SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

Stefanie A. Brand, Esq., NJ-Atty.ID No.032331986
Maria T. Novas-Ruiz, Esq., NJ-Atty.ID No.003591991
New Jersey Division of Rate Counsel
140 East Front Street, 4th Fl.
P.O. Box 003
Trenton, NJ 08625
T(609)984-1460 F(609)292-2923
Attorneys for Appellant

I/M/O THE BOARD'S INVESTIGATION REGARDING THE RECLASSIFICATION OF INCUMBENT LOCAL EXCHANGE SERVICES AS COMPETITIVE	)	APPELLATE DIVISION DOCKET NO.A-004769-14T2 CIVIL ACTION On Appeal from the May 19, 2015 Order of the New Jersey Board of Public Utilities in BPU Docket No. TX11090570

BRIEF OF APPELLANT
THE STATE OF NEW JERSEY DIVISION OF RATE COUNSEL

On the Brief:
Stefanie A. Brand, Director
New Jersey Division of Rate Counsel
Maria T. Novas-Ruiz,
Assistant Deputy Rate Counsel

Dated: October 28, 2015

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

REGULATIONS

STATUTES

STATE AGENCY DECISIONS

STATE AGENCY DECISIONS CONTINUED

OTHER SOURCES

PRELIMINARY STATEMENT

This appeal arises out of an Order approving a Stipulation of Settlement between the Staff of the Board of Public Utilities ("Board") and Verizon that "reclassifies" Verizon's four remaining rate regulated services as "competitive" under N.J.S.A. 48:2-12.19. These services include basic stand-alone telephone service for residential and single line business customers and the non-recurring installation charges that accompany such services. Reclassifying these services removes them from rate regulation, allowing Verizon to increase the rates for these services in the future without Board oversight. The Stipulation does limit Verizon's ability to raise rates for five years, but allows the company to increase rates up to 36% over that time period. The Stipulation also phases out the Board's oversight over service quality for these services over the next three to five years.

The Stipulation was reached more than two-and-one-half years after public and evidentiary hearings were held in this case, and resulted from closed door negotiations conducted solely between Board Staff and Verizon. Rate Counsel, a party to the case and the statutory representative of ratepayers was not involved in these negotiations. The Board's approval of the Stipulation appears to be based on a three-year old record,

supplemented by undisclosed information that was apparently provided by the company at some point during the lapse of time. The Stipulation includes provisions that were never addressed during the evidentiary hearings or disclosed in the public hearing notices that were issued three years ago. Although interested parties were permitted a brief period to comment on the Stipulation after it had been executed by Board Staff and Verizon, the Board approved the Stipulation without change a few days after the comment period ended.

The result is a Stipulation that is unsupported by the record and relies on information that has not been disclosed, much less put to the test of evidentiary hearings. Despite the statutory requirement that notice and hearing precede a finding that a service is competitive, the Board's finding here relies on stale, or in some ways non-existent, evidence and inadequate notice.

Yet the impact of the Board's Order is extremely significant. While there may be competition over wireless plans and double and triple plays, the record does not demonstrate competition for stand-alone basic telephone service. Such service is often not even offered by some competitors, and the Board's Order fails to recognize that customers who need, or can only afford, such service are often without choice and are at

the mercy of the prices set by the monopoly incumbent providers. These people are most often seniors, the disabled and customers with fixed and/or low incomes. They are the customers who need the Board's protection the most.

It is well established that government must "turn square corners" and act "fairly and candidly in respect of those whose interests may be affected by agency action." In re University Cottage Club of Princeton v. New Jersey Dept. of Environmental Protection, 191 N.J. 38, 57 (2007). Before jettisoning its regulatory oversight, the Board has a statutory and constitutional obligation to provide fair notice of the actions it is contemplating and an opportunity for the public and Rate Counsel to comment on and test the evidence on which the Board may rely. Its failure to do so in this case renders the Order appealed herein arbitrary, capricious and contrary to law. The matter should be remanded so that the record can be refreshed, the evidence disclosed and tested, and a decision made on the record and before the public eye.

PROCEDURAL HISTORY AND STATEMENT OF FACTS[1]

The law regarding the regulation of telecommunications services in New Jersey was amended in January 1992. N.J.S.A. 48: 2-21.16 through N.J.S.A. 48:2-21.21 ("the 1992 Act").[2] The 1992 Act recognizes the changing nature of the telecommunications industry and sets the public policy of the State with regard to the regulation of this changing industry. The 1992 Act defines which telephone services are protected by regulation, sets forth the requirements for approval of applications for alternative forms of regulation for competitive services, and establishes minimum criteria and standards that the Board must consider to determine whether reclassification of a rate regulated service as a competitive service is warranted. Id.

The 1992 Act defines "alternative form of regulation" as a form of regulation other than traditional rate base, rate of return regulation approved by the Board which may include the use of an index, formula, price caps, or zone of rate freedom. N.J.S.A. 48:2-21.17. Pursuant to N.J.S.A. 48:2-21.18(3)(a), a local exchange telecommunications company may petition the Board to be regulated under an alternative form of regulation and must submit its plan for an alternative form of regulation with its

---

[1]/For purposes of clarity and the convenience of the Court, Rate Counsel has combined the Statement of Facts and Procedural History.

[2]/P.L. 1991, c. 428.

petition. The 1992 Act also authorizes the Board "to determine, after notice and hearing, whether a telecommunications service is a competitive service." N.J.S.A. 48:2-21.19b. In re Application of New Jersey Bell Tel. Co. (now Bell Atl.-N.J., Inc.) for Approval of its Plan for An Alternative Form of Regulation, 291 N.J. Super. 77 (App. Div. 1996).

Pursuant to N.J.S.A. 48:2-21.19(b),the party seeking reclassification of a rate regulated service must establish at a minimum the following criteria:(i) evidence of ease of market entry, (ii) presence of other competitors, and (iii) availability of like or substitute services in the relevant geographic area. In conducting its analysis to determine competition for telecommunications services in the state, the Board must review current state specific data regarding voice telephone service provided to end-users. N.J.A.C. 14:10-5.7 and N.J.A.C. 14:10-4. Once a service is deemed competitive, "the board shall not regulate, fix, or prescribe the rates, tolls, charges, rate structures, terms and conditions of service, rate base, rate of return, and cost of service" for that service. N.J.S.A. 48:2-21.19.

Although the 1992 Act encourages less regulation if competitive forces are present, the 1992 Act included specific provisions to ensure consumer safeguards where there is none.

