

precludes participation in the student’s usual educational setting, pursuant to N.J.A.C. 6A:16-10.

i. To request virtual related services due to a temporary or chronic health condition, the parent shall submit to the school district a request that includes a written order from the student’s physician verifying the projected need for confinement at the student’s residence or other treatment setting for more than 10 consecutive school days or 20 cumulative school days during the school year.

ii. The school district shall forward the written determination to the school physician, who shall verify the student’s need for virtual related services. The school physician may contact the student’s physician to secure additional information concerning the student’s diagnosis or need for treatment and shall either verify the need for virtual related services or shall provide to the district board of education the reason(s) for denial.

iii. The school district shall notify the parent concerning the school physician’s verification or reason(s) for denial within five school days after the school district’s receipt of the written determination by the student’s physician.

iv. The IEP team shall meet to determine, for each related service required by the IEP, whether the related service will be provided virtually or in-person. The school district shall provide the student with virtual related services within five school days after the school district’s receipt of the school physician’s verification or, if verification is made prior to the student’s confinement, during the first week of the student’s confinement to the home or another out-of-school setting.

v. The school district shall be responsible for the costs of providing virtual related services, either directly or through a contract with another district board of education, educational services commission, jointure commission, or approved clinic or agency. The costs shall include the cost of any needed equipment.

vi. When the provision of home or out-of-school instruction exceeds 30 consecutive days in a school year, the IEP team shall convene a meeting to review the continued need for virtual related services and, if appropriate, revise the student’s IEP.

2. A school building or school district is closed pursuant to N.J.S.A. 18A:7F-9.b or c and the school district has implemented its program of virtual or remote instruction pursuant to N.J.A.C. 6A:32-13; or

3. The appropriate local health agency or officer or the student’s physician determines that the student requires a mandatory period of isolation/quarantine for at least five days because the student’s presence in school may jeopardize the health of others because the student has contracted a communicable disease or has been exposed to a communicable disease.

i. The IEP team shall meet to determine, for each related service required by the IEP, whether the related service will be provided virtually or in-person.

SUBCHAPTER 5. PROVIDING EDUCATIONAL AND RELATED SERVICES

6A:14-5.1 General requirements

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

(c) For the services listed below, district boards of education may contract with private clinics and agencies approved by the Department of Education, private professional practitioners who are certified and licensed according to State statutes and rules, and agencies or programs that are certified, approved, or licensed by the Department of Human Services or by the Department of Health to provide counseling or mental health services. For the related services listed at (c)l(iii) and v below, approved private schools for students with disabilities may contract with private clinics and agencies approved by the Department of Education, private professional practitioners who are certified and licensed according to State statutes and rules, and agencies or programs that are certified, approved, or licensed by the Department of Human Services or by the Department of Health to provide counseling or mental health services. All instructional, child study team, and related services personnel provided by approved clinics and agencies and private professional practitioners shall be fully certified. No instructional, child study team, and related services personnel provided by approved clinics and agencies, or private professional practitioners, may, if a certification is required for the

discipline *[pursuant to]* ***under*** which they are providing services, provide services pursuant to this subsection if certified through the emergency certification process.

1. For public school students:

i.-ii. (No change.)

iii. Related services;

(1) (No change.)

(2) Physical therapy assistants shall work under the supervision of a certified physical therapist.

(3) (No change.)

iv.-v. (No change.)

2. (No change.)

(d)-(e) (No change.)

PUBLIC UTILITIES

(a)

BOARD OF PUBLIC UTILITIES

All Utilities

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

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

Proposed: August 21, 2023, at 55 N.J.R. 1816(a).

Adopted: April 30, 2024, by the New Jersey Board of Public Utilities, Christine Guhl-Sadovy, President, Dr. Zenon Christodoulou, Ph.D., Marian Abdou and Michael Bange, Commissioners.

Filed: May 1, 2024, as R.2024 d.050, **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. 48:2-13; 48:2-16, 16.1 through 16.4, 17, 20, 23, 24, 25, and 27; 48:3-2.3, 3, 4, and 7.8; 48:3-17.11 through 17.14; and 48:19-17.

BPU Docket Number: AX22090613.

Effective Date: June 3, 2024.

Expiration Date: July 15, 2029.

