

NEW JERSEY BOARD OF PUBLIC UTILITIES

Adoption of Companion Amendments

N.J.A.C. 14:3, All Utilities

Effective January 5, 2009

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**PUBLIC UTILITIES
BOARD OF PUBLIC UTILITIES
All Utilities**

Adopted Amendments: N.J.A.C. 14:3

Proposed: May 19, 2008, at 40 N.J.R. 2414(a)

Adopted: December 8, 2008, by the New Jersey Board of Public Utilities, Jeanne M. Fox, President, Frederick F. Butler, Joseph L. Fiordaliso, Nicholas V. Asselta, and Elizabeth Randall, Commissioners.

Filed: December 11, 2008, as R. 2008 d. , with substantive 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, 48:2-16, 16.1-4, 48:2-17, 48:2-20, 48:2-23, 48:2-24, 48:2-25, 48:2-27, 48:3-2.3, 48:3-3, 48:3-4, 48:3-7.8 and 48:19-17.

BPU Docket Number: AX08030165.

Effective date: January 5, 2009

Expiration date: April 10, 2013

The New Jersey Board of Public Utilities (Board) is herein adopting amendments to its rules for all utilities, N.J.A.C. 14:3. These rules provide basic requirements for all utilities regulated by the Board, which include water, wastewater, electricity, gas, and telephone utilities. While the Board regulates cable television operators, these are not governed by this chapter, as the Board's enabling statutes do not define them as utilities.

These amendments implement changes the Board determined were necessary based on comments it received on its proposed readoption of these rules. The readoption, and the proposed amendments being adopted herein, were both published in the May 19, 2008 issue of the New Jersey Register, at 40 N.J.R. 2481(a) and 2414(a), respectively. The amendments adopted herein incorporate changes that the Board would have made in the May 19, 2008 readoption but could not because they were substantive changes that required additional notice and comment.

Summary of Public Comments and Agency Responses:

The following persons submitted timely comments on the proposal:

1. Karen D. Alexander, New Jersey Utilities Association (NJUA);
2. Richard A. Chapkis, Verizon New Jersey (VZ);
3. Ronald K. Chen, New Jersey Department of the Public Advocate, Division of Rate Counsel (RC);
4. Jim Dieterle, AARP New Jersey (AARP);
5. Dante Di Pirro, New Jersey Cable Television Association (NJCTA);
6. Mary Patricia Keefe, Pivotal Utility Holdings d/b/a Elizabethtown Gas (ETG);
7. Suzana Loncar, New Jersey American Water (NJAW);
8. David McMillin, Legal Services of New Jersey (LSNJ);
9. Jeanne W. Stockman, United Telephone of New Jersey d/b/a Embarq (MBQ); and
10. Tracey Thayer, New Jersey Natural Gas (NJNG).

SUBCHAPTER 1. DEFINITIONS AND GENERAL PROVISIONS

1. COMMENT: The utility rules are no longer appropriate for telephone companies in general, and for business telephone services in particular. These rules distort competition by forcing regulated carriers to respond to artificial regulatory requirements rather than competitive forces. They also harm consumers by placing regulatory burdens on regulated carriers that restrict their ability to invest in innovative products and services. (VZ)

RESPONSE: The Board does not agree that the rules are no longer necessary due to the evolving telecommunications marketplace. Marketplace competition does not in and of itself eliminate the need for regulation, especially in areas such as service quality measures and consumer protections. While rules have associated costs, there have been no studies submitted showing that the cost of any particular existing or proposed rule poses a significant impediment to the provision of services. There is a cost associated with the provision of safe, adequate and proper service

which cannot be avoided. Every telecommunications carrier that elects to participate in the market has an obligation to consumers whom the Board endeavors to protect.

2. COMMENT: We request clarification of the definition for normal business hours to state which facilities and operations it applies to. The definition should remain as ending at 4:30 p.m. in order to avoid additional expense to all ratepayers with little benefit. Most of our member companies' walk-in locations close at 4:30 p.m. The definition should only apply to the availability of emergency customer service representatives by telephone. For instance we are concerned that under N.J.A.C. 14:3-6.1 – "Records and Reporting", utilities will now be required to keep offices open at ratepayer expense for customer record inspections until 5:00 p.m. (NJUA) (NJCTA)

RESPONSE: Please see the response to comment 3 below.

3. COMMENT: Expanding the definition of normal business hours would: extend the hours for service calls (see N.J.A.C. 14:3-3.8); extend the hours a company would have to make customer service representatives available (see N.J.A.C. 14:3-5.2(a)5); extend the time it would have to make a regulatory affairs representative available during normal business hours (see N.J.A.C. 14:3-5.2(a)5); extend the hours it would have to make records open for examination by the Board's inspectors (see N.J.A.C. 14:3-6.1); and extend the hours business offices would have to be kept open (see N.J.A.C. 14:10-1A.4). However, the Board has not identified any complaints that have been made about the current rule provision nor a need for this proposed amendment. Expanding normal business hours would increase company costs that may ultimately be borne by customers. Many of the companies choose to provide extended hours, even beyond 5 p.m., but in a competitive environment such as the NJ telecommunications market, utilities should be allowed more and not less flexibility in how they operate their business to red to the needs of their customers. For these reasons, we recommend that the Board not adopt the proposed change in the definition of "normal business hours". (NJCTA)