Those safeguards include that non-competitive services cannot subsidize competitive services; that non-competitive services must be offered separately to consumers at tariffed rates; that the Board retain authority to ensure that providers do not impose unjust preferences in rates for non-competitive services; and that the Board continue to monitor competitive services to ensure sufficient competition to protect consumers. N.J.S.A. 48:2-21.19, - 21.20.

The statutory criteria for determining whether a service is competitive and thus eligible for reclassification turn on whether market forces are sufficient to discipline the rates, terms and conditions of services offered to the public. Examination and consideration of market power is also consistent with the Board's rules on monitoring competition. N.J.A.C. 14:10-5.7(b)(2). Market forces are insufficient where there are market failures, including market dominance or market power. Market power is the ability to raises price by restricting output, or stated differently, it is "[t]he ability of one or more firms profitably to maintain prices above a competitive level for a significant period of time." [3] While a truly competitive marketplace provides a powerful antidote to any effort to exploit consumers, the competitive marketplace cannot

[3]/ United States Department of Justice Merger Guidelines (1984), reprinted in 4 Trade Reg. Rep. (CCH) ¶ 13,103 at 20,556.

provide this protection if a competitor has market power since the pricing discipline of a competitive marketplace cannot be effective in the presence of market power. Aa260-280; Confidential Aa618-638.

In 1992, Verizon sought approval of a Plan for Alternative Regulation pursuant to the 1992 Act. The Board issued an Order approving a plan on May 6, 1993. I/M/O the Application of NJ Bell for Approval of a Plan for Alt. Form of Reg., Decision and Order, BPU Docket No. TO92030358("PAR-1"). Aa910. Verizon subsequently sought reclassification of most of its services, filing a petition to modify its PAR on February 15, 2001. I/M/O the Application of Verizon New Jersey, Inc. for Approval of a New Plan for Alternative Regulation and (ii) to Reclassify Multi-Line Rate Regulated Business Services as Competitive Service, and Compliance Filing, ("PAR-2") Decision and Order, BPU Docket No. TO01020095. Aa837. The PAR-2 was approved on August 8, 2003, and at that time rate regulation of most of Verizon's services was eliminated. The following services were the only ones still subject to rate regulation: basic wireline service for residential customers and for business customers with under five lines, non-recurring installation charges for

these services, and residential directory assistance.[4] Aa843. However, the Board specifically retained oversight over service quality pursuant to the service metrics established by the Board in a prior proceeding.[5] Aa842-843 and Aa847-849. The PAR-2 Order states that the PAR-2 will commence on the date of Board approval and acknowledged Verizon's ability to file for approval of a new plan or petition the Board to modify any of the provisions of the PAR-2 to reflect changed conditions. Aa844. The Order also affirmed the Board's authority to monitor service quality and terminate the Plan, after notice and hearing, in the event that a substantial degradation of service was found to exist. Aa848.

This matter stems from a request originally made by Verizon to the Board in a letter dated November 14, 2007, requesting that the Board investigate the state of competition for certain mass market retail services provided by incumbent local exchange carriers ("ILECs") in New Jersey. The incumbent carriers sought a finding that their remaining regulated services were sufficiently competitive and should be

---

[4]/ Verizon was allowed to adjust rates for business customers with two, three, or four lines within a range of 10% per year from existing rates. Aa843.

[5]/ I/M/O Petition of New Jersey Bell Telephone Company for Approval of a Proposal for a Rate Stability Plan and Relaxed Earnings Surveillance for Certain Competitive Services, BPU Docket TO87050398 ("Rate Stability Plan Order"), dated June 22, 1987.

"reclassified" as competitive services not subject to rate regulation. In response, the Board initiated two proceedings: In the Matter of the Board's Investigation Regarding the Reclassification of Incumbent Local Exchange Carriers Services as Competitive BPU Docket No. TX07110873; and I/M/O the Application of United Telephone Company of New Jersey d/b/a/ Embarq for Approval of a Plan for Alternative Regulation, BPU Docket No. TO08060451, ("ILEC Reclass Phase I"). In these cases, following extensive discovery, testimony and hearings on May 30, 2008, Verizon, Board Staff and Rate Counsel jointly submitted a Stipulation of Settlement to the Board for approval which reclassified ILEC services with the exception of (1) Residential basic exchange service; (2) Single line business basic exchange service; (3) Non-recurring; charges for residence service connection and installation; and (4) Residential Directory Assistance ("DA") services. The Stipulation did allow the ILECs to adjust rates on the four remaining rate regulated services on an annual basis for three years. The settlement also called for a further proceeding after three years to re-evaluate the competitiveness of the four rate-regulated retail services and other services (if Rate Counsel sought reclassification on the ground that they were no longer competitive). A similar Stipulation of Settlement was submitted on June 27, 2008,

regarding another ILEC, CenturyLink. Both Stipulations were approved by the Board on August 20, 2008. Aa2.

In October 2011, pursuant to the 2008 Stipulations and Order, the Board initiated proceedings to determine the competitiveness of the remaining four rate-regulated retail ILEC services. In the Matter of the Board's Investigations Regarding the Reclassification of Incumbent Local Exchange Carrier (ILEC) Services as Competitive - Phase II, ("ILEC Reclass Phase II October 2011 Order"), Docket No. TX11090570. Aa855. The Board stated its intent "to review the necessary criteria and determine if ILEC services satisfy the elements of ease of market entry, presence of other competitors, and availability of like or substitute services in the relevant geographic area," and further stated that "[i]n order to provide a full record and to allow for an inclusive and transparent process, the Board proposes to conduct this hearing with the input of any and all interested parties, pursuant to N.J.S.A. 48:2-21.19(b)." 834a. Thereafter on November 30, 2011, the Board issued a Prehearing Order with a nine month schedule allowing for four rounds of discovery, three rounds of testimony, three public hearings, and an evidentiary hearing followed by initial and reply briefs before final Board action. Those proceedings did in fact occur,

with an evidentiary hearing held on July 17, 2012 and public hearings held on November 15 and 19, 2012.[6]

The matter then remained dormant for two and one-half years. Rate Counsel was approached by Verizon on April 20, 2015 with a proposed settlement. Rate Counsel responded by indicating that it was willing to discuss some aspects of the proposal but that it disagreed with other aspects. No further discussions between Verizon and Rate Counsel occurred regarding Settlement.

