

## CHAPTER 77

AN ACT concerning certain decisions of the Board of Public Utilities and amending P.L.1991, c.428 and P.L.1983, c.454.

**BE IT ENACTED** by the Senate and General Assembly of the State of New Jersey:

1. Section 4 of P.L.1991, c.428 (C.48:2-21.19) is amended to read as follows:

C.48:2-21.19 Competitive services, rates not regulated; conditions.

4. a. (1) Notwithstanding the provisions of R.S.48:2-18, R.S.48:2-21, section 31 of P.L.1962, c.198 (C.48:2-21.2), R.S.48:3-1, or any other law to the contrary, 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, of competitive services.

(2) The board shall not require the local exchange telecommunications company or interexchange telecommunications carrier to file and maintain tariffs for retail competitive services, but shall require any terms and conditions of retail competitive services to be made available for public inspection on the Internet website of any local exchange telecommunications company or interexchange telecommunications carrier providing those services, and a printed copy of those terms and conditions shall be provided upon the request of a customer. Nothing in this section shall affect the ability of a local exchange telecommunications company or interexchange telecommunications carrier, in their discretion, to file tariffs with the board.

b. The board is authorized to determine, after notice and public hearing, whether a telecommunications service is a competitive service. In making that 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. A final decision or order pursuant to this subsection shall be made within 12 months of the final public hearing held to determine whether a telecommunications service is a competitive service. If the board has not adopted a final decision or order within 12 months of the final public hearing, the board shall hold an additional public hearing before adopting a final decision or order. The board shall not make a determination pursuant to this subsection unless a public hearing has been held in the previous 12 months to determine whether a telecommunications service is a competitive service.

c. The board may determine, by rule, order, or in accordance with the provisions of a plan filed pursuant to subsection a. of section 3 of P.L.1991, c.428 (C.48:2-21.18), what reports are necessary to monitor the competitiveness of any telecommunications service.

d. The board shall have the authority to reclassify any telecommunications service that it has previously found to be competitive if, after notice and public hearing, it determines that sufficient competition is no longer present, upon application of the criteria set forth in subsection b. of this section. Upon that reclassification, the provisions of subsection a. of this section shall no longer apply and the board may determine such rates for that telecommunications service which it finds to be just and reasonable. The board, however, shall continue to monitor the telecommunications service and, whenever the board shall find that the telecommunications service has again become sufficiently competitive pursuant to subsection b. of this section, the board shall again apply the provisions of subsection a. of this section. A final decision or order pursuant to this subsection shall be made within 12 months of the final public hearing held to determine whether a telecommunications service is a competitive service. If the board has not adopted a final decision or order within 12 months of the final public hearing, the board shall hold an additional public hearing before adopting

a final decision or order. The board shall not make a reclassification pursuant to this subsection unless a public hearing has been held in the previous 12 months to determine whether a telecommunications service is a competitive service.

e. Notwithstanding the provisions of subsection a. of this section, the following safeguards shall apply to the offering of any competitive service by a local exchange telecommunications company:

(1) the local exchange telecommunications company shall unbundle each noncompetitive service which is incorporated in the competitive service and shall make all noncompetitive services separately available to any customer under tariffed terms and conditions, including price, that are identical to those used by the local exchange telecommunications company in providing its competitive service;

(2) the rate which a local exchange telecommunications company charges for a competitive service shall exceed the rates charged to others for any noncompetitive services used by the local exchange telecommunications company to provide the competitive service;

(3) tariffs for competitive services that may be filed with the board shall either be in the public records, or, if the board determines that the rates are proprietary, shall be filed under seal and made available under the terms of an appropriate protective agreement, such as those used in cases before the board; and

(4) nothing in P.L.1991, c.428 (C.48:2-21.16 et seq.) shall limit the authority of the board, pursuant to R.S.48:3-1, to ensure that local exchange telecommunications companies do not make or impose unjust preferences, discriminations, or classifications for noncompetitive services.

2. Section 2 of P.L.1983, c.454 (C.48:2-32.6) is amended to read as follows:

C.48:2-32.6 Public hearings.

2. a. (1) The provisions of any other law, rule, regulation, or order to the contrary notwithstanding, the board, or the Office of Administrative Law acting pursuant to subsection (c) of section 10 of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-10(c)), shall conduct as many of its public hearings held to review applications by public utilities other than municipal, county, or other local government owned companies not subject to the jurisdiction of the board for significant increases, changes, or alterations in their rate schedules, in the service area of the applicant as the board deems necessary or appropriate to afford the affected ratepayers the opportunity to monitor the decision-making process by which the rates are set. At least two public hearings shall be held in the service area with respect to any application except that, if substantial portions of the service area are located in more than one geographic region of the State, then at least two public hearings shall be held in the service area located in each of those geographic regions, under the terms and conditions specified in this subsection. One of the public hearings held in the service area, or one of the hearings held in each geographic area, as the case may be, shall be a hearing in which petitioners, respondents, and intervenors are parties. At the second hearing required by the provisions of this subsection, statements by objectors shall be permitted. All public hearings held pursuant to the provisions of this subsection shall be held at places which are easily accessible to the public with at least one hearing held during evening hours.

(2) As used in this subsection, "public utility" means "public utility" as defined in R.S.48:2-13.

b. On the day that the final public hearing is to be held in connection with any application, after which the recommended report and decision is to be filed in accordance with subsection (c) of section 10 of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-10(c)), the administrative law judge or the board, as the case may be, may require

the parties to the proceedings to present a summary statement of their cases or defenses. After the presentation, statements by the objectors shall be permitted in order to accord persons not parties to the proceedings an opportunity to participate in the proceedings. If no presentation is made, objector's statements shall be permitted in any event before the conclusion of the hearing. The final public hearing shall be held in the service area.

3. Section 3 of P.L.1983, c.454 (C.48:2-32.7) is amended to read as follows:

C.48:2-32.7 Final decision or order.

3. a. The board shall adopt a final decision or order with respect to an application under section 2 of P.L.1983, c.454 (C.48:2-32.6) at a public meeting, in accordance with subsection (d) of section 10 of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-10(d)). Each member of the board shall individually state the reason for the member's decision on the application either at the public meeting or in a written document, which document shall be available to the public upon request.

b. A final decision or order pursuant to subsection a. of this section shall be made within 12 months of the final public hearing held to review an application under section 2 of P.L.1983, c.454 (C.48:2-32.6). If the board has not adopted a final decision or order within 12 months of the final public hearing, the board shall hold an additional public hearing before adopting a final decision or order. A final decision or order shall not be adopted pursuant to subsection a. of this section unless a public hearing to review an application has been held in the previous 12 months.

4. This act shall take effect immediately.

Approved May 11, 2017.