

54:30A-102

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2001 **CHAPTER:** 433
NJSA: 54:30A-102 (Transitional Energy Facility Assessment (TEFA) surcharge)
BILL NO: A4045 (Combined with S2773)

SPONSOR(S): Sires and others

DATE INTRODUCED: December 17, 2001

COMMITTEE: **ASSEMBLY:** Appropriations

SENATE: ----

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** January 7, 2002

SENATE: January 7, 2002

DATE OF APPROVAL: January 8, 2002

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (Assembly Committee Substitute for A4045/S2773)

A4045

SPONSORS STATEMENT: (Begins on page 17 of original bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes

SENATE: No

FLOOR AMENDMENT STATEMENTS: No

LEGISLATIVE FISCAL ESTIMATE: No

S2773

SPONSORS STATEMENT: (Begins on page 20 of original bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: Yes

FLOOR AMENDMENT STATEMENTS: Yes

LEGISLATIVE FISCAL ESTIMATE: No

FINAL VERSION (2ND reprint): Yes

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ASSEMBLY, No. 4045

STATE OF NEW JERSEY 209th LEGISLATURE

INTRODUCED DECEMBER 13, 2001

Sponsored by:

Assemblyman ALBIO SIRES

District 33 (Hudson)

Assemblyman JOSEPH V. DORIA, JR.

District 31 (Hudson)

SYNOPSIS

Changes phase-out of transitional energy facility assessment (TEFA) unit rate surcharges on certain energy sales and provides a tax credit for certain investments in qualified electric and thermal energy generation equipment.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT changing the phase-out schedule of the transitional energy
2 facility assessment (TEFA) unit rate surcharges on certain energy
3 sales and providing a corporation business tax credit for certain
4 investments in qualified electric and thermal energy generation
5 equipment, amending P.L.1997, c.162 and P.L.1993, c.171.

6
7 **BE IT ENACTED** *by the Senate and General Assembly of the State*
8 *of New Jersey:*

9
10 1. Section 38 of P.L.1997, c.162 (C.54:30A-102) is amended to
11 read as follows:

12 38. Each remitter's transitional energy facility assessment shall be
13 established pursuant to section 67 of P.L.1997, c.162 (C.48:2-21.34).
14 Under no circumstances shall an assessment be made under this act for
15 any year commencing after December 31, **[2002]** 2006.
16 (cf: P.L.1997, c.162, s.38)

17
18 2. Section 41 of P.L.1997, c.162 (C.54:30A-105) is amended to
19 read as follows:

20 41. a. Every remitter shall on or before October 15, 1998, and on
21 or before October 15, in each year thereafter for years in which the
22 transitional energy facility assessment is imposed, return to the
23 Director of the Division of Taxation in the Department of the Treasury
24 and the Board of Public Utilities a statement in such form, manner and
25 detail as the director shall require showing the **[following:**

26 (1) Sales and use tax collected and use tax liability through
27 September 30 of the current calendar year;

28 (2) Estimated sales tax collections and use tax liability for the
29 period from October 1 through December 31 of the current calendar
30 year;

31 (3) Estimated corporation business tax, including negative and
32 positive deferred corporation business taxes shown separately, for the
33 current privilege period based upon actual taxable income from
34 January 1 through September 30 and estimated taxable income from
35 October 1 through December 31; and

36 (4) **Actual]** actual transitional energy facility assessment liability
37 from January 1 through September 30 and estimated liability from
38 October 1 through December 31 for the current calendar year.

39 b. On or before November 15, 1998, and on or before November
40 15 of each year thereafter for years in which the transitional energy
41 facility assessment is imposed, the State Treasurer shall, with the
42 cooperation of the Board of Public Utilities, calculate the percentage
43 reduction, as may be applicable, in the initial TEFA unit rate

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 surcharges or the calendar year 2001 TEFA unit rate surcharges based
2 upon the formula set forth in section 67 of P.L.1997, c.162
3 (C.48:2-21.34) and the board shall report the amount of such
4 reduction, if any, to the remitters subject to the transitional energy
5 facility assessment.

6 c. Every remitter shall on or before February 1, 1998 file with the
7 director a statement showing:

8 (1) The total public utility tax advance payments paid in the initial
9 year pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.); and

10 (2) The remitter's base year liability and each of the amounts
11 described in subsections (a), (b) and (c) in the definition of "base year
12 transitional energy facility assessment" in section 37 of P.L.1997,
13 c.162 (C.54:30A-101).

14 d. For any remitter owning or holding both gas and electric
15 facilities and conducting both gas and electric business in this State
16 each of the amounts reported on the return required to be filed
17 pursuant to subsection c. shall be allocated by the director between
18 those operations in the proportion that the sum of the unit-based taxes
19 bore to the whole of the unit-based taxes in the base year or such other
20 allocation methodology as the director shall prescribe.

21 e. The statements required pursuant to this section shall be
22 subscribed and sworn to by the president, a vice-president or chief
23 officer of the corporation preparing each statement. Any remitter
24 refusing or neglecting to make the statements herein provided for shall
25 forfeit and pay to the State of New Jersey the sum of \$100 per day for
26 each day of such refusal or neglect, to be recovered in an action at law
27 in the name of the State and which, when recovered, shall be paid into
28 the State Treasury. It shall be the duty of the director to certify any
29 such default to the Attorney General of the State who, thereupon, shall
30 prosecute an action at law for each penalty.

31 f. The Director of the Division of Taxation shall audit and verify
32 the statements filed by remitters whenever and in such respects the
33 director shall deem necessary or advisable. The director may require
34 any remitter to supply additional data and information in such form,
35 manner, and detail as the director shall request, whenever the director
36 may deem it necessary or helpful, for the proper performance of the
37 director's duties under this act.

38 g. The director may, by regulation, additionally require that all
39 filings required for the calculation and certification of assessment to
40 be paid by remitters established pursuant to this act shall be made in
41 an electronic form. The form and content of the electronic filing
42 message, the circumstances under which the electronic filing message
43 shall serve as a substitute for the filing of another return and the means
44 by which remitters shall be determined to be subject to this electronic
45 filing requirement shall be prescribed by the director.

1 For the purpose of this act "electronic filing" or "electronic filings"
2 means any message that is initiated through an electronic terminal,
3 telecommunication device, or computer for the purpose of fulfilling the
4 reporting responsibilities set forth hereinabove.

5 (cf: P.L.1997, c.162, s.41)

6
7 3. Section 43 of P.L.1997, c.162 (C.54:30A-107) is amended to
8 read as follows:

9 43. a. (1) The liability for the transitional energy facility
10 assessment made against any remitter in the first year of assessment
11 shall be an amount equal to TEFA unit rate surcharges (excluding the
12 provision for corporation business taxes included therein) determined
13 in section 67 of P.L.1997, c.162 (C.48:2-21.34) multiplied by the
14 associated therms of natural gas and kilowatthours of electricity sold
15 or transported for sale to ultimate consumers in New Jersey in the first
16 year plus any advances paid in the initial year pursuant to P.L.1940,
17 c.5 (C.54:30A-49 et seq.) by that remitter.

18 (2) The liability for the transitional energy facility assessment made
19 against any remitter for each year subsequent to the first year shall be
20 an amount equal to the TEFA unit rate surcharges (excluding the
21 provision for corporation business taxes included therein) calculated
22 in section 67 of P.L.1997, c.162 (C.48:2-21.34) for that year
23 multiplied by the associated therms of natural gas and kilowatthours
24 of electricity sold or transported for sale to ultimate consumers in New
25 Jersey in that year.

26 b. A credit against the liability determined pursuant to paragraph
27 (1) of subsection a. of this section shall be taken in the first year by the
28 remitter in the amount of all advances paid in the initial year pursuant
29 to P.L.1940, c.5 (C.54:30A-49 et seq.).

30 c. (1) Each remitter shall make an estimated payment on May 15
31 of the first assessment year in the amount of the base year transitional
32 energy facility assessment.

33 (2) Subsequent to the first year, each remitter shall make an
34 estimated payment on May 15 of each assessment year in which the
35 transitional energy facility assessment is in effect, in an amount equal
36 to the transitional energy facility assessment liability described in
37 subsection a. of this section for the immediately preceding assessment
38 year, excluding advances paid in the initial year pursuant to P.L.1940,
39 c.5 (C.54:30A-49 et seq.), reduced by the applicable reduction
40 percentage, if any, for the current assessment year determined
41 pursuant to paragraphs (2), (3) and (4) or paragraph (5) of subsection
42 d. of section 67 of P.L.1997, c.162 (C.48:2-21.34) less credits
43 described in subsection d. of this section, if any.

44 d. Any excess of the estimated payment made pursuant to
45 paragraph (1) or (2) of subsection c. of this section over the liability
46 determined pursuant to subsection a. of this section shall be treated as

1 a credit against the estimated payment for the subsequent assessment
2 year and reduce the amount of the estimated payment required to be
3 made for that subsequent year. Any excess of the estimated payment
4 made pursuant to paragraph (2) of subsection c. of this section over
5 the liability for the final year of the transitional energy facility
6 assessment shall be utilized as a nonrefundable credit with an unlimited
7 carryforward against that remitter's corporation business tax liability
8 in the subsequent privilege period year. Such credit shall be applied
9 in full to each estimated corporation business tax payment beginning
10 in the subsequent privilege period until fully utilized.

11 (cf: P.L.1997, c.162, s.43)

12

13 4. Section 67 of P.L.1997, c.162 (C.48:2-21.34) is amended to
14 read as follows:

15 67. a. As used in this section:

16 "Base rates" means the rates, including minimum bills, charged for
17 utility commodities or service subject to the board's jurisdiction, other
18 than the rates charged under a utility's levelized energy adjustment
19 clause, hereinafter "LEAC," or levelized gas adjustment clause,
20 hereinafter "LGAC," or equivalent rate provision;

21 "Base year" means the calendar year 1996;

22 "Board" means the Board of Public Utilities;

23 "Sales and use tax" means the sales and use tax liability computed
24 on sales and use of energy and utility service as defined in section 2 of
25 P.L.1966, c.30 (C.54:32B-2);

26 "Utility" means a public utility subject to regulation by the board
27 pursuant to Title 48 of the Revised Statutes; and

28 "Utility service" means the supply, transmission, distribution or
29 transportation of electricity, natural gas or telecommunications
30 services or any combination of such commodities, processes or
31 services.

32 b. No later than 60 days after the date this act is enacted, each
33 electric, gas and telecommunications utility subject to the provisions
34 of this act shall file with the board, and shall simultaneously provide
35 copies to the Director of the Division of the Ratepayer Advocate,
36 revised tariffs and such other supporting schedules, narrative and
37 documentation required by this act, as set forth in this section, to
38 reflect in the utility's rates the changes in tax liability effected pursuant
39 to this act. No later than 90 days after the date of the utility's filing,
40 and after determining that the filing and the rate changes provided for
41 therein are in compliance with the provisions of this act, the board
42 shall approve the utility's filing and associated rates for billing to the
43 utility's customers, effective for utility service rendered on and after
44 January 1, 1998. If the board determines that the utility's filing and the
45 associated rate changes provided for therein are not in compliance
46 with the provisions of this act, the board shall require the utility to

1 amend or otherwise modify its filing to render it in compliance. The
2 board may also permit the rates provided for in the utility's filing to be
3 implemented on an interim basis pending the board's final
4 determination in the event the board, in its discretion, determines that
5 due to the filing's complexity, or for other valid reasons, including but
6 not limited to the enactment of this act after June 30, 1997, additional
7 time is needed for the board to complete its review of the filing. If the
8 rates approved by the board upon its final determination are less than
9 the rates implemented on an interim basis, the difference shall be
10 refunded to the utility's customers with interest computed in
11 accordance with N.J.A.C.14:3-7.5(c). The rate adjustments
12 implemented pursuant to this act shall not constitute a fixing of rates
13 pursuant to R.S.48:2-21 and shall not be subject to the hearing
14 requirements set forth in that section.

15 c. As of the effective date of the rate changes implemented
16 pursuant to this act, and except for rates applicable to sales that were
17 or are currently exempt from the unit-based energy taxes formerly
18 imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) and rates
19 applicable to sales to which section 59 of P.L.1997, c.162
20 (C.48:2-21.31) applies, the board shall remove from the base rates of
21 each electric public utility and gas public utility the unit tax rates
22 included therein for the recovery of those unit-based energy taxes, and
23 include therein provision for the recovery of corporation business tax
24 imposed pursuant to P.L.1945, c.162 (C.54:10A-1 et seq.), and
25 additionally shall authorize the collection of the sales and use tax
26 imposed pursuant to P.L.1966, c.30 (C.54:32B-1 et seq.), as follows:

27 (1) The base rates of each gas and electric utility shall be reduced
28 by the amount of the unit-based energy taxes per kilowatthour or per
29 therm included therein.

