

SUBCHAPTER 5. QUALIFIED JOURNEYMAN ELECTRICIANS

13:31-5.5 Continuing education requirements

(a) Upon triennial registration renewal, a qualified journeyman electrician shall attest that he or she has completed *[10]* *15* credit hours of continuing education on the most recent edition of the National Electrical Code. Falsification of any information submitted on the registration renewal application may require an appearance before the Board and may subject the registrant to disciplinary action as set forth at N.J.S.A. 45:1-21 et seq. Falsification of any information submitted on the registration renewal application by a qualified journeyman electrician who is also a licensed electrical contractor may also result in the suspension or revocation of his or her electrical contracting license. A licensed electrical contractor who satisfies the requirements at N.J.A.C. 13:31-1.7 shall be deemed to have satisfied the requirements of this section.

1. The *[10]* *15* credit hours shall be conducted in-person. Webinars and electronic media distance learning courses shall not satisfy this requirement.

(b)-(g) (No change.)

PUBLIC UTILITIES

(a)

BOARD OF PUBLIC UTILITIES

Rules of Practice

Readoption with Amendments: N.J.A.C. 14:1

Proposed: September 19, 2022, at 54 N.J.R. 1778(a).

Adopted: January 11, 2023, by the New Jersey Board of Public Utilities, Joseph L. Fiordaliso, President, Mary-Anna Holden, Dianne Solomon, Robert M. Gordon, and Dr. Zenon Christodoulou, Commissioners.

Filed: January 31, 2023, as R.2023 d.028, with non-substantial changes not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 47:1A-1 et seq., 48:2-12, and 52:27F-18.

BPU Docket Number: AX21121240.

Effective Dates: January 31, 2023, Readoption;
March 6, 2023, Amendments.

Expiration Date: January 31, 2030.

Summary of Public Comments and Agency Responses:

The Board of Public Utilities (“Board” or “BPU”) received written comments from: Comcast Cable Communications, LLC (Comcast); New Jersey Division of Rate Counsel (RC); New Jersey American Water Company (NJAWC); and SJI Companies (South Jersey Gas Company (SJG) and Elizabethtown Gas Company (ETG) filed comments as wholly owned subsidiaries of SJI Industries, Inc.).

General Comments

1. COMMENT: The commenter welcomes the proposed amendments at N.J.A.C. 14:1 that would permit the electronic filing of communications, petitions, and other documents as a meaningful modernization of the Board’s regulations. (Comcast)

RESPONSE: The Board thanks Comcast for its support.

2. COMMENT: The commenter strongly supports the proposed amendments permitting electronic filing, namely, the proposed amendments at N.J.A.C. 14:1-1.3 (defining “electronically filed”), 1.6 (amending certain subsections to facilitate ordinary-course electronic filing of “[a]ll communications, including formal pleadings, correspondence, and other papers”), 1.6A (amending certain subsections to permit electronic filing of comments on rule proposals), and 4.2A (deleting paragraph (b)4 to eliminate redundant paper-filing requirements for electronically filed documents). (Comcast)

RESPONSE: The Board thanks Comcast for its support.

SUBCHAPTER 1. GENERAL PROVISIONS

N.J.A.C. 14:1-1.2 Construction and Amendment

3. COMMENT: The commenter described the current waiver requirements at N.J.A.C. 14:1-1.2(b)2 and referenced its prior proposal that the Board permit waiver applicants to contact the Board Secretary “electronically, via e-mail” to ease the burden on applicants and preserve resources. The commenter notes that the Board accepted this suggestion in its published notice of proposal. The commenter supports the proposed change because they will ease the procedural burden on applicants without lessening the standards at paragraph (b)2 and because it is consistent with other changes to Chapter 1 that include e-filing, such as at N.J.A.C. 14:1-1.6 and 1.6A. (RC)

RESPONSE: The Board thanks Rate Counsel for its support.

N.J.A.C. 14:1-1.4 Offices and Hours

4. COMMENT: Pursuant to proposed N.J.A.C. 14:1-1.4, the ninth-floor designation in the mailing address for the Board’s records custodian is being removed. The commenter supports this modification, as it is consistent with the other amendments made throughout Chapter 1 to reflect the current mailing address of the Board’s records custodian. The commenter also supports this change as consistent with N.J.A.C. 14:1-12.5(b). (RC)

RESPONSE: The Board thanks Rate Counsel for its support.

N.J.A.C. 14:1-1.6 Communications

5. COMMENT: The commenter urges the Board to add language mandating that all pleadings and any communications in rate matters be served upon the Division of Rate Counsel. Many pleadings and other documents are not served upon Rate Counsel until days or weeks after they are filed with the Board. This delay harms the Rate Counsel’s ability to participate fully and adequately in proceedings, especially in cases involving legislatively shortened timeframes for the Board to act. The commenter suggests adding a subsection (c) stating that, “Service of all communications and pleadings must be made upon the Division of Rate Counsel on the same day that papers are filed at the Board.” (RC)

RESPONSE: The Board agrees as Rate Counsel has articulated that all pleadings and any communications in rate matters be served upon Rate Counsel. However, service upon Rate Counsel in said instances is set forth at existing N.J.A.C. 14:1-4.5. Notwithstanding, in recognition of Rate Counsel’s concerns, the Board will include a specific reference to Rate Counsel at N.J.A.C. 14:1-4.5, which addresses service.

6. COMMENT: The commenter supports the proposed changes at N.J.A.C. 14:1-1.6(a) and (b), as they are consistent with both current modern technology and the interests of ratepayers and all public utility consumers. Consumers should be able to communicate with the Board using whatever medium is accessible to them. To strengthen the Board’s suggestion, the commenter recommends adding sentences at N.J.A.C. 14:1-1.6(b) and (c) suggesting that consumers save or print copies of webpages confirming that their communications have been received by the Board. The commenter also suggests changes to account for interruptions in power or problems with the external access portal or public documents portal. Accordingly, the commenter proposes the following major language changes at N.J.A.C. 14:1-1.6(b): (1) changing “submitted” to “sent” to determine when communications are deemed officially received by the Board Secretary; (2) adding the phrase “the Board’s public document system” as a filing option; (3) removing the reference to “the postmarked date of the communication” for communications mailed to the Board Secretary; (4) removing the words “by hand delivery”; and (5) adding language recommending that individuals print and electronically save copies of webpages that confirm the Board’s receipt of the filing or document attempts to electronically submit such filing. The recommended language is as follows: “(b) All communications, except for comments on rule proposals, or other communications specifically exempted by rule, or by waiver, pursuant to N.J.A.C. 14:1-1.2(b), shall be deemed to be officially received when [submitted] sent to the Board Secretary by email, filed electronically through the Board’s External Access Portal, uploaded to the Board’s public documents system or alternatively mailed to the Secretary [when delivered] at the office [of the Board or electronically pursuant to N.J.A.C. 14:1-4.2A] B[b]ut [a Commissioner or] the Secretary [or an Assistant

Secretary] of the Board may in his or her discretion receive papers and correspondence for filing. [Comments on rule proposals shall be deemed to be officially received in accordance with N.J.A.C. 14:1-1.6A.] Individuals are encouraged to print and electronically save copies of webpages either confirming that their communications have been received by or uploaded to the Board's External Access Portal or public documents system or, in the case of a power interruption or problem with the Board's online portals, documenting attempts to electronically submit." (RC)

RESPONSE: The Board declines Rate Counsel's suggestion to modify the rule. Rate Counsel's suggested language regarding saving or printing copies of webpages at N.J.A.C. 14:1-1.6(b) and (c) offers good business practices that, while beneficial, is not a required action and, therefore, is not appropriate to incorporate into a rule. Rate Counsel recommends as an unenforceable voluntary practice that the parties may employ. Regarding Rate Counsel's suggested additional language at N.J.A.C. 14:1-1.6(b), the recommendations are stylistic and not considered changes needed to enhance the intent of the rules. Furthermore, only comments on rule proposals submitted pursuant to N.J.A.C. 14:1-1.6A and not communications pursuant to N.J.A.C. 14:1-1.6 are technically designed to be filed through the Board's public document search tool.

