

NEW JERSEY BOARD OF PUBLIC UTILITIES

Proposed Amendments to the Rules for Extensions to Provide Regulated Services (aka Smart Growth rules)

N.J.A.C. 14:3-8.1A

BPU Docket Number: AX08110997

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PUBLIC UTILITIES

BOARD OF PUBLIC UTILITIES

All Utilities

Proposed New Rule:	N.J.A.C. 14:3-8.1A
Authorized By:	Board of Public Utilities, Jeanne M. Fox, President; Frederick F. Butler, Joseph L. Fiordaliso, Nicholas V. Asselta and Elizabeth Randall, Commissioners.
Authority:	N.J.S.A. 48:2-13, 48:2-23.
Calendar Reference:	See Summary below for an explanation of exception to calendar requirement.
BPU Docket Number:	AX08110997
Proposal Number:	PRN 2008-

Comments may be submitted through June 5, 2009, through either of the following methods:

- ? Electronically, in Microsoft WORD format, or in a format that can be **easily converted** to WORD, by e-mailing them to the following e-mail address: rule.comments@bpu.state.nj.us; or

- ? On paper to:
 - New Jersey Board of Public Utilities
 - Kristi Izzo, Secretary
 - ATTN: BPU Docket Number: AX08110997**
 - Two Gateway Center
 - Newark, New Jersey 07102

The agency proposal follows:

Summary

The New Jersey Board of Public Utilities ("Board") is proposing a new rule as part of its rules governing extensions of utility service at N.J.A.C. 14:3-8.3. These rules are designed to ensure that its programs reflect State smart growth policy goals by preventing subsidization of sprawl development by utility ratepayers. Specifically, these rules govern how much a utility may contribute to the cost of extending utility service to a development, based on whether the development served by the extension is in a designated growth area under the State Development and Redevelopment Plan (State Plan).

The Board's existing rules permit a utility to contribute a substantial amount towards the cost of extending utility service to new development, if the development is located in a designated growth area under the State Development and Redevelopment Plan (State Plan). However, a person applying for extension of utility service to new development in an area that is not designated for growth under the State Plan must pay the full cost of the extension.

Under N.J.S.A. 52:18A-199, the State Planning Commission is to revise and readopt the State Plan at least every three years. The Office of Smart Growth (staff to the State Planning Commission) has completed many, but not all of the steps necessary to complete this readoption. However, due to a variety of factors, the process is substantially behind schedule, and the State Plan currently in effect dates back to 2001. The cross acceptance process performed as part of the readoption of the State Plan has revealed certain map changes that are necessary and different than the currently effective State Plan planning area and center designations.

This situation has placed some applicants for extensions of utility service in a difficult position, wherein their development may be located in an area that meets the substantive characteristics of a designated growth area, but the area is not yet so designated in the currently effective State Plan. Many applicants have been waiting some time for the redesignation of their properties, and therefore have endured significant delays in pursuing their development projects. Some of these applicants for extension of utility service have received written assurances from the Office of Smart Growth that it will recommend to the State Planning Commission that their properties be redesignated as

growth areas in the upcoming State Plan readoption. (The final redesignation is of course contingent on State Planning Commission approval.)

The proposed new rule would address the situation described above. Specifically, the rule would provide for the Board to issue an order temporarily suspending the application of certain main extension rule provisions if an applicant for an extension can show written assurance from the Office of Smart Growth that their property will be recommended for redesignation as a growth area. To obtain a smart growth suspension order, an applicant must petition the Board and provide a letter from the Office of Smart Growth stating that the property that will be served by the requested utility extension has been recommended to the State Planning Commission for redesignation in the next revision of the State Plan.

A property covered by a temporary smart growth suspension order would be treated by the utility and the Board as a designated growth area under the main extension rules. This would last only until the next readoption of the State Plan. If a property covered by a suspension order is not redesignated as a growth area in the readopted State Plan, the holder of the order must repay the utility for the cost of the extension, recalculated as if the property was in an area not designated for growth. Also, the Board would stop issuing these orders upon the readoption by the State Planning Commission of the revised State Plan.