On May 6, 2015, the Board released via electronic format after the close of business, a Stipulation of settlement negotiated by Board Staff and Verizon. The Stipulation reclassifies the remaining four rate regulated services as competitive, allowing price capped rate increases under a five year schedule. Aa19.

The Stipulation permitted increased rates for Verizon's customers as follows:

(a) For residential basic exchange service and single line business basic exchange service annual rate increases shall not exceed $1 [per month] in years one (1) through four (4) or $2 [per month] in year five (5);

(b) Non-recurring charges for residential service connection and installation shall not exceed the current cap of $50 for a period of three (3) years from an effective date of any Board Order approving this Stipulation and annual increases to those charges

[6]/ On January 15, 2013, the Board and Rate Counsel entered into a Stipulation of Settlement with CenturyLink which was affirmed by Board Order dated March 20, 2013. Aa861-883.

shall not exceed $5 in years four (4) and five (5); and

(c) Verizon agrees to provide residential customers with one free Directory Assistance call per month for a period of one (1) year from the effective date of any Board Order approving this Stipulation. [Aa40]

The Stipulation relinquishes the Board's authority over service quality standards for residential basic local exchange service and single line business basic exchange service after a minimum of three years with an option to extend the period by an additional two years. Aa41.

The Stipulation was signed by Verizon and a Deputy Attorney General on May 6, 2015. Aa43. Although Rate Counsel was a party to the proceeding, it was not included in the negotiations and was not aware that negotiations were occurring. The Board requested that Rate Counsel and other interested parties submit comments by May 15, 2015. Aa68.

Rate Counsel and others submitted comments on the proposed Stipulation as directed by the Board's Notice by Friday, May 15, 2015. Aa72. Rate Counsel submitted 23 pages of comments outlining its concerns with the Stipulation, the manner in which it was negotiated, and the lack of a current record to support it. Aa79-95. On Tuesday, May 19, 2015, the Board approved the Stipulation without change. The Board's Order was then issued on June 5, 2015. Aa32. After reviewing the history of the case, the

positions of the parties, and the relevant statutes, the Board approved the Stipulation in its entirety.

The Board acknowledged the arguments raised by Rate Counsel and others of the lack of competition for stand-alone telephone service. Aa21-25. The Board rejected that argument, however, stating that the Stipulation itself provides "what is sought in the comments, availability of standalone basic service and single-line business service at reasonable rates." Aa27. The Board's Order did not address the fact that under the Stipulation, these services will not be subject to rate regulation after five years. In addition, there is nothing in the Order, the Stipulation or the record to support the reasonableness of the rates agreed to over the next five years.

The Board's 2012 Public Hearing Notice states that when a service is deemed competitive the Board no longer regulates its rates, but the Board did not provide fair notice of the increases the Board has now ordered. Aa-106. Rate Counsel and other commenters noted that the public hearings in this matter were held in 2012, and that the Notice of those hearings did not discuss any impact on service quality regulation or the proposed rate caps included in the Stipulation. Aa21, Aa23, Aa24. The Board rejected the requests of commenters that further hearings be held and that the record be refreshed. Aa26-27.

Commenters also raised concerns surrounding service quality, chronic deteriorated service, the lack of the existence viable service competitors and objected to the Board's short window for comments, noting the inability to provide insightful comments under the timeframe provided by the Board. Aa388-392, Aa395, Aa396, Aa397, Aa398, Aa400-401, Aa402-403, Aa404-405, Aa406-407, Aa408-412, Aa413-418, Aa419-426, and Aa427. With respect to service quality, the Board Order resolved some of the ambiguity in the Stipulation regarding whether the service quality requirements of PAR-2 remained in effect for previously reclassified services. Aa-27. However, in finding that the "Agreement memorializes that service quality standards will be sustained," the Board failed to address the plain language of paragraph 20 of the Stipulation that clearly indicates service quality standards governing the services being reclassified now would continue for at most 5 years. That paragraph states:

> 20. The Signatory Parties agree that the service quality standards set forth by prior decisions of the Board will continue to apply to residential basic local exchange service and single line business basic exchange service for three years. At the close of year three, the Board will then determine whether these service quality standards should apply for the remaining two years. Aa-41.

Despite the passage of time and the failure of the 2012 Public Notice to fairly apprise the public of what is now being ordered, the Board summarily ruled that all parties had been

afforded a sufficient opportunity to develop the record and provide comments. Id. Aa26a-27a.

Relying on the three-year old record, the Board then found that Verizon had met the statutory standards for reclassification: (i) ease of market entry, (ii) presence of competitors, and (iii) availability of like or substitute services in the relevant geographic area. N.J.S.A. 48:2-21.19(b). With respect to the first two criteria, the Board cited the presence of Competitive Local Exchange Carriers (CLECs), wireless carriers, cable companies and VoIP providers in New Jersey. Aa-28-29.

Earlier in its Order, the Board acknowledged Rate Counsel's arguments that competition does not exist for these services. Aa-15-18. Rate Counsel pointed out that cable and VoIP companies do not offer stand-alone telephone service, that wireless is not an equivalent of wireline service, that CLECs may only gain access to the network to provide competing service by negotiating with ILECs such as Verizon, and that there is evidence of market power that undermines a claim that there is sufficient competition to warrant deregulation. Aa-15-18. In rejecting Rate Counsel's arguments, the Board cited testimony of Verizon's witnesses that cable companies aggressively promote their service as a substitute, and Verizon's argument in its brief that the reduction in the number of basic residential

lines shows that other services are adequate substitutes. Aa-29. Relying only on citations to the Company's briefs, the Board also concluded that CLECs have no difficulty entering the market and competing with Verizon, and that many people are "cutting the cord." Aa-30. The Board did not address the availability of stand-alone telephone service or the specific market power concerns raised by Rate Counsel.

Rate Counsel filed this appeal on June 29, 2015, and filed an amended CIS on July 16, 2015.

ARGUMENT

Courts are required to uphold an administrative agency's ruling only if the court finds the agency decision to be reasonable, or when the record contains such evidence as a reasonable mind might accept as adequate to support a conclusion. In re Jersey Cent. Power & Light Co. Petition, 85 NJ 520, 527 (1991)("JCP&L") (quoting In re N.J. Power & Light Co., 9 N.J. 498,509 (1952). Put another way, "'[a]ny review of the facts must be confined to the question of whether they are supported by substantial evidence, i.e., such evidence as a reasonable mind might accept as adequate to support a conclusion.'" In re Pub. Serv. Elec. & Gas Co., 35 N.J. 358, 376 (1961)(quoting In re Hackensack Water Co., 41 N.J. Super. 408, 418 (App. Div. 1956). Moreover, N.J.S.A. 48:2-46 affirms the Appellate Division's authority to set aside any Board order "when it clearly appears that there was no evidence before the board to support" it.