N.J.A.C. 14:1-1.6A Submittal of Comments on Rule Proposals

7. COMMENT: The proposed regulations would incorporate technology by allowing comments on rule proposals to be made electronically. Like the proposed changes to other communications to the Board, the commenter supports these amendments as both consistent with current modern technology and the interests of public utility consumers. However, the commenter urges the Board to add language mandating that all comments in rule proposals be served upon the Division of Rate Counsel because any delay would harm the commenter's ability to participate fully and adequately in rulemaking proceedings. The commenter suggests adding a subsection (e) stating that, "Service of all comments on rule proposals must be made upon the Division of Rate Counsel on the same day that papers are filed at the Board." (RC)

RESPONSE: The Board denies Rate Counsel's proposed modification. To require that Rate Counsel be served comments simultaneously when filing with the Board would place an additional requirement on filers. All commenters are treated in the same manner and are asked to submit comments to the Board through the Office of the Secretary by the date reflected in the notice of proposal. The comments are uploaded to the public document search system for all interested parties to review. Accordingly, adding an additional service requirement to the rules is not appropriate.

8. COMMENT: The commenter recommends adding a sentence at N.J.A.C. 14:1-1.6A(d)1 suggesting that consumers electronically save or print and save copies of webpages confirming either that their comments have been received by the Board or that they made a timely, bona-fide attempt to submit. The modified language would read as follows:

(d) The date upon which a comment on a rule proposal shall be deemed received shall be as follows: 1. The date upon which the Board receives the comment at the e-mail address set forth in the published proposal or if electronically filed, the date of submission. Individuals are encouraged to print and electronically save copies of webpages either confirming that their communications have been received by or uploaded to the Board's External Access Portal or public documents system or, in the case of a power interruption or problem with the Board's online portals, documenting attempts to electronically submit. (RC)

RESPONSE: The Board declines to make Rate Counsel's proposed modification. Rate Counsel's recommendation offers good business practices that, while beneficial, are not appropriate to incorporate into a rule since the proposed recordkeeping practices are voluntary and, thus, unenforceable.

N.J.A.C. 14:1-1.7 Official Records

9. COMMENT: The Board's modifications in this section would allow members of the public to obtain copies of Board rules, orders, decisions, and reports by email without a fee, or by mail upon payment of the appropriate fees. The commenter supports the addition of language

allowing the public to request documents by email without a fee and recommends adding the following language:

"All reports published on the Board's website should include language indicating their specific URL, if applicable at time of publication. N.J.A.C. 14:1-1.7(c)." (RC)

RESPONSE: The Board declines to make the Rate Counsel's request as unnecessary. Reports posted on the Board's website contain a URL link that directs the reader to the document.

N.J.A.C. 14:1-1.8 Cameras and Recording Devices

10. COMMENT: The changes at N.J.A.C. 14:1-1.8 would substitute the term "fitting dignity" with the word "proper" at subsection (a), which relates to the conduct of Board proceedings. The commenter is not opposed to this change on its face, but it is unclear on the intended difference between the terms or why the Board has determined such a change is necessary. (RC)

RESPONSE: The Board thanks Rate Counsel for its support. The Board believes the change from "fitting dignity" to "proper" is necessary to modernize the conduct of Board proceedings. The term "fitting dignity" is not widespread and, thus, not clear. The change is a minor revision to the language without any substantive change to the parties' conduct in proceedings before the Board.

SUBCHAPTER 2. FEES AND CHARGES

N.J.A.C. 14:1-2.2 Payment of Fees and Charges

11. COMMENT: The proposed changes in this section would clarify that fees should only be charged for filing hard copies of documents or for requesting hard copies of filed documents. Specifically, N.J.A.C. 14:1-2.2(a) would be modified to include the word "hard." The commenter supports this change as internally consistent with Subchapter 1 and not overly burdensome. (RC)

RESPONSE: The Board thanks Rate Counsel for its support and notes that the modifications reflect that no petitions, reports, notices, or other documents will be accepted for filing and no request for hard copies will be granted unless the filings and requests are accompanied by the payment of required fees or charges as provided by law.

SUBCHAPTER 4. PLEADINGS

N.J.A.C. 14:1-4.2 Number of Copies

12. COMMENT: The proposed changes in this section would reduce the number of additional hard copies of pleadings that need to be filed with the Board from 10 to one. This amendment benefits both ratepayers who may file pleadings before the Board and lowers costs for utilities. Therefore, the commenter supports these amendments as ones that will reduce monetary and logistical burdens on ratepayers. (RC)

RESPONSE: The Board thanks Rate Counsel for its support.

N.J.A.C. 14:1-4.4 Defective Pleadings

13. COMMENT: The Board is not proposing any changes to this section. The commenter, however, suggests adding language that would allow the Board or Board staff to reject incomplete or defective pleadings. This language would benefit the utilities, Board staff, and ratepayers by saving time and resources. If the Board or Board staff believe that a pleading is deficient, it is better for the petitioner and other parties to address that issue in the initial stages of the filing rather than wait until parties have taken substantive positions. Procedurally, this change will allow for a more efficient processing of matters before the Board. The commenter suggests the following language: "The Board or Board Staff may reject deficient pleadings that fail to meet the minimum filing or other basic requirements and will send such deficient pleadings back to the original filer with clear instructions on how to correct the deficiencies." N.J.A.C. 14:1-4.4. (RC)

RESPONSE: The Board declines to make Rate Counsel's proposed modification. The existing rule sufficiently addresses the Board's ability to deem a pleading deficient. Additionally, pursuant to N.J.A.C. 14:1-5.4(b), the Board may refuse to consider any deficient petition and may also issue an order dismissing such petition. The burden of curing the deficiency rests with the filer.

N.J.A.C. 14:1-4.5 Service and Notice of Proceedings

14. COMMENT: The commenter urges the Board to add language mandating that all pleadings, petitions, and tariff filings, together with any attachments, be served upon the Division of Rate Counsel under the commenter's proposed N.J.A.C. 14:1-4.8, Service upon Rate Counsel; 5.2, Applications to other regulatory bodies; 5.6, Petitions for the approval of the sale or lease of property; 5.9A, Criteria for proposed security issues; and 5.12, Tariff filings or petitions that propose increases in charges to customers. Similar to other pleadings, communications, and comments in rulemakings, the commenter notes that any delay harms its ability to participate fully and adequately in Board proceedings. For each section, the commenter suggests language as follows:

a. N.J.A.C. 14:1-4.8 Service upon Rate Counsel

The commenter suggests adding new N.J.A.C. 14:1-4.8, stating that, "Service of complete pleadings, together with any attachments to those pleadings, must be made upon the Division of Rate Counsel on the same day that papers are filed with the Board."

b. N.J.A.C. 14:1-5.2 Applications to other regulatory bodies

The commenter suggests adding new N.J.A.C. 14:1-5.2(a)4, stating that, "Service of complete petitions, together with any attachments to those pleadings, must be made upon the Division of Rate Counsel on the same day that papers are filed with the Board."

c. N.J.A.C. 14:1-5.6 Petitions for the approval of the sale or lease of property

The commenter suggests adding new N.J.A.C. 14:1-5.6(1), stating that, "Service of complete petitions for the sale or lease of property, together with any attachments to those pleadings, must be made upon the Division of Rate Counsel on the same day that papers are filed with the Board."

d. N.J.A.C. 14:1-5.9A Criteria for proposed security issues

The commenter suggests adding new N.J.A.C. 14:1-5.9A(c), stating that, "Service of complete petitions for authority to issue stocks, bonds, notes, or other evidence of indebtedness, together with any attachments to those pleadings, must be made upon the Division of Rate Counsel on the same day that papers are filed at the Board."

e. N.J.A.C. 14:1-5.12 Tariff filings or petitions that propose increases in charges to customers

The commenter suggests adding new N.J.A.C. 14:1-5.12(a)11, stating that, "Service of all tariff filings or complete petitions that propose increases in charges to customers, together with any attachments to those pleadings, must be made upon the Division of Rate Counsel on the same day that papers are filed with the Board." (RC)

RESPONSE: The Board declines to make the Rate Counsel's requests to add service language to five sections at N.J.A.C. 14:1. Service upon Rate Counsel in said instances is set forth in the existing text at N.J.A.C. 14:1-4.5. Notwithstanding, in recognition of Rate Counsel's concerns, the Board will include a specific reference to Rate Counsel at N.J.A.C. 14:1-4.5(a)4 (as referenced in prior comments), which addresses service and notice of proceedings, consistent with Rate Counsel's statutory jurisdiction pursuant to N.J.S.A. 52:27EE-48.