30 (2) The provision for corporation business tax initially included in
31 the base rates of each gas and electric utility shall be based on the
32 utility's after-tax net income earned in the base year as booked, unless
33 the board determines, in its discretion, that such income as booked is
34 unusually high or low or otherwise unrepresentative of the utility's
35 prospective net income, in which case the utility's base year net income
36 shall be adjusted as determined by the board.

37 To permit the board to make this determination, in addition to
38 including in its filing schedules showing its net income earned in the
39 base year as booked, the utility shall include adjustments to such
40 booked income to eliminate the effect of revenues, expenses and
41 extraordinary or other charges that are non-recurring, atypical, or
42 both, including, but not limited to an adjustment to eliminate the effect
43 of unusually hot or cold weather, and that would otherwise make the
44 utility's base year net income unusually high or low or otherwise
45 unrepresentative of the utility's prospective net income. If the
46 adjustment is being made to eliminate the effect of unusually hot or

1 cold weather, associated revenue and expense adjustments shall also
2 be made. Subject to the board's approval, such adjusted income shall
3 be the basis for the calculation of the initial provision for corporation
4 business tax to be included in the utility's base rates.

5 The utility shall also include a calculation of its rate of return on
6 common equity achieved in the base year, both as booked and as
7 adjusted in accordance with the foregoing. The calculation shall be
8 made employing the methodology set forth in N.J.A.C.14:12-4.2(b)1,
9 and shall separately show the effect of reflecting adjustments to the
10 calculation, if any, that may have been employed historically in
11 establishing the utility's rate of return on common equity allowed for
12 ratemaking purposes. The utility's filing shall also include copies of its
13 audited financial statements for the base year and associated quarterly
14 and other reports filed with the Securities and Exchange Commission.

15 To reflect the provision for corporation business tax in base rates,
16 the demand charges, or charges per kilowatt, decatherm or million
17 cubic feet; the energy charges, or charges per kilowatthour or per
18 therm; and the customer charges, or charges other than demand and
19 energy charges, set forth in each base rate schedule, and the floor price
20 employed in parity rate schedules, included in the utility's tariff filed
21 with and approved by the board shall be increased by amounts
22 determined by multiplying such charges by the adjustment factor, "A
23 e, g" derived below:

$$24 \quad A_{e, g} = (I_{e, g} \times [Rs/(1-Re)])$$

$$25 \quad (Br_{e, g})$$

26
27
28
29 where:

30
31 "A e, g" means the adjustment factor applicable to electric base
32 rates (e), gas base rates (g), or both, other than rates applicable to
33 sales that were exempt from unit-based energy taxes formerly imposed
34 pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) or to which section
35 59 of P.L.1997, c.162 (C.48:2-21.31) applies;

36 "I e, g" means the utility's base year after-tax net income from
37 electric or gas sales, or both, and transportation service subject to the
38 board's jurisdiction and other operating revenue if such revenue is
39 reflected in the utility's cost of service for ratemaking purposes,
40 adjusted as approved by the board;

41 "Br e, g" means the utility's base year revenue from base rates
42 applicable to electric or gas sales, or both, and transportation service
43 subject to the board's jurisdiction, but excluding sales that were
44 exempt from unit-based energy taxes formerly imposed pursuant to
45 P.L.1940, c.5 (C.54:30A-49 et seq.) or to which section 59 of
46 P.L.1997, c.162 (C.48:2-21.31) applies;

1 "Rs" means the corporation business tax rate, expressed as a
2 decimal;

3 "Rf" means the applicable federal corporation income tax rate
4 expressed as a decimal; and

5 "Re" equals $R_s + R_f(1-R_s)$.

6 The utility shall account for the changes in tax liability provided for
7 by this act effective January 1, 1998. Such accounting shall include
8 the recording on the utility's income statement and balance sheet of
9 deferred corporation business tax defined, for book accounting
10 purposes, as differences in corporation business tax expense arising
11 from timing differences in the recognition of revenue and expenses for
12 book and tax purposes.

13 (3) When billed to the utility's customers, the adjusted base rate
14 charges determined pursuant to paragraphs (1), (2), and (4) of this
15 subsection, and the charges determined pursuant to the utility's
16 levelized energy adjustment clause, levelized gas adjustment clause, or
17 both, as determined both upon the effective date of the rate changes
18 authorized by this act and as revised prospectively in accordance with
19 the utility's tariff filed with and approved by the board, and the
20 transitional energy facility assessment unit rate surcharges, hereinafter,
21 "TEFA unit rate surcharges," determined in accordance with
22 subsection d. of this section, shall be increased by an amount
23 determined by multiplying such charges by the sales and use tax rate
24 imposed under P.L.1966, c.30 (C.54:32B-1 et seq.). In addition to the
25 utility's rates for service included in its tariff, for informational
26 purposes the tariff shall include such rates after application of the sales
27 and use tax authorized by this section.

28 (4) The utility's filing with the board to implement the rate changes
29 provided for by this act shall include an analysis, description, and
30 quantification of the effect of the changes in rates and tax payments
31 implemented pursuant to this act on the utility's requirement for cash
32 working capital, and if such requirement is less than the cash working
33 capital allowed for the collection and payment of unit-based energy
34 taxes formerly imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et
35 seq.) in determining the utility's base rates in effect prior to the rate
36 changes implemented pursuant to this act, and to the extent the
37 working capital reduction is not offset by a reduction in net deferred
38 taxes as provided for below, such base rates shall be reduced by the
39 reduction in the utility's revenue requirement associated with the
40 remaining reduction in the working capital requirement not so offset,
41 if any. The reduction in working capital shall be determined by using
42 the same methodology employed in establishing the working capital
43 allowance related to unit-based energy taxes reflected in the utility's
44 base rates in effect prior to the rate changes implemented pursuant to
45 this act. The reduction in the utility's revenue requirement associated
46 with the reduced working capital requirement shall be calculated using

1 the utility's last overall rate of return allowed by the board, including
2 provision for federal income taxes and the corporation business tax
3 implemented pursuant to this act payable on the equity portion of the
4 return, and shall be implemented on the effective date of the rate
5 changes provided for, and in the manner set forth in paragraph (2) of
6 this subsection.

7 If the utility's requirement for cash working capital is increased as
8 a result of the changes in rates and tax payments implemented pursuant
9 to this act, the utility may accrue carrying costs, calculated at its last
10 overall rate of return allowed by the board and applied on a simple
11 annual interest basis without compounding, on the increased working
12 capital requirement and request recovery of such carrying costs in a
13 rate proceeding before the board.

14 The working capital-related base rate changes and carrying cost
15 accruals shall be subject to the board's approval, and shall not be
16 included in the determination of the TEFA unit tax surcharges
17 provided for in subsection d. of this section.

18 The utility's filing with the board to implement the rate changes
19 provided for by this act shall also include an analysis, description and
20 quantification of net deferred taxes. For the purposes of this section,
21 "net deferred taxes" means deferred corporation business taxes, net of
22 federal deferred income taxes, associated with the tax and rate changes
23 implemented pursuant to this act, including deferred corporation
24 business tax recorded in accordance with section 4 of P.L.1945, c.162
25 (C.54:10A-4), projected for the calendar year in which this act takes
26 effect and for each year of the tax life of the asset giving rise to the
27 deferred corporation business taxes pursuant to section 4 of P.L.1945,
28 c.162 (C.54:10A-4).

29 If the change in such net deferred taxes projected for the calendar
30 year in which the rate changes implemented pursuant to this act takes
31 effect is negative and if the utility's requirement for working capital is
32 reduced as a result of the changes in rates and tax payments
33 implemented pursuant to this act, the working capital-related rate
34 reduction that otherwise would have been implemented pursuant to
35 this subsection shall be treated as set forth in subparagraph (a) or (b)
36 of this paragraph. For the purposes of this act, a change in net
37 deferred taxes is considered negative when it reduces an existing
38 deferred tax liability or creates a deferred tax asset on the utility's
39 balance sheet. An appropriate rate adjustment for the working capital
40 impacts of this act, reflecting all relevant facts and circumstances at
41 the time of the adjustment, shall be made in the year when the earlier
42 of the following events occur:

43 (a) The year in which the reduction in carrying costs assumed for
44 the rate reduction for working capital that would have been made but
45 for this paragraph is no longer required to offset, on a present value
46 basis, the annual carrying costs calculated on the accumulated balance

1 of negative net deferred taxes projected to be recorded by the utility,
2 its successors and assigns, over the tax life of the single asset account
3 giving rise to such net deferred taxes pursuant to section 4 of
4 P.L.1945, c.162 (C.54:10A-4). For the purposes of this subparagraph
5 (a):

6 (i) Carrying costs and present values are to be computed using the
7 weighted average after-tax rate of return approved by the board in the
8 utility's last base rate proceeding.

9 (ii) The accumulated balance of such negative net deferred taxes
10 shall include net deferred taxes associated with all assets and liabilities
11 originally placed in service by the utility and held by the utility or a
12 company affiliated with the utility regardless of whether or not such
13 assets continue to be subject to regulation by the New Jersey Board of
14 Public Utilities.

15 (b) The year in which both an appropriate working capital
16 adjustment and the accumulated balance of negative deferred taxes, as
17 described in (ii) of subparagraph (a) of this paragraph (4), are reflected
18 in the utility's rate base in a rate proceeding before the board. It is the
19 intent of this section to fully compensate utilities on a present value
20 basis, for the carrying costs associated with negative net deferred taxes
21 arising as a result of this act, and to remit to ratepayers any credit due
22 them as a result of any overcompensation as may have occurred due
23 to the treatment of working capital and deferred taxes as set forth
24 herein or in subparagraph (a) of this paragraph (4). At the time the
25 above base rate adjustment is made, an analysis shall be made to
26 determine if such carrying costs have been or will be fully recovered
27 pursuant to the intent of this provision and any additional credit or
28 charge to ratepayers to adjust for ratepayer overpayments or
29 underpayments, if any shall be addressed.

30 If the change in net deferred taxes is positive, the increase shall be
31 added to, or increase, the reduction in the utility's requirement for
32 working capital if the requirement is reduced as a result of the rate and
33 tax payment changes implemented pursuant to this act, or subtracted
34 from the working capital requirement if it is increased, and the
35 resultant net working capital requirement shall be reflected in rates or
36 accrue carrying costs in the same manner as prescribed for changes in
37 the utility's requirement for working capital above.

38 The deferred tax-related rate changes or carrying cost accruals shall
39 be subject to the board's approval and shall not be included in the
40 determination of the TEFA unit rate surcharges provided for in
41 subsection d. of this section.

42 d. (1) Electric and gas utilities shall file, for the board's review and
43 approval, initial TEFA unit rate surcharges determined by deducting
44 from each unit-based energy tax unit tax rate effective January 1, 1997
45 the following: (a) An amount per kilowatthour or per therm
46 determined by multiplying the total revenue received in the base year

1 from sales to which that unit tax rate would have been applicable by
 2 the factor $R_u/(1 + R_u)$, where R_u is the sales and use tax rate imposed
 3 under P.L.1966, c.30 (C.54:32B-1 et seq.) expressed as a decimal, and
 4 dividing the result by the kilowatthours or therms billed in that unit tax
 5 rate class in the base year; and (b) An amount per kilowatthour or per
 6 therm determined by dividing the revenue that would have been
 7 received in the base year from the inclusion, in the manner prescribed
 8 in paragraph (2) of subsection c. of this section, of the corporation
 9 business tax in the rates applicable to sales billed in that unit tax rate
 10 class by the kilowatthours or therms billed in that rate class. In each
 11 case, the determination shall reflect the effect of adjustments that
 12 affect the level of sales and revenue, if any, as provided in subsection
 13 c. of this section. Of the resultant rate per kilowatthour or per therm,
 14 the portion for recovery of the utility's transitional energy facilities
 15 assessment liability shall be determined by multiplying such rate by the
 16 factor $(1 - R_s)$, where R_s is the corporation business tax rate expressed
 17 as a decimal. The TEFA unit rate surcharges shall constitute
 18 non-bypassable wires and/or mains charges of the utility, and shall be
 19 applied to all sales within the customer classes to which they apply,
 20 regardless of whether such customers are purchasing bundled or
 21 unbundled services from the utility, but shall not be applied to sales
 22 that were or are currently exempt from unit-based energy taxes
 23 formerly imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) or
 24 to which section 59 of P.L.1997, c.162 (C.48:2-21.31) applies.

25 If, following the effective date of this act, a customer taking
 26 bundled service from the utility shall elect to obtain its requirements
 27 from another supplier and take transportation or wheeling service from
 28 the utility, the TEFA unit rate surcharge applicable to the bundled
 29 service shall continue to apply to the transportation or wheeling
 30 service. The TEFA components of the unit rate surcharges determined
 31 pursuant to this subsection (the components of the surcharges
 32 remaining after deducting the provision for corporation business tax
 33 included therein) shall be used to determine the transitional energy
 34 facility assessment liability pursuant to sections 36 through 49 of
 35 P.L.1997, c.162 (C.54:30A-100 through C.54:30A-113).