The Appellate Division has held that an agency's decision must be adequately explained, "because courts cannot exercise their duty of review unless they are advised of the considerations underlying the action under review." Bd. Of Educ. of E. Windsor Reg. Sch. Dist. V. State Bd. Of Educ., 172 N.J. Super. 547, 552, (App. Div. 1980). Moreover, the courts have held that "[f]ailure to address critical issues, or to analyze

the evidence in light of those issues, renders the agency's decision arbitrary and capricious and is grounds for reversal." Green v. State Health Benefits Comm'n, 373 N.J. Super. 408, 415 (App. Div. 2004). Therefore, a court will reverse when "the court finds the final agency actions are 'arbitrary, capricious or unreasonable or [if the action] is not supported by substantial credible evidence in the record as a whole.'" N.J. Soc'y for the Prev. of Cruelty to Animals v. N.J. Dep't of Agric., 196 N.J. 366, 384-85 (2008) (quoting Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980)) (alteration in original).

The court's scope of review under the arbitrary, capricious, and unreasonable standard, is guided by three questions: (1) whether the agency's decision conforms with relevant law; (2) whether the decision is supported by substantial credible evidence in the record; and (3) whether in applying the law to the facts, the administrative agency clearly erred in reaching its conclusion. In re Stallworth, 208 N.J. 182, 194 (2011); Mazza v. Bd. of Trs., 143 N.J. 22, 25 (1995). In making a determination that an agency decision is "supported by sufficient credible evidence present in the record," Close v. Kordulak Bros., 44 N.J. 589, 599 (1965), the New Jersey Supreme Court has advised that:

> Application of this standard requires far more than a perfunctory review; it calls for careful and principled consideration of the agency record and findings. The administrative agency must set forth basic findings of fact supported by the evidence and supporting the ultimate conclusions and final determination so that the parties and any reviewing tribunal will know the basis on which the final decision was reached.
>
> Riverside Gen. Hosp. v. New Jersey Hosp. Rate Setting Comm's, 98 N.J. 458, 468 (1985)(citations omitted).

The court's examination also considers whether the agency has carried out the function assigned to it by the legislature. New Jersey Society for the Prevention of Cruelty to Animals, et., al. v. New Jersey Dept. of Agriculture, et al. 196 N.J. 366 (2008); George Harms Construction Co. v. New Jersey Turnpike Auth. 137 N.J. 8, 27 (1994). These fundamental principles of administrative law control the disposition of this case.

POINT I

THIS MATTER SHOULD BE REVERSED AND REMANDED AS THE BOARD FAILED TO PROVIDE ADEQUATE NOTICE AND HEARING AND THE RECORD DOES NOT SUPPORT ITS DECISION.

Pursuant to N.J.S.A. 48:2-21.19(b), the Board must provide "notice and hearing" before it determines whether a telecommunications service is a competitive service. IMO the Application of Bell Atlantic-New Jersey for Approval of its Plan

for Alternative Regulation, 342 N.J. Super. 439 (App. Div. 2001). Although public hearings were held in this matter, the three public hearings occurred in October and November of 2012 and the evidentiary hearing was held over three years ago in July, 2012. Aa4.

The passage of time and the specific notices issued by the Board in May, 2015 are insufficient to provide the public with meaningful notice and opportunity to be heard regarding the provisions of this Stipulation.[7] While the Notice issued for the 2012 public hearings mentioned the potential that Verizon's rates would be deregulated, it made no mention of potential rate increases, no discussion of service quality, and no mention of the impact the Board's action in this case would have on other provisions of Verizon's PAR. Aa4. The stale and incomplete notices cannot be deemed sufficient to provide the public with notice of the terms of this Stipulation. The Board had an obligation under the statute to allow ratepayers to refresh the record with new data before ending a century of consumer protection in this area, and before abandoning residential and

[7]/ Rate Counsel notes that when the Board approved the Stipulation of Settlement with CenturyLink in this case, it did not hold supplemental public hearings prior to affirming that settlement. However, the Settlement therein did not deregulate basic services, did not end CenturyLink's PAR, and even though it did include modest rate increases, the settlement occurred approximately two and a half months after the public hearings, not over two and a half years, as does the Verizon settlement herein.

single-line business consumers who continue to rely on stand-alone plain old telephone service ("POTS") for which there is no competition. The Stipulation in this matter is inappropriate and contrary to the requirements of N.J.S.A. 48:2-21.19(b).

In addition, although the Board allowed public comment on the Stipulation after it was reached, it did not address the legal and factual issues raised by Rate Counsel and others in their comments and in the record. The Board's decision violates both the statute enabling the Board to approve a reclassification of Verizon's services as competitive, N.J.S.A. 48:2-21.19(b), and the New Jersey Administrative Procedure Act ("APA"), N.J.S.A 52:14B-9. It also fails to satisfy basic requirements of procedural due process.

1. The Board's Action is Contrary to the Language and Intent Underlying N.J.S.A. 48:2-21.19(b).

N.J.S.A. 48:2-21.19(b) provides in pertinent part:

> The board is authorized to determine, after notice and hearing, whether a telecommunications service is a competitive service. In making such a determination, the board shall develop standards of competitive service which, at a minimum, shall include evidence of ease of market entry; presence of other competitors; and the availability of like or substitute services in the relevant geographic area.

Both the statute and legislative intent are clear and unambiguous. The Legislature declared the State policy to (1)

maintain universal telecommunications service at affordable rates; (2) ensure that customers pay only reasonable charges for local exchange telecommunications services..." and (3) only relieve interexchange telecommunications carriers from traditional utility regulation after notice and hearing when competition for service exists, keeping rates affordable and reasonable. N.J.S.A. 48:2-21.16(1) and (2).