Summary of Public Comments and Agency Responses:

Written comments were received by: Atlantic City Electric Company (ACE); Legal Services of New Jersey (LSNJ); New Jersey American Water Company (NJAWC); New Jersey Division of Rate Counsel (Rate Counsel); Public Service Electric & Gas Company (“PSE&G” or “Company”); and Rockland Electric Company (RECO).

General Comments

1. COMMENT: The commenter appreciates and supports the efforts of the Board of Public Utilities (Board) and Board staff in proposing to amend N.J.A.C. 14:3-3A.4 to 3A.9 to implement the extension of the Winter Termination Program (WTP) to water and wastewater residential customers pursuant to sections 6 and 7 at P.L. 2021, c. 317. (LSNJ)
RESPONSE: The Board thanks the commenter for its support.

2. COMMENT: The commenter appreciates the Board’s consideration and responsiveness to the comments of the Company and other commenters on the notice of pre-proposal of the rules and fully support the published changes. (NJAWC)
RESPONSE: The Board thanks the commenter for its support.

N.J.A.C. 14:3-1.1—Definitions

3. COMMENT: The commenter stated that the proposed definition of a “public utility infrastructure project” does not necessarily encompass all Distribution System Improvement Charge (DSIC) and Wastewater System Improvement Charge (WSIC) projects, which all require the Board’s approval. While the commenter supported the proposed addition of language that specifically includes IIP projects and high-pressure gas pipelines, the commenter further urged the Board to add references to

N.J.A.C. 14:9-10.4 and 11.4, the DSIC and WSIC rules, respectively. (Rate Counsel)

RESPONSE: The Board believes that the definition of a “public utility infrastructure project,” sufficiently addresses the types of projects for which utility coordination would be beneficial. Therefore, the Board declines to make further modifications.

4. COMMENT: Regarding the definition of a “public utility infrastructure project,” the commenter states that the Board’s proposed language that would exclude “small blanket-type infrastructure repair or replacement tasks that are repetitive or routine in nature unless they are performed in conjunction with a main replacement” should be deleted from the definition. The commenter stated that the Legislature did not indicate an intent to exclude all “blanket-type” projects. (Rate Counsel)

RESPONSE: The Board believes that the definition of a “public utility infrastructure project” appropriately excludes “small blanket-type” projects that would not benefit from utility coordination. This language is necessary to ensure that public utilities will not be required to issue notifications for certain work that does not impact the underground facilities of the local unit or local utility. Given that the proposed language would still require notification for “blanket-type” projects performed in conjunction with a main replacement, the Board believes that the intent of the Legislature is preserved. Therefore, the Board declines to make further modifications.

5. COMMENT: The commenter notes that the definition of a “public utility infrastructure project” excludes “work occurring during an emergency, as that term is defined at N.J.S.A. 48:3-17.11.” The commenter believes that the definition of an “emergency” is unnecessarily broad because it includes instances “... when the condition of the equipment of the local utility or public utility is in need of immediate repair to prevent injury to persons or damage to property.” According to the commenter, this language could include standard “wear and tear” repairs. (Rate Counsel)

RESPONSE: The Board believes that the definition of an “emergency,” as defined at N.J.S.A. 48:3-17.11, is sufficiently specific for utilities to determine what constitutes an emergency condition. Therefore, the Board declines to make further modifications.

N.J.A.C. 14:3-2.9—Public utility notification of a planned infrastructure project

6. COMMENT: Regarding the public utility 180-day notification requirement, the commenter seeks clarification whether an additional 180-day notice is required where proper notice was provided and there is a subsequent change in scope, schedule, and/or timing. The commenter is concerned that if any change to an infrastructure project would restart the 180-day clock, it could have significant scheduling implications and increase the cost of a project. (PSE&G)

RESPONSE: The Board agrees that a restart of the 180-day clock could add confusion and uncertainty, as well as increased cost to the project, which could ultimately be borne by the ratepayer. The Board does not believe, however, that further clarification is needed. As proposed, N.J.A.C. 14:3-2.9(a) requires that “A public utility shall notify a local unit and local utility ... at least 180 days prior to initiating work ...” The Board believes that once the public utility provides the initial notification, a reciprocal process will be established between the parties that will identify scheduling changes and delays. Additionally, N.J.A.C. 14:3-2.9(b) provides that “The local unit, local utility, and public utility shall coordinate to provide timely notification of any changes to their respective project plans or schedule and, when feasible, to jointly establish a timeframe for scheduled work.”