SUBCHAPTER 5. PETITIONS**N.J.A.C. 14:1-5.9A Criteria for Proposed Security Issues**

15. COMMENT: N.J.A.C. 14:1-5.9A(a) concerns Board approval of security issuances by public utilities in New Jersey. The proposed changes at N.J.A.C. 14:1-5.9A(a) state that the Board "shall approve proposed security issues ..." The commenter objects to this change because petitions regarding security issues should not be automatically approved. Indeed, it directly contradicts the prior addition of "shall determine what security issues may be made by public utilities in the State of New Jersey." Therefore, the commenter suggests changing this language to reflect that the Board "may" approve proposed security issues. (RC)

RESPONSE: The Board declines to make the Rate Counsel's request to change the proposed language from "shall" to "may." As noted in the Board's notice of proposal, the proposed inclusion of the word "shall" at

N.J.A.C. 14:1-5.9A(a) is derived from the statutory language at N.J.S.A. 48:3-9(a). Furthermore, the Board only grants approval pursuant to N.J.A.C. 14:1-5.9A(a) provided the Board, after investigation, is satisfied that proposed issues are in accordance with law and provided the Board approves the purpose of said proposed issues. Thus, contrary to Rate Counsel's assertion, approval is not automatic.

N.J.A.C. 14:1-5.12 Tariff Filings or Petitions that Propose Increases in Charges to Customers

16. COMMENT: Although the commenters understand that the Board's intention is to harmonize its regulations with the decision of the Appellate Division holding that 100 percent of benefits from any consolidated tax adjustment (CTA) should be enjoyed by ratepayers, the commenters recommend eliminating proposed N.J.A.C. 14:1-5.12(a)10 and determining that the Board will no longer utilize a CTA in establishing utility base rates. (SJI Companies and NJAWC)

RESPONSE: The Board believes that it is appropriate for ratepayers to share in the benefits of a consolidated tax return, and it would be inappropriate to eliminate this section of the rules. This is reasonable in light of how consolidated tax savings occur. If a company has negative taxable income on its Federal income tax return (loss company), the Internal Revenue Service (IRS) would not send a check to that company for negative taxes due. The only thing the loss company could do on an individual basis is to apply it against future or prior year's taxable income under IRS carry forward/carry backward provisions. If the loss company does not have prior year taxable income, it would not be able to benefit from the loss until sometime in the future, and then only if the loss company has positive income within the timeframe allowed by the IRS. Absent a structural reorganization, if the loss company does not have positive taxable income within the allowed timeframe, the benefit would be lost entirely. However, if the loss company files a consolidated tax return with an affiliated company that has positive taxable income, the taxable loss of the loss company could be offset against the positive taxable income of the affiliate (positive affiliate), thus reducing the taxes payable to the IRS currently and achieving tax savings. This is exactly the issue here. Utility parent companies often file consolidated tax returns in order to achieve on a current basis the tax benefit of offsetting the positive affiliates' taxable income with the loss affiliates' taxable loss. In some of these cases, the tax paid by the New Jersey regulated utility to the parent company exceeds the taxes paid to the IRS by the parent company. If the CTA were eliminated, as proposed by the commenter, none of the consolidated tax savings would flow to the regulated utility customers.

17. COMMENT: If the Board does not eliminate the CTA, the commenter recommends that the Board modify the proposed regulations to make it clear that the Board has flexibility to determine how the CTA will be established in future rate cases based on individual facts and circumstances. Specifically, the commenter proposes to make the following edits to the proposed N.J.A.C. 14:1-5.12(a)10 (deletions in brackets; additions in boldface):

"A CTA provides a mechanism that the Board [will] **may** utilize in rate cases, so that ratepayers [should] **may** share a specified portion of the tax savings achieved from the filing of a consolidated tax return."

In addition, the commenter proposes to add the following sentence to this section, "The Board will determine whether and to what extent a CTA will be required in individual rate proceedings based on individual facts and circumstances." The commenter argues that these edits would allow the State's utilities to propose, and allow the Board to consider, whether a CTA should include or exclude certain entities, assets, income, expenses, or other tax elements such that the calculated CTA reflects only the utility's "proper share" of the consolidated tax savings. Additionally, the commenter believes the CTA should be changed because it unreasonably disincentivizes investments by New Jersey utilities. The commenter notes that in the 2014 order that modified the CTA policy, the Board recognized that the CTA policy should be changed to encourage economic growth and improve the investment climate in the State (*In re the Board's Review of the Applicability and Calculation of a Consolidated Tax Adjustment*, BPU Docket No. EO12121072, Order dated December 17, 2014). Moreover, the Board found that changes to the Internal Revenue Code to incentivize wind, solar, renewables, manufacturing, and

research and development had caused the CTA to increase to the point where its continued use would discourage investment in clean energy technologies, contrary to the State's policies for energy and economic growth. *Id.* The commenter argues that this continues to be the case today. The commenter recommends that the Board eliminate the CTA to maximize the State's utilities and their unregulated affiliates' incentives to invest in clean energy technology without concern that such investments will generate CTA adjustments. (SJI Companies)

RESPONSE: N.J.A.C. 14:1-1.2(b) states that "[i]n special cases and for good cause shown, the Board may, unless otherwise specifically stated, relax, or permit deviations from these rules." Therefore, it is not necessary to modify the proposed rules to make it clear that the Board has flexibility to permit deviations from this rule in special cases and for good cause shown pursuant to N.J.A.C. 14:1-1.2(b). Furthermore, the Board believes that the current CTA methodology is appropriate, ensures that customers receive only the proper amount of the benefit from the filing of the consolidated tax return, and does not unreasonably disincentivize investments by New Jersey utilities. As noted by the commenter, in the 2014 order that modified the CTA policy, the Board recognized that the CTA policy should be changed to "encourage economic growth and improve the investment climate in the State" (*In re the Board's Review of the Applicability and Calculation of a Consolidated Tax Adjustment*, BPU Docket No. EO12121072, Order dated December 17, 2014). However, the Board did not choose to eliminate the CTA. In the order, the Board found that "New Jersey regulated utilities, as part of holding companies, are required to reduce rates as a result of a CTA applied during base rate cases to reflect certain tax savings realized by the holding company." Further, the Board changed the CTA methodology to limit the rate base adjustment to five years. The "rate base" method essentially treats the tax benefits derived by the parent company as cost-free capital contributed by ratepayers, with the carrying costs associated with the "loan" credited to ratepayers. The change in methodology essentially means that customers only get carrying costs on the consolidated tax benefit for five years. This change was designed to encourage economic growth and improve the investment climate in New Jersey, while balancing this goal with the need to ensure that customers are allowed to benefit from the filing of a consolidated tax return. As such, the Board declines to adopt the commenter's proposed change.

18. COMMENT: The commenter disagrees with the CTA methodology set forth in this section. The commenter believes that the methodology has multiple flaws, including the fact that it is based on prior years and, therefore, retroactive. In addition, the commenter raises concerns about the methodology's "impact on rate base, the additional 'penalty' of the theoretical tax benefit multiplied by its weighted overall pre-tax cost of capital, double-counting of tax benefits already taken into account by other regulators, and ignoring the effect of affiliates that have been sold or ceased operations." Further, the commenter believes the CTA improperly commingles jurisdictional and non-jurisdictional assets and expenses and double counts benefits already conferred on customers in other jurisdictions. If the Board does not eliminate the CTA, the commenter recommends the following changes:

- The CTA calculation should remove the net operating loss (NOL) being carried forward as of the date and for the period of the look back; otherwise, the CTA is employing a NOL that has not been realized;
- The CTA should not include the tax benefits generated by regulated utility group members that have already been included in their respective rates; otherwise, the CTA would include benefits that are duplicative and, therefore, hypothetical;
- The CTA should also remove the losses generated by group members that are no longer, or will no longer be, members of the group for the period the CTA would be effective, as such "losses" have been rendered hypothetical and not relevant to the future period when rates are in effect; and
- The CTA should remove the losses generated by non-regulated group members that would have been allocable and able to be utilized by the non-regulated group.