RESPONSE to comments 2 and 3: The term "normal business hours" is used in four provisions in the chapter. Each provision clearly indicates to which facilities and operations the term applies. N.J.A.C. 14:3-3.8 applies to the hours during which utilities may schedule service calls. N.J.A.C. 14:3-5.2(a)2 governs the hours during which utilities must provide a toll-free non-emergency *telephone number* to customers; while N.J.A.C. 14:3-5.2(a)5 governs the hours during which a utility must make a regulatory affairs representative available to Board staff *by telephone*. Note that both of these provisions apply only to telephone services provided by the utility, and not to walk-in office hours. Finally, N.J.A.C. 14:3-6.1 requires utilities to make certain records available for inspection by Board staff "upon reasonable notice during normal business hours". N.J.A.C. 14:3-6.1 does not apply to records inspections by customers. Rather, it applies solely to inspections of records by Board staff. The rules at N.J.A.C. 14:10-1A.4, which previously governed the hours that business offices stay open, was repealed on October 20, 2008. Therefore, the only in-person customer service affected by the definition of "normal business hours" is the

scheduling of service calls. All other affected services are either provided by telephone or must be prearranged between the utility and Board staff.

4. COMMENT: We support the proposal to restore the former definition of “normal business hours.” (RC)
RESPONSE: The Board appreciates this comment in support of the rules.

5. COMMENT: We support the proposal in N.J.A.C. 14:3-1.3(e) to require the filing of a petition and Board approval for any gas, electric, water, or wastewater utility seeking to enter into a contract or agreement to provide service at rates not provided for in the utility’s Board-approved tariff. This is consistent with the Board’s longstanding practice, and should be adopted. (RC)
RESPONSE: The Board appreciates this comment in support of the rules. It should be noted that the requirement to which the commenter refers applies only to off-tariff rates that are not already authorized under the utility’s tariff. In most instances, an individual utility’s tariff, approved by the Board through a rate case filing, allows the utility to negotiate and make contracts or agreements with certain customer classes for rates unique to the rate class and to the utility company. In such a case, N.J.A.C. 14:3-1.3(e) and (f) would not apply because the rate in the contract or agreement would already be authorized under the tariff.

6. COMMENT: At N.J.A.C. 14:3-1.3(e), the proposal eliminates the requirement that telecommunications utilities file off-tariff rate agreements with the Board. Instead, they would make such agreements available to the Board’s Staff upon request. This would undermine the Board’s ability to exercise its regulatory authority over telecommunications utilities. (RC)
RESPONSE: The Board has determined that the requirement for submittal of these agreements by telecommunications utilities is not necessary and will require that the agreements be made available for Board staff inspection. Because of the competitive nature of the telecommunications marketplace, submittal of such agreements would be burdensome for both the utilities and the Board, and would produce no additional regulatory benefit. Therefore, the commenter’s suggested change has not been made upon adoption.

7. COMMENT: We are concerned with the new requirement to file a formal petition to obtain approval for any agreement for off-tariff rates. Current regulations require the filing of the contract, not a formal petition. We do not understand, nor did the proposal explain, the rationale for this requirement. The new requirement will create unnecessary administrative expense. (NJUA)
RESPONSE: The requirement to which the commenter refers applies only to off-tariff rates that are not already authorized under the utility’s tariff. In most instances, an individual utility’s tariff, approved by the Board through a rate case filing, allows the utility to negotiate and make contracts or agreements with certain customer classes for rates unique to the rate class and to the utility company. In such a case, N.J.A.C. 14:3-1.3(e) and (f) would not apply because the rate in the contract or agreement would already be authorized under the tariff.

SUBCHAPTER 2. PLANT

8. COMMENT: We thank the Board and staff for continuing to apply the scope of N.J.A.C. 14:3-2.5(a) to only those pieces of utility equipment that were identified previously and for recognizing the impracticality of the initially proposed expansion of the requirements. (NJUA)

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

9. COMMENT: We support the proposed revisions to N.J.A.C. 14:3-2.5 to narrow the requirement to label assets identified previously in the rule, including fire hydrants. This rule should also include the provision that would allow utilities to use a “hydrant ring” as the labeling feature for fire hydrants instead of the proposed “paint, brand or soft metal plate,” as the hydrant ring can serve the same purpose and can also prevent theft of hydrant water. (NJAW)

RESPONSE: It is important that the identifying markings on each hydrant are attached to the body of the hydrant. If a hydrant ring is attached to the body of the hydrant, placing the required identifying marks on it would comply with the rules. If the ring is removable, it would not comply with the rules. A utility that is in doubt as to whether a particular marking location on a piece of equipment complies with the rules should contact Board staff for guidance.