7. COMMENT: The commenter recommends that the Board include additional provisions to ensure that utility ratepayers do not pay for unreasonable requirements imposed by local governments. The commenter also states that the Board’s rule proposal should include more specific provisions pertaining to the manner in which notice is to be effectuated. Further, the commenter states that the Board should develop a dispute resolution policy to assist utilities and local government units in resolving disputes regarding all issues, including those regarding notice requirements, which arise that delay the proposed work from being commenced or completed in a timely fashion. (Rate Counsel)

RESPONSE: The Board was tasked with adopting rules needed to implement the provisions of P.L. 2021, c. 263 (N.J.S.A. 48:3-17.11 et seq.). The commenter’s proposed additions are outside the scope of the proposal, and the Board declines to add new provisions to the rule.

N.J.A.C. 14:3-2.10—Local unit and local utility notification of an infrastructure project

8. COMMENT: Regarding the local unit and local utility 180-day notification, the commenter seeks a similar clarification to the 180-day notification requirement as discussed for N.J.A.C. 14:3-2.9 at Comment 6 above. (PSE&G)

RESPONSE: As discussed in Response to Comment 6, the Board agrees that a restart of the 180-day clock could add confusion and uncertainty, as well as increased cost to the project, which could ultimately be borne by the ratepayer. The Board does not believe, however, that further clarification is needed. As proposed, N.J.A.C. 14:3-2.10(a) requires that “A local unit and local utility shall notify each public utility ... at least 180 days prior to initiating work ...” The Board believes that once the local unit and local utility provides the initial notification, a reciprocal process will be established between the parties that will identify scheduling changes and delays. Additionally, N.J.A.C. 14:3-2.10(b) provides that “The local unit, local utility, and public utility shall coordinate to provide timely notification of any changes to their respective project plans or schedule and, when feasible, to jointly establish a timeframe for scheduled work.”

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

9. COMMENT: The commenter does not support the requirement to provide assistance information in all communications as changes to assistance programs are not always released in a timely manner, and all State programs are not updated on the same schedule making it challenging to provide updated information in all collection correspondence. The commenter proposes including a Statement of Customer Rights to all customers eligible for shut-off, as well as modifying this statement to include energy assistance information. (PSE&G)

RESPONSE: The Board thanks the commenter for its comment. The Board notes the Company’s concerns; however, this language is required by P.L. 2022, c. 4, Section 3, which requires utilities to provide this information to all customers. Additionally, it ensures that customers are aware of available protections during periods of financial hardship and opportunities to potentially obtain financial assistance.

10. COMMENT: N.J.A.C. 14:3-3A.4(i) currently requires electric and gas utilities to provide certain information to their residential and special customers with any notice of discontinuance of service. The commenter supports the proposed change to N.J.A.C. 14:3-3A.4(i) to extend this obligation to provide this information to all water and wastewater customers, not just electric and gas customers. (Rate Counsel)

RESPONSE: The Board thanks the commenter for its support.

11. COMMENT: N.J.A.C. 14:3-3A.4(j) currently specifies the size and location of the notice of customer’s rights that each electric and gas utility must provide to its customers. The commenter supports the proposed change to N.J.A.C. 14:3-3A.4(j) to require utilities to provide notice drawing customers’ attention to the Utility Customer Bill of Rights, and to extend the obligation to provide this information to all water and wastewater customers, not just electric and gas customers. (Rate Counsel)

RESPONSE: The Board thanks the commenter for its support.

12. COMMENT: The commenter supports new provision N.J.A.C. 14:3-3A.4(k) which requires each public utility to supplement their communications with customers about an overdue bill to provide information about the availability of the WTP and certain payment assistance programs, including but not limited to, the Universal Service Fund (USF), the Low Income Home Energy Assistance Program (LIHEAP), Low Income Household Water Assistance Program (LIHWAP), and any other utility assistance program administered by the State, and to provide such information about the WTP from November 15 through March 15 of each year. (Rate Counsel)

RESPONSE: The Board thanks the commenter for its support.

13. COMMENT: Neither the current rule nor the proposed amendment at N.J.A.C. 14:3-3A.4(i) and (j) extend their requirements to

telecommunication public utilities. The commenter supports adding telecommunication public utilities to these provisions. (Rate Counsel)

RESPONSE: The Board thanks the commenter for its comment. The existing rules at N.J.A.C. 14:3-3.3 concerning the Customer Bill of Rights, as well as N.J.A.C. 14:3-3A.8, provide information for telecommunication customers in areas under the Board's jurisdiction; therefore, the proposed changes are unnecessary.

