



State of New Jersey  
DIVISION OF RATE COUNSEL  
140 EAST FRONT STREET, 4<sup>TH</sup> FL  
P.O. BOX 003  
TRENTON, NEW JERSEY 08625

PHIL MURPHY  
Governor

SHEILA OLIVER  
Lt. Governor

STEFANIE A. BRAND  
Director

August 21, 2018

**Via Hand Delivery**

Aida Camacho-Welch, Secretary  
New Jersey Board of Public Utilities  
44 South Clinton Ave., 10<sup>th</sup> Floor  
P.O. Box 350  
Trenton, New Jersey 08625-0350

**Re: I/M/O Proposed Amendment to N.J.A.C. 14:1-5.12 –  
Tariff Filings or Petitions Which Propose Increases in  
Charges to Customers  
BPU Docket No. AX17050468  
Proposal Number: PRN 2018-007**

Dear Secretary Camacho-Welch:

Please accept this letter from the New Jersey Division of Rate Counsel (“Rate Counsel”) regarding the above-referenced matter. This letter is a follow-up to a phone call that took place on August 16, 2018 between Rate Counsel and senior staff of the Board of Public Utilities (“BPU” or “Board”). During that call, Rate Counsel confirmed to Board Staff that the comments submitted by Rate Counsel on March 16, 2018 solely addressed the rule proposal for the above-referenced matter that was published in the New Jersey Register on January 16, 2018. Rate Counsel never had the opportunity to comment on the draft rule published on February 5, 2018 because Rate Counsel did not become aware of the existence of this second version of the rule until late May 2018.

The January 16, 2018 publication of the proposed rule was the only publication for which Rate Counsel received notice. Rate Counsel staff subsequently learned that a separate, and substantively different, version of the rule had been published on February 5, 2018. By the time that Rate Counsel finally learned of the February publication, the comment period had been over for approximately seven weeks. Despite being the statutory representative of ratepayers in New Jersey, Rate Counsel was never provided with notice of the February publication, and therefore was unable to submit comments on that version of the draft rule. The Board's failure to provide notice to Rate Counsel of the February publication constituted a violation of N.J.A.C. 1:30-5.2(a)(3), which requires the Board to e-mail or mail either the notice of proposal or a statement of the substance of the proposed agency action to "interested persons" and "those persons on the agency's electronic mailing list..." Given that the rule was being proposed to comply with a remand by the Appellate Division in an appeal brought by Rate Counsel, there can be no doubt that Rate Counsel was an interested party who should have been notified of the re-proposal.

Moreover, Rate Counsel is writing to express to the Board its belief that the February 5, 2018 publication failed to comply with the requirements for "substantive changes" to a draft rule as set forth in the Administrative Procedure Act, N.J.S.A. 52:14B-1 et. seq. The draft rule published in January allocated 75% of the calculated consolidated tax adjustment to ratepayers, while the draft rule published in February allocated only 25% of the calculated adjustment to ratepayers. This change will result in tens, if not hundreds of millions, of dollars in additional rate increases annually to ratepayers compared to the January draft rule. This changes "what is being prescribed, proscribed or otherwise mandated by law" and will "enlarge...the scope of the proposed rule and its burden on those affected by it," thereby constituting a "substantive change" under N.J.S.A. 52:14B-4.10.

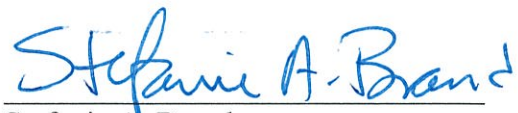
The draft rule published on February 5, 2018, did not include any of the required elements of the public notice, and was therefore deficient. In addition, the notice requirements set forth in N.J.A.C. 1:30-5.2 were also not met for the February publication. If the Board wishes to proceed with the new allocation set forth in the February draft rule, it must meet all of these

Ms. Aida Camacho-Welch  
August 21, 2018  
Page 3

requirements, including an explanation of its reasons for substantially decreasing ratepayers' share of consolidated tax savings.

By this letter, Rate Counsel requests that these deficiencies be cured before any final rule is adopted, and that the Board provide to Rate Counsel copies of all comments from the public received in response to both the January draft rule and the February draft rule. These comments have not been placed on the BPU's website, and Rate Counsel respectfully requests that it be provided copies within ten days of the Board's receipt of this letter.

Respectfully submitted,



Stefanie A. Brand  
Stefanie A. Brand  
Director, Division of Rate Counsel

**I/M/O Proposed Amendment to  
N.J.A.C. 14:1-5.12- Tariff Filings or  
Petitions Which Propose Increases in  
Charges to Customers**

**BPU Docket No. AX17050468  
Service List**

Aida Camacho-Welch, Secretary  
Board of Public Utilities  
44 South Clinton Avenue, 3<sup>rd</sup> Fl.  
Suite 314  
P.O. Box 350  
Trenton, NJ 08625-0350

Paul Flanagan, Executive Director  
Board of Public Utilities  
44 South Clinton Avenue  
P.O. Box 350  
Trenton, NJ 08625-0350

Noreen Giblin, Chief Counsel  
Board of Public Utilities  
44 South Clinton Avenue  
P.O. Box 350  
Trenton, NJ 08625-0350

James Boyd, Esq.  
Board of Public Utilities  
44 South Clinton Avenue  
P.O. Box 350  
Trenton, NJ 08625-0350

Geoffrey Gersten, DAG  
Division of Law  
124 Halsey Street, 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, NJ 07101

Carolyn McIntosh, DAG  
Division of Law  
124 Halsey Street, 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, NJ 07101

Alex Moreau, Esq., DAG  
Division of Law  
124 Halsey Street, 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, NJ 07101

Caroline Vachier, DAG  
Division of Law  
124 Halsey Street, 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, NJ 07101

Thomas Churchelow, Esq.  
New Jersey Utilities Association  
50 West State Street  
Suite 1117  
Trenton, NJ 08608

Steven S. Goldenberg, Esq.  
Fox Rothschild LLP  
Princeton Pike Corporate Center  
997 Lenox Drive  
Bldg. 3  
Lawrenceville, NJ 08648

Stefanie A. Brand, Director  
Division of Rate Counsel  
140 East Front Street, 4th Floor  
P.O. Box 003  
Trenton, NJ 08625

Ami Morita, Esq.  
Division of Rate Counsel  
140 East Front Street, 4th Floor  
P.O. Box 003  
Trenton, NJ 08625

Diane Schulze, Esq.  
Division of Rate Counsel  
140 East Front Street, 4th Floor  
P.O. Box 003  
Trenton, NJ 08625

Christine M. Juarez, Esq.  
Division of Rate Counsel  
140 East Front Street, 4th Floor  
P.O. Box 003  
Trenton, NJ 08625

Lisa M. Gurkas  
Division of Rate Counsel  
140 East Front Street, 4th Floor  
P.O. Box 003  
Trenton, NJ 08625