36 (2) Unless reduced pursuant to paragraphs (3) and (4) of this
 37 subsection, the initial TEFA unit rate surcharges are to be reduced
 38 annually on January 1, 1999 through January 1, [2003] 2001 by the
 39 following percentages:

40	January 1, 1999,	20%
41		
42	January 1, 2000,	40%
43		
44	January 1, 2001,	60%
45		
46	[January 1, 2002,	80%

1 January 1, 2003, 100%]

2 (3) For each year beginning with calendar year 1998 and ending
3 with calendar year [2002] 2001, the TEFA surcharge adjustment shall
4 be determined as the difference between:

5 (a) The sum of the estimated, or actual when known, (i) TEFA
6 liabilities, as defined in section 43 of P.L.1997, c.162 (C.54:30A-107),
7 and sales and use taxes collected and corporation business taxes
8 booked for the year 1998 by the gas and electric utilities and other
9 entities subject to the TEFA provisions of this act (the year 1998
10 liability), and (ii) the TEFA liabilities of those utilities and entities in
11 all years following the year 1998 through the year in which a
12 determination is being made pursuant to this subsection (the
13 determination year); and

14 (b) The sum of (i) the total of each remitter's base year liability, as
15 defined in section 37 of P.L.1997, c.162 (C.54:30A-101), and (ii) the
16 cumulative TEFA obligation, defined as the sum through the
17 determination year of the amounts calculated by multiplying, for the
18 applicable year, the percentage in the second column of the following
19 table:

Determination Year	% of Year 1998 TEFA
-----	-----
1999	80%
2000	60%
[2001	40%
2002	20%]

34 by the Year 1998 TEFA,

35
36 where the Year 1998 TEFA is calculated as the total of each remitter's
37 base year liability less the sales and use taxes collected and the
38 corporation business taxes booked for the privilege period ending in
39 calendar year 1998 by the gas and electric utilities and other entities
40 subject to the TEFA provisions of this act. For purposes of this
41 subsection, the amounts assumed for the determination year, including
42 the year 1998 liability when first determined for the purposes of this
43 subsection, shall be estimates based on nine months of actual data
44 through and including the month of September, and three months of
45 data forecast for the months of October through December.

46 (4) If the TEFA surcharge adjustment determined for the

1 determination year is positive (that is, if the amount determined
 2 pursuant to subparagraph (a) of paragraph (3) of this subsection is
 3 greater than the amount determined pursuant to subparagraph (b) of
 4 paragraph (3) of this subsection), no reduction shall be made in the
 5 reduction in the TEFA unit rate surcharges provided for in paragraph
 6 (2) of this subsection for the year following the determination year.
 7 If the TEFA surcharge adjustment is negative, the reduction in the
 8 TEFA unit rate surcharges that otherwise would have been
 9 implemented on January 1 of the year following the determination year
 10 pursuant to paragraph (2) of this subsection shall be reduced by an
 11 amount (by percentage points) equal to the percentage the TEFA
 12 surcharge adjustment is of the total of the base year transitional energy
 13 facility assessment of all remitters, as defined in section 37 of
 14 P.L.1997, c.162 (C.54:30A-101), provided however, that such
 15 reduction in the reduction in the TEFA unit rate surcharges shall not
 16 exceed the percentage shown in paragraph (2) of this subsection for
 17 that year; and provided further that in the first two years, that such
 18 reduction shall not exceed 10 percentage points for each year.

19 (5) (a) The TEFA unit rate surcharges for calendar years 2002
 20 through 2004 shall be the same as the TEFA unit rate surcharges in
 21 effect for calendar year 2001.

22 (b) The TEFA unit rate surcharges in effect for calendar year 2004
 23 shall be reduced annually on January 1, 2005 through January 1, 2006
 24 by the following percentages:

25 January 1, 2005 33%

26

27 January 1, 2006 67%

28 e. The utility's filing with the board to implement the rate changes
 29 provided for by this act shall include proof of revenue schedules that
 30 show for each rate schedule included in the utility's tariff, aggregated
 31 by unit-based energy tax unit tax classes, the number of customers
 32 billed under the rate schedule, the billing determinants of such
 33 customers (i.e. the kilowatts of billing demand and kilowatthours of
 34 electric energy consumed, and the million cubic feet/decatherm subject
 35 to gas capacity-related charges and decatherm of gas consumed) and
 36 the associated revenue, both as booked in the base year and on a pro
 37 forma basis reflecting the rate changes implemented pursuant to this
 38 act. The proof of revenue shall additionally show the amount of
 39 unit-based energy taxes included in the base year revenue as booked,
 40 the unit-based energy taxes that would have been collected at the
 41 unit-based energy tax unit tax rates effective January 1, 1997, if
 42 different, as well as the corporation business tax, sales and use tax and
 43 transitional energy facility assessment revenue that would have been
 44 collected or received on a pro forma basis if the rates implemented
 45 pursuant to this act had been in effect in the base year.

46 f. The board may, in its discretion, permit the rate changes

1 provided for this act to be implemented as part of a pending base rate
2 case or other proceeding in which the utility's rates are to be changed,
3 provided that the effective date of the changes is not delayed beyond
4 the date on which the changes would have been implemented under
5 subsection c. of this section. The board may also, pursuant to its
6 powers provided by law, permit or require further modifications in the
7 implementation of this section to address unforeseen consequences
8 arising out of the implementation of this act.

9 g. Customers of the utility who are exempt from the sales and use
10 tax imposed on sales of gas and/or electricity or as a result of rate
11 changes occurring prior to the effective date of this act or for other
12 valid reasons are due a refund of sales or use tax inadvertently
13 imposed on such customers as a result of implementing the rate
14 changes provided for by this act shall file with the State Treasurer to
15 obtain such refunds. The State Treasurer shall promptly notify the
16 utility of customers granted refunds under this provision in order to
17 prevent additional collections of the sales and use tax from such
18 customers.

19 h. Public utilities providing telecommunications service regulated
20 by the board shall file for the board's review and approval revised
21 tariffs that eliminate from the rates applicable to such service the
22 excise tax liability included therein pursuant to P.L.1940, c.4
23 (C.54:30A-16 et seq.), and shall include therein the corporation
24 business tax calculated using the methodology used in calculating the
25 adjustment factor set forth in paragraph (2) of subsection c. of this
26 section. Subsection d. of this section shall not apply to
27 telecommunication utilities, and telecommunication utilities subject to
28 a plan of regulation other than rate base/rate of return shall
29 additionally not be required to file the rate of return information
30 required by paragraph (2) of subsection c. Such utilities shall,
31 however, include a narrative and/or other documentation as required
32 by the board to support the reasonableness of the after-tax income,
33 which may be adjusted to eliminate the effect of non-recurring or other
34 atypical events, on which the corporate business tax inclusion in rates
35 is based. Telecommunications utilities shall comply with all other
36 applicable provisions of this section.

37 i. (1) The board shall not adjust the rates of a public utility, as
38 provided in subsections c. and d. of this section, for a purchase by a
39 cogenerator of natural gas and the transportation of that gas, that is
40 exempt from sales and use tax pursuant to paragraph (2) of subsection
41 b. of section 26 of P.L.1997, c.162 (C.54:32B-8.46). The board shall
42 not allocate, in any future rate case, any sales and use tax, corporation
43 business tax, or transitional energy facility assessment to rates for this
44 purpose.

45 (2) The board shall adjust the rates, as provided in subsection c. of
46 this section, for a purchase by a cogenerator of any quantity of natural

1 gas and the transportation of that gas that is not exempt from sales and
2 use tax pursuant to paragraph (2) of subsection b. of section 26 of
3 P.L.1997, c.162 (C.54:32B-8.46).

4 (3) For the purposes of this section, "cogenerator" means a person
5 or business entity that owns or operates a cogeneration facility in the
6 State of New Jersey, which facility is a plant, installation or other
7 structure whose primary purpose is the sequential production of
8 electricity and steam or other forms of useful energy which are used
9 for industrial, commercial, heating or cooling purposes, and which is
10 designated by the Federal Energy Regulatory Commission, or its
11 successor, as a "qualifying facility" pursuant to the provisions of the
12 "Public Utility Regulatory Policies Act of 1978," Pub.L. 95-617.
13 (cf: P.L.1997, c.162, s.67)

14

15 5. Section 2 of P.L.1993, c.171 (C.54:10A-5.17) is amended to
16 read as follows:

17 2. For the purposes of this act:

18 "Control," with respect to a corporation, means ownership, directly
19 or indirectly, of stock possessing 50% or more of the total combined
20 voting power of all classes of the stock of the corporation entitled to
21 vote; "control," with respect to a trust, means ownership, directly or
22 indirectly, of 50% or more of the beneficial interest in the principal or
23 income of the trust. The ownership of stock in a corporation, of a
24 capital or profits interest in a partnership or association or of a
25 beneficial interest in a trust shall be determined in accordance with the
26 rules for constructive ownership of stock provided in subsection (c) of
27 section 267 of the federal Internal Revenue Code of 1986, 26 U.S.C.
28 s.267, other than paragraph (3) of subsection (c) of that section.

29 "Controlled group" means one or more chains of corporations
30 connected through stock ownership with a common parent corporation
31 if stock possessing at least 50% of the voting power of all classes of
32 stock of each of the corporations is owned directly or indirectly by one
33 or more of the corporations; and the common parent owns directly
34 stock possessing at least 50% of the voting power of all classes of
35 stock of at least one of the other corporations.

36 "Director" means the Director of the Division of Taxation in the
37 Department of the Treasury.

38 "Full-time employee" means an employee working for the taxpayer
39 for at least 140 hours per month at a wage not less than the State or
40 federal minimum wage, if either minimum wage provision is applicable
41 to the business, on a permanent basis, which does not include
42 employment that is temporary or seasonal.

43 "Investment credit base" means the cost of qualified equipment. The
44 cost of qualified equipment shall not include the value of equipment
45 given in trade or exchange for the equipment purchased for business
46 relocation or expansion. If equipment is damaged or destroyed by fire,

1 flood, storm or other casualty, or is stolen, the cost of replacement
2 equipment shall not include any insurance proceeds received in
3 compensation for the loss. In the case of self-constructed equipment,
4 the cost thereof shall be the amount properly charged to the capital
5 account for depreciation in accordance with federal income tax law.
6 The cost of equipment acquired by written lease is the minimum
7 amount required by the agreement, agreements, contract or contracts
8 to be paid over the term of the lease, provided however, that the
9 minimum amount shall not include any amount required to be paid, as
10 determined by the director, after the expiration of the useful life of the
11 equipment.

12 "Number of new employees" means the increase in the average
13 number of full-time employees and full-time employee equivalents
14 residing and domiciled in this State employed at work locations in this
15 State from the employment base year to the employment measurement
16 year. The employment base year is the tax year immediately preceding
17 the tax year for which the credit pursuant to section 3 of P.L.1993,
18 c.171 (C.54:10A-5.18), is allowed, provided that if the taxpayer was
19 not subject to tax and did not have a tax year immediately precede the
20 tax year for which a credit pursuant to section 3 of P.L.1993, c.171
21 (C.54:10A-5.18), was allowed the employment base year is the tax
22 year in which the credit pursuant to section 3 of P.L.1993, c.171
23 (C.54:10A-5.18), was allowed. The measurement year is the tax year
24 immediately following the tax year in which the credit pursuant to
25 section 3 of P.L.1993, c.171 (C.54:10A-5.18), was allowed. The
26 hours of part-time employees shall be aggregated to determine the
27 number of full-time employee equivalents.

28 "Part-time employee" means an employee working for the taxpayer
29 for at least 20 hours per week for at least six months during the tax
30 year.

31 "Purchase" means any acquisition of property, including an
32 acquisition pursuant to a lease, but only if:

33 a. the property is not acquired from a person whose relationship to
34 the person acquiring it would result in the disallowance of deductions
35 under section 267 or subsection (b) of section 707 of the federal
36 Internal Revenue Code of 1986, 26 U.S.C. s.267 or s.707;

37 b. the property is not acquired by one member of a controlled
38 group from another member of the same controlled group. The
39 director may waive this requirement if the property was acquired from
40 a related person for its then fair market value; and

41 c. the basis of the property for federal income tax purposes, in the
42 hands of the person acquiring it, is not determined:

43 (1) in whole or in part by reference to the federal adjusted basis of
44 such property in the hands of the person from whom it was acquired;
45 or

46 (2) under subsection (e) of section 1014 of the federal Internal

1 Revenue Code of 1986, 26 U.S.C. s.1014.

2 "Qualified equipment" means machinery, apparatus or equipment
3 acquired by purchase for use or consumption by the taxpayer directly
4 and primarily in the production of tangible personal property by
5 manufacturing, processing, assembling or refining, as defined pursuant
6 to subsection a. of section 25 of P.L.1980, c.105 (C.54:32B-8.13),
7 having a useful life of four or more years, placed in service in this
8 State and machinery, apparatus or equipment acquired by purchase for
9 use or consumption directly and primarily in the generation of
10 electricity as defined pursuant to subsection b. of section 25 of
11 P.L.1980, c.105 (C.54:32B-8.13) to the point of connection to the
12 grid, or in the generation of thermal energy, having a useful life of four
13 or more years, placed in service in this State. Qualified equipment does
14 not include tangible personal property which the taxpayer contracts or
15 agrees to lease or rent to another person or licenses another person to
16 use.