14. COMMENT: Neither the current rule nor the proposed amendment at N.J.A.C. 14:3-3A.4(k) extends their requirements to telecommunication public utilities. The commenter supports adding telecommunication public utilities to this provision. (Rate Counsel)

RESPONSE: The Board thanks the commenter for its comment. The requirement that electric, gas, wastewater, and water public utilities provide their customers with information regarding assistance programs for the services they render is covered at N.J.A.C. 14:3-3A.4(k). Thus, it would be confusing to customers to also require telecommunication public utilities to provide the same information for services they do not render. Therefore, the proposed change is unnecessary.

N.J.A.C. 14:3-3A.5—Winter Termination Program

15. COMMENT: The commenter states that the wording of the proposed rule pursuant to N.J.A.C. 14:3-3A.5(a)8 is unclear. The commenter is uncertain as to whether the intention is to provide WTP protections to electric and gas utility customers who are receiving assistance paying their sewer and water bills, or whether the intention is to add WTP protections to sewer and water utility customers who are receiving assistance paying their sewer and water bills. (RECO)

RESPONSE: The Board thanks the commenter for its comment and clarifies that the rule that provides WTP protections pursuant to P.L. 2021, c. 317, applies to all utility customers including water and sewer utility customers, who fall within the nine prescribed categories of the WTP.

16. COMMENT: The commenter maintains that the proposed changes at N.J.A.C. 14:3-3A.5(a)9 needs further defining regarding the meaning of "self-certify." The commenter questions whether the customer can simply "orally report" to the utility that they cannot pay due to illness or unemployment or if the customer is required to provide written documentation. The commenter claims that this proposal conflicts with sections at N.J.A.C. 14:3-3A.2, which requires documentation of a "medical emergency" and the submission of "reasonable proof of inability to pay". The commenter questions whether the utility is now prohibited from requesting said proof and/or documentation, and whether the customer can decline to provide it and simply "self certify" on a recorded line that they are unable to pay their bill in order to be protected from discontinuation of service from November 15 through March 15. The commenter states that if a customer is allowed to self-certify there should be language providing a solution to the customer's situation, for example a requirement that the customer enter into a re-payment agreement and submit a deposit. The commenter believes that allowing customers to self-certify creates a situation where the prohibition against termination of service is open-ended and can potentially continue without resolution. (RECO)

RESPONSE: The Board thanks the commenter for its comment. The requirements for eligible customers seeking protection under the WTP are set forth fully at N.J.A.C. 14:3-3A. In the interests of ensuring safe, adequate, and proper service during the heating season, the WTP provides vital protections and safeguards to vulnerable New Jersey residents from termination during the heating season. However, N.J.A.C. 14:3-3A.2(i) is only applicable when a customer is attempting to maintain or restore service because of a medical emergency at any time during the year. The requirements of this provision are separate and apart from the WTP as it requires documentation from a medical professional attesting that the disconnection of utility service would exacerbate the customer's medical condition and/or emergency.

17. COMMENT: The commenter notes that the new statutory WTP water/wastewater protections will be in effect during the coming 2023-2024 heating season, and urges the Board to ensure that these protections are fully extended to water and wastewater customers. (LSNJ)

RESPONSE: The Board thanks the commenter for its comment. All water and wastewater customers are eligible to seek WTP protections during the 2023-2024 heating season and during future heating seasons.

18. COMMENT: The commenter suggests strengthening the WTP and related rules to prohibit disconnection during the winter months, otherwise utilities should be required to take all reasonable steps to determine whether a customer is protected under the WTP. The commenter also suggests that the down payment requirement should be eliminated, and WTP rules be expanded to ensure that tenants who receive service through an account in another name, such as their landlord, are protected from winter shutoffs. (LSNJ)

RESPONSE: The Board thanks the commenter for its comment. The WTP, as currently structured, provides fair and equitable protections for all customers and upholds the Board's mission of providing safe, adequate, and proper service to all utility customers. Further, it also provides and encourages applying for financial assistance to make utility service more affordable for the residents of New Jersey.