As the Board has provided a 60-day comment period on the proposed new rule, it is exempt from the rulemaking calendar requirements set forth at N.J.A.C. 1:30-3.1 and 3.2, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed new rules will have a positive social impact by providing relief for applicants for utility extensions who are awaiting redesignation of their properties through the upcoming readoption of a revised State Plan by the State Planning Commission.

Economic Impact

The proposed new rule will have a positive economic impact because it will reduce delays for certain development projects.

Federal Standards Statement

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. require State agencies that adopt, readopt or amend State rules that exceed any Federal standard or requirement to include in the rulemaking document a Federal Standards Analysis. N.J.A.C. 14:8-3 is 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 proposed new rule.

Jobs Impact

The proposed new rule may cause a slight increase in jobs, in that it will reduce delays in certain development projects. However, the number of projects affected will likely be few, so the impact will be minimal.

Agriculture Industry Impact

The proposed new rule is not expected to have any impact on the agriculture industry in New Jersey. It applies only to a small number of development projects.

Regulatory Flexibility Analysis

The proposed new rule will not impose recordkeeping, reporting or other compliance requirements on small businesses. A small business, as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., is a business that has fewer than 100 employees. While some of the planned development projects affected by the rule may involve small businesses, the proposed new rule actually reduces compliance requirements, by allowing these projects to go forward without delay.

Smart Growth Impact

The Board anticipates that the proposed new rule will enable projects in designated growth areas to achieve a benefit as a means to implement the State Plan and ensure the Board's consistency with it. The proposal is carefully crafted to ensure that only projects with written assurance from the New Jersey Office of Smart Growth will be provided with temporary orders of smart growth suspension. Further, should a project area fail to be designated for growth in the readopted State Plan, the rule provides a mechanism for retrospective application of the payment that would have been required in the absence of the temporary suspension order.

Housing Affordability Impact

The Board is presently aware of approximately 410 housing units that will be affected by the new rules. However, additional housing units may also be affected because these rules will apply until the next readoption of the State Plan by the State Planning Commission and it is not clear exactly when the readoption will be completed. The effect of the new rules will be to hasten the date upon which a utility is authorized to contribute financially to the cost of extending utility lines to new development in certain areas. The rules apply to new development in areas that have almost completed redesignation as areas designated for growth. Rather than requiring developments in these areas to await the final official adoption of the redesignation by the State Planning Commission, the new rules allow these developments to be treated as if the redesignation had already been completed.

All housing affected by the proposed new rules will be new development, and it is likely

that most will be built for individual sale, although it is possible that some units may be bought by individuals who intend to rent them out. Based on the location of the affected housing in areas being redesignated from non-growth to areas designated for growth, it is likely that the majority of affected housing units will be detached single family homes, duplexes, or multi-unit attached town homes. The proposed new rules will allow a utility to contribute financially now to the extension of utility lines to qualifying new housing units, rather than waiting for official State Plan redesignation. These rules affect only the timing and not the cost for these housing units.

Smart Growth Development Impact

The Board is presently aware of approximately 410 housing units that will be affected by the new rules. However, additional housing units may also be affected because these rules will apply until the next readoption of the State Plan by the State Planning Commission and it is not clear exactly when the readoption will be completed. The effect of the new rules will be to hasten the date upon which a utility is authorized to contribute financially to the cost of extending utility lines to new development in certain areas. The rules apply to new development in areas that have almost completed redesignation as areas designated for growth. Rather than requiring developments in these areas to await the final official adoption of the redesignation by the State Planning Commission, the new rules allow these developments to be treated as if the redesignation had already been completed.

The rules specifically apply to new construction located in areas undergoing redesignation from a planning area 3 or 4 to a planning area 2 or a designated center. Therefore, any housing affected by the new rules will be new development. The effect of the proposed new rules will be to allow a utility to contribute financially sooner, rather than later, to the extension of utility lines to new housing units (including any affordable housing included in a development) in areas undergoing redesignation to growth areas. These rules affect only the timing of utility financial support for affected developments, and are not expected to directly affect the availability of affordable housing units. Based on the location of the affected housing in areas being redesignated from non-growth to areas designated for growth, it is likely that the types of affected housing units will be detached single family homes, duplexes, or multi-unit attached town homes. It is also likely that most will be built for individual sale, although it is possible that some units may be bought by individuals who intend to rent them out.