17 "Related person" means:

18 a. a corporation, partnership, association or trust controlled by the
19 taxpayer;

20 b. an individual, corporation, partnership, association or trust that
21 is in control of the taxpayer;

22 c. a corporation, partnership, association or trust controlled by an
23 individual, corporation, partnership, association or trust that is in
24 control of the taxpayer; or

25 d. a member of the same controlled group as the taxpayer.

26 "Tax year" means the fiscal or calendar accounting year of a
27 taxpayer.

28 (cf: P.L.1993, c.171, s.2)

29

30 6. This act shall take effect immediately and be retroactive to
31 January 1, 2002, and section 5 shall apply to tax years beginning on
32 and after January 1, 2002.

33

34

35

STATEMENT

36

37 This bill will freeze transitional energy facility assessment (TEFA)
38 unit rate surcharges at calendar year 2001 rates for a three year period
39 from calendar years 2002 through 2004 and then reduce that unit rate
40 surcharge ratably over the next two year period from calendar years
41 2005 through 2006. After December 31, 2006 the TEFA assessments
42 will be eliminated to comport with the original planned phase-out of
43 the tax as had been proposed in the 1997 energy tax reform law.

44 During the years leading up to 1997, New Jersey had the highest
45 rate of energy taxation in the nation. The original purpose of the
46 "Transitional Energy Facility Assessment Act," enacted as part of the

1 1997 energy tax reform law was to reduce over time New Jersey's
2 energy tax rate from approximately 13.5% of the price of energy
3 toward the national average of 7.5%. However, the Legislature in
4 enacting that law recognized that such a reduction would be
5 accomplished gradually over a period of years in order to minimize the
6 fiscal impact of that reduction on the State budget.

7 More recently New Jersey consumers have been enjoying reduced
8 electricity rates pursuant to the provisions of section 4 of the "Electric
9 Discount and Energy Competition Act" P.L.1999, c.23 (C.48:3-52),
10 which requires the reduction of electric energy charges to consumers
11 by 10% by August of 2003.

12 With the recent events of September 11, 2001 necessitating a
13 significant increase in State expenditures for security and public safety
14 measures during this period of declining revenues and budget stress,
15 it would not be in the public interest to continue the phased reduction
16 in the TEFA unit rate surcharges according to the original phase-out
17 schedule first proposed in 1997. Therefore, this bill holds the current
18 year TEFA unit rate surcharges at their current level during fiscal
19 years 2002 through 2004 and then reduces those unit rate surcharges
20 during fiscal years 2005 through 2006. The bill eliminates the TEFA
21 unit rate surcharge as a source of revenue during fiscal year 2007 and
22 for fiscal years thereafter.

23 This bill also provides the manufacturing equipment and
24 employment investment tax credit under the corporation business tax
25 for electric energy and thermal energy production. This bill will
26 provide the tax credit for investment in electric generation facilities
27 and thermal energy generation facilities consistent with the tax
28 treatment available under the "Manufacturing Equipment and
29 Employment Incentive Tax Credit Act," P.L.1993, c.171 (C.54:10A-
30 5.16 et seq.). This corporation business investment tax credit will
31 encourage needed investment in electric and thermal energy generation
32 facilities in New Jersey to further stabilize energy prices and meet the
33 energy needs of the region.

34 This investment tax credit will encourage competition in electric
35 and thermal energy generation which is needed to ensure that the State
36 continues to have an adequate supply of electric and thermal energy
37 generation capacity. By encouraging the construction of additional
38 generation capacity the State can avoid the type of energy supply crisis
39 recently experienced in the state of California where electric energy
40 demand has outpaced growth in generation capacity.

SENATE, No. 2773

STATE OF NEW JERSEY
209th LEGISLATURE

INTRODUCED DECEMBER 6, 2001

Sponsored by:

Senator ROBERT E. LITTELL

District 24 (Sussex, Hunterdon and Morris)

Senator WAYNE R. BRYANT

District 5 (Camden and Gloucester)

SYNOPSIS

Changes phase-out of transitional energy facility assessment (TEFA) unit rate surcharges on certain energy sales and provides a tax credit for certain investments in qualified electric and thermal energy generation equipment.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT changing the phase-out schedule of the transitional energy
2 facility assessment (TEFA) unit rate surcharges on certain energy
3 sales and providing a corporation business tax credit for certain
4 investments in qualified electric and thermal energy generation
5 equipment, amending P.L.1997, c.162 and P.L.1993, c.171.

6
7 **BE IT ENACTED** by the Senate and General Assembly of the State
8 of New Jersey:

9
10 1. Section 38 of P.L.1997, c.162 (C.54:30A-102) is amended to
11 read as follows:

12 38. Each remitter's transitional energy facility assessment shall be
13 established pursuant to section 67 of P.L.1997, c.162 (C.48:2-21.34).
14 Under no circumstances shall an assessment be made under this act for
15 any year commencing after December 31, [2002] 2006.
16 (cf: P.L.1997, c.162, s.38)

17
18 2. Section 41 of P.L.1997, c.162 (C.54:30A-105) is amended to
19 read as follows:

20 41. a. Every remitter shall on or before October 15, 1998, and on
21 or before October 15, in each year thereafter for years in which the
22 transitional energy facility assessment is imposed, return to the
23 Director of the Division of Taxation in the Department of the Treasury
24 and the Board of Public Utilities a statement in such form, manner and
25 detail as the director shall require showing the [following:

26 (1) Sales and use tax collected and use tax liability through
27 September 30 of the current calendar year;

28 (2) Estimated sales tax collections and use tax liability for the period
29 from October 1 through December 31 of the current calendar year;

30 (3) Estimated corporation business tax, including negative and
31 positive deferred corporation business taxes shown separately, for the
32 current privilege period based upon actual taxable income from
33 January 1 through September 30 and estimated taxable income from
34 October 1 through December 31; and

35 (4) Actual] actual transitional energy facility assessment liability
36 from January 1 through September 30 and estimated liability from
37 October 1 through December 31 for the current calendar year.

38 b. On or before November 15, 1998, and on or before November 15
39 of each year thereafter for years in which the transitional energy
40 facility assessment is imposed, the State Treasurer shall, with the
41 cooperation of the Board of Public Utilities, calculate the percentage
42 reduction, as may be applicable, in the initial TEFA unit rate
43 surcharges or the calendar year 2001 TEFA unit rate surcharges based

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 upon the formula set forth in section 67 of P.L.1997, c.162
2 (C.48:2-21.34) and the board shall report the amount of such
3 reduction, if any, to the remitters subject to the transitional energy
4 facility assessment.

5 c. Every remitter shall on or before February 1, 1998 file with the
6 director a statement showing:

7 (1) The total public utility tax advance payments paid in the initial
8 year pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.); and

9 (2) The remitter's base year liability and each of the amounts
10 described in subsections (a), (b) and (c) in the definition of "base year
11 transitional energy facility assessment" in section 37 of P.L.1997,
12 c.162 (C.54:30A-101).

13 d. For any remitter owning or holding both gas and electric facilities
14 and conducting both gas and electric business in this State each of the
15 amounts reported on the return required to be filed pursuant to
16 subsection c. shall be allocated by the director between those
17 operations in the proportion that the sum of the unit-based taxes bore
18 to the whole of the unit-based taxes in the base year or such other
19 allocation methodology as the director shall prescribe.

20 e. The statements required pursuant to this section shall be
21 subscribed and sworn to by the president, a vice-president or chief
22 officer of the corporation preparing each statement. Any remitter
23 refusing or neglecting to make the statements herein provided for shall
24 forfeit and pay to the State of New Jersey the sum of \$100 per day for
25 each day of such refusal or neglect, to be recovered in an action at law
26 in the name of the State and which, when recovered, shall be paid into
27 the State Treasury. It shall be the duty of the director to certify any
28 such default to the Attorney General of the State who, thereupon, shall
29 prosecute an action at law for each penalty.

30 f. The Director of the Division of Taxation shall audit and verify the
31 statements filed by remitters whenever and in such respects the
32 director shall deem necessary or advisable. The director may require
33 any remitter to supply additional data and information in such form,
34 manner, and detail as the director shall request, whenever the director
35 may deem it necessary or helpful, for the proper performance of the
36 director's duties under this act.

37 g. The director may, by regulation, additionally require that all
38 filings required for the calculation and certification of assessment to
39 be paid by remitters established pursuant to this act shall be made in
40 an electronic form. The form and content of the electronic filing
41 message, the circumstances under which the electronic filing message
42 shall serve as a substitute for the filing of another return and the means
43 by which remitters shall be determined to be subject to this electronic
44 filing requirement shall be prescribed by the director.

45 For the purpose of this act "electronic filing" or "electronic filings"
46 means any message that is initiated through an electronic terminal,

1 telecommunication device, or computer for the purpose of fulfilling the
2 reporting responsibilities set forth hereinabove.

3 (cf: P.L.1997, c.162, s.41)

4

5 3. Section 43 of P.L.1997, c.162 (C.54:30A-107) is amended to
6 read as follows:

7 43. a. (1) The liability for the transitional energy facility
8 assessment made against any remitter in the first year of assessment
9 shall be an amount equal to TEFA unit rate surcharges (excluding the
10 provision for corporation business taxes included therein) determined
11 in section 67 of P.L.1997, c.162 (C.48:2-21.34) multiplied by the
12 associated therms of natural gas and kilowatthours of electricity sold
13 or transported for sale to ultimate consumers in New Jersey in the first
14 year plus any advances paid in the initial year pursuant to P.L.1940,
15 c.5 (C.54:30A-49 et seq.) by that remitter.

16 (2) The liability for the transitional energy facility assessment made
17 against any remitter for each year subsequent to the first year shall be
18 an amount equal to the TEFA unit rate surcharges (excluding the
19 provision for corporation business taxes included therein) calculated
20 in section 67 of P.L.1997, c.162 (C.48:2-21.34) for that year
21 multiplied by the associated therms of natural gas and kilowatthours
22 of electricity sold or transported for sale to ultimate consumers in New
23 Jersey in that year.

24 b. A credit against the liability determined pursuant to paragraph
25 (1) of subsection a. of this section shall be taken in the first year by the
26 remitter in the amount of all advances paid in the initial year pursuant
27 to P.L.1940, c.5 (C.54:30A-49 et seq.).

28 c. (1) Each remitter shall make an estimated payment on May 15
29 of the first assessment year in the amount of the base year transitional
30 energy facility assessment.

31 (2) Subsequent to the first year, each remitter shall make an
32 estimated payment on May 15 of each assessment year in which the
33 transitional energy facility assessment is in effect, in an amount equal
34 to the transitional energy facility assessment liability described in
35 subsection a. of this section for the immediately preceding assessment
36 year, excluding advances paid in the initial year pursuant to P.L.1940,
37 c.5 (C.54:30A-49 et seq.), reduced by the applicable reduction
38 percentage, if any, for the current assessment year determined
39 pursuant to paragraphs (2), (3) and (4) or paragraph (5) of subsection
40 d. of section 67 of P.L.1997, c.162 (C.48:2-21.34) less credits
41 described in subsection d. of this section, if any.

42 d. Any excess of the estimated payment made pursuant to
43 paragraph (1) or (2) of subsection c. of this section over the liability
44 determined pursuant to subsection a. of this section shall be treated as
45 a credit against the estimated payment for the subsequent assessment
46 year and reduce the amount of the estimated payment required to be

1 made for that subsequent year. Any excess of the estimated payment
2 made pursuant to paragraph (2) of subsection c. of this section over
3 the liability for the final year of the transitional energy facility
4 assessment shall be utilized as a nonrefundable credit with an unlimited
5 carryforward against that remitter's corporation business tax liability
6 in the subsequent privilege period year. Such credit shall be applied
7 in full to each estimated corporation business tax payment beginning
8 in the subsequent privilege period until fully utilized.
9 (cf: P.L.1997, c.162, s.43)

10

11 4. Section 67 of P.L.1997, c.162 (C.48:2-21.34) is amended to
12 read as follows:

13 67. a. As used in this section:

14 "Base rates" means the rates, including minimum bills, charged for
15 utility commodities or service subject to the board's jurisdiction, other
16 than the rates charged under a utility's levelized energy adjustment
17 clause, hereinafter "LEAC," or levelized gas adjustment clause,
18 hereinafter "LGAC," or equivalent rate provision;

19 "Base year" means the calendar year 1996;

20 "Board" means the Board of Public Utilities;

21 "Sales and use tax" means the sales and use tax liability computed
22 on sales and use of energy and utility service as defined in section 2 of
23 P.L.1966, c.30 (C.54:32B-2);

24 "Utility" means a public utility subject to regulation by the board
25 pursuant to Title 48 of the Revised Statutes; and

26 "Utility service" means the supply, transmission, distribution or
27 transportation of electricity, natural gas or telecommunications
28 services or any combination of such commodities, processes or
29 services.