19. COMMENT: The commenter supports the proposed change at recodified N.J.A.C. 14:3-3A.5(a)9 that one of the current categories of residential customers protected by the WTP, those who are unable to pay their utility bills because of circumstances beyond their control due to unemployment, illness, medically related expenses, recent death of an immediate family member, or any other circumstances that might cause financial hardship, may "self-certify" to the utility or the Board's Division of Customer Assistance staff their inability to pay their public utility bill. (Rate Counsel)

RESPONSE: The Board thanks the commenter for its support.

20. COMMENT: The commenter supports the proposed change at N.J.A.C. 14:3-3A.5(b) to clarify that only electric and gas utility customers, and not water or wastewater customers, must pay a down payment of 25 percent of their outstanding balance as a condition of receiving electric or gas service during the current heating season. (Rate Counsel)

RESPONSE: The Board thanks the commenter for its support.

21. COMMENT: The commenter recommends further amending N.J.A.C. 14:3-3A.5(b) to clarify that the "outstanding balance" may include only energy, distribution, and transmission charges, and not late fees, reconnection fees, returned check charges, appliance service charges, repairs, or any other fees, charges, or costs. (Rate Counsel)

RESPONSE: The Board thanks the commenter for its comment. Current rules at N.J.A.C. 14:3-3A.2(b) state that a utility may discontinue service for nonpayment only of charges for the actual utility commodity itself, that is, for electric, gas, water, wastewater service, or telephone service. Additionally, a utility shall not discontinue service for optional services, as defined at N.J.A.C. 14:4-1.1, or for repairs, merchandise, installation of conservation measures, or other non-tariff services contracted for between the customer and the utility. The Board believes the current rules provide necessary protections for customers who are requesting service restoration. Thus, there is no need to make any changes at N.J.A.C. 14:3-3A.5(b).

22. COMMENT: The commenter supports new N.J.A.C. 14:3-3A.5(c), which requires water and wastewater utilities to reconnect service during the heating season to residential customers whose service was discontinued for non-payment before the heating season, if they have applied for assistance from the LIHWAP or any other State, local, or utility program that provides assistance or discounted rates to help eligible customers pay water or wastewater bills, until the application is approved, denied, or withdrawn. The utility may not require these customers to make a down payment on their outstanding balance as a condition of receiving water and wastewater service during the current heating season. Upon request of the utility, the customer must provide an update on the status of their application for payment assistance or discounted rates. (Rate Counsel)

RESPONSE: The Board thanks the commenter for its support.

23. COMMENT: Recodified N.J.A.C. 14:3-3A.5(j) requires electric and gas customers who are otherwise eligible for the WTP, whose service was discontinued for non-payment before the heating season but who subsequently caused the unauthorized restoration of service, to pay 25 percent of their outstanding account balance as a precondition of continuing service during the heating season. The proposed rule amends recodified N.J.A.C. 14:3-3A.5(k) to extend this requirement to water and wastewater customers. Rate Counsel has no objection to this change. (Rate Counsel)

RESPONSE: The Board thanks the commenter for its comment.

N.J.A.C. 14:3-3A.6—Discontinuance of service to tenants

24. COMMENT: The commenter opposes the proposed change to increase the notice period from 15 days to 30 days and refers to its prior December 13, 2022, comments regarding the same issue. The commenter submits that the notice period should not be extended to 30 days, because it would allow customers' payment delinquencies and outstanding balances to increase further when there is a landlord-tenant relationship. The proposed amendment would also increase burdens on utilities and require changes to the commenter's current processes. (ACE)

RESPONSE: The Board thanks the commenter for its comment. Providing protections to all individuals affected by discontinuance of service is paramount to the Board's mission to ensure safe, adequate, and proper service.

25. COMMENT: The commenter maintains that the proposed change does not provide additional protection for these end-users, and instead provides time for arrearages to accumulate. (PSE&G)

RESPONSE: The Board thanks the commenter for its comment. The Board believes that the additional period of time will afford tenants the opportunity to make alternative arrangements in the interest of their health and safety. Further, this proposed amendment affords tenants the same protections as account holders.

26. COMMENT: The commenter supports the proposed change at N.J.A.C. 14:3-3A.6(a) and (b). The current rule requires utilities to provide a 15-day notice of discontinuance to tenants who are not the customer of record, as defined at N.J.A.C. 14:3-1.1. The proposal modifies N.J.A.C. 14:3-3A.6(a) and (b) to extend that notice period to 30 days. (Rate Counsel)

RESPONSE: The Board thanks the commenter for its support.