The commenter included examples of its concerns with the CTA methodology in its comments, which the commenter believes support its position. (NJAWC)

RESPONSE: The rate base method of calculating a CTA is not retroactive ratemaking. The CTA is reflected in rate base, which is made up of balances that have built up over a period of time. This does not constitute retroactive ratemaking because these adjustments are not made to offset previous rates, but to continue to pass along to consumers the cumulative tax benefits. Moreover, the Board earlier addressed the question of retroactive ratemaking with respect to the Consolidated Tax Savings methodology and has determined that it does not represent retroactive ratemaking (*In re Petition of Atlantic City Electric Company for Approval of Amendments to its Tariff to Provide for an Increase in Rates and Charges for Electric Service Phase II*, BPU Docket No. ER90091090J, Order dated October 20, 1992). Specifically, the Board noted that the CTA methodology does not represent retroactive ratemaking (*Id.* at 6). Further, in the 1993 JCP&L Order, the Board further found that "[t]he rate base approach properly compensates ratepayers for the time value of money that is essentially lent cost-free to the holding companies in the form of tax advantages" and this method is supported by past Board Orders (*In re the Petition of Jersey Central Power and Light Co. for Approval of Increased Base Tariff Rates and Charges for Electric Service and Other Tariff Revisions*, BPU Docket No. ER91121820J, Order dated June 15, 1993, at 8 (1993 JCP&L Order)). Regarding the commenter's other arguments against the current CTA methodology, it is important to note that the CTA adjustment is for only five years. Because the CTA is calculated using the rate base method, customers only get carrying costs on the consolidated tax benefit, not the actual amount of the consolidated tax savings. After the five years of carrying costs, customers no longer receive any benefit from the consolidated tax savings. Furthermore, there is no double counting by including affiliates with taxable losses from other jurisdictions in the calculation. The consolidated tax savings occur solely because a consolidated tax return was filed that includes the positive taxable income affiliates. The loss affiliates would not have been able to receive the benefit of their taxable losses in the year they were incurred without filing a consolidated return with companies that had positive income. The current CTA methodology allocates the savings to the positive income companies by the portion of the total positive income that each company provides. This is the most appropriate way to allocate the savings and this is fully within the Board's jurisdiction. The customers of the New Jersey utility with positive taxable income are entitled to benefit from the consolidated tax savings because the positive income that was produced by rates that they paid contributed to the positive income that is necessary to achieve the consolidated tax savings. Therefore, allowing customers to benefit from the consolidated tax savings through the CTA is a matter of fairness, and not a penalty to the company. Regarding companies that are no longer part of the consolidated group, the same logic applies. Those companies could not have benefited from their taxable losses in the year they were incurred without filing with companies that had positive income. The rate base approach properly compensates ratepayers for the time value of money that is essentially lent cost-free to the holding companies in the form of tax advantages. The actual consolidated tax savings dollars are not given to customers. Regarding the examples given by the commenter, if the commenter believes that there are special circumstances that the Board should consider in a specific rate case that would affect the CTA (like prior year NOL carryovers, the sale of affiliates, and the creation of LLCs), the commenter should present that information in the specific rate case, wherein it can be supported by testimony, thoroughly examined by the parties and subject to discovery and cross-examination. This would allow for a complete record before a decision was made utilizing the data. Regarding the commenter's example (not reproduced in the comment summary above) that described \$46 million of tax losses, \$9.6 million of consolidated tax savings (\$46M x 21 percent) and a \$2.1 million CTA, if this information were presented in a rate case, the Board would want to consider, among other things, the revenue requirement impact of the rate base CTA. Although the commenter did not provide it with their example, the revenue requirement impact would likely be about \$200,000 based on the fact that rate base adjustments generally result in revenue requirement impacts of about 9.5 to 10.5 percent depending upon the specific company's cost of capital. The Board would then consider the appropriateness of customers getting a \$200,000 benefit from a \$9,600,000 total tax benefit, as well as other information that could be

brought to light in a case with a completely developed record, such as the number of years a tax benefit was produced from the consolidated return that included the utility before the loss affiliate was sold. As such, the Board declines to make the commenter's proposed changes. Please also see the Response to Comment 16, regarding why the Board believes that it is appropriate to utilize a CTA and the Response to Comment 17, regarding why the Board believes that the current CTA methodology is appropriate, ensures that customers receive only the proper amount of the benefit from the filing of the consolidated tax return, and does not unreasonably disincentivize investments by New Jersey utilities.

19. COMMENT: The commenters state that New Jersey is one of two states that utilizes CTAs to set rates, and the other state, West Virginia, uses a different method. FERC stopped using CTAs in 1983. While the fact that the other states do not employ a CTA is not binding on the Board and there is no statute that requires the Board to utilize a CTA, the commenters suggest that the CTA is no longer reasonable to employ for ratemaking and recommend eliminating the CTA. (SJI Companies and NJAWC)

RESPONSE: The public utility commissions in other states are not empowered by the New Jersey statutes; they are empowered by the laws of their respective states. The Board is not bound by the laws of other states or the actions of other public utility commissions and will not opine on the appropriateness of the decisions made by other state commissions or the compliance of those public utility commissions with the laws that are applicable to those commissions. The Board is empowered to utilize CTA adjustments, and the Board makes CTA adjustments to ensure that ratepayers share in the benefit of filing a consolidated tax return. As early as 1952, the courts recognized that a utility attempting to establish its proper operating income level in a rate proceeding is "entitled to an allowance for actual taxes and not for higher taxes that it would pay if it filed on a different basis." *New Jersey Power & Light Co. v. P.U.C.*, 9 N.J. 498, 528 (1952). The Board temporarily stopped making CTAs from the late 1980s, when there was some question regarding whether or not CTAs were inconsistent with the normalization requirements of the Internal Revenue Code (Code), until 1991 when the IRS issued a statement clarifying that they are not inconsistent with the normalization requirements of the Code (I.R.S. Gen. Couns. Mem. (Sept. 9, 1991)).

Ratepayers must not pay a "phantom" tax that never goes to the IRS. New Jersey State courts have recognized the Board's policy requiring that consolidated tax savings be passed along to consumers. *Lambertville Water Co. v. N.J. Board of Pub. Util. Comm'rs*, 153 N.J. Super. 24, 28 (App. Div. 1977), *rev'd in part on other grounds*, 79 N.J. 449 (1979). In *Lambertville*, the court noted that the BPU Commissioners have "the power and the function to take into consideration the tax savings flowing from the filing of the consolidated return and determining what proportion of the consolidated tax is reasonably attributable to [the utility]." *Id.* at 28-29.

The Board's policy to make CTAs has been long standing. In reaffirming its consolidated tax savings policy in the 1993 JCP&L Order, the Board stated that it:

believes that it is appropriate to reflect a consolidated tax savings adjustment where ... there has been a tax savings as a result of the filing of a consolidated tax return. Income from utility operations provide the ability to produce tax savings for the entire GPU system because utility income is offset by the annual losses of the other subsidiaries. Therefore, the ratepayers who produce the income that provides the tax benefits should share in those benefits. The Appellate Division has repeatedly affirmed the Board's policy of requiring utility rates to reflect consolidated tax savings and the IRS has acknowledged that consolidated tax adjustments can be made and there are no regulations which prohibit such an adjustment. *1993 JCP&L Order* at 7-8.

In the 1993 JCP&L Order, the Board further found that "[t]he rate base approach properly compensates ratepayers for the time value of money that is essentially lent cost-free to the holding companies in the form of tax advantages" and this method is supported by past Board orders. 1993 JCP&L Order at 8. The Board reaffirmed this approach in its 2004 Rockland Electric Decision finding that "if a utility is part of a conglomerate which profits by consequential tax benefits from the

utility's contributions, the utility customers are entitled to have a computation of their fair share of those benefits reflected in their utility rates" (*In re the Petition of Rockland Electric Company for Approval of Changes in Electric Rates, its Tariff for Electric Service, its Depreciation Rates, and for Other Relief*, BPU Docket No. ER02100724, Order dated April 20, 2004, at 64 (2004 Rockland Electric Decision)). Thus, the Board declines to eliminate the CTA.

20. COMMENT: The Board should eliminate the CTA as there is no sound reason why a utility's recoverable tax expense should not be based solely upon the financial results of its own operations, which are reflected in the rates its customers pay, not those of affiliates for which customers of the utility do not bear any cost or risk. The Board should recognize that the CTA Decision does not require the Board to reflect a CTA or use any particular methodology. As set forth in the Superior Court of New Jersey, Appellate Division's decision in *In re Adopted Amendment to N.J.A.C. 14:1-5.12 (Tariff Filings or Petitions which Propose Increases in Charges to Customers)* (the CTA Decision), (No. A-3621-18 (App. Div. June 7, 2021), available at <https://www.njcourts.gov/system/files/court-opinions/2021/a3621-18.pdf?bcs-agent-scanner=20b0dee2-cef9-7e4d-b9bf-5c1fc57b2cfl>), the Board has broad discretion to apply a CTA in any number of ways or to decline to apply a CTA at all. As the Appellate Division stated in the CTA Decision:

[t]he Board "has the power and discretion to choose any of the foregoing general approaches or any other approach which rationally determines petitioner's effective tax rate," unless it "plainly contravenes" the governing statutes ... We further explained that the Board is not required "to utilize any particular method," as long as the method has "a rational relationship with ... [the] determination of the actual tax liability" and the Board "articulate[s] its rationale for choosing [that] specific method of computation."