30 b. No later than 60 days after the date this act is enacted, each
31 electric, gas and telecommunications utility subject to the provisions
32 of this act shall file with the board, and shall simultaneously provide
33 copies to the Director of the Division of the Ratepayer Advocate,
34 revised tariffs and such other supporting schedules, narrative and
35 documentation required by this act, as set forth in this section, to
36 reflect in the utility's rates the changes in tax liability effected pursuant
37 to this act. No later than 90 days after the date of the utility's filing,
38 and after determining that the filing and the rate changes provided for
39 therein are in compliance with the provisions of this act, the board
40 shall approve the utility's filing and associated rates for billing to the
41 utility's customers, effective for utility service rendered on and after
42 January 1, 1998. If the board determines that the utility's filing and the
43 associated rate changes provided for therein are not in compliance
44 with the provisions of this act, the board shall require the utility to
45 amend or otherwise modify its filing to render it in compliance. The
46 board may also permit the rates provided for in the utility's filing to be

1 implemented on an interim basis pending the board's final
2 determination in the event the board, in its discretion, determines that
3 due to the filing's complexity, or for other valid reasons, including but
4 not limited to the enactment of this act after June 30, 1997, additional
5 time is needed for the board to complete its review of the filing. If the
6 rates approved by the board upon its final determination are less than
7 the rates implemented on an interim basis, the difference shall be
8 refunded to the utility's customers with interest computed in
9 accordance with N.J.A.C.14:3-7.5(c). The rate adjustments
10 implemented pursuant to this act shall not constitute a fixing of rates
11 pursuant to R.S.48:2-21 and shall not be subject to the hearing
12 requirements set forth in that section.

13 c. As of the effective date of the rate changes implemented
14 pursuant to this act, and except for rates applicable to sales that were
15 or are currently exempt from the unit-based energy taxes formerly
16 imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) and rates
17 applicable to sales to which section 59 of P.L.1997, c.162
18 (C.48:2-21.31) applies, the board shall remove from the base rates of
19 each electric public utility and gas public utility the unit tax rates
20 included therein for the recovery of those unit-based energy taxes, and
21 include therein provision for the recovery of corporation business tax
22 imposed pursuant to P.L.1945, c.162 (C.54:10A-1 et seq.), and
23 additionally shall authorize the collection of the sales and use tax
24 imposed pursuant to P.L.1966, c.30 (C.54:32B-1 et seq.), as follows:

25 (1) The base rates of each gas and electric utility shall be reduced
26 by the amount of the unit-based energy taxes per kilowatthour or per
27 therm included therein.

28 (2) The provision for corporation business tax initially included in
29 the base rates of each gas and electric utility shall be based on the
30 utility's after-tax net income earned in the base year as booked, unless
31 the board determines, in its discretion, that such income as booked is
32 unusually high or low or otherwise unrepresentative of the utility's
33 prospective net income, in which case the utility's base year net income
34 shall be adjusted as determined by the board.

35 To permit the board to make this determination, in addition to
36 including in its filing schedules showing its net income earned in the
37 base year as booked, the utility shall include adjustments to such
38 booked income to eliminate the effect of revenues, expenses and
39 extraordinary or other charges that are non-recurring, atypical, or
40 both, including, but not limited to an adjustment to eliminate the effect
41 of unusually hot or cold weather, and that would otherwise make the
42 utility's base year net income unusually high or low or otherwise
43 unrepresentative of the utility's prospective net income. If the
44 adjustment is being made to eliminate the effect of unusually hot or
45 cold weather, associated revenue and expense adjustments shall also
46 be made. Subject to the board's approval, such adjusted income shall

1 be the basis for the calculation of the initial provision for corporation
2 business tax to be included in the utility's base rates.

3 The utility shall also include a calculation of its rate of return on
4 common equity achieved in the base year, both as booked and as
5 adjusted in accordance with the foregoing. The calculation shall be
6 made employing the methodology set forth in N.J.A.C.14:12-4.2(b)1,
7 and shall separately show the effect of reflecting adjustments to the
8 calculation, if any, that may have been employed historically in
9 establishing the utility's rate of return on common equity allowed for
10 ratemaking purposes. The utility's filing shall also include copies of its
11 audited financial statements for the base year and associated quarterly
12 and other reports filed with the Securities and Exchange Commission.

13 To reflect the provision for corporation business tax in base rates,
14 the demand charges, or charges per kilowatt, decatherm or million
15 cubic feet; the energy charges, or charges per kilowatthour or per
16 therm; and the customer charges, or charges other than demand and
17 energy charges, set forth in each base rate schedule, and the floor price
18 employed in parity rate schedules, included in the utility's tariff filed
19 with and approved by the board shall be increased by amounts
20 determined by multiplying such charges by the adjustment factor, "A
21 e, g" derived below:

22

$$23 \quad A_{e, g} = (I_{e, g} \times [Rs / (1 - Re)])$$

24

$$25 \quad (Br_{e, g})$$

26

27 where:

28

29 "A e, g" means the adjustment factor applicable to electric base
30 rates (e), gas base rates (g), or both, other than rates applicable to
31 sales that were exempt from unit-based energy taxes formerly imposed
32 pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) or to which section
33 59 of P.L.1997, c.162 (C.48:2-21.31) applies;

34 "I e, g" means the utility's base year after-tax net income from
35 electric or gas sales, or both, and transportation service subject to the
36 board's jurisdiction and other operating revenue if such revenue is
37 reflected in the utility's cost of service for ratemaking purposes,
38 adjusted as approved by the board;

39 "Br e, g" means the utility's base year revenue from base rates
40 applicable to electric or gas sales, or both, and transportation service
41 subject to the board's jurisdiction, but excluding sales that were
42 exempt from unit-based energy taxes formerly imposed pursuant to
43 P.L.1940, c.5 (C.54:30A-49 et seq.) or to which section 59 of
44 P.L.1997, c.162 (C.48:2-21.31) applies;

45 "Rs" means the corporation business tax rate, expressed as a
46 decimal;

1 "Rf" means the applicable federal corporation income tax rate
2 expressed as a decimal; and

3 "Re" equals $R_s + R_f(1-R_s)$.

4 The utility shall account for the changes in tax liability provided for
5 by this act effective January 1, 1998. Such accounting shall include
6 the recording on the utility's income statement and balance sheet of
7 deferred corporation business tax defined, for book accounting
8 purposes, as differences in corporation business tax expense arising
9 from timing differences in the recognition of revenue and expenses for
10 book and tax purposes.

11 (3) When billed to the utility's customers, the adjusted base rate
12 charges determined pursuant to paragraphs (1), (2), and (4) of this
13 subsection, and the charges determined pursuant to the utility's
14 levelized energy adjustment clause, levelized gas adjustment clause, or
15 both, as determined both upon the effective date of the rate changes
16 authorized by this act and as revised prospectively in accordance with
17 the utility's tariff filed with and approved by the board, and the
18 transitional energy facility assessment unit rate surcharges, hereinafter,
19 "TEFA unit rate surcharges," determined in accordance with
20 subsection d. of this section, shall be increased by an amount
21 determined by multiplying such charges by the sales and use tax rate
22 imposed under P.L.1966, c.30 (C.54:32B-1 et seq.). In addition to the
23 utility's rates for service included in its tariff, for informational
24 purposes the tariff shall include such rates after application of the sales
25 and use tax authorized by this section.

26 (4) The utility's filing with the board to implement the rate changes
27 provided for by this act shall include an analysis, description, and
28 quantification of the effect of the changes in rates and tax payments
29 implemented pursuant to this act on the utility's requirement for cash
30 working capital, and if such requirement is less than the cash working
31 capital allowed for the collection and payment of unit-based energy
32 taxes formerly imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et
33 seq.) in determining the utility's base rates in effect prior to the rate
34 changes implemented pursuant to this act, and to the extent the
35 working capital reduction is not offset by a reduction in net deferred
36 taxes as provided for below, such base rates shall be reduced by the
37 reduction in the utility's revenue requirement associated with the
38 remaining reduction in the working capital requirement not so offset,
39 if any. The reduction in working capital shall be determined by using
40 the same methodology employed in establishing the working capital
41 allowance related to unit-based energy taxes reflected in the utility's
42 base rates in effect prior to the rate changes implemented pursuant to
43 this act. The reduction in the utility's revenue requirement associated
44 with the reduced working capital requirement shall be calculated using
45 the utility's last overall rate of return allowed by the board, including
46 provision for federal income taxes and the corporation business tax

1 implemented pursuant to this act payable on the equity portion of the
2 return, and shall be implemented on the effective date of the rate
3 changes provided for, and in the manner set forth in paragraph (2) of
4 this subsection.

5 If the utility's requirement for cash working capital is increased as
6 a result of the changes in rates and tax payments implemented pursuant
7 to this act, the utility may accrue carrying costs, calculated at its last
8 overall rate of return allowed by the board and applied on a simple
9 annual interest basis without compounding, on the increased working
10 capital requirement and request recovery of such carrying costs in a
11 rate proceeding before the board.

12 The working capital-related base rate changes and carrying cost
13 accruals shall be subject to the board's approval, and shall not be
14 included in the determination of the TEFA unit tax surcharges
15 provided for in subsection d. of this section.

16 The utility's filing with the board to implement the rate changes
17 provided for by this act shall also include an analysis, description and
18 quantification of net deferred taxes. For the purposes of this section,
19 "net deferred taxes" means deferred corporation business taxes, net of
20 federal deferred income taxes, associated with the tax and rate changes
21 implemented pursuant to this act, including deferred corporation
22 business tax recorded in accordance with section 4 of P.L.1945, c.162
23 (C.54:10A-4), projected for the calendar year in which this act takes
24 effect and for each year of the tax life of the asset giving rise to the
25 deferred corporation business taxes pursuant to section 4 of P.L.1945,
26 c.162 (C.54:10A-4).

27 If the change in such net deferred taxes projected for the calendar
28 year in which the rate changes implemented pursuant to this act takes
29 effect is negative and if the utility's requirement for working capital is
30 reduced as a result of the changes in rates and tax payments
31 implemented pursuant to this act, the working capital-related rate
32 reduction that otherwise would have been implemented pursuant to
33 this subsection shall be treated as set forth in subparagraph (a) or (b)
34 of this paragraph. For the purposes of this act, a change in net
35 deferred taxes is considered negative when it reduces an existing
36 deferred tax liability or creates a deferred tax asset on the utility's
37 balance sheet. An appropriate rate adjustment for the working capital
38 impacts of this act, reflecting all relevant facts and circumstances at
39 the time of the adjustment, shall be made in the year when the earlier
40 of the following events occur:

41 (a) The year in which the reduction in carrying costs assumed for
42 the rate reduction for working capital that would have been made but
43 for this paragraph is no longer required to offset, on a present value
44 basis, the annual carrying costs calculated on the accumulated balance
45 of negative net deferred taxes projected to be recorded by the utility,
46 its successors and assigns, over the tax life of the single asset account

1 giving rise to such net deferred taxes pursuant to section 4 of
2 P.L.1945, c.162 (C.54:10A-4). For the purposes of this subparagraph
3 (a):

4 (i) Carrying costs and present values are to be computed using the
5 weighted average after-tax rate of return approved by the board in the
6 utility's last base rate proceeding.

7 (ii) The accumulated balance of such negative net deferred taxes
8 shall include net deferred taxes associated with all assets and liabilities
9 originally placed in service by the utility and held by the utility or a
10 company affiliated with the utility regardless of whether or not such
11 assets continue to be subject to regulation by the New Jersey Board of
12 Public Utilities.

13 (b) The year in which both an appropriate working capital
14 adjustment and the accumulated balance of negative deferred taxes, as
15 described in (ii) of subparagraph (a) of this paragraph (4), are reflected
16 in the utility's rate base in a rate proceeding before the board. It is the
17 intent of this section to fully compensate utilities on a present value
18 basis, for the carrying costs associated with negative net deferred taxes
19 arising as a result of this act, and to remit to ratepayers any credit due
20 them as a result of any overcompensation as may have occurred due
21 to the treatment of working capital and deferred taxes as set forth
22 herein or in subparagraph (a) of this paragraph (4). At the time the
23 above base rate adjustment is made, an analysis shall be made to
24 determine if such carrying costs have been or will be fully recovered
25 pursuant to the intent of this provision and any additional credit or
26 charge to ratepayers to adjust for ratepayer overpayments or
27 underpayments, if any shall be addressed.