The Appellate Division's decision in I/M/O The Application of Bell Atlantic for Approval of an Extension of its Plan for an alternative Form of Regulation, 342 N.J. Super. 439 (App. Div. 2001) is on point. In that case, the Court reviewed the procedures utilized by the BPU in approving a petition filed by Bell Atlantic seeking to have Directory Assistance declared a "competitive service" under its PAR so that the rates for that service would be deregulated. The court found that the statute "unambiguously requires a hearing before the determination can rightfully be made. It is not a requirement that can be ignored." Id. at 443. In determining what type of hearing was required, the court stated that "the precise characteristics of a required hearing are dictated not so much by the type of exercise in which the agency is engaged, but more so by the nature of the questions presented." Id. at 445.

In this case, the evidentiary hearing was conducted over two and a half years ago. Neither service quality nor the

increases in rates on the underlying services were part of the public or evidentiary hearings conducted in 2012. No opportunity for hearing was afforded to refresh the record on the state of competition for POTS residential and single-line business in New Jersey. No opportunity was afforded to review, rebut and provide evidence on the reasonableness of the rate increases that were approved, which could result in up to a 36% increase. Aa40. No opportunity was provided to present evidence opposing the Board's decision to cease oversight of Verizon's service quality obligations at year three or year five from the date of the Board's Order. Once the Stipulation was reached, only a brief opportunity for comment was allowed, not an ability to review and test the facts on which the agency's action was based.

In its Order, the Board justified its failure to conduct new, timely public hearings by noting that the 2012 Notice "explicitly indicates that when the Board determines retail services to be competitive, it no longer regulates, fixes, or prescribes the rates of those services, in accordance with N.J.S.A. 48:2-21.19." Aa27. The Board thus asserts that "[T]he clarity of the Notice therefore is not at issue." Aa27.

This is clearly insufficient. Rate Counsel and other interested parties were not given fair notice that specific rate increases would be approved or that service quality oversight

would be phased out. Nor was the public apprised of the information Verizon provided to justify the agreed upon rate increases or the Board's decision to relinquish its authority to review Verizon's service quality within three to five years. They were not given "an adequate opportunity to refresh the data in the record and test the accuracy and sufficiency of all the material showings in support of the Stipulation," or the opportunity "to make affirmative showings challenging the premises of the proposal in some better form than that which was actually permitted." Bell Atlantic, 342 N.J. Super. at 455. As the Appellate Division stated in Bell Atlantic, "the Advocate and others opposing the proposal were entitled to appropriate opportunity to test the factual premises of the proposal and the proofs offered in support thereof. This must be the least meaning of the hearing requirement of N.J.S.A. 48:2-21.19(b)." Id. at 453-4. Thus, the Court should vacate the Order and remand the matter so that the record can be refreshed to afford an opportunity for fair public notice to test the factual premises of the Board Order.

2. The Board's Actions Violated the Administrative Procedure Act

The Administrative Procedure Act defines a "contested case" as:

> A proceeding . . . in which the legal rights, duties, obligations, privileges, benefits or other legal relations of specific parties are required by constitutional right or by statute to be determined by an agency by decisions, determinations or orders, addressed to them or disposing of their interests, after opportunity for an agency hearing. N.J.S.A. 52:14B-2(b).

As noted above, the underlying statute here requires notice and hearing, and this case was adjudicated in 2012 as a contested case. As such, findings of fact must be based solely on the evidence in the record and on matters officially noticed. N.J.S.A. 52:14B-9(f). However, a review of the evidentiary record from 2012 demonstrates that the cost of providing service and the reasonableness of any particular rates, as well as service quality issues, were not part of that proceeding and thus a record on those issues was not established. Moreover, the Board relied on facts that must have been subsequently provided by Verizon without affording opposing parties the opportunity to examine and rebut those facts. The APA clearly provides that the parties shall be afforded an opportunity "to respond, appear and present evidence and argument on all issues involved." N.J.S.A. 52:14B-9(c). Rate Counsel and other interested parties

were denied this opportunity and the Board's Order should be reversed and remanded as a result.

The Board's Order cites a number of facts based on new information that were not part of the record developed in 2012 and must have been provided by Verizon during its settlement negotiations with Board Staff. These facts include the following:

- "Competition has been so strong that fewer than 10% of the households in Verizon NJ's wireline area subscribe to services that would be affected by the proposed Stipulation." Aa-21.

- "FCC reports that as of the end of 2013, there were 1.9 million non-ILEC interconnected VoIP interconnected VoIP [sic] lines in the state;" Aa-22.

- "98.1% of the New Jersey population has the choice of two or more providers of wired broadband, and thus has multiple available options for VoIP services;" Aa-22.

- "The volume of DA calls fell another 75% between 2011 and 2014." Aa-22.

The Board's Order also notes that:

> Verizon states that it continued to lose a significant number of lines since it filed its initial testimony. In the last three and one-half years, the basic number of basic residential lines has declined by 54% and single line business lines have declined by 19%. Lifeline lines have declined 73% over the same period. Verizon attributes this to Lifeline customers preferring to use wireless phones for their lifeline service. Aa-22.

The Board Order also cites additional new information submitted by Verizon which states that in March, Pennsylvania reclassified

Verizon's services as competitive on the finding of "incontrovertible evidence" of the existence of substitutes for wireline services and that Washington and Colorado have reclassified residential and small-line business services as competitive as well. Aa-23.

Rate Counsel and other interested parties were denied the opportunity to verify the data provided by Verizon to Board Staff and/or to rebut the information provided, as this information and data was not disclosed to the parties prior to the release of the Board's Order. See, Tosco Corp. v. Dep't of Transp. and Marketfair, 337 N.J. Super. 199, 208 (App. Div. 2001)(holding that an administrative agency is not free to rely on undisclosed evidence that parties have not had an opportunity to rebut). Nor was the information contained or annexed to the proposed Stipulation of Settlement and Notice released for comment by the Board. Aa68. This is extremely important because these facts go to the Board's ultimate findings. For example, evidence of line losses was central to Verizon's arguments and the Board's conclusion regarding the availability of substitute services. Aa-29-30. The validity of the comparison to other states is also something that is subject to dispute as the state of competition and availability of substitute services changes from state to state and the definition and impact of the reclassification of "small-line business lines" as competitive

in Pennsylvania may differ from the reclassification of "single-line business customers" in New Jersey.

The Board clearly relied on these new facts in reaching its decision. In rejecting the argument of Rate Counsel and others that the Stipulation and the lack of competition threatened customers who only sought stand-alone telephone service at reasonable rates, the Board stated:

> This determination is based on the record, which demonstrates more competition today than four years ago when the Board in Phase I found that all of Verizon's other mass market services were competitive. The record in this proceeding contains additional data and statistics that demonstrate that the communications industry in New Jersey continues to be subject to increasing competitive pressures from entities such as cable television providers, wireless providers, VoIP providers, and CLECs. Aa-27.