SUBCHAPTER 3. SERVICE

10. COMMENT: The Board is proposing to add a New-Jersey State-issued identification card to the list of documents that utilities are required to accept as proof of identity (see N.J.A.C. 14:3-3.2(e)). We support this change, which will simplify access to utility service for those who may not have access to the other documents on the list. (RC)

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

11. COMMENT: We thank the Board for adopting the changes to the 30 minute interruption rules at N.J.A.C. 14:3-3.7(d). This change will ensure that resources are focused on reporting those interruptions that are of most concern to the Board and staff. (NJUA)

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

SUBCHAPTER 3A. DISCONTINUANCE AND RESTORATION OF SERVICE

12. COMMENT: As an alternative to the 90° threshold rule, the Board promised to strive for better outreach to customers who may be eligible for financial assistance programs, which in turn “may” increase enrollment. 40 N.J. Reg. 2414(a), 2415 (May 19, 2008). The Board provides no specifics, and the promise is substantially undermined by the recognition of many barriers to participation identified in the Board’s consultants’ recent report on the Universal Service Fund Program, see APPRISE, Inc., *Impact Evaluation and Concurrent Process Evaluation of the New Jersey Universal Fund* at 43-59 (April 2006), and by the absence of substantial

evidence of successful efforts to increase program enrollment in recent years.
(LSNJ) (AARP)

RESPONSE: The Board believes that at risk customers can be more effectively protected from shutoffs in extreme weather through existing programs that are specifically targeted towards utility assistance for customers in need. These programs, by their nature, are designed and implemented to ensure that ratepayer funds are directed to those who need them. By contrast, the Winter Termination Program rules are less precise, and more prone to abuse by those who are not truly in need. The Board has taken several steps in recent months to allow better access to these financial assistance programs for those customers who are eligible. For example, the Board has adopted a LIHEAP/USF renewal application that allows recipients to renew benefits without completing a full application. Additionally, the renewal application for the Pharmaceutical Assistance for the Aged and Disabled (PAAD) has been modified. Those eligible for PAAD and Medicare Part D Low-Income Subsidy are screened for USF without any additional action on their part. Further, other PAAD applicants may be screened for USF depending on their household composition. Those who cannot be screened are encouraged to consider applying for the LIHEAP/USF program. The result is that tens of thousands of senior citizens and disabled low-income people will now be able to apply for USF assistance with very little effort. Also, when customers obtain assistance through these existing programs, this means that experienced USF staff will evaluate eligibility for assistance in a deliberative process. Based on the 28% increase in USF program costs from the last heating season to the present, as well as current economic conditions, the Board anticipates that enrollment in USF will continue to increase. Furthermore, the rules contain specific provisions for those with medical emergencies at N.J.A.C. 14:3-3A.2(i). These existing programs are a more specific and efficient method of protecting low-income and at-risk individuals than the rule's shutoff threshold.

13. COMMENT: We urge that the BPU adopt the terms of the companion proposal in which it proposed that the outside temperatures at which a moratorium on shut-offs is prohibited be 32 degrees Fahrenheit. The customer protections in New Jersey surpass those of many other states and protect customers sufficiently. Moreover, it has been our practice to suspend service termination during, for example, prolonged cold weather, when so requested by BPU staff. As with all utilities in New Jersey, we maintain an ongoing commitment to customers with payment difficulties and provide information on available assistance programs in various manners. (NJNG)

RESPONSE: Please see the response to comment 16 below.

14. COMMENT: The Board should retain the high-temperature shut-off threshold at 90° Fahrenheit. However, an alternative policy option that would provide similar protections would be to consider adopting a rule prohibiting electric or cooling-related natural gas service shut-offs when the maximum heat index is forecast to be 95° or higher during the next 48 hours. Of course, if the Board deems it advisable to consider this alternative, it should keep the existing 90° temperature threshold in place while it does so. (LSNJ) (AARP)

RESPONSE: Please see the response to comment 16 below.

15. COMMENT: We support maintaining the recently adopted regulation that protects consumers from disconnection of utility service when the temperature is forecast to reach 90 degrees Fahrenheit or higher at any time during the following 48 hours. We note that according to the Center for Disease Control, heat related disconnection protections are needed because, heat and humidity pose a threat to health and safety, especially among the elderly, the seriously ill and young children. The hotter the weather, the more electricity consumed, and the higher a consumer's electric bill. Studies have shown that there is an increased likelihood that families will have difficulty paying bills in full and therefore risk disconnection of service when electric bills are higher. Research also shows that consumers often cut back on electricity usage, even when necessary for health and safety, rather than run up high bills and risk disconnection. We note a study by the National Energy Assistance Directors Association that found 19% of energy assistance recipients in the face of unaffordable energy bills, kept their homes at unsafe or unhealthy temperatures. An Associate Professor of Sociology at New York University in his book "Heat Wave: A Social Autopsy of Disaster in Chicago", states that in typical years heat kills more Americans than all other natural disasters, including earthquakes, hurricanes, tornadoes and flood, combined. The National Weather Service has determined that a heat index of 105 degrees or above represents a dangerous or extremely dangerous situation. Such a heat index can be reached at temperatures lower than 95 degrees when the relative humidity is higher than 55 percent, which often occurs in New Jersey; 55% relative humidity and a temperature of 94 degrees results in a heat index of 106 and extreme danger occurs at 92 degrees and 85% relative humidity. For these reasons, we support maintaining the recently adopted 90 degree standard, as it provides the necessary health and safety protections, especially for vulnerable seniors and those with medical conditions. (AARP)

RESPONSE: Please see the response to comment 16 below.