28 If the change in net deferred taxes is positive, the increase shall be
29 added to, or increase, the reduction in the utility's requirement for
30 working capital if the requirement is reduced as a result of the rate and
31 tax payment changes implemented pursuant to this act, or subtracted
32 from the working capital requirement if it is increased, and the
33 resultant net working capital requirement shall be reflected in rates or
34 accrue carrying costs in the same manner as prescribed for changes in
35 the utility's requirement for working capital above.

36 The deferred tax-related rate changes or carrying cost accruals shall
37 be subject to the board's approval and shall not be included in the
38 determination of the TEFA unit rate surcharges provided for in
39 subsection d. of this section.

40 d. (1) Electric and gas utilities shall file, for the board's review and
41 approval, initial TEFA unit rate surcharges determined by deducting
42 from each unit-based energy tax unit tax rate effective January 1, 1997
43 the following: (a) An amount per kilowatthour or per therm
44 determined by multiplying the total revenue received in the base year
45 from sales to which that unit tax rate would have been applicable by
46 the factor $Ru/(1 + Ru)$, where Ru is the sales and use tax rate imposed

1 under P.L.1966, c.30 (C.54:32B-1 et seq.) expressed as a decimal, and
 2 dividing the result by the kilowatthours or therms billed in that unit tax
 3 rate class in the base year; and (b) An amount per kilowatthour or per
 4 therm determined by dividing the revenue that would have been
 5 received in the base year from the inclusion, in the manner prescribed
 6 in paragraph (2) of subsection c. of this section, of the corporation
 7 business tax in the rates applicable to sales billed in that unit tax rate
 8 class by the kilowatthours or therms billed in that rate class. In each
 9 case, the determination shall reflect the effect of adjustments that
 10 affect the level of sales and revenue, if any, as provided in subsection
 11 c. of this section. Of the resultant rate per kilowatthour or per therm,
 12 the portion for recovery of the utility's transitional energy facilities
 13 assessment liability shall be determined by multiplying such rate by the
 14 factor $(1 - R_s)$, where R_s is the corporation business tax rate expressed
 15 as a decimal. The TEFA unit rate surcharges shall constitute
 16 non-bypassable wires and/or mains charges of the utility, and shall be
 17 applied to all sales within the customer classes to which they apply,
 18 regardless of whether such customers are purchasing bundled or
 19 unbundled services from the utility, but shall not be applied to sales
 20 that were or are currently exempt from unit-based energy taxes
 21 formerly imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) or
 22 to which section 59 of P.L.1997, c.162 (C.48:2-21.31) applies.

23 If, following the effective date of this act, a customer taking
 24 bundled service from the utility shall elect to obtain its requirements
 25 from another supplier and take transportation or wheeling service from
 26 the utility, the TEFA unit rate surcharge applicable to the bundled
 27 service shall continue to apply to the transportation or wheeling
 28 service. The TEFA components of the unit rate surcharges determined
 29 pursuant to this subsection (the components of the surcharges
 30 remaining after deducting the provision for corporation business tax
 31 included therein) shall be used to determine the transitional energy
 32 facility assessment liability pursuant to sections 36 through 49 of
 33 P.L.1997, c.162 (C.54:30A-100 through C.54:30A-113).

34 (2) Unless reduced pursuant to paragraphs (3) and (4) of this
 35 subsection, the initial TEFA unit rate surcharges are to be reduced
 36 annually on January 1, 1999 through January 1, [2003] 2001 by the
 37 following percentages:

38	January 1, 1999,	20%
39		
40	January 1, 2000,	40%
41		
42	January 1, 2001,	60%
43		
44	[January 1, 2002,	80%
45		
46	January 1, 2003,	100%]

1 (3) For each year beginning with calendar year 1998 and ending
 2 with calendar year [2002] 2001, the TEFA surcharge adjustment shall
 3 be determined as the difference between:

4 (a) The sum of the estimated, or actual when known, (i) TEFA
 5 liabilities, as defined in section 43 of P.L.1997, c.162 (C.54:30A-107),
 6 and sales and use taxes collected and corporation business taxes
 7 booked for the year 1998 by the gas and electric utilities and other
 8 entities subject to the TEFA provisions of this act (the year 1998
 9 liability), and (ii) the TEFA liabilities of those utilities and entities in
 10 all years following the year 1998 through the year in which a
 11 determination is being made pursuant to this subsection (the
 12 determination year); and

13 (b) The sum of (i) the total of each remitter's base year liability, as
 14 defined in section 37 of P.L.1997, c.162 (C.54:30A-101), and (ii) the
 15 cumulative TEFA obligation, defined as the sum through the
 16 determination year of the amounts calculated by multiplying, for the
 17 applicable year, the percentage in the second column of the following
 18 table:

Determination Year	% of Year 1998 TEFA
-----	-----
1999	80%
2000	60%
[2001	40%
2002	20%]

33 by the Year 1998 TEFA,

34
 35 where the Year 1998 TEFA is calculated as the total of each remitter's
 36 base year liability less the sales and use taxes collected and the
 37 corporation business taxes booked for the privilege period ending in
 38 calendar year 1998 by the gas and electric utilities and other entities
 39 subject to the TEFA provisions of this act. For purposes of this
 40 subsection, the amounts assumed for the determination year, including
 41 the year 1998 liability when first determined for the purposes of this
 42 subsection, shall be estimates based on nine months of actual data
 43 through and including the month of September, and three months of
 44 data forecast for the months of October through December.

45 (4) If the TEFA surcharge adjustment determined for the
 46 determination year is positive (that is, if the amount determined

1 pursuant to subparagraph (a) of paragraph (3) of this subsection is
 2 greater than the amount determined pursuant to subparagraph (b) of
 3 paragraph (3) of this subsection), no reduction shall be made in the
 4 reduction in the TEFA unit rate surcharges provided for in paragraph
 5 (2) of this subsection for the year following the determination year.
 6 If the TEFA surcharge adjustment is negative, the reduction in the
 7 TEFA unit rate surcharges that otherwise would have been
 8 implemented on January 1 of the year following the determination year
 9 pursuant to paragraph (2) of this subsection shall be reduced by an
 10 amount (by percentage points) equal to the percentage the TEFA
 11 surcharge adjustment is of the total of the base year transitional energy
 12 facility assessment of all remitters, as defined in section 37 of
 13 P.L.1997, c.162 (C.54:30A-101), provided however, that such
 14 reduction in the reduction in the TEFA unit rate surcharges shall not
 15 exceed the percentage shown in paragraph (2) of this subsection for
 16 that year; and provided further that in the first two years, that such
 17 reduction shall not exceed 10 percentage points for each year.

18 (5) (a) The TEFA unit rate surcharges for calendar years 2002
 19 through 2004 shall be the same as the TEFA unit rate surcharges in
 20 effect for calendar year 2001.

21 (b) The TEFA unit rate surcharges in effect for calendar year 2004
 22 shall be reduced annually on January 1, 2005 through January 1, 2006
 23 by the following percentages:

24 January 1, 2005 33%

25

26 January 1, 2006 67%

27 e. The utility's filing with the board to implement the rate changes
 28 provided for by this act shall include proof of revenue schedules that
 29 show for each rate schedule included in the utility's tariff, aggregated
 30 by unit-based energy tax unit tax classes, the number of customers
 31 billed under the rate schedule, the billing determinants of such
 32 customers (i.e. the kilowatts of billing demand and kilowatthours of
 33 electric energy consumed, and the million cubic feet/deca-therm subject
 34 to gas capacity-related charges and deca-therm of gas consumed) and
 35 the associated revenue, both as booked in the base year and on a pro
 36 forma basis reflecting the rate changes implemented pursuant to this
 37 act. The proof of revenue shall additionally show the amount of
 38 unit-based energy taxes included in the base year revenue as booked,
 39 the unit-based energy taxes that would have been collected at the
 40 unit-based energy tax unit tax rates effective January 1, 1997, if
 41 different, as well as the corporation business tax, sales and use tax and
 42 transitional energy facility assessment revenue that would have been
 43 collected or received on a pro forma basis if the rates implemented
 44 pursuant to this act had been in effect in the base year.

45 f. The board may, in its discretion, permit the rate changes
 46 provided for this act to be implemented as part of a pending base rate

1 case or other proceeding in which the utility's rates are to be changed,
2 provided that the effective date of the changes is not delayed beyond
3 the date on which the changes would have been implemented under
4 subsection c. of this section. The board may also, pursuant to its
5 powers provided by law, permit or require further modifications in the
6 implementation of this section to address unforeseen consequences
7 arising out of the implementation of this act.

8 g. Customers of the utility who are exempt from the sales and use
9 tax imposed on sales of gas and/or electricity or as a result of rate
10 changes occurring prior to the effective date of this act or for other
11 valid reasons are due a refund of sales or use tax inadvertently
12 imposed on such customers as a result of implementing the rate
13 changes provided for by this act shall file with the State Treasurer to
14 obtain such refunds. The State Treasurer shall promptly notify the
15 utility of customers granted refunds under this provision in order to
16 prevent additional collections of the sales and use tax from such
17 customers.

18 h. Public utilities providing telecommunications service regulated
19 by the board shall file for the board's review and approval revised
20 tariffs that eliminate from the rates applicable to such service the
21 excise tax liability included therein pursuant to P.L.1940, c.4
22 (C.54:30A-16 et seq.), and shall include therein the corporation
23 business tax calculated using the methodology used in calculating the
24 adjustment factor set forth in paragraph (2) of subsection c. of this
25 section. Subsection d. of this section shall not apply to
26 telecommunication utilities, and telecommunication utilities subject to
27 a plan of regulation other than rate base/rate of return shall
28 additionally not be required to file the rate of return information
29 required by paragraph (2) of subsection c. Such utilities shall,
30 however, include a narrative and/or other documentation as required
31 by the board to support the reasonableness of the after-tax income,
32 which may be adjusted to eliminate the effect of non-recurring or other
33 atypical events, on which the corporate business tax inclusion in rates
34 is based. Telecommunications utilities shall comply with all other
35 applicable provisions of this section.

36 i. (1) The board shall not adjust the rates of a public utility, as
37 provided in subsections c. and d. of this section, for a purchase by a
38 cogenerator of natural gas and the transportation of that gas, that is
39 exempt from sales and use tax pursuant to paragraph (2) of subsection
40 b. of section 26 of P.L.1997, c.162 (C.54:32B-8.46). The board shall
41 not allocate, in any future rate case, any sales and use tax, corporation
42 business tax, or transitional energy facility assessment to rates for this
43 purpose.

44 (2) The board shall adjust the rates, as provided in subsection c. of
45 this section, for a purchase by a cogenerator of any quantity of natural
46 gas and the transportation of that gas that is not exempt from sales and

1 use tax pursuant to paragraph (2) of subsection b. of section 26 of
2 P.L.1997, c.162 (C.54:32B-8.46).

3 (3) For the purposes of this section, "cogenerator" means a person
4 or business entity that owns or operates a cogeneration facility in the
5 State of New Jersey, which facility is a plant, installation or other
6 structure whose primary purpose is the sequential production of
7 electricity and steam or other forms of useful energy which are used
8 for industrial, commercial, heating or cooling purposes, and which is
9 designated by the Federal Energy Regulatory Commission, or its
10 successor, as a "qualifying facility" pursuant to the provisions of the
11 "Public Utility Regulatory Policies Act of 1978," Pub.L. 95-617.
12 (cf: P.L.1997, c.162, s.67)

13

14 5. Section 2 of P.L.1993, c.171 (C.54:10A-5.17) is amended to
15 read as follows:

16 2. For the purposes of this act:

17 "Control," with respect to a corporation, means ownership, directly
18 or indirectly, of stock possessing 50% or more of the total combined
19 voting power of all classes of the stock of the corporation entitled to
20 vote; "control," with respect to a trust, means ownership, directly or
21 indirectly, of 50% or more of the beneficial interest in the principal or
22 income of the trust. The ownership of stock in a corporation, of a
23 capital or profits interest in a partnership or association or of a
24 beneficial interest in a trust shall be determined in accordance with the
25 rules for constructive ownership of stock provided in subsection (c) of
26 section 267 of the federal Internal Revenue Code of 1986, 26 U.S.C.
27 s.267, other than paragraph (3) of subsection (c) of that section.

28 "Controlled group" means one or more chains of corporations
29 connected through stock ownership with a common parent corporation
30 if stock possessing at least 50% of the voting power of all classes of
31 stock of each of the corporations is owned directly or indirectly by one
32 or more of the corporations; and the common parent owns directly
33 stock possessing at least 50% of the voting power of all classes of
34 stock of at least one of the other corporations.