N.J.A.C. 14:3-3A.9—Basis for restoration

27. COMMENT: The commenter asserts that, regarding N.J.A.C. 14:3-3A.9(e)2, the word "shall" should be changed to "may," because it believes that the exception as written and the obligation imposed on utilities by this proposed exception are unclear. The commenter submits that utilities should retain discretion on the proper down payment amount to accept from customers. (ACE)

RESPONSE: The Board thanks the commenter for its comment. The Board feels that there is no need to amend the language, as it is needed to provide adequate protections to all customers, encourages them to seek help through assistance programs, and shows that utility is willing to work with them to restore service.

28. COMMENT: The commenter believes the proposed rule is overly restrictive as not all customers who have had their service disconnected need payment assistance. The commenter also notes it already affords customers down payments of up to 25 percent and the purposed language is redundant as current language already suggests that a utility can accept any amount from one dollar to 25 percent of the customer's arrearages. (PSE&G)

RESPONSE: The Board thanks the commenter for its comment. The Board notes the commenter's concerns. However, the Board does not feel the proposed amendment forces or requires all customers to apply for assistance. Instead, it affords customers who may not have the immediate funds requested by the utility company for restoration with a path forward to have service restored with more affordable bills and puts a customer in a position to maintain monthly payments.

29. COMMENT: The commenter states that requests for reconnection outside of the WTP protection while assistance applications are pending should not be arbitrarily restricted to once every calendar year. Thus, proposed N.J.A.C. 14:3-3A.9(f) should be deleted. (LSNJ)

30. COMMENT: The commenter states that the new N.J.A.C. 14:3-3A.9(f) limits the right to service restoration pursuant to the terms at N.J.A.C. 14:3-3A.9 to once per year and recommends modifying this proposal, by increasing the right to restoration to twice or three times per year. The commenter further states an increase would be consistent with the rulemaking amending N.J.A.C. 14:3-3A.9(e)1 to allow a customer to qualify for service reconnection by demonstrating their eligibility for any of the listed payment assistance programs that may exist at the time by recognizing that programs may arise throughout the year. (Rate Counsel)

RESPONSE TO COMMENTS 29 AND 30: The Board thanks the commenters for their comments. The limitation specified at N.J.A.C. 14:3-3A.9(f) simply reflects the reality that customers can only apply to the assistance programs enumerated at N.J.A.C. 14:3-3A.9(e)1 once per calendar year. Thus, this proposed amendment strikes a balance of fairness for utility collection activities while protecting all ratepayers and encourages customers to apply for assistance to make their bills more affordable going forward. Therefore, the Board has retained the provision.

31. COMMENT: The commenter supports the proposed change at N.J.A.C. 14:3-3A.9(e) which currently requires a utility to reconnect a residential electric, gas, water, or wastewater customer, whose service has been disconnected, upon satisfaction of certain conditions. The rulemaking amends N.J.A.C. 14:3-3A.9(e) to clarify that this protection extends to both non-WTP eligible customers and WTP-eligible customers outside the WTP heating season of November 15 to March 15. This change clarifies that this protection is in addition to those afforded pursuant to the WTP and eliminates any potential confusion between their respective conditions (for example, down payment not required under WTP). (Rate Counsel)

RESPONSE: The Board thanks the commenter for its support.

32. COMMENT: The commenter supports the proposed changes at N.J.A.C. 14:3-3A.9(e)1, 2, and 3 that change the conditions for income-eligible customers to qualify for service reconnection. The first of these conditions currently requires the customer to demonstrate their eligibility for any of four specifically listed payment assistance programs: USF, LIHEAP, LIHWAP, or Payment Assistance for Gas and Electric (PAGE). N.J.A.C. 14:3-3A.9(e)1. The proposal amends N.J.A.C. 14:3-3A.9(e)1 by allowing a customer to satisfy this condition by demonstrating their eligibility for any of the listed payment assistance programs that may exist at the time, including the four currently listed (that is, USF, LIHEAP, LIHWAP, or PAGE), or any other State, local, or utility program that provides assistance or discounted rates specifically to help eligible customers pay their utility bills. The proposal also eliminates the condition, currently at N.J.A.C. 14:3-3A.9(e)2, that the customer must not have been enrolled in any of four listed assistance programs (that is, USF, LIHEAP, PAGE, or LIHWAP) during the prior year. N.J.A.C. 14:3-3A.9(e)3 currently requires restoration of service to a customer who has made a down payment of up to 25 percent of their outstanding balance. The rulemaking recodifies N.J.A.C. 14:3-3A.9(e)3 as paragraph (e)2, and amends it to require the utility to accept a lesser amount from customers who prove they do not have the ability to pay. (Rate Counsel)

RESPONSE: The Board thanks the commenter for its support.