CTA Decision at 16 (citing *Toms River Water Co. v. N.J. Board of Pub. Util. Comm'rs*, 158 N.J. Super. 57, 60-61 (App. Div. 1978)) (This decision was reversed on other grounds. See 82 N.J. 201 (1980)).

The commenter submits that the Board should use the discretion afforded to it, as recognized in the CTA Decision, to eliminate the CTA and determine that recoverable taxes in utility rate proceedings should be determined on a standalone basis. The commenter argues that the only requirement that the CTA Decision imposes upon the Board is that if it arrives at the determination of a CTA, it must allocate one hundred percent of the CTA to utility customers (See CTA Decision at 17 ("Allocating to shareholders any portion of the CTA—the amount in which the Board found the utility's tax expense to be 'hypothetical'—would make the ratepayers bear a hypothetical tax expense to that extent, in violation of case law precedent.")).

The commenter also cites various cases from other states in support of its recommendation to eliminate the CTA. (SJI Companies)

RESPONSE: Please see the Response to Comment 16 for a detailed explanation of why the Board believes that it is appropriate for ratepayers to share in the benefit of filing a consolidated tax return. See the Response to Comment 19, which addresses the Board's legal authority to utilize a CTA. The commenter's assertion that there is no sound reason why a utility's recoverable tax expense should not be based solely upon the financial results of its own operations is flawed.

To determine a utility's recoverable tax expense solely upon the financial results of its own operations is the same as arguing that customers should receive benefits of zero percent of the CTA. This is contrary to the CTA Decision that the commenter cited to, which states, "Allocating to shareholders any portion of the CTA—the amount in which the Board found the utility's tax expense to be 'hypothetical'—would make the ratepayers bear a hypothetical tax expense to that extent, in violation of case law precedent." CTA Decision at 17.

21. COMMENT: Eliminating the CTA would not require customers to pay hypothetical taxes because eliminating the CTA would ensure that when utility rates are set, customers will be required to pay the same amount of taxes that they would pay on a standalone basis to the utility if there were no consolidated tax filing. (SJI Companies)

RESPONSE: The Board continues to maintain that the CTA is an appropriate mechanism. The CTA ensures ratepayers share in the benefits of consolidation, which accounts for the real set of facts that help set the

utility's tax amount. This approach has been accepted by the judiciary of this State because a utility attempting to establish its proper operating income level in a rate proceeding is "entitled to an allowance for actual taxes and not for higher taxes which it would pay if it filed on a different basis." *New Jersey Power & Light Co. v. P.U.C.*, 9 N.J. 498, 528 (1952); see *Toms River Water Co.*, 158 N.J. Super. 57 (App. Div. 1978); *Lambertville Water Co.*, 153 N.J. Super. at 28 (App. Div. 1977).

22. COMMENT: N.J.A.C. 14:1-5.12(a)10 has been changed to mandate that, as part of a rate case, a utility's rate base shall be reduced by 100 percent of the full CTA. The commenter is in agreement that 100 percent of the calculated CTA be reflected in rates. (RC)

RESPONSE: The Board thanks Rate Counsel for its comment.

23. COMMENT: The commenter does not agree with the five-year look-back period in the draft rule. Instead, the commenter recommends the Board adopt a longer look-back period, such as 20 years. The commenter asserts that the Board has not provided the basis for its selection of this time period. The commenter recommends the Board now do so. Furthermore, based on the commenter's experience with recent rate cases, such as a short look-back period can, and sometimes does, lead to a CTA of zero dollars (\$0), which the Board acknowledges is impermissible. The commenter urges the Board to reconsider its selection of such a short time period, and instead adopt a look-back period, such as 20 years. The Board should also make clear that this filing requirement is not intended to limit the scope of discovery during review of the petition so that parties may explore and petition for a different lookback period. (RC)

RESPONSE: As discussed in the Response to Comment 17, in the 2014 order that modified the CTA policy, the Board recognized that the CTA policy should be changed to encourage economic growth and improve the investment climate in the State (*In re the Board's Review of the Applicability and Calculation of a Consolidated Tax Adjustment*, BPU Docket No. EO12121072, Order dated December 17, 2014). The Board changed the CTA methodology to limit the rate base adjustment to five years in that order. The Board has broad discretion in its policy decisions. The Board believes that the current CTA methodology, including the five-year time period, is appropriate, ensures that customers receive only the proper amount of the benefit from the filing of the consolidated tax return, provides stakeholders with a reasonable basis for tax planning purposes, and does not unreasonably disincentivize investments by New Jersey utilities.

SUBCHAPTER 8. CONTESTED CASE HEARINGS

N.J.A.C. 14:1-8.7 Motions and Answers on Rehearing

24. COMMENT: The proposed change of adding "reopening and reconsideration" to the section heading at N.J.A.C. 14:1-8.7 would clarify the section's purpose. The commenter has no objection to this clarification. Also proposed is the addition of a new paragraph clearly stating the 45-day requirement to file an appeal of a Board Order at the Appellate Division. The addition also provides direct reference that this statutory time limit is found in the Rules Governing the Courts of the State of New Jersey and information regarding filing an appeal can be obtained from the Superior Court of New Jersey. The commenter has no objection to the Board's addition of this clarifying paragraph. (RC)

RESPONSE: The Board thanks Rate Counsel for its support.

SUBCHAPTER 12. PROCEDURES FOR DETERMINING THE CONFIDENTIALITY OF SUBMITTED INFORMATION

N.J.A.C. 14:1-12.3 Procedure for Making a Confidentiality Claim

25. COMMENT: N.J.A.C. 14:1-12.3 requires, among other things, that the confidential version of documents claimed to be confidential must be sealed in two physical envelopes, the inner one labeled confidential, and also specifies the means by which the physical envelope must be sent to the Board. This requirement alone suffices to preclude the electronic filing of documents claimed to be confidential. To facilitate a meaningful transition to electronic filing, so that electronic filers can claim confidentiality without having to submit the filed documents in paper form, the Board should change N.J.A.C. 14:1-12.3(c) through (g) to establish new procedures for claiming confidentiality in filings submitted via email or through the Board's external access portal. Specifically, the

commenter recommends adding new subsection (e) to permit filers to claim confidentiality by including the word "CONFIDENTIAL" in the file name of electronically submitted documents. The commenter seeks: the elimination of the following language at subsection (c), "in a manner which shall be clearly visible on photocopies of the confidential copy"; the addition of the following language at subsection (d), "[i]f the claimant sends a physical copy of the information claimed to be confidential to the Board"; and the addition of the following language at newly proposed subsection (e), "If the information claimed to be confidential is electronically filed, the claimant shall include the word "CONFIDENTIAL" in the file name of the submitted document. The claimant shall request that the custodian verify by email confirmation that the submission has been received." The commenter also seeks the addition of "or electronic submission" at subsections (e) and (f). (Comcast)

RESPONSE: The Board agrees with Comcast's recommendation and agrees that it facilitates electronic filing of communications, petitions, and other documents as a meaningful modernization of the Board's rules. The Board will change subsections (c) through (g) as Comcast recommended. Accordingly, for clarification, the Board will replace the word "blacked out" with "redacted" at subsection (b).

N.J.A.C. 14:1-12.5 Correspondence, Inquiries, and Notices

26. COMMENT: The proposed amendments at N.J.A.C. 14:1-12.5(b), the ninth-floor designation in the mailing address for the Board's records custodian is being removed. The commenter supports this modification as being consistent with the other amendments made throughout Chapter 1 to reflect the current mailing address of the Board's records custodian. The commenter also supports this change as consistent with N.J.A.C. 14:1-1.4. (RC)

RESPONSE: The Board thanks Rate Counsel for its support.

27. COMMENT: N.J.A.C. 14:1-12.5 mandates that all confidentiality claims and correspondence related thereto be sent to a designated physical mailing address. This requirement alone suffices to preclude the electronic filing of documents claimed to be confidential. Specifically, the commenter recommends that all correspondence, inquiries, notices, and submissions concerning confidentiality claims under this subchapter shall be electronically filed by the claimant or directed to the custodian. (Comcast)

RESPONSE: The Board agrees with Comcast's recommendation and agrees that it facilitates electronic filing of communications, inquiries, and other submissions as a meaningful modernization of the Board's regulations. The Board will make the changes at N.J.A.C. 14:1-12.5 as proposed by Comcast to reflect that all correspondence, inquiries, notices, and submissions concerning confidentiality claims pursuant to this subchapter may be electronically filed by the claimant or directed to the custodian.