35 "Director" means the Director of the Division of Taxation in the
36 Department of the Treasury.

37 "Full-time employee" means an employee working for the taxpayer
38 for at least 140 hours per month at a wage not less than the State or
39 federal minimum wage, if either minimum wage provision is applicable
40 to the business, on a permanent basis, which does not include
41 employment that is temporary or seasonal.

42 "Investment credit base" means the cost of qualified equipment. The
43 cost of qualified equipment shall not include the value of equipment
44 given in trade or exchange for the equipment purchased for business
45 relocation or expansion. If equipment is damaged or destroyed by fire,
46 flood, storm or other casualty, or is stolen, the cost of replacement

1 equipment shall not include any insurance proceeds received in
2 compensation for the loss. In the case of self-constructed equipment,
3 the cost thereof shall be the amount properly charged to the capital
4 account for depreciation in accordance with federal income tax law.
5 The cost of equipment acquired by written lease is the minimum
6 amount required by the agreement, agreements, contract or contracts
7 to be paid over the term of the lease, provided however, that the
8 minimum amount shall not include any amount required to be paid, as
9 determined by the director, after the expiration of the useful life of the
10 equipment.

11 "Number of new employees" means the increase in the average
12 number of full-time employees and full-time employee equivalents
13 residing and domiciled in this State employed at work locations in this
14 State from the employment base year to the employment measurement
15 year. The employment base year is the tax year immediately preceding
16 the tax year for which the credit pursuant to section 3 of P.L.1993,
17 c.171 (C.54:10A-5.18), is allowed, provided that if the taxpayer was
18 not subject to tax and did not have a tax year immediately precede the
19 tax year for which a credit pursuant to section 3 of P.L.1993, c.171
20 (C.54:10A-5.18), was allowed the employment base year is the tax
21 year in which the credit pursuant to section 3 of P.L.1993, c.171
22 (C.54:10A-5.18), was allowed. The measurement year is the tax year
23 immediately following the tax year in which the credit pursuant to
24 section 3 of P.L.1993, c.171 (C.54:10A-5.18), was allowed. The
25 hours of part-time employees shall be aggregated to determine the
26 number of full-time employee equivalents.

27 "Part-time employee" means an employee working for the taxpayer
28 for at least 20 hours per week for at least six months during the tax
29 year.

30 "Purchase" means any acquisition of property, including an
31 acquisition pursuant to a lease, but only if:

32 a. the property is not acquired from a person whose relationship to
33 the person acquiring it would result in the disallowance of deductions
34 under section 267 or subsection (b) of section 707 of the federal
35 Internal Revenue Code of 1986, 26 U.S.C. s.267 or s.707;

36 b. the property is not acquired by one member of a controlled group
37 from another member of the same controlled group. The director may
38 waive this requirement if the property was acquired from a related
39 person for its then fair market value; and

40 c. the basis of the property for federal income tax purposes, in the
41 hands of the person acquiring it, is not determined:

42 (1) in whole or in part by reference to the federal adjusted basis of
43 such property in the hands of the person from whom it was acquired;

44 or

45 (2) under subsection (e) of section 1014 of the federal Internal
46 Revenue Code of 1986, 26 U.S.C. s.1014.

1 "Qualified equipment" means machinery, apparatus or equipment
2 acquired by purchase for use or consumption by the taxpayer directly
3 and primarily in the production of tangible personal property by
4 manufacturing, processing, assembling or refining, as defined pursuant
5 to subsection a. of section 25 of P.L.1980, c.105 (C.54:32B-8.13),
6 having a useful life of four or more years, placed in service in this
7 State and machinery, apparatus or equipment acquired by purchase for
8 use or consumption directly and primarily in the generation of
9 electricity as defined pursuant to subsection b. of section 25 of
10 P.L.1980, c.105 (C.54:32B-8.13) to the point of connection to the
11 grid, or in the generation of thermal energy, having a useful life of four
12 or more years, placed in service in this State. Qualified equipment does
13 not include tangible personal property which the taxpayer contracts or
14 agrees to lease or rent to another person or licenses another person to
15 use.

16 "Related person" means:

17 a. a corporation, partnership, association or trust controlled by the
18 taxpayer;

19 b. an individual, corporation, partnership, association or trust that
20 is in control of the taxpayer;

21 c. a corporation, partnership, association or trust controlled by an
22 individual, corporation, partnership, association or trust that is in
23 control of the taxpayer; or

24 d. a member of the same controlled group as the taxpayer.

25 "Tax year" means the fiscal or calendar accounting year of a
26 taxpayer.

27 (cf: P.L.1993, c.171, s.2)

28

29 6. Section 4 of P.L.1993, c.171 (C.54:10A-5.19) is amended to
30 read as follows:

31 4. a. A taxpayer allowed a credit under section 3 of P.L.1993,
32 c.171 (C.54:10A-5.18), with respect to the investment credit base,
33 shall be allowed a credit for the increase in employment by the
34 taxpayer determined by the number of new employees for each of the
35 two tax years next succeeding the tax year for which the credit under
36 section 3 of P.L.1993, c.171 (C.54:10A-5.18), is allowed, in an
37 amount equal to 3% of the investment credit base, not to exceed a
38 maximum allowed amount for each of the two tax years of \$1,000
39 multiplied by the number of new employees.

40 b. The tax imposed for the tax year pursuant to section 5 of
41 P.L.1945, c.162, shall first be reduced by the amount of any credit
42 allowed pursuant to section 19 of P.L.1983, c.303 (C.52:27H-78),
43 then by any credit allowed pursuant to section 12 of P.L.1985, c.227
44 (C.55:19-13), then by any credit allowed pursuant to section 42 of
45 P.L.1987, c.102 (C.54:10A-5.3), and then by any credit allowed
46 pursuant to section 3 of P.L.1993, c.171 (C.54:10A-5.18), prior to

1 applying any credits allowable pursuant to this section. Credits
2 allowable pursuant to this section shall be applied in the order of the
3 tax year of the credit allowed pursuant to section 3 of P.L.1993, c.171
4 (C.54:10A-5.18), to which the credit under this section relates and
5 then by the order of the credits' tax years. The amount of the credits
6 applied under this section and section 3 of P.L.1993, c.171
7 (C.54:10A-5.18), against the tax imposed pursuant to section 5 of
8 P.L.1945, c.162, for a tax year shall not exceed 50% of the tax liability
9 otherwise due and shall not reduce the tax liability to an amount less
10 than the statutory minimum provided in subsection (e) of section 5 of
11 P.L.1945, c.162.

12 c. The amount of tax year credit otherwise allowable under
13 subsection a. of this section which cannot be applied for the tax year
14 due to the limitations of subsection b. of this section may be carried
15 over, if necessary, to the seven tax years following a credit's tax year.
16 Provided however, that a taxpayer may not carry over any amount of
17 credit or credits allowed under subsection a. of this section to a tax
18 year during which a corporate acquisition with respect to which the
19 taxpayer was a target corporation occurred or during which the
20 taxpayer was a party to a merger or a consolidation, or to any
21 subsequent tax year, if the credit was allowed for a tax year prior to
22 the year of acquisition, merger or consolidation; provided further,
23 however, that if in the case of a corporate merger or corporate
24 consolidation the taxpayer can demonstrate, through the submission
25 of a copy of the plan of merger or consolidation and such other
26 evidence as may be required by the director, the identity of the
27 constituent corporation which was the acquiring person, a credit
28 allowed to the acquiring person may be carried over by the taxpayer.
29 "Acquiring person" means the constituent corporation the stockholders
30 of which own the largest proportion of the total voting power in the
31 surviving or consolidated corporation after the merger or
32 consolidation.

33 d. (1) With respect to equipment that is three-year property, as
34 described in subsection (e) of section 168 of the federal Internal
35 Revenue Code of 1986, 26 U.S.C. s.168, which is disposed of or
36 ceases to be qualified equipment prior to the end of the 36 month
37 period following being placed in service in this State, the amount of
38 credit allowed shall be that portion of the credit provided for in
39 subsection a. of this section which represents the ratio which the
40 months of qualified use bear to 36, and the difference between the
41 credit taken and the credit allowed for actual use shall be forfeited.
42 Additionally, except when the property is damaged or destroyed by
43 fire, flood, storm or other casualty, or is stolen, the taxpayer shall
44 redetermine the amount of credit allowed for the tax year of the credit
45 by reducing the investment credit base by the cost of the amount of the
46 disposed or disqualified equipment. If the redetermination of the

1 credit results in an increase in final liability for any tax year in which
2 the credit was applied, then, notwithstanding the four year limitation
3 of subsection b. of R.S.54:49-6 to the contrary, the amount of unpaid
4 liability, if any, shall be considered a deficiency for the purposes of the
5 State [Tax] Uniform Tax Procedure Law, R.S.54:48-1 et seq. The
6 amount of credit allowed for actual use shall be determined by
7 multiplying the original credit by the ratio which the months of
8 qualified use bear to 36.

9 (2) With respect to property other than that described in
10 subparagraph (1) of this subsection which is disposed of or ceases to
11 be qualified equipment prior to the end of the 60 month period
12 following being placed in service in this State, the amount of credit
13 allowed shall be that portion of the credit provided for in subsection
14 a. of this section which represents the ratio which the months of
15 qualified use bear to 60, and the difference between the credit taken
16 and the credit allowed for actual use shall be forfeited. Additionally,
17 except when the property is damaged or destroyed by fire, flood,
18 storm or other casualty, or is stolen, the taxpayer shall redetermine the
19 amount of credit allowed for the tax year of the credit by reducing the
20 investment credit base by the cost of the amount of the disposed or
21 disqualified equipment. If the redetermination of the credit results in
22 an increase in final liability for any tax year in which the credit was
23 applied, then, notwithstanding the four year limitation of subsection b.
24 of R.S.54:49-6 to the contrary, the amount of unpaid liability, if any,
25 shall be considered a deficiency for the purposes of the State [Tax]
26 Uniform Tax Procedure Law, R.S.54:48-1 et seq. The amount of
27 credit allowed for actual use shall be determined by multiplying the
28 original credit by the ratio which the months of qualified use bear to
29 60.

30 e. A taxpayer that claims a credit pursuant to this section shall not
31 be eligible to receive a grant pursuant to the "Business Relocation
32 Assistance Act," P.L.1996, c.25 (C.34:1B-112 et seq.) or the
33 "Business Employment Incentive Program Act," P.L.1996, c.26
34 (C.34:1B-124 et seq.).

35 (cf: P.L.1993, c.171, s.4)

36

37 7. This act shall take effect shall take effect immediately and
38 sections 5 and 6 shall apply to tax years beginning on and after January
39 1 next following enactment.

STATEMENT

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This bill will freeze transitional energy facility assessment (TEFA) unit rate surcharges at calendar year 2001 rates for a three year period from calendar years 2002 through 2004 and then reduce that unit rate surcharge ratably over the next two year period from calendar years 2005 through 2006. After December 31, 2006 the TEFA assessments will be eliminated to comport with the original planned phase-out of the tax as had been proposed in the 1997 energy tax reform law.

During the years leading up to 1997, New Jersey had the highest rate of energy taxation in the nation. The original purpose of the "Transitional Energy Facility Assessment Act," enacted as part of the 1997 energy tax reform law was to reduce over time New Jersey's energy tax rate from approximately 13.5% of the price of energy toward the national average of 7.5%. However, the Legislature in enacting that law recognized that such a reduction would be accomplished gradually over a period of years in order to minimize the fiscal impact of that reduction on the State budget.

More recently New Jersey consumers have been enjoying reduced electricity rates pursuant to the provisions of section 4 of the "Electric Discount and Energy Competition Act" P.L.1999, c.23 (C.48:3-52), which requires the reduction of electric energy charges to consumers by 10% by August of 2003.

With the recent events of September 11, 2001 necessitating a significant increase in State expenditures for security and public safety measures during this period of declining revenues and budget stress, it would not be in the public interest to continue the phased reduction in the TEFA unit rate surcharges according to the original phase-out schedule first proposed in 1997. Therefore, this bill holds the current year TEFA unit rate surcharges at their current level during fiscal years 2002 through 2004 and then reduces those unit rate surcharges during fiscal years 2005 through 2006. The bill eliminates the TEFA unit rate surcharge as a source of revenue during fiscal year 2007 and for fiscal years thereafter.

This bill also provides the manufacturing equipment and employment investment tax credit under the corporation business tax for electric energy and thermal energy production. This bill will provide the tax credit for investment in electric generation facilities and thermal energy generation facilities consistent with the tax treatment available under the "Manufacturing Equipment and Employment Incentive Tax Credit Act," P.L.1993, c.171 (C.54:10A-5.16 et seq.). This corporation business investment tax credit will encourage needed investment in electric and thermal energy generation facilities in New Jersey to further stabilize energy prices and meet the energy needs of the region.