33. COMMENT: The commenter recommends that the down payment requirement at N.J.A.C. 14:3-3A.9(e)2 eliminated for water and wastewater customer reconnections (as reflected at proposed N.J.A.C. 14:3-3A.5(c)) also be eliminated for all customers with pending utility assistance applications—a step fully within the Board's power—thus rendering N.J.A.C. 14:3-3A.9(e)2, as well as the down payment provisions at N.J.A.C. 14:3-3A.5(b), unnecessary. If the down payment provision is retained, however, the commenter recommends changing the proposed language at N.J.A.C. 14:3-3A.9(e)2 as follows (addition in bold): "They have made a down payment of up to 25 percent of the outstanding balance, **except that the utility shall waive the down payment requirement or accept a lesser amount from those customers who certify, orally or in writing, that they do not have the ability to pay.**" (LSNJ)

RESPONSE: The Board thanks the commenter for its comment. This amendment of up to 25 percent down payment mirrors the existing WTP language that has been in effect for many years and has been proven successful in providing an opportunity for many customers to maintain and/or restore utility services. The down payment requirement provides a path forward for all customers in varying financial circumstances.

34. COMMENT: The changes at Subchapter 8 would add water and wastewater service to the gross-up factor template (N.J.A.C. 14:3-8.6(c)3) and include other, non-substantive changes. The commenter defers to the Board's expertise on these changes. (Rate Counsel)

RESPONSE: The Board thanks the commenter for its comment.

Federal Standards Statement

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

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

SUBCHAPTER 1. GENERAL PROVISIONS

14:3-1.1 Definitions

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

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

“Local unit” means a county or municipality.

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

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

SUBCHAPTER 2. PLANT

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

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

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

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

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

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

SUBCHAPTER 3A. DISCONTINUANCE AND RESTORATION OF SERVICE

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

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

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

1.-3. (No change.)

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

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

(l) (No change in text.)

14:3-3A.5 Winter Termination Program

(a) Electric, gas, water, and wastewater utilities shall not discontinue service during the period from November 15 through March 15 (referred to in this section as the “heating season”), unless otherwise ordered by the

Board, to those residential customers who demonstrate at the time of the intended termination that they are:

1.-6. (No change.)

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

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

9. Residential customers who are unable to pay their utility bills because of circumstances beyond their control. Such circumstances shall include, but shall not be limited to, unemployment, illness, medically related expenses, recent death of an immediate family member, and any other circumstances, which might cause financial hardship. These residential customers shall be permitted to self-certify to the utility or Division of Customer Assistance of the Board of an inability to pay their public utility bill.

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

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

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

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

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

1.-4. (No change.)

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

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

(a) Electric, gas, water, and wastewater public utilities shall make every reasonable attempt to determine when a landlord-tenant relationship exists at premises being serviced. If such a relationship is known to exist,

and if the tenants are not the customers of record but are end-users, as these terms are defined at N.J.A.C. 14:3-1.1, discontinuance of service is prohibited unless the utility has, notwithstanding the time periods at N.J.A.C. 14:3-3A.5, given a 30-day written notice to the owner of the premises or to the customer of record to whom the last preceding bill was rendered. Further, the utilities shall use their best efforts to determine the names and addresses of each tenant, in order to provide such notice, for example, through mailings to landlords requesting a list of tenants. The utility shall use its best efforts to provide copies of the discontinuance notice to all tenants. In addition, the utility shall provide the tenant(s) with a 30-day written notice, which shall be hand-delivered, mailed, or posted in a conspicuous area of the premises and in the common areas of multiple family premises.

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

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

14:3-3A.9 Basis for restoration

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

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

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

2. They have made a down payment of up to 25 percent of the outstanding balance, except that the utility shall accept a lesser amount from those customers who prove they do not have the ability to pay.

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

SUBCHAPTER 8. EXTENSIONS TO PROVIDE REGULATED SERVICES

14:3-8.5 General provisions regarding costs of extensions

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

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

1.-3. (No change.)

4. If any portion of a deposit or non-refundable contribution is taxable pursuant to the Internal Revenue Code, and the regulated entity has decided to include the Internal Revenue Code tax consequences in the deposit or non-refundable contribution:

i.-iv. (No change.)