16. COMMENT: The Board proposes to rescind its high temperature shut-off reduction, restore the threshold to 95° Fahrenheit and make other changes to weather-related shut-off protection, based on utility complaints that higher costs would result. An average of 688 deaths are caused each year by exposure to high heat nationwide. Centers for Disease Control, *Heat-Related Deaths – United States, 1999-2003*, MMWR Weekly, July 28, 2006 at 796. In New Jersey, the Department of Health and Senior Services reports that 30 New Jerseyans died in 1999, and 18 in 2002, because of excessive heat. Additionally, excessive heat causes between 45 and 170 hospitalizations annually in New Jersey. National Weather Service (NWS) data indicates that dangerous conditions occur commonly at temperatures above 90° but below 95° Fahrenheit, when the relative humidity is as low as 55% (commenter attached an illustrative NWS chart). Extremely dangerous heat indices begin to occur at 90° Fahrenheit and occur at a relative humidity of 80% even when the temperature remains below 95°. Between the temperatures of 90° Fahrenheit and 95° Fahrenheit, the relative humidity at which heat stroke becomes highly likely steadily decreases to approximately 75% -- well within the range of typical relative

humidity in New Jersey throughout the summer. In addition to reaching the “Extreme Danger” range, the heat index also reaches the “Danger” range, at which heat exhaustion is likely and heat stroke becomes possible with prolonged exposure, at a relative humidity of between 65 and 70% when the temperature is 90° Fahrenheit, and at a relative humidity of 50% by the time the temperature reaches 95° Fahrenheit. (One commenter noted that the National Weather Service issued an excessive heat watch on July 17, 2008, and that on that day the temperature did not exceed 94°.) The Legislature provided that “in view of the severity of the impact of sustained heat on the physical well-being of at-risk individuals, *it is the public policy of this State to ensure that [at-risk] individuals, their financial circumstances notwithstanding, are not deprived of electrical power during periods when the amelioration of the effects of high heat and humidity is essential to their health and welfare.*” N.J.S.A. 48:2-29.44(c) (emphasis added). There is no evidence in the record that protection of utility customers in this temperature range would impose any costs on other ratepayers. The only concerns in the record related to the proposal to reduce the 95° temperature threshold to 90° are included in Comments No. 107 and 108, from a utility trade association and one utility company, that the change would “significantly impact [] outstanding and uncollectible amounts” and “greatly impact our collection activity.” There is no quantification of costs. Our evidence indicates at most an average 14 days that shut-offs could potentially occur over a 92-day summer, even fewer if one considers that the rules also prohibit shutoffs on Fridays and weekends. This indicates that costs, if any, would be minimal. In the absence of any evidentiary support or reasoned analysis in the record, the Board’s decision is arbitrary and capricious. (LSNJ) (AARP)

RESPONSE to comments 13 through 16: The Board is aware that excessive heat and cold can be dangerous and occasionally fatal. That is why the Board is a leader in warm weather shutoff protections. Board staff contacted utility regulators in Maine, Michigan, Pennsylvania, New York, Illinois, and Delaware, and found that New Jersey’s rules are in the forefront of customer protection, even as the rules stood prior to revision in May 2008. Under the rules prior to revision and as adopted herein, the heat-related shutoff prohibition would be triggered at 95° Fahrenheit, regardless of humidity. None of these other states restrict termination of service due to high temperature except Delaware, which prohibits residential shut-offs for nonpayment only when the heat index is predicted to exceed 105. On low humidity days (below 55%), the Board’s 95° Fahrenheit standard is somewhat more protective of customers than Delaware’s standard, whereas on high humidity days (55% and above) the Board’s standard is somewhat less protective. Prior to the amendments adopted herein, the Board’s rules would have prohibited shutoffs at a heat index 15 points lower than Delaware’s – for example at a temperature of 84 degrees with 66% humidity. Regarding winter shutoff restrictions, most of these other states, if they have any winter safeguards at all, set the low temperature threshold at 32° Fahrenheit.

Contrary to one commenter’s assertion, the Board believes that the potential costs of the stricter shut-off limits to utilities, and ultimately ratepayers, will be significant. In a letter to the Board dated November 30, 2007, Public Service Electric & Gas

Company stated as follows regarding the more stringent weather related shutoff restrictions:

“Based on our own analysis using five years of historical data, the company has determined that this proposal will result in an increased moratorium on discontinuance of service for customers eligible for WPT of approximately three and a half months. ... This will dramatically effect (sic) write-off and have a negative impact on our customer bills through the SBC, as well as on PSE&G through an increase to the SBC. The almost doubling of the moratorium will require PSE&G to examine our use of unionized resources. PSE&G will need to consider the elimination of permanent field collection positions and the potential for outsourcing in order to meet seasonal peaking opportunities which will create significant concerns among our union members and union leaders.”