The Board is under a duty to make findings of fact, based on the record created at the evidentiary hearings to support its decision. The Board may not simply rely on the Stipulation or on Staff's recommendations contained therein, nor may the Board rely on representations made by the Company that objecting parties have not had the opportunity to challenge. I/M/O the Revision of Rates Filed by Redi-Flo Corp., 76 N.J. 21, 24 (1978). The Legislature has expressly reserved to agency heads, in this case the Board itself, the power to decide contested cases. N.J.S.A. 52:14B-10; In re Appeal of Certain Sections of Uniform Administrative Procedure Rules, 90 N.J. 85, 94 (N.J.

1982). The Board must therefore make findings of fact, based on the record created at evidentiary hearings to support its decision.

The rights of specific parties, i.e., residential and single-line business customers, who do not have competitive service options for stand-alone telephone services, are substantially affected by the Board's Order which relied on new, unverified information provided by Verizon. The relevant statute required a hearing to determine ease of market entry, the existence of competitors and the availability of substitute services. It was inappropriate for the Board to allow Verizon to refresh the record with new information while denying Rate Counsel and other parties the opportunity to review the information submitted and provide counter-evidence. Accordingly, pursuant to the APA, the record should have been reopened allowing parties to update the evidence to establish a record upon which the Board and this Court could determine whether the reclassification of Verizon's residential and single-line business met the statutory criteria. IMO Bell Atlantic, supra. See also, Division of State Police v. Maguire, 368 N.J. Super. 564, 573 (App. Div. 2004).

3. The Board's Actions Violate Due Process

It is "a fundamental tenet of our Anglo-American system of justice that no court or administrative agency is so knowledgeable that they can make fair findings of fact without providing both sides an opportunity to be heard." Paco v. Am. Leather Co., 213 N.J. Super. 90, 97 (App. Div. 1986). The amount of process that is due varies based on the circumstances of each case. See Matthews v. Eldridge, 424 U.S. 319, 334-335 (1976). Notice and an opportunity to be heard are essential components of fundamental due process. Mettinger v. Globe Slicing Mach. Co., 153 N.J. 371, 389 (1998).

The Board's responsibility for regulating the State's public utilities is an important one. As the New Jersey Supreme Court stated, "the system of rate regulation and the fixing of rates thereunder are related to constitutional principles which no legislative or judicial body may overlook." In re Industrial Sand Rates, 66 N.J. 12, 23 (1974). The Board is responsible for protecting the property rights of both utilities and their customers:

> ... if the rate for the service supplied be unreasonably low it is confiscatory of the utility's right of property, and if unjustly and unreasonably high ... it cannot be permitted to inflict extortionate and arbitrary charges upon the public. Id. at 24.

In this regard, the New Jersey Supreme Court has recognized that the rights subject to the Board's protection "inher[e] in the public which pays as well as the entity that receives." Id. Likewise, the Court has noted, "N.J.S.A. 48:2-13 charges the Board with the task of overseeing the operations of all public utilities in accordance with the purposes of the Public Utilities Act, and foremost among these responsibilities is its duty to ensure that rates are not excessive." In re Redi-Flo Corp., 76 N.J. 21, 39 (1978). In addition, the Board must ensure that a decision "will produce just and reasonable rates for telecommunications service," and will "enhance economic development in the state while maintaining affordable rates." *See also*, In re Application of New Jersey Bell, Co., Supra, 291 N.J. Super. at 83. In order to satisfy the requirements of procedural due process a party must, at a minimum, be provided with adequate notice, a chance to know the opposing evidence, and to present evidence and argument in response. High Horizons Dev. Co. v. Dep't of Transp., 120 N.J. 40, 53 (1990). See also, In re Amico Tunnel Carwash, 371 N.J. Super. 199, 215 (App. Div. 2004)(finding on remand that appellants should be afforded an opportunity to review and comment upon any evidence or recommendations the agency may consider in reaching its decision.)

In its Order, the Board noted that approximately 600 comments were received from the public between the release of the Public Notice on May 6 and the deadline for submission of comments on May 15, 2015. Aa24-25. Many of the comments expressed concern over service quality of landline service and increasing rates and concern that Verizon will seek to raise rates to force consumers to switch to an inferior product, such as Verizon's wireless VoiceLink. Aa388-392, Aa395, Aa396, Aa397, Aa398, Aa400-401, Aa402-403, Aa404-405, Aa406-407, Aa408-412, Aa413-418, Aa419-426, and Aa427. The comments opposed approval of the Stipulation and requested an extension of time for Public Hearings and evidentiary hearings. Id. Although the Board acknowledged the material issues of fact raised in many of the comments concerning lack of available substitute services, the Board ignored these concerns and based its decision on the stale 2011-2012 record and new, undisclosed information. Aa-26.

Central to procedural fairness is a chance to know the opposing evidence and to present evidence and argument in response. Tosco, supra at 337 N.J. Super. 208 (App. Div. 2001). In Tosco, the court remanded an agency highway siting decision in which the agency relied on undisclosed evidence. Id. at 208. The agency admitted that it had "permitted and invited comment" and conceded that some of the material it received was not provided to the plaintiff prior to the agency's decision. Id.

The Tosco court found the agency's reliance on undisclosed material "extremely troubling" reasoning that "[o]ne of the core values of judicial review of administrative actions is the furtherance of accountability." Id. at 208. The court concluded that "an agency is never free to act on undisclosed evidence that parties have had no opportunity to rebut." Id. (citations omitted). See also, High Horizons Devel. Co., supra, 120 N.J. at 53. The Tosco court remanded for a new hearing at which plaintiff could meet and contest the evidence relied on by the agency.

Similarly, in In re Parlow, 192 N.J. Super. 247, 249-250(App. Div. 1983) the Appellate Division ruled that it was clear error for an agency to take into consideration a document not admitted into evidence at the hearing before an ALJ. The court ruled that the agency could not base its decision on out-of-record material that parties to the case have not had the opportunity to confront or contest. Id.