N.J.A.C. 14:1-12.8 Substantiation of Confidentiality

28. COMMENT: First, subsection (b) requires that the information furnished to substantiate a confidentiality claim pursuant to subsection (a) "shall be supported by an affidavit from a person with personal knowledge of the information, certifying its truth and accuracy." By requiring an affidavit, the rules implicitly also require that the substantiation be notarized. In the decentralized work environments that have become commonplace since the beginning of the pandemic, notarization requirements add unnecessary time, expense, and logistical complexity to the filing process. While such a requirement might not be onerous on an exceptional basis, New Jersey cable companies file dozens of reports, petitions, and other documents each year that necessitate confidentiality claims. The cumulative drain on employee time and financial resources that results from the notarization requirement is unnecessary. The purpose of subsection (b), to ensure that an individual at the claimant company takes responsibility for the truth and accuracy of the confidentiality substantiation, can be achieved by requiring the filing of a certification rather than an affidavit. As Board staff is aware, verification of the signer's identity is the primary purpose of notarization. Certifications are routinely accepted in other contexts and by other State and Federal agencies, and there is no known issue regarding that an individual signing a certification on behalf of a regulated entity might be someone other than the identified signer. (Comcast)

RESPONSE: The Board declines to make Comcast's recommendation. Comcast's request is vague in that it does not define what it means by a "certification." It provides no rule or law defining certification, nor does it propose any language for the Board's consideration. Furthermore, it does not explain how a certification would provide the same assurance of accuracy, truthfulness, and reliability as an affidavit, which is a signed and sworn statement subject to perjury rules. A certification does not assure the identity of the signer making representations on behalf of the entity. As such, the affidavit requirement in the rules is necessary and appropriate.

29. COMMENT: The commenter recommends that the Board qualify N.J.A.C. 14:1-12.8(c) to provide that it is not necessary to comply with subsections (a) and (b) in order to avoid waiver of a prior confidentiality claim in either of two circumstances: (i) if a claimant is merely resubmitting a document containing information already claimed to be confidential; and (ii) if a claimant is responding to a staff letter of inquiry request related to information already claimed to be confidential. In such instances, the requirement to file an additional confidentiality substantiation in order to avoid waiver virtually always results in the unnecessary and duplicative submission of explanations already on file with the Board. The resubmitted filing will contain minor changes or corrections and, therefore, the original confidentiality substantiation accurately and adequately explains why the information resubmitted should be treated as confidential. Where a resubmitted filing or response to a staff letter of inquiry request contains confidential information not described in the initial confidentiality substantiation, the commenter recommends that subsection (c) be amended to allow claimants to supplement their original claim for confidential treatment. (Comcast)

RESPONSE: The Board declines to make Comcast's recommendation as the request assumes that all resubmissions are minor corrections. Further, the suggested modification would improperly shift to the Board the claimant's burden of substantiating and maintaining confidentiality of information contained in various filings. As the owner of the confidential information, the claimant bears sole responsibility for maintaining such status, whether submitted under different petitions, filings, and dockets before the Board or whether the filing constitutes a resubmission of information. It is the claimant's responsibility, not that of Board staff, to request confidential treatment to protect the claimant's information. Finally, Comcast's argument erroneously assumes that there may never be any change in the status of information deemed confidential. The law or other obligation could change, or Comcast could change the status of information previously deemed confidential.

30. COMMENT: The commenter recommends that the Board add new subsection (e) providing that confidentiality substantiations pursuant to subsections (a) and (b) are waived for outage report filings and that such filings are presumptively confidential, subject to a confidentiality determination pursuant to N.J.A.C. 14:1-12.9. The commenter states that since 2004, the Federal Communications Commission (FCC) extended this presumption of confidentiality for outage reports, and the commenter strongly encourages the Board to follow the FCC in determining that all outage reports are presumptively confidential. The commenter's concern is that the requirement of an affidavit could delay getting time-sensitive information to Board staff, possibly resulting in enforcement exposure for the cable operator. For example, a cable operator might have to hold an email reporting an outage that is ready to be sent to Board staff until an affidavit is produced, the appropriate signatory (that is, one with personal knowledge of the reasons for the claim of confidentiality and corporate authorization to sign) is located, a notary is located, and the affidavit is signed in the notary's presence. The commenter notes that issues related to outage report confidentiality will extend beyond the cable television industry and that a fully satisfactory resolution of this issue requires a knowledge of utility regulations beyond the commenter's area of expertise. The commenter, therefore, recommends generally that the Board designate "Outage Reports" as a defined term at N.J.A.C. 14:1-1.3 and that this term be defined to include all appropriate outage reporting provisions for each of the industries and utilities regulated by the Board. That definition should specifically include "all reports submitted to the Office of Cable Television and Telecommunications pursuant to N.J.A.C. 14:18-6.6." (Comcast)

RESPONSE: The Board declines to make Comcast's recommendations. Comcast's suggestion is overbroad and unsupportable, as it would require the creation of a definition for "Outage Reports," which would apply not only to cable providers, but would encompass all regulated entities under the Board's jurisdiction, and presumptively designate all such reports as confidential. To our knowledge, other utilities regulated by the Board do not currently seek confidential treatment of outage reports. The proposed modification is not sufficiently justified and does not reflect the current practice of similarly situated entities regulated by the Board. The Board's confidentiality rules are necessary to ensure both that confidential information is not inadvertently disclosed and that information subject to public disclosure is not inadvertently withheld. Accordingly, the Board does not believe that outage reports merit such a distinction in the rules. Furthermore, contrary to Comcast's representations, Comcast only requests confidential treatment of information contained in monthly outage reports, which are filed with the Board Secretary's office—not outage notification emails, which is sent to Board staff only. Thus, Comcast's concern with confidential substantiation and affidavits is not as widespread as Comcast depicted.

N.J.A.C. 14:1-12.18 Payment for Copies

31. COMMENT: Pursuant to the proposed amendment at N.J.A.C. 14:1-12.18(b), the use of credit cards as an option for making a payment for copies is no longer permitted. The options for payment still include "cash, by check[,] or money order." An amendment is also included in this subsection indicating that "[a]ccess to electronic records and non-printed materials shall be provided free of charge" pursuant to the Open Public Records Act. While the commenter appreciates the Board pointing out that ratepayers are afforded the statutory right to obtain materials electronically at no charge, some ratepayers may not have access to the technology to obtain the documentation in such a manner or would simply prefer to obtain hard copies. Accordingly, the proposed amendment is not in the interest of ratepayers since it removes an option for payment for copies that is perhaps the most convenient. The commenter recommends continuing to permit the use of a credit card for making payments for copies. (RC)

RESPONSE: As stated in the notice of proposal, a credit card payment option is unavailable. For the Board to offer a credit card as a payment option for copies is very expensive and administratively burdensome given the vendor fees the Board must pay per transaction for a relatively small dollar amount and the accompanying administrative cost of having an employee process the payment. The expense of such an option is outweighed by the infrequency of the request. Thus, the Board declines to make the suggested change.

Federal Standards Statement

N.J.S.A. 52:14B-22 through 24 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. N.J.A.C. 14:1 is not promulgated under the authority of, or in order to implement, comply with, or participate in any program established pursuant to Federal law or pursuant to a State statute that incorporates or refers to Federal law, Federal standards, or Federal requirements. Accordingly, N.J.S.A. 52:14B-1 et seq., does not require a Federal standards analysis for the rules readopted with amendments.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 14:1.

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

SUBCHAPTER 1. GENERAL PROVISIONS

14:1-1.2 Construction and amendment

(a) (No change.)

(b) In special cases and for good cause shown, the Board may, unless otherwise specifically stated, relax or permit deviations from this chapter.

1. (No change.)

2. Any person or entity seeking waiver of any of the Board's rules or parts thereof shall apply, in writing, or electronically, through email, to

the Secretary of the Board. A request for waiver shall include the following:

- i.-iii. (No change.)
- 3. (No change.)
- (c) (No change.)

14:1-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Electronically filed” means submitted to the Board Secretary through the Board’s External Access Portal, <https://www.nj.gov/bpu/agenda/efiling/>, or emailed to Board.Secretary@bpu.nj.gov.

14:1-1.4 Offices and hours

(a) The statutory office of the Board and the Secretary are located at 44 South Clinton Avenue, PO Box 350, Trenton, New Jersey 08625-0350.

(b)-(c) (No change.)

14:1-1.6 Communications

(a) All communications, including formal pleadings, correspondence and other papers, shall be submitted to the Board Secretary by email, filed electronically through the Board’s External Access Portal, hand delivered, or mailed to the Secretary, Board of Public Utilities, 44 South Clinton Avenue, PO Box 350, Trenton, New Jersey 08625-0350.