In addition, the electric and gas utilities have stated in comments that they anticipate additional projected annual write-offs of several million dollars stemming from the increased stringency of the weather-related shutoff restrictions. These costs are significant and will ultimately be passed on to all ratepayers, causing an added burden during a time when economic conditions are already difficult for the average citizen. In addition, there are other programs already in place to protect at-risk customers from utility shut-offs during extreme weather events. For more detail regarding these programs, please see the response to comment 12 above.

Finally, Board staff has extensive experience working with the utilities during extreme weather events. As noted by a commenter, Board staff has in the past contacted utilities and requested a temporary halt to shutoffs during extreme weather events, and the utilities have been consistently cooperative with these requests. The Board is confident that New Jersey utilities will continue to carefully consider special needs customers, such as senior citizens and those with health-related conditions, when terminating service during extreme weather periods. In addition, even without these rules, the Board has the authority at any time during periods of extreme heat to order a moratorium on shut-offs by the State’s regulated electric and gas utilities.

It should be noted that the Legislature has mandated that the Board work to minimize nonpayment shutoffs to low-income customers that are genuinely at risk of health or safety consequences. However, the Legislature has also tasked the Board with protecting all ratepayers from unreasonably high costs. Both of these mandates are becoming more important, and more difficult to achieve, in the current climate of high fuel costs and economic crisis.

The Board has carefully considered all of the comments on this matter, both those submitted during the recent re-adoption of chapter 3 and during this rulemaking. Commenters have made many valid points regarding these amendments, both pro and con. Based on these comments, staff experience, and the review of other states’ policies, the Board has determined that a return to the previous rules will adequately protect the utility customers of New Jersey, while minimizing an undue burden on utilities and ratepayers. The Board encourages utilities to aggressively pursue their ongoing efforts to identify customers that are eligible for USF and other assistance programs, to ensure that appropriate protections are provided.

17. COMMENT: We support the changes in the proposed rules. In particular, we support the changes to the weather-related restrictions on utility service shut-offs. The potential impact to our uncollectible position if the temperature point remains at 40 degrees Fahrenheit presents a potential burden which is not fair to the utility or its customers. We respectfully urge the Board to return the temperature point to 32 degrees Fahrenheit. (ETG)

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

18. COMMENT: We greatly appreciate the acknowledgement of the concerns previously raised regarding the changes originally proposed to the weather-related shut-off rules. We share the Board's concern over the health and safety of our customers during extreme weather conditions, and believe that by returning to the original language the Board will continue to have adequate authority to protect the health and safety of the residents. (NJUA)

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

19. COMMENT: While we are pleased that the Board has chosen to revert to the original weather shut-off triggers, the fact remains that the new triggers remain in effect until these new proposed rules are adopted. In order to maintain a smooth transition and not confuse customers, we respectfully ask the Board to either expeditiously adopt these rules or in the interim act on waiver requests previously filed by the EDCs. (NJUA)

RESPONSE: The Board appreciates this comment in support of the rules, and has endeavored to complete this rulemaking expeditiously.

20. COMMENT: We believe that by returning to the original language of N.J.A.C. 14:3-3A.2(e) and 3A.5(a), timely paying customers will not be burdened unduly by the expense associated with non-paying customers. (NJUA)

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

21. COMMENT: We support the proposal at N.J.A.C. 14:3-3A.4(i) to require utilities to include on the front of a disconnection notice a boldface notice alerting the customers to customer rights information printed on the back of the notice. This will help assure that customers facing the threat of disconnection are aware of their rights. (RC)

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

22. COMMENT: Amendments to N.J.A.C. 14:3-3A.5(i) would weaken due process protections for customers in the Winter Termination Program who are accused of tampering. The readopted rule and the former rule specified that the Board would investigate a tampering allegation and make a finding as to whether tampering occurred. The amendments would apparently authorize Staff to make final determinations as to whether tampering occurred, with no opportunity for the customer to confront a utility company in a contested proceeding. Customers accused of tampering should have the right to have such allegations determined in a contested proceeding. While it is appropriate to assign Staff to investigate allegations of tampering, Staff should not have the authority to make final determinations without

affording customers an evidentiary hearing. The proposed rule should make it clear that any customer disagreeing with Staff's determination has the right to an evidentiary hearing before an Administrative Law Judge or the Board. (RC)

RESPONSE: Any person can petition the Board at any time, in accordance with the Board's rules of procedure at N.J.A.C. 14:1.5. A cross-reference to this provision has been added to N.J.A.C. 14:3-3A.5(i)3 upon adoption to clarify this point. An additional modification has been made in that subparagraph to clarify that the information required to show medical emergency is the same as is required under N.J.A.C. 14:3-3A.5(i) and (j).

23. COMMENT: Please clarify whether, and if so, how the requirement at N.J.A.C. 14:3-3A.9(a) to restore service "within 12 hours upon proper application" is related to the restoration of service during normal business hours of the utility. (NJAW)

RESPONSE: As stated at N.J.A.C. 14:3-3A.9(a), service must be restored within 12 hours of a customer request. Therefore, if restoration requires a service call, the service call must occur within the 12 hour period. However, if the 12 hour period does not include normal business hours, a customer may request a delay in restoration of service to allow for a service call during normal business hours, pursuant to N.J.A.C. 14:3-3.8(a).