Here, as detailed above, the Board clearly relied on updated evidence that was not in the record and failed to afford opposing parties the opportunity to rebut that evidence. In fact, to this day, Rate Counsel and other parties are not aware of what information was provided by Verizon to Board Staff in the negotiations as no other party was included in those proceedings. It was improper for the Board not to reopen the

record and afford Rate Counsel and other interested parties the same opportunity provided to Verizon. Rate Counsel and the other interested parties should have been permitted to refresh the record and test the accuracy of Verizon's data on the current state of competition for residential and single-line business in New Jersey. The Board's failure to allow this is inconsistent with basic requirements of due process.

It is also well-established that, at a minimum, an agency's decision must be based on "sufficient credible evidence present in the record." Close v. Kordulak Bros., Supra, N.J. at 599. An administrative decision not based upon substantial evidence is legally infirm and must be rejected. Ocean County Walton League v. DEP, 303 N.J. Super. 1, 9-10 (App. Div. 1997). The record below is devoid of any cost analysis or data upon which to justify or confirm that the rate increases up to 36% contemplated under the Stipulation are reasonable. The absence of evidence in the record to support the Board's determination that these rate increases are "just and reasonable" renders the decision inconsistent with due process and requires a remand. In re Musick, 143 N.J. 206, 216-217 (1996); See also, In re Galloway Tp. & Bridgeton, 418 N.J. Super. 94, 103 (App. Div. 2011).

The same is true of the Board's approval of the provision in paragraph 20 of the Stipulation allowing for a phase out of

the regulation of service quality for the services at issue here. The only evidence in the record at all regarding service quality are the comments submitted opposing the Stipulation in which several commenters detailed their concerns about eroding service quality on residential and small-business lines. Aa388-392, Aa395, Aa396, Aa397, Aa398, Aa400-401, Aa402-403, Aa404-405, Aa406-407, Aa408-412, Aa413-418, Aa419-426, and Aa427. The Board's Order does not address these comments. Service quality was not addressed at all in the 2012 record and a potential phase-out of service quality regulation was not included in the 2012 public notices. There is thus no record whatsoever to support the Board's approval of this as part of the Stipulation.

In sum, the Board's actions reclassifying Verizon's residential and single-line business services as competitive, approving rate increases and phasing out service quality oversight, is not supported by the record. The Board's Order is based on a stale record refreshed only by unknown data provided by Verizon only to Board Staff. The legal and factual issues raised by Rate Counsel and other parties regarding the lack of evidence and the impact on ratepayers are not addressed by the decision which was rendered only days after the comments were submitted. The procedures utilized denied ratepayers their fundamental due process rights and frustrate any chance for

meaningful appellate review. The Board's actions also violated its enabling statute, N.J.S.A. 48:2-21.19, which unambiguously requires notice and hearing, and the Administrative Procedure Act, N.J.S.A. 52:14B-9. For these reasons, the Board's order should be reversed and remanded for further proceedings.

POINT II

THE BOARD'S DECISION AND ORDER WAS CONTRARY TO LAW, ARBITRARY AND CAPRICIOUS.

Even utilizing the 2012 record, the Board's Order approving the Stipulation in this case is arbitrary and capricious and not supported by the record. Findings are not adequate if they merely summarize the evidence or consist only of conclusions or general statements. In re Rodriguez, 423 N.J. Super. 440, 450-451, 453 (App. Div. 2011)(reversing decision made on an inadequate record based on preliminary investigations).

The 1992 Act authorizes the Board to "determine, after notice and hearing, whether a telecommunications service is a competitive service." The legislation requires the Board to develop standards of competitive service that, "at a minimum," include evidence with respect to: 1) ease of market entry; 2) presence of other competitors; and 3) availability of like or substitute services in the relevant geographic area. N.J.S.A. 48:2-21.19. Assuming *arguendo*, that the Board, may properly base

its decision today on stale 2012 evidence, that record does not support reclassification.

1. Ease of Market Entry and Presence of Competitors

The Board, citing primarily from briefs filed by Verizon, based its finding that there are no barriers to entry on the presence of competitors providing cable, wireless and VoIP. Aa-28. While ease of market entry can be demonstrated, in part, by the presence of other competitors, the analysis should also look at whether those competitors offer the services that are being reviewed for competitiveness. Rate Counsel was able to demonstrate in the record below that in New Jersey only a handful of companies are serious contenders for residential and single-line business customers that want stand-alone phone service and many of these companies show no revenues. Aa276-275; Confidential Aa634-635.

The evidence provided by Rate Counsel noted that as of December 31, 2010, of the approximate 5.4 million total wireline retail telephone lines in service in New Jersey, approximately 2.94 million were served by incumbent carriers (i.e., Verizon, CenturyLink, and Warwick) and 2.46 million were served by non-incumbents. Aa265; Confidential Aa623. However, the non-incumbent carriers did not necessarily offer stand-alone basic local exchange service to residential and single-line business

customers. Aa265; Confidential Aa623. The data shows that the competitors provide bundled services and provide little if any competition for stand-alone residential and single-line business services. Aa243-248, Aa250-261; Confidential Aa601-606, Aa608-619. In addition, Rate Counsel's 2012 testimony demonstrated that lines served by non-incumbent carriers in the New Jersey residential market were on the decline. Aa286; Confidential Aa644, and that in connection with single-line business customers, Verizon had "no way to determine how many single-line business customers are served by competitors." Aa532-534; Confidential Aa711-713.

Rate Counsel's CLEC survey showed that most CLECs that serve business customers serve metropolitan areas and focus on larger commercial customers. Aa210-212; Aa278-296; Confidential Aa636-654. Hence CLECs provide little if any service to residential and single-line business customers. Aa312-327; Confidential Aa670-685.

With respect to wireless service, the FCC has consistently reaffirmed its position that wireless service does not effectively constrain pricing on wireline services. Aa213, Aa272-277; Confidential Aa630-635. Similarly, although cable providers exist in 99% of Verizon's territory, the evidence introduced by Rate Counsel in the record demonstrated that 89% of interconnected residential VoIP lines (cable company

telephony) are provided as part of a bundle with broadband Internet access. Aa268-274; Confidential Aa622-628. The record also shows that cable companies price their telephone product at a much higher rate than Verizon's basic local exchange service even in the rare instances where the customer is able to purchase a voice-only product from the cable company. Aa213-215; Aa300-305, Confidential 658-663. In addition, service provided by cable competitors is often tied to a contract period with early termination fees. The evidence in the record confirmed that Verizon continued to control the vast majority of POTS lines in the residential market. Aa513-518, Aa531-542; Confidential Aa787-792; Aa805-816.

