amendment to add vertiports to the application fee schedule. N.J.A.C. 16:54-3.1(a)2i(10) is proposed for amendment to clarify a distance measurement. N.J.A.C. 16:54-3.1(a)2iv and v are added to include application requirements for vertiports.

The heading at N.J.A.C. 16:54-4.3 is proposed for amendment for clarity. N.J.A.C. 16:54-4.3(a) is proposed for amendment to clarify language regarding required submissions to the Bureau. N.J.A.C. 16:54-4.3(a)1 is proposed for amendment to add a Department website. N.J.A.C. 16:54-4.3(a)3 is proposed for amendment to simplify language for a notification plan for tenants. Proposed new N.J.A.C. 16:54-4.3(b)3 is added for consistency with other sections of the chapter.

N.J.A.C. 16:54-6.2(a)1iv and (a)2i, iii, and iv, 6.3(a)2, and 6.4(a)2 are proposed for amendment to update the number of an FAA Advisory Circular. New N.J.A.C. 16:54-6.2(a)3, 6.3(a)3, 6.4(a)3, and 8.1(b)6 are proposed to add language relating to public use vertiports. Recodified N.J.A.C. 16:54-6.2(a)6 is proposed for amendment to update a manual.

N.J.A.C. 16:54-8.2(b)2 is proposed for amendment to clarify the submission requirements for sketches or photographs. N.J.A.C. 16:54-8.4 is proposed for amendment for clarity and to correct punctuation.

N.J.A.C. 16:54 Appendix A is proposed for amendment to update contact information.