24. COMMENT: Under N.J.A.C. 14:3-3A.2(i), regarding the requirement that "[d]iscontinuance of residential service for nonpayment is prohibited for up to 60 days," clarification is needed that it is the sole responsibility of the customer seeking to prevent discontinuance under this provision to request an extension of this maximum 60-day time period from the BPU. If the customer does not seek an extension from BPU, the utility may, in accordance with the applicable regulations, discontinue service. (NJAW)

RESPONSE: This comment is beyond the scope of the proposal, in that no change was proposed to the provisions governing the limit on shut-offs in cases of medical emergency. Any person that wishes to request a change in an existing rule may do so through submittal of a petition for rulemaking under the rules of the New Jersey Office of Administrative Law at N.J.A.C. 1:30-4.

25. COMMENT: How many times (e.g., per year, per account) is a customer allowed to ask for a suspension of the discontinuance of service under N.J.A.C. 14:3-3A.2(i)?(NJAW)

RESPONSE: Please see the response to comment 24 above.

26. COMMENT: Throughout N.J.A.C. 14:3-3A.2(i), the term "medical emergency [that] exists within the residential premises" needs to be defined. Currently, the lack of a precise definition for this term allows for an unnecessarily broad interpretation of what constitutes a medical emergency by the customer and physician as further required in N.J.A.C. 14:3-3A.2(i)(2) and N.J.A.C. 14:3-3A.2(i)(3), giving rise to the situation that customers whose medical conditions that are not true medical emergencies will be afforded unnecessary and undeserved protections under the applicable rules. (NJAW)

RESPONSE: Please see the response to comment 24 above.

27. COMMENT: In N.J.A.C. 14:3-3A.2(i)(1), there is no definition of “reasonable proof of inability to pay.” Such reasonable proof should be more explicitly set forth and should include a statement from the customer that sets forth the precise reasons for his or her inability to pay the overdue amount, as well as the submission of relevant documents that support this statement. (NJAW)

RESPONSE: Please see the response to comment 24 above.

28. COMMENT: N.J.A.C. 14:3-3A.2(i)(2) states that the utility may require a written physician’s statement to the utility, stating the existence of the emergency, its nature and probable duration, and that discontinuance of service will aggravate the medical emergency. However in N.J.A.C. 14:3-3A.2(i)(3), a physician’s “recertification” is referenced, and in N.J.A.C. 14:3-3A.2(j), it is described as an “updated physician’s note that meets the requirements of (i)2.” This inconsistency should be harmonized, and a physician’s certification, along with the information that is required therein (including the statement that the physician certifies that all the statements within the certification are, to the best of his or knowledge true, and if any such statements made by him or her were knowingly false, he or she is aware that he or she may be subject to punishment), should be consistently referenced within all the aforementioned regulations. (NJAW)

RESPONSE: Please see the response to comment 24 above.

29. COMMENT: Please clarify how N.J.A.C. 14:3-3A.2(i)(3), by which a utility “may require submittal of a recertification by the physician as to the continuing nature of the medical emergency after 30 days,” is related to N.J.A.C. 14:3-3A.2(i) wherein “[d]iscontinuance of residential service for nonpayment is prohibited for up to 60 days if a medical emergency exists within the residential premises, which would be aggravated by a discontinuance of service” with respect to the establishment of a medical emergency and the time period for suspending discontinuance of service. Specifically, if the physician’s recertification pursuant to N.J.A.C. 14:3-3A.2(i)(3) indicates that there exists a medical emergency that is different from the medical emergency referenced in the physician’s statement provided pursuant to N.J.A.C. 14:3-3A.2(i)(2), could this situation necessitate the computation of a new, up-to-sixty-day period of the suspension of discontinuance of service under the existing rules, which would go beyond the originally-anticipated 60-day period? Or, would such a situation necessitate a petition by the affected customer to the BPU? (NJAW)

RESPONSE: Please see the response to comment 24 above.

30. COMMENT: N.J.A.C. 14:3-3A.2(i)(4) states in relevant part that “at the end of such period of emergency, the customer shall remain liable for payment for all service(s) rendered...” Please confirm that the end of the period of medical emergency is determined by information within the physician’s statement/recertification/note, as that document is described within N.J.A.C. 13:3-3A.2(i)(2), 13:3-3A.2(i)(3), and 13:3-3A.2(j), if this period is indicated therein to be less than the 60-day maximum. (NJAW)

RESPONSE: Please see the response to comment 24 above.