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

SUBCHAPTER 8. Extensions to Provide Regulated Services

14:3-8.1A [(Reserved)] Temporary smart growth suspension order

(a) An applicant for an extension that will serve development in an area not designated for growth may, within the time period between {effective date of this rule} and the next immediately following revision and readoption of the State Development and Redevel-

opment Plan (State Plan) by the State Planning Commission, petition the Board for a temporary smart growth suspension order in accordance with this section.

(b) If an applicant for an extension presents a temporary smart growth suspension order issued under this section to a utility, the utility shall not process the application under the rules at N.J.A.C. 14:3-8.6 for extensions to serve development in an area not designated for growth, but instead shall apply the requirements at N.J.A.C. 14:3-8.7 for extensions to development in a designated growth area.

(c) The Board shall issue smart growth suspension orders only until the State Planning Commission readopts the State Plan. After the next readoption of the State Development and Redevelopment Plan (State Plan) by the State Planning Commission following {effective date of this rule}, the Board shall discontinue issuance of temporary smart growth suspension orders.

(d) A petition for a temporary smart growth suspension order shall meet the requirements for a petition at N.J.A.C. 14:1-5, and shall include a letter from the Director of the Office of Smart Growth in the New Jersey Department of Community Affairs (DCA Office of Smart Growth), which states all of the following:

1. The street address, block and lot of the property upon which the development to be served by the extension is located; and
2. That the Director of the Office of Smart Growth either has recommended, or will recommend to the State Planning Commission, that the property upon which the development is to be located be redesignated as a designated growth area, as defined at N.J.A.C. 14:3-8.2.

(e) If the Board determines that an applicant has met the requirements of (d) above:

1. The Board shall issue a smart growth suspension order, temporarily suspending the application of N.J.A.C. 14:3-8.6 to the applicant's extension;
2. The temporary suspension order shall continue in effect until the next readoption of the State Development and Redevelopment Plan (State Plan) by the State Planning Commission following {effective date of this rule}; and
3. While the suspension order remains in effect, the extension shall be subject to the requirements of this chapter that apply to an extension serving a designated growth area at N.J.A.C. 14:3-8.7.

(f) Within 60 calendar days after the State Planning Commission readopts the State Plan, the holder of a smart growth suspension order shall notify the Board, with a copy to the applicable utility of the readopted State Plan designation of the area covered by the smart growth suspension order.

1. If property subject to the suspension order is located in a designated growth area in the readopted State Plan, the Board shall issue a summary order closing the matter; or
2. If the property subject to the suspension order is located in an area not designated for growth in the readopted State Plan, the holder of a smart growth sus-

pension order may, within 60 calendar days after the State Plan is readopted, either:

- i. Pay the utility the cost of the extension, determined in accordance with (h) below; or
- ii. Apply for an exemption from the requirements of this chapter pursuant to N.J.A.C. 14:3-8.8.

(g) If a property is not designated for growth in the readopted State Plan, and the Board does not receive a request for an exemption within the 60-day deadline at (f)2 above, the holder of the suspension order shall repay the utility for the cost of the extension. However, if an exemption request was submitted prior to the readoption of the State Plan, the request need not be resubmitted in full, but a written request for a decision on the exemption request may be submitted.

(h) For purposes of (f)2i and (g) above, the cost of the extension shall be determined by applying the provisions at N.J.A.C. 14:3-8.6 for extensions that serve development in an area not designated for growth. The amount shall be calculated using the rules as they would have applied if the area had never been designated for growth and no temporary smart growth suspension order had been issued.

(i) The amount determined under (h) above shall be due and payable to the utility upon the 61st calendar day after the readoption of the State Plan. Any deposit paid under this subchapter by the holder of a temporary smart growth suspension order, which the utility has not yet refunded, shall be applied towards any due and payable amount.

(j) If a request for exemption is denied, the Board shall set forth the terms of repayment consistent with this chapter.

(k) Utilities shall take all appropriate steps to collect all due and payable amounts.

(l) A temporary smart growth suspension order issued under this section shall apply solely to the property specifically identified in the order, solely for purposes of applying the requirements of this chapter.

(m) The issuance of a temporary smart growth suspension order under this section shall not, by itself, constitute a grounds for reliance, or for an exemption from any requirement of this chapter.

[14:3-8.1B (Reserved)]