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

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

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

1. Collects a deposit or non-refundable contribution that is taxable in whole, or in part, pursuant to the Internal Revenue Code; and

2. Includes in the deposit or non-refundable contribution the associated tax consequences incurred by the regulated entity pursuant to the Internal Revenue Code.

(b) If a regulated entity includes in a deposit or non-refundable contribution the tax consequences incurred pursuant to the Internal

Revenue Code, all deposit refunds shall also include the associated tax consequences incurred pursuant to the Internal Revenue Code. These tax consequences shall be determined in accordance with this section.

(c) The Internal Revenue Code gross-up factor shall be:

1.-2. (No change.)

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

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

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

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

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

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

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

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

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

2. (No change.)

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

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

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

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

1. As of *(14 days after the effective date of this rulemaking))* ***June 17, 2024***, each regulated entity that utilizes electric and/or gas depreciation rates shall calculate its Internal Revenue Code gross-up factor pursuant to (c) above and file this factor, along with the completed IRC Gross-up Factor Template, with the Board Secretary and the Director of the Board's Division of Energy. A regulated entity that utilizes both electric and gas depreciation rates shall file both of its gross-up factors and accompanying completed templates;

2. As of *(14 days after the effective date of this rulemaking))* ***June 17, 2024***, each regulated entity that utilizes water and/or wastewater depreciation rates shall calculate its Internal Revenue Code gross-up factor pursuant to (c) above and file this factor, along with the completed

IRC Gross-up Factor Template, with the Board Secretary and Director of the Board's Division of Water;

3. As of *(14 days after the effective date of this rulemaking))* ***June 17, 2024***, each regulated entity that utilizes telecommunication depreciation rates shall calculate its Internal Revenue Code gross-up factor pursuant to (c) above and file this factor along with a detailed calculation of this factor with the Board Secretary and Director of the Board's Division of Telecommunications; and

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

TRANSPORTATION

(a)

MOTOR VEHICLE COMMISSION

New Jersey Licensed Motor Vehicle Dealers and Leasing Dealers

Adopted Amendments: N.J.A.C. 13:21-15.1 through 15.7, 15.9, 15.10, 15.11, 15.13, 15.14, and 15.15

Proposed: July 17, 2023, at 55 N.J.R. 1367(a).

Adopted: May 6, 2024, by the Motor Vehicle Commission, Latrecia Littles-Floyd, Acting Chair.

Filed: May 6, 2024, as R.2024 d.051, **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. 39:2A-21, 39:2A-28, 39:10-19, and 39:10-20.

Effective Date: June 3, 2024.

Expiration Date: September 9, 2027.

Summary of Hearing Officer's Recommendations and Agency Responses:

The New Jersey Motor Vehicle Commission (Commission) held a public hearing on October 5, 2023, to provide interested parties the opportunity to ask questions and present comments concerning the proposed amendments. See 55 N.J.R. 1367(a). Timely notice of the hearing was provided in a media advisory issued by the Commission on September 21, 2023, and was posted on the Commission's website and in the main lobby of the Commission's office at 225 East State Street, Trenton, New Jersey on September 21, 2023. Subsequently, hearing officer, Elaine Schwartz, Deputy Director of Legal Affairs, New Jersey Motor Vehicle Commission recommended that the rulemaking be adopted with changes clarifying certain provisions pertaining to leasing dealers, brokering of motor vehicles, insurance liability limits, persons with controlling interests, established place of business requirements, and permitted off-site sales, and correcting typographical errors. That recommendation was accepted. The hearing record may be reviewed by contacting the Office of the Chief Administrator, New Jersey Motor Vehicle Commission, 225 East State Street, 9th Floor, Trenton, New Jersey.

Summary of Public Comments and Agency Responses:

The written comments received by the Commission regarding its July 17, 2023, notice of proposal at 55 N.J.R. 1367(a) are available for inspection at the Office of the Chief Administrator, New Jersey Motor Vehicle Commission, 225 East State Street, 9th Floor, Trenton, New Jersey. The following individuals submitted timely written comments to the Commission regarding the proposal:

1. Dave Thom
2. Mark Binder, Copart
3. The Honorable Vin Gopal, New Jersey Senate
4. Paul Lips, National Auto Auction Association
5. Carling Dinkler, Carvana Adesa