SUBCHAPTER 4. METERS

31. COMMENT: N.J.A.C. 14:3-4.6 should be clarified. The previous response to comments regarding this rule stated that the amendments are intended “to encourage utilities to strive for meter accuracy” as the Board has observed that “some utilities tend to have problems keeping current with required testing and maintenance of meters”. (See Response to Comment 154). As proposed, this regulation does not provide for the use of a different calculation in situations involving a meter that was timely tested versus situations in which a meter was not timely tested. A gross-up factor should be included in the calculations that are utilized for a meter that was timely tested or replaced in accordance with BPU regulations and would also result in a more accurate determination of the amount charged in error as a result of meter inaccuracies. Please see Attachment A for an example of how this gross-up factor should be applied. Regarding N.J.A.C. 14:3-4.6(c)(2), in order to determine the applicable time period, if the date the meter became inaccurate is not known, the time period between the date a new meter was installed and the date of the most recent previous test of the meter should also be included as an option. The inclusion of this second means of determining the applicable time period will take into account situations where utility policy is to install new meters rather than testing the meters at issue. (The commenter attached a table of figures showing their suggested alternative calculation methods.) (NJAW)

RESPONSE: While the primary goal of these provisions is to ensure that utilities comply with testing schedules, the provisions are also intended to place the responsibility for meter accuracy on the entity with the most control over the meter. There may be times when meters become inaccurate despite full utility compliance and careful testing. In such cases, the utility, not the customer, is most able to detect the problem, and is empowered to correct the problem once it is discovered. In such a case, the Board believes that requiring the utility to repay the customer places the responsibility on the entity most able to remedy the meter problem, while simultaneously meeting the above-described goal of encouraging compliance with meter testing requirements. The Board also believes that the most appropriate way to address problems with prompt meter testing is to increase the period during which overcharges must be returned to the customer. Calculating adjustments based on overcharges during a period that ends only when a meter is tested will work as an incentive to utilities to promptly test meters taken out of service in order to ensure quick resolution of any possible overcharge problems. However, the Board did not intend to require a utility to pay a customer for charges based on an inaccurate meter after that meter has been removed from the customer’s premises and replaced. This would clearly be a perversion of the intent of the provision. Therefore, the rule has been modified to allow for an end to the applicable period in a case of meter replacement, even though the final test of the meter may not yet have occurred. It should be noted, however, that all meters must be tested prior to their retirement from service in accordance with N.J.A.C. 14:3-4.7(c)6. One additional change made on adoption is a clarification in N.J.A.C. 14:3-4.6(c)2ii that the term “maximum time between meter tests” always refers to the maximum permitted time.

32. COMMENT: Regarding the calculations that are to be made under N.J.A.C. 14:3-4.6 for a fast-running meter for which the date that it first became inaccurate is not known, N.J.A.C. 14:3-4.6(c)3 states that the utility is to “ [d]etermine the total charges that accrued during the applicable time period determined under (c)2 above.” With regard to the reference to the charges within (c)3, please clarify whether these charges refer to the charges that have been billed to the customer. (NJAW)

RESPONSE: The phrase “the total charges that accrued during the applicable time period determined under (c)2 above” refers to all charges paid by the customer during the applicable time period. The intent of this provision is to reimburse a customer that has overpaid for utility service because of a meter inaccuracy. If it is possible to determine the exact amount of the overpayment, the utility must reimburse the customer for that exact amount. However, in many cases the exact amount of the overpayment cannot be determined because the duration of the meter inaccuracy is not definitely known. In such a case, the rules provide a formula for calculating a payment to the customer. The formula is based not only on an approximation of the duration of the inaccuracy, but also on the percentage by which the meter was found inaccurate at its most recent test.

33. COMMENT: We continue to be concerned by the change in N.J.A.C. 14:3-4.7 that would in effect eliminate the 6 year limit on the time period for which a utility must keep adjusted charges for meter errors. Under N.J.A.C. 14:3-6.1(b), the rules require only a minimum of six years of customer records. However under the adjustment rules in this section, the only way to complete the calculation in some cases would be to have access to data in excess of the 6 years. We request that the language be clarified to clearly state the time period during which a utility may adjust charges for meter errors. We respectfully request that the timeframe be set at 6 years. (NJUA) (NJAW)

RESPONSE: The commenter is correct that the meter adjustment provisions will require that some customer records be kept for more than six years in order to calculate adjustments for meter errors. The Board believes that this is not an undue burden, and that it is necessary to ensure fairness to customers and utility attention to meter accuracy.

SUBCHAPTER 7. BILLS AND PAYMENTS FOR SERVICE

34. COMMENT: N.J.A.C. 14:3-7.1(f) -- Mandating the use of a particular font is unnecessary and burdensome for companies that currently use a different font style. Requiring the use of a particular typeface would necessitate unnecessary expense and time to retool the utility’s billing process. Large and/or bold fonts make it more likely that bills will be longer and require additional pages. The Board has not identified any complaints or a need for the use of a specific font, especially for commercial customers. We suggest that the language be changed to remove the font type and size requirement. Overall, utilities should have flexibility regarding the appearance of their bills as long as the bills are clear and legible. If the requirement is not removed, it should be limited to residential customers only, as non-residential

customers can be reasonably expected to know that the services are regulated by the Board of Public Utilities; and have competitive options that ensure they can get bills in a form that meets their needs. (NJCTA) (NJUA)

RESPONSE: Please see the response to comment 35 below.