(b) All communications, except for comments on rule proposals, or other communications specifically exempted by rule, or by waiver pursuant to N.J.A.C. 14:1-1.2(b), shall be deemed to be officially received when submitted to the Board Secretary by email, filed electronically through the Board’s External Access Portal, or the postmarked date of the communication, if mailed to the Secretary at the office address listed at (a) above. The Secretary may, in his or her discretion, receive by hand delivery papers and correspondence for filing.

14:1-1.6A Submittal of comments on rule proposals

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

(c) Comments on rule proposals shall be filed electronically through the Board’s External Access Portal; uploaded through the Board’s Public Document Search tool; emailed to Board.Secretary@bpu.nj.gov; or sent by hand delivery or regular mail, on or before the date identified in the rule proposal published in the New Jersey Register. All electronically filed documents shall be submitted in Microsoft Word or PDF format with text that is searchable and able to be copied and pasted.

(d) The date upon which a comment on a rule proposal shall be deemed received shall be, as follows:

1. The date upon which the Board receives the comment at the email address set forth in the published proposal or, if electronically filed, the date of submission;
2. The date upon which the comment is hand delivered to the Secretary; or
3. (No change.)

14:1-1.7 Official records

(a) (No change.)

(b) Copies of rules and orders and decisions of the Board will be furnished by the Secretary by email or by regular mail upon payment of appropriate fees.

(c) Copies of official Board annual reports or other reports will be furnished by the Secretary, or its designee, by email or by regular mail upon payment of appropriate fees.

(d) (No change.)

14:1-1.8 Cameras and recording devices

(a) Proceedings before the Board shall be conducted with proper decorum.

(b)-(g) (No change.)

SUBCHAPTER 2. FEES AND CHARGES

14:1-2.2 Payment of fees and charges

(a) No petition, report, notice, or other document will be accepted for filing, and no request for hard copies of any forms, pamphlets, or

documents will be granted, nor action taken by the Board, unless such filings and requests are accompanied by the required fees or charges, as provided by law.

(b) All checks for payment of such fees and charges shall be made payable to the order of “Treasurer, State of New Jersey” and delivered or mailed to the Secretary of the Board, or designee, 44 South Clinton Avenue, PO Box 350, Trenton, New Jersey 08625-0350. The check shall include a description as to the nature of the payment.

SUBCHAPTER 3. APPEARANCE BEFORE THE BOARD

14:1-3.1 Appearances

Any person appearing before or transacting business with the Board in a representative capacity may be required by the Board to file evidence of his or her authority to act in such capacity, subject to the provisions at N.J.A.C. 1:1-5.1, 5.2, and 5.4.

14:1-3.3 Former employees

(a) No former member or employee of the Board of Public Utilities or member of the Attorney General’s Office assigned to the Board of Public Utilities may appear before the Board or engage with Board staff in a representative capacity by writing letters, sending emails, making phone calls, making physical appearances, or serving as an expert witness, on behalf of any third-party, except for the State or a third-party engaged by the Board of Public Utilities to perform work on its behalf under its control and direction, at any time within six months after separation from the Board of Public Utilities or the Office of the Attorney General.

(b) After the expiration of the six-month period, no former member or employee of the Board of Public Utilities or member of the Attorney General’s Office assigned to the Board of Public Utilities may appear in a representative capacity, by writing letters, sending emails, making phone calls, making physical appearances, or serving as an expert witness, on behalf of any third-party, except for the State or a third-party engaged by the Board of Public Utilities to perform work on its behalf and under its control and direction, at any time in any specific cause, proceeding, application, or matter wherein the former employee or member had direct and substantial involvement while associated with the Board of Public Utilities.

SUBCHAPTER 4. PLEADINGS

14:1-4.2 Number of copies

(a) Unless otherwise required by the Board, there shall be filed with the Board for its own use, an original and one conformed copy of each pleading or other document and amendment thereof, when filed by hard copy.

(b) (No change.)

14:1-4.2A Electronic filing

(a) The filing requirements of this subchapter shall not apply to any electronically filed pleading or other document and amendment thereof submitted through the electronic filing program established by the Board.

(b) The requirements of the electronic filing program established by the Board shall include, but not be limited to:

1. (No change.)

2. Electronically submitted documents shall be deemed as officially filed upon submission; and

3. Any portion of the filing submitted by hard copy shall be subject to the provisions at N.J.A.C. 14:1-4.2.

14:1-4.3 Attachments to pleadings

(a) All balance sheets, income statements, and journal entries submitted with pleadings must conform to the applicable Uniform System of Accounts.

(b) This section shall not apply to entities exempted by the Federal Communications Commission from using the Uniform System of Accounts as specified at N.J.A.C. 14:10-1A.13.

14:1-4.5 Service and notice of proceedings

(a) Unless otherwise provided for by statute or in *[these rules]* ***this chapter*** or unless otherwise ordered or permitted by the Board, the following provisions shall govern:

1.-2. (No change.)

3. Every other pleading, including all answers, replies, notices, briefs*,* and other papers, shall be served by the party filing the same, whether a utility or other regulated entity or not, on all other parties of record concurrently with or prior to the filing thereof; *[and]*

4. Every pleading and attachment in rate and/or tariff matters, including all answers, replies, notices, briefs, and other papers, shall be served by the party filing the same, whether a utility or other regulated entity, or not, on the Division of Rate Counsel on the same day that papers are filed at the Board; and

[4.] *5.* (No change in text.)

SUBCHAPTER 5. PETITIONS

14:1-5.2 Applications to other regulatory bodies

(a) Where the relief sought in a petition also requires the approval or authorization of any other State or Federal regulatory body, the petition to the Board shall so state and include the following:

1.-2. (No change.)

3. If such an application or amendment thereof is filed with another State or Federal regulatory body subsequent to the date of filing with the Board but prior to its determination, a copy of such application or amendment thereof, together with a copy of any order or certificate issued relating thereto, shall be filed with the Board and served upon other parties of record.

14:1-5.6 Petitions for the approval of the sale or lease of property

(a) Petitions for the approval of the sale, conveyance, or lease of real or personal property, or the granting of an easement, or like interest therein as required by law shall conform to the provisions at N.J.A.C. 14:1-4, 5.1, 5.2, 5.3, and 5.4 to the extent applicable, and shall, in the body thereof, or in attached exhibits, also provide the following information:

1. An original and one copy of a separate sheet or sheets designated Schedule "A" containing a description of the property;

i.-ii. (No change.)

2.-15. (No change.)

(b)-(h) (No change.)

(i) Upon request by a utility, and in accordance with the general purposes and intent of this section, the Board shall grant said utility a waiver to the advertising requirement set forth at (b) above, if:

1.-7. (No change.)

(j)-(k) (No change.)

14:1-5.9 Petitions for authority to issue stocks, bonds, notes, other evidence of indebtedness, or to execute mortgages

(a) Petitions for authority to issue any stocks, bonds, notes, or other evidence of indebtedness, payable in more than one year from the date thereof, and to execute mortgages shall conform to the provisions at N.J.A.C. 14:1-4, 5.1, 5.2, 5.3, and 5.4, to the extent applicable, and shall in the body thereof, or in the attached exhibits, provide the following information:

1.-5. (No change.)

6. Where one of the purposes is to reimburse the treasury for expenditures not previously capitalized by the issuance of securities, the petitioner shall also show the exact period and amount for which reimbursement is desired; comparative financial statements that shall include, at a minimum, balance sheets and utility plant by accounts as at the beginning and end of the period, as well as changes in the period, and, in the case of utility plant, additions and retirements shall be stated separately for each year; a statement indicating the source and application of funds during the period; a statement indicating the manner in which the petitioner proposes to use the proceeds from the security issue; and the necessity and reasonableness of the proposed transaction;

7.-14. (No change.)

(b) (No change.)

14:1-5.9A Criteria for proposed security issues

(a) The Board shall determine what security issues may be made by public utilities in the State of New Jersey (N.J.S.A. 48:3-9). The Board, after investigation, including a hearing at the Board's discretion, shall approve proposed security issues; provided, the Board is satisfied that

proposed issues are in accordance with law, and provided the Board approves the purpose of said proposed issues.

(b) Various cases involving the approval of proposed security issues have been acted upon by the Board pursuant to law. An analysis of many of these cases discloses certain general principles upon which these applications should be determined. These general principles will control unless and until good reason can be shown for departing therefrom. For the information of public utilities petitioning or intending to petition for the approval of security issues, certain of these general principles are set forth, as follows:

1. (No change.)