Rate Counsel also submitted testimony below challenging Verizon's argument that line losses demonstrate competition. Rate Counsel's position regarding line losses was supported by FCC findings. I/M/O the Verizon Telephone Companies Request for Forbearance Pursuant to 47 U.S.C. §160(c)in the Boston, New York, Philadelphia, Pittsburg Providence and Virginia Beach Metropolitan Statistical Areas, FCC WC Docket No. 06-172, Memorandum Opinion and Order, FCC 07-212, released December 5, 2007. Aa308; Confidential Aa668. In that case, that the FCC, in connection with six metropolitan statistical areas which included portions of New Jersey, rejected Verizon's reliance of "line loss" to demonstrate a competitive market and expressed

concerns about the evidentiary reliability of its E911 data as evidence of competitor lines. Aa309-311; Confidential Aa667-670.

Additionally, Rate Counsel demonstrated that the existence of non-incumbent carriers in local markets does not demonstrate the existence of true competition for stand-alone local exchange service for residential and single-line business customers, where Verizon maintains and continues to exert market power. Because Verizon owns the network, it controls the terms by which potential competitors may connect to that network in order to resell their voice services. Its market power allows Verizon to negotiate favorable and advantageous terms in resale agreements. Since Verizon controls the facilities and has no compelling economic incentive to facilitate access to its network facilities to its CLEC rivals, the mere presence of CLECs in the State does not necessarily demonstrate a competitive marketplace. Aa280-290 and Confidential Aa638-648.

Hence, the evidence provided by Rate Counsel below demonstrates that because Verizon controls these bottleneck elements which are necessary for its rivals, and does not yet price these elements based on their underlying costs, adequate competition does not exist. Aa234, Aa326; Confidential Aa592, Aa684. Therefore, CLECs cannot yet constrain the rates of Verizon's services. The evidence demonstrates that while CLECs may be present, the vast majority of the CLECs are, at best,

fringe competitors, and therefore should be discounted. Aa291-291; Confidential Aa649-650.

2. Lack of Substitute Services

The availability of like or substitute services must be assessed in the relevant geographic area and concerns both supply (i.e., is it available in the geographic area of the consumer?) and demand (i.e., does the customer consider it an alternative?). The Board's finding that substitute services exist, again based primarily on citations to Verizon's briefs, is based on the marketing messages of cable companies and line losses. But once again the Board made no effort to distinguish between the availability of substitutes for telephone services generally and the availability of substitutes for basic stand-alone telephone service. Aa-29-30.

Rate Counsel was able to demonstrate in the record below the absence of alternative suppliers and substitutes for basic local exchange service in New Jersey. Aa263-279 and Aa520-521; Confidential Aa621-637]; and Aa698-699. In particular Rate Counsel was able to show that in the majority of instances, wireless does not represent a substitute for the services at issue in this proceeding. Wireless-only households have certain distinct characteristics and based on a Center for Disease Control and Prevention ("CDC") report discussed by Rate Counsel in the record below, the percentage of adults living in

households with only wireless telephones decreases as age increases beyond 35 years: 34.3% for adults aged 35-44 years; 21.6% for adults aged 54-64 years; and 7.9% for adults aged 65 years and over. Aa271-276; Confidential Aa629-634. The data demonstrates that senior consumers rarely view wireless as a substitute for wireline service (they may own wireless service, but use wireless service *in addition to* rather than *instead of* wireline service). Aa271-276; Confidential Aa629-634. The mere fact that wireless service is available in Verizon's service territory has little *if any* bearing on whether it is a substitute for plain old telephone service. Aa83-87; Aa213-214; Aa271-276; and Confidential Aa629-634. Similarly, as discussed in the previous section, VoIP is typically provided as part of a bundle, and, therefore, is not a substitute for stand-alone basic local exchange service. In those few instances where cable companies sell stand-alone VoIP, it is offered at a much higher price than that of the ILECs' basic service. Aa267-270 and Aa522; Confidential Aa625-628 and Aa701a.

The evidence presented by Rate Counsel in the record below clearly demonstrates that Verizon continues to be the dominant provider of stand-alone basic local exchange service for residential and single-line business customers. Confidential Aa665-670. As the dominant provider of stand-alone basic service it has the ability to exert market power. Aa290-294;

Confidential Aa648-652. Local exchange markets are not sufficiently competitive to constrain the rates, terms, and conditions of Verizon's basic stand-alone local exchange service for residential and single-line business customers. If competition does not exist for these customers then other aspects of basic local exchange service, including installation charges, are also not competitive. Without viable CLEC competitors, there is thus also no pricing constraint on Verizon's installation service charges for residential and single-line business customers. Aa326-327; Confidential Aa684-685.

Rate Counsel also provided ample evidence which demonstrates that customers do not have economic substitutes for basic local exchange service, and their purchasing decisions demonstrate that they continue to rely on the ILECs such as Verizon for stand-alone basic service. Aa300-307; Confidential Aa658-665. Rate Counsel was able to demonstrate that the major erosion of the ILECs' residential lines occurred as a result of cable companies' triple play offerings and therefore do not represent economic substitutes for stand-alone basic local wireline service for residential and single-line business customers. Aa307-314; Confidential Aa665-672.

This evidence was simply not addressed by the Board in its Order. Instead, the Board made conclusory findings primarily

citing briefs filed by one litigant. The Board made no effort to address the evidence of market power or the lack of substitute services for stand-alone basic telephone which is still relied upon by many customers, particularly seniors.

Courts have clearly established that "[A]ll administrative agencies must articulate the standards and principles that govern their discretionary decisions in as much detail as possible." In re Galloway Tp., supra. 418 N.J. Super., at 103-104. "Without findings of fact supported by the record and supporting the ultimate determination, an agency decision is an arbitrary, capricious, and unreasonable action." Id. As the court in Galloway cautioned, "fact-finding is, therefore, far from a technicality, it is a matter of substance," Id. The Board's Order in this matter clearly fails in this regard.

CONCLUSION

For the foregoing reasons, Rate Counsel respectfully requests that this court find that the Board Order approving the Stipulation of Settlement is arbitrary and capricious and violates Rate Counsel's due process rights. Rate Counsel respectfully requests that this court reverse and remand this matter back to the Board for further proceedings.

Respectfully submitted,

Stefanie A. Brand,
Director
Maria T. Novas-Ruiz,
Assist. Deputy Rate Counsel
Attorneys for Appellant
STATE OF NEW JERSEY
DIVISION OF RATE COUNSEL

Dated: October 28, 2015.