35. COMMENT: N.J.A.C. 14:3-7.1(f): We thank the Board and staff for reducing the font requirement to an Arial 18 point font, but we continue to be concerned over the font size requirement. The 18 point font will still require the use of an additional page for many utilities with a resulting increase in printing and postage costs. We suggest that the font type and size requirement be replaced with a statement that: "This text shall be printed in type with a font or weight of equal or greater size than that of surrounding text." (NJUA) (VZ) (MBQ) (ETG)

RESPONSE to comments 34 and 35: N.J.A.C. 14:3-7.1(f) is intended to ensure that this information is noticeable. The Board has determined that it is not necessary to mandate font style, however requiring a size 18 font is appropriate. The Board believes that requiring only that the font be equal to the surrounding text will not achieve the intended purpose, and this change has not been made upon adoption. The Board believes that the requirement as proposed and adopted strikes an appropriate balance between the interests of the utility in minimizing costs and the interests of residential customers for adequate information regarding billing. Regarding the suggestion to limit the requirement to residential customers, the Board does generally provide for more flexibility in arrangements between the utility and its non-residential customers, and this suggestion is consistent with that Board policy. However, this change cannot be made upon adoption. Therefore, the Board will make this change in a future rulemaking.

36. COMMENT: The requirement in N.J.A.C. 14:3-7.1(b) for a Spanish statement is unnecessary and could impose additional costs on the provider to change their billing practices. The additional requirement is unnecessary because N.J.A.C. 14:3-7.1(b) already requires each utility to provide customers an option to receive discontinuance notices in Spanish. If the requirement is not removed, it should be limited to residential customers only. (NJCTA)

RESPONSE: The Board must balance the goal of access for speakers of other languages against the need to minimize cost for all ratepayers. A Spanish-speaking customer who is unaware that they may be in arrears, or who is being shut off erroneously, may not have thought it necessary to request discontinuance notices in Spanish. The required statement on the discontinuance notice is a reasonable way to ensure that such a customer can address any error or arrears situation promptly. Many utility marketing materials are routinely provided in Spanish. A utility that obtains revenues from serving Spanish-speaking customers has an obligation to provide appropriate service to those customers. Regarding the suggestion to limit the requirement to residential customers, the Board does generally provide for more flexibility in arrangements between the utility and its non-residential customers, and this suggestion is consistent with that Board policy. However, this change cannot be made upon adoption.

37. COMMENT: N.J.A.C. 14:3-7.1(g) should be modified to eliminate the boldface type requirement. Printing the message in boldface type may confuse non-Spanish speaking customers. A customer who cannot read the statement may think since it is in bold type, it is a number that they must call. Further customer confusion may result when they call and reach a Spanish speaking representative. (VZ)
RESPONSE: The Board believes that the importance of maximizing customer awareness of the statement of customers' rights outweighs the risk that some customers may unnecessarily call the utility. Therefore, the suggested change has not been made upon adoption.

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. The amendments adopted herein 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 the adoption of these amendments.

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

SUBCHAPTER 3A. Discontinuance and restoration of service

14:3-3A.5 Winter termination program for residential electric and gas service

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

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

1. (No change.)
2. (No change from proposal.)
3. Upon a finding by the Board staff that tampering did occur, the utility shall give written notification to the customer, by certified mail, return receipt requested *[,]*
; and to the local public welfare agency and the local municipal health agency, by regular mail, as to the date upon which service to the customer shall be terminated. Said notification shall be made at least seven days prior to the date of the proposed service termination. The utility shall further advise the customer in the written notification that if he or she claims to be dependent on life sustaining equipment, the customer must *[furnish a physician's certificate]* *comply with the procedures for medical emergencies at N.J.A.C. 14:3-3A.2(i) and (j)* within the

aforementioned seven-day period*[, wherein the condition requiring such equipment is identified and verified]* Any customer that wishes to dispute a discontinuance based upon a finding that tampering has occurred may file a petition with the Board in accordance with N.J.A.C. 14:1-5*; and

4. (No change.)

(j) (No change.)

SUBCHAPTER 4. METERS

14:3-4.6 Adjustment of charges for meter error

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

(c) If the date when the meter first became inaccurate is not known, the adjustment shall be determined as follows:

1. (No change.)

2. Determine the applicable time period as follows:

i. Determine the period of inaccuracy; that is, the period between the test that found the meter inaccuracy and *the earlier of the events at (1) or (2) below (Note: The period of inaccuracy may be longer than the time the meter has served the existing customer):

(1) The* *[the]* most recent previous test of the meter*[*] *; or

(2) The date upon which the meter was taken out of service at the customer's premises* *[The period of inaccuracy may be longer than the

time the meter has served the existing customer]*;

ii. Perform the following calculation:

(A) If the period of inaccuracy determined under (c)2i is shorter than the maximum permitted time between meter tests, as determined under N.J.A.C. 14:5-3.2, 14:6-4.2, or 14:9-4.1(b), divide the period of inaccuracy in half;

(B) If the period of inaccuracy is longer than the maximum permitted time between meter tests, divide the maximum *permitted* time between meter tests in half; then add the difference between the maximum *permitted* time between meter tests and the period of inaccuracy;

iii. - iv. (No change.)

3. - 4. (No change.)

(d) - (f) (No change.)