2. The purpose of a proposed issue is not commendable and will not carry the Board's approval where the issue, if approved, would result in an evasion of mandatory statutory provisions governing the issue, sale, and delivery of securities.

3.-9. (No change.)

14:1-5.11 Tariff filings which do not propose increases in charges to customers

(a) Tariff filings for the purpose of making effective initial tariffs or revisions, changes, or alterations of existing tariffs; and which are not filed because of the need for additional revenue from products or services covered by existing tariffs; and which do not propose increases in charges to customers, shall conform to the provisions at N.J.A.C. 14:1-4.2A, 5.1, 5.2, 5.3, and 5.4, to the extent applicable, and shall, in the body thereof, or in attached exhibits, also provide the following information:

1. The proposed tariff or revision, change, or alteration thereof, together with an explanation of the manner in which the tariff or change differs from the existing or prior tariff, and the effect, if any, upon revenue;

2.-5. (No change.)

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

(a) Tariff filings or petitions for the purpose of making effective or making revisions, changes, or alterations of existing tariffs; and which propose to increase any rate, fare, toll, rental, or charge to alter any classification, practice, rule, or regulation as to result in such an increase, other than filings to effectuate the operation of an existing fuel or raw materials adjustment clause, shall conform to the provisions at N.J.A.C. 14:1-4.2A, 5.1, 5.2, 5.3, and 5.4, to the extent applicable; and shall in the body thereof, or in attached exhibits, contain all applicable information and data set forth at N.J.A.C. 14:1-5.11; and, in addition, shall contain the following information and financial statements, which shall be prepared in accordance with the applicable Uniform System of Accounts:

1.-6. (No change.)

7. In providing the information required at (a)5 and 6 above, a company may also file, in addition to the new rates proposed to become effective, alternative rate changes designed to produce the full revenue request, which alternatives are illustrative of the application of other possible rate designs to the filing;

8. An itemized schedule showing all payments or accruals to affiliated companies or organizations and to those who own in excess of five percent of the utility's capital stock regardless of the form or manner in which such charges are paid or accrued and an explanation of the service performed for such charges;

9. A copy of the form of notice to customers; and

10. If a company is part of a family of companies that files a consolidated Federal income tax return, that company shall include in its petition a consolidated tax adjustment (CTA) calculation using the rate base method, which allows the parent company to keep certain tax savings, while requiring the petitioner to reflect the savings by reducing the rate base upon which the utility's return is determined. The CTA calculation must include all supporting information and documents necessary for the Board to determine and implement an appropriate CTA calculation pursuant to this section. A CTA provides a mechanism that the Board will utilize in rate cases, so that ratepayers should share a specified portion of the tax savings achieved from the filing of a consolidated tax return. Required information and supporting documents include, but are not limited to, a schedule showing each affiliate company's taxable income/loss by year, an indication whether the affiliate is a regulated

utility company or not, the statutory Federal income tax requirement for each year, if any, and the alternative minimum tax requirement for each year, if any. The review period for the CTA calculation shall be for five consecutive tax years, including the complete tax year within the utility's proposed test year. The calculated CTA shall be allocated, so that the rate base shall be reduced by 100 percent of the full CTA. The transmission portion of an electric distribution company's income shall not be included in the calculation of CTA.

(b) Each utility that makes a filing pursuant to (a) above shall, unless otherwise ordered or permitted by the Board, give notice thereof, as follows:

1. Serve a notice of the filing and a copy of the proposed tariff or a copy of the petition or a statement of the effect of the proposed filing upon the municipal clerk in each of the municipalities in which there is rendered a service, the charge for which is proposed to be increased, the clerk of the Board of County Commissioners of each affected county and, where appropriate, the executive officer of each affected county;

2. Serve a notice of the filing and two copies of the petition or tariff on the Department of Law and Public Safety, Division of Law, Public Utilities Section, R.J. Hughes Justice Complex, 25 Market St., 7th Floor West, PO Box 112, Trenton, NJ 08625 and on the Director, Division of Rate Counsel, 140 East Front Street, 4th Floor, PO Box 003, Trenton, New Jersey 08625;

3. (No change.)

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

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

1. Serve written notice of the intended provisional rate increase at least 30 days in advance of the provisional rate increase, but not earlier than 75 days in advance of the provisional rate increase, upon:

i.-ii. (No change.)

iii. The Department of Law and Public Safety, Public Utilities Section, 25 Market Street, PO Box 112, Trenton, NJ 08625;

iv. (No change.)

v. The clerk of the Board of County Commissioners of each county where the utility renders service;

vi.-ix. (No change.)

2.-4. (No change.)

(g)-(k) (No change.)

14:1-5.13 Informal complaint in lieu of petition

(a) In lieu of filing a petition, an informal complaint may be made by letter, email, electronic filing, or telephone.

(b)-(i) (No change.)

SUBCHAPTER 8. CONTESTED CASE HEARINGS

14:1-8.7 Motions and answers on rehearing, reopening, or reconsideration

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

(e) Appeals of the Board's rulings on a motion for rehearing, reopening, or reconsideration must be made to the Appellate Division within 45 days of the Board's Order. The Rules Governing the Courts of the State of New Jersey provide the rules and procedures for filing the appeal. Information regarding filing an appeal may be obtained from the Superior Court of the State of New Jersey.

SUBCHAPTER 12. PROCEDURES FOR DETERMINING THE CONFIDENTIALITY OF SUBMITTED INFORMATION

14:1-12.3 Procedure for making a confidentiality claim

(a) (No change.)

(b) A claimant shall submit*,* to the custodian*,* a confidential copy and a preliminary public copy, as those terms are defined at N.J.A.C. 14:1-12.2, of the entire record containing asserted confidential information. The preliminary public copy shall carry a notation, in a form to be developed by the custodian, stating that confidential information has been *[blacked out]* *redacted* or deleted. The custodian may disclose the preliminary public copy to any person, without restriction or limitation.

(c) The claimant shall label the first page of the confidential copy "CONFIDENTIAL COPY." At the top of each page of the confidential copy which contains information that the claimant asserts is confidential, the claimant shall place a boldface heading reading "CONFIDENTIAL." The claimant shall clearly underscore or highlight all information in the confidential copy which the claimant asserts to be confidential*[, in a manner which shall be clearly visible on photocopies of the confidential copy]*.

(d) *[The]* *If the claimant sends a physical copy of the information claimed to be confidential to the Board, the* claimant shall seal the confidential copy in an envelope displaying the word "CONFIDENTIAL" in bold type or stamp on both sides.

1. This envelope shall be enclosed in another envelope for transmittal to the custodian. The outer envelope shall bear no markings indicating the confidential nature of the contents.

[(e)] *2.* (No change in text.)

* (e) If the information claimed to be confidential is electronically filed, the claimant shall include the word "CONFIDENTIAL" in the file name of the submitted document. The claimant shall request that the custodian verify by email confirmation that the submission has been received.*

(f) The claimant shall include in the package *or electronic submission,* a written designation of a person to receive notices and other communications. The designation shall include the information required pursuant to N.J.A.C. 14:1-12.4.

(g) The claimant shall include in the package *or electronic submission,* substantiation of the confidentiality claim as described *[in]* *at* N.J.A.C. 14:1-12.8.

14:1-12.5 Correspondence, inquiries, and notices

(a) (No change.)

(b) *[A claimant shall direct all]* *All* correspondence, inquiries, notices, and submissions concerning confidentiality claims pursuant to this subchapter *shall be electronically filed by the claimant or directed* to the custodian at:

Records Custodian
New Jersey Board of Public Utilities
44 South Clinton Avenue
PO Box 350
Trenton, New Jersey 08625-0350

14:1-12.18 Payment for copies

(a) (No change.)

(b) For the convenience of the requester, payment may be made in cash, by check or money order. Access to electronic records and non-printed materials shall be provided free of charge pursuant to N.J.S.A. 47:1A-5.b(1) of the Open Public Records Act.

TREASURY—GENERAL

(a)

NEW JERSEY CANNABIS REGULATORY COMMISSION

Personal-Use Cannabis Rules

Readoption of Specially Adopted Rules with Amendments: N.J.A.C. 17:30

Adopted New Rules: N.J.A.C. 17:30-12, 13, 15, and 20.7

Adopted Recodification with Amendments: N.J.A.C. 17:30-2.2 as 2.3

Proposed: August 1, 2022, at 54 N.J.R. 1470(a).

Adopted: February 8, 2023, by Dianna Houenou, Chair, New Jersey Cannabis Regulatory Commission.

Filed: February 8, 2023, as R.2023 d.034, with non-substantial changes not requiring additional notice or public comment (see N.J.A.C. 1:30-6.3).