1 This investment tax credit will encourage competition in electric
2 and thermal energy generation which is needed to ensure that the State
3 continues to have an adequate supply of electric and thermal energy
4 generation capacity. By encouraging the construction of additional
5 generation capacity the State can avoid the type of energy supply crisis
6 recently experienced in the state of California where electric energy
7 demand has outpaced growth in generation capacity.

8 The bill also eliminates eligibility for Business Relocation
9 Assistance Program and Business Employment Incentive Program
10 grants for taxpayers who claim an employment investment tax credit
11 under the corporation business tax.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 2773

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 13, 2001

The Senate Budget and Appropriations Committee reports favorably and with committee amendments Senate Bill No. 2773.

This bill will freeze transitional energy facility assessment (TEFA) unit rate surcharges at calendar year 2001 rates for a three year-period from calendar years 2002 through 2004 and then reduce that unit rate surcharge ratably over the next two year period from calendar years 2005 through 2006. After December 31, 2006 the TEFA assessments will be eliminated to comport with the original planned phase-out of the tax as had been proposed in the 1997 energy tax reform law.

During the years leading up to 1997, New Jersey had the highest rate of energy taxation in the nation. The original purpose of the "Transitional Energy Facility Assessment Act," enacted as part of the 1997 energy tax reform law was to reduce over time New Jersey's energy tax rate from approximately 13.5% of the price of energy toward the national average of 7.5%. However, the Legislature in enacting that law recognized that such a reduction would be accomplished gradually over a period of years in order to minimize the fiscal impact of that reduction on the State budget.

This bill holds the current year TEFA unit rate surcharges at their current level during fiscal years 2002 through 2004 and then reduces those unit rate surcharges during fiscal years 2005 through 2006. The bill eliminates the TEFA unit rate surcharge as a source of revenue during fiscal year 2007 and for fiscal years thereafter.

This bill also provides the manufacturing equipment and employment investment tax credit under the corporation business tax for electric energy and thermal energy production. This bill will provide the tax credit for investment in electric generation facilities and thermal energy generation facilities consistent with the tax treatment available under the "Manufacturing Equipment and Employment Incentive Tax Credit Act," P.L.1993, c.171 (C.54:10A-5.16 et seq.). This corporation business investment tax credit will encourage needed investment in electric and thermal energy generation facilities in New Jersey to further stabilize energy prices and meet the energy needs of the region.

COMMITTEE AMENDMENTS

The committee amendments delete the section of the bill that would have prohibited any taxpayers that claim the manufacturing equipment and employment incentive tax credit from receiving grants under the Business Relocation Assistance Program and Business Employment Incentive Program. The amendments also clarify that the provisions of the bill are intended to begin on January 1, 2002.

FISCAL IMPACT

The Office of Legislative Services (OLS) estimates that this bill will increase State revenue from the TEFA by about \$800.8 million between Fiscal Years 2002 and 2006. The table below displays the estimated annual revenue amounts compared to current law. The OLS notes that actual revenue amounts may be subject to fluctuations in the number of actual units. The phase-out includes a 33% reduction in 2005 from the 2001 unit rates, a 67% reduction in 2006, and a 100% reduction in 2007. Amounts in each year through 2007 are also subject to adjustments due to overpayments or underpayments of estimated payments. The largest annual revenue amounts of \$231.8 million will affect Fiscal Years 2003 and 2004.

Estimated Changes to the Transitional Energy Facility Assessment \$ Millions			
Year	Current Law	Estimated Per Bill	Difference
2001	\$231.8	\$231.8	\$0.0
2002	\$126.4	\$231.8	\$105.4
2003	\$0.0	\$231.8	\$231.8
2004	\$0.0	\$231.8	\$231.8
2005	\$0.0	\$155.3	\$155.3
2006	\$0.0	\$76.5	\$76.5
2007	\$0.0	\$0.0	\$0.0
Total:			\$800.8

The OLS cannot estimate the potential impact of the tax credits under this bill. The OLS has no information from which it may predict any new qualified investments or any increase in employment that may occur as a result of the manufacturing equipment and employment investment tax credit for electric energy and thermal energy production provided for in the bill.

[First Reprint]

SENATE, No. 2773

STATE OF NEW JERSEY
209th LEGISLATURE

INTRODUCED DECEMBER 6, 2001

Sponsored by:

Senator ROBERT E. LITTELL

District 24 (Sussex, Hunterdon and Morris)

Senator WAYNE R. BRYANT

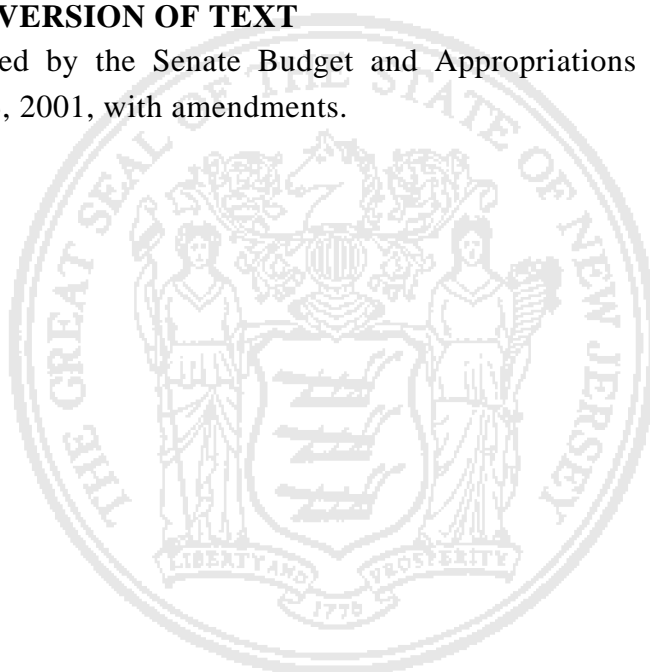
District 5 (Camden and Gloucester)

SYNOPSIS

Changes phase-out of transitional energy facility assessment (TEFA) unit rate surcharges on certain energy sales and provides a tax credit for certain investments in qualified electric and thermal energy generation equipment.

CURRENT VERSION OF TEXT

As reported by the Senate Budget and Appropriations Committee on December 13, 2001, with amendments.



1 AN ACT changing the phase-out schedule of the transitional energy
2 facility assessment (TEFA) unit rate surcharges on certain energy
3 sales and providing a corporation business tax credit for certain
4 investments in qualified electric and thermal energy generation
5 equipment, amending P.L.1997, c.162 and P.L.1993, c.171.

6
7 **BE IT ENACTED** *by the Senate and General Assembly of the State*
8 *of New Jersey:*

9
10 1. Section 38 of P.L.1997, c.162 (C.54:30A-102) is amended to
11 read as follows:

12 38. Each remitter's transitional energy facility assessment shall be
13 established pursuant to section 67 of P.L.1997, c.162 (C.48:2-21.34).
14 Under no circumstances shall an assessment be made under this act for
15 any year commencing after December 31, [2002] 2006.
16 (cf: P.L.1997, c.162, s.38)

17
18 2. Section 41 of P.L.1997, c.162 (C.54:30A-105) is amended to
19 read as follows:

20 41. a. Every remitter shall on or before October 15, 1998, and on
21 or before October 15, in each year thereafter for years in which the
22 transitional energy facility assessment is imposed, return to the
23 Director of the Division of Taxation in the Department of the Treasury
24 and the Board of Public Utilities a statement in such form, manner and
25 detail as the director shall require showing the [following:

26 (1) Sales and use tax collected and use tax liability through
27 September 30 of the current calendar year;

28 (2) Estimated sales tax collections and use tax liability for the
29 period from October 1 through December 31 of the current calendar
30 year;

31 (3) Estimated corporation business tax, including negative and
32 positive deferred corporation business taxes shown separately, for the
33 current privilege period based upon actual taxable income from
34 January 1 through September 30 and estimated taxable income from
35 October 1 through December 31; and

36 (4) Actual] actual transitional energy facility assessment liability
37 from January 1 through September 30 and estimated liability from
38 October 1 through December 31 for the current calendar year.

39 b. On or before November 15, 1998, and on or before November
40 15 of each year thereafter for years in which the transitional energy
41 facility assessment is imposed, the State Treasurer shall, with the

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SBA committee amendments adopted December 13, 2001.

1 cooperation of the Board of Public Utilities, calculate the percentage
2 reduction, as may be applicable, in the initial TEFA unit rate
3 surcharges or the calendar year 2001 TEFA unit rate surcharges based
4 upon the formula set forth in section 67 of P.L.1997, c.162
5 (C.48:2-21.34) and the board shall report the amount of such
6 reduction, if any, to the remitters subject to the transitional energy
7 facility assessment.

8 c. Every remitter shall on or before February 1, 1998 file with the
9 director a statement showing:

10 (1) The total public utility tax advance payments paid in the initial
11 year pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.); and

12 (2) The remitter's base year liability and each of the amounts
13 described in subsections (a), (b) and (c) in the definition of "base year
14 transitional energy facility assessment" in section 37 of P.L.1997,
15 c.162 (C.54:30A-101).

16 d. For any remitter owning or holding both gas and electric
17 facilities and conducting both gas and electric business in this State
18 each of the amounts reported on the return required to be filed
19 pursuant to subsection c. shall be allocated by the director between
20 those operations in the proportion that the sum of the unit-based taxes
21 bore to the whole of the unit-based taxes in the base year or such other
22 allocation methodology as the director shall prescribe.

23 e. The statements required pursuant to this section shall be
24 subscribed and sworn to by the president, a vice-president or chief
25 officer of the corporation preparing each statement. Any remitter
26 refusing or neglecting to make the statements herein provided for shall
27 forfeit and pay to the State of New Jersey the sum of \$100 per day for
28 each day of such refusal or neglect, to be recovered in an action at law
29 in the name of the State and which, when recovered, shall be paid into
30 the State Treasury. It shall be the duty of the director to certify any
31 such default to the Attorney General of the State who, thereupon, shall
32 prosecute an action at law for each penalty.

33 f. The Director of the Division of Taxation shall audit and verify
34 the statements filed by remitters whenever and in such respects the
35 director shall deem necessary or advisable. The director may require
36 any remitter to supply additional data and information in such form,
37 manner, and detail as the director shall request, whenever the director
38 may deem it necessary or helpful, for the proper performance of the
39 director's duties under this act.

40 g. The director may, by regulation, additionally require that all
41 filings required for the calculation and certification of assessment to
42 be paid by remitters established pursuant to this act shall be made in
43 an electronic form. The form and content of the electronic filing
44 message, the circumstances under which the electronic filing message
45 shall serve as a substitute for the filing of another return and the means
46 by which remitters shall be determined to be subject to this electronic

1 filing requirement shall be prescribed by the director.

2 For the purpose of this act "electronic filing" or "electronic filings"
3 means any message that is initiated through an electronic terminal,
4 telecommunication device, or computer for the purpose of fulfilling the
5 reporting responsibilities set forth hereinabove.

6 (cf: P.L.1997, c.162, s.41)

7

8 3. Section 43 of P.L.1997, c.162 (C.54:30A-107) is amended to
9 read as follows:

10 43. a. (1) The liability for the transitional energy facility
11 assessment made against any remitter in the first year of assessment
12 shall be an amount equal to TEFA unit rate surcharges (excluding the
13 provision for corporation business taxes included therein) determined
14 in section 67 of P.L.1997, c.162 (C.48:2-21.34) multiplied by the
15 associated therms of natural gas and kilowatthours of electricity sold
16 or transported for sale to ultimate consumers in New Jersey in the first
17 year plus any advances paid in the initial year pursuant to P.L.1940,
18 c.5 (C.54:30A-49 et seq.) by that remitter.

19 (2) The liability for the transitional energy facility assessment made
20 against any remitter for each year subsequent to the first year shall be
21 an amount equal to the TEFA unit rate surcharges (excluding the
22 provision for corporation business taxes included therein) calculated
23 in section 67 of P.L.1997, c.162 (C.48:2-21.34) for that year
24 multiplied by the associated therms of natural gas and kilowatthours
25 of electricity sold or transported for sale to ultimate consumers in New
26 Jersey in that year.

27 b. A credit against the liability determined pursuant to paragraph
28 (1) of subsection a. of this section shall be taken in the first year by the
29 remitter in the amount of all advances paid in the initial year pursuant
30 to P.L.1940, c.5 (C.54:30A-49 et seq.).

31 c. (1) Each remitter shall make an estimated payment on May 15
32 of the first assessment year in the amount of the base year transitional
33 energy facility assessment.

34 (2) Subsequent to the first year, each remitter shall make an
35 estimated payment on May 15 of each assessment year in which the
36 transitional energy facility assessment is in effect, in an amount equal
37 to the transitional energy facility assessment liability described in
38 subsection a. of this section for the immediately preceding assessment
39 year, excluding advances paid in the initial year pursuant to P.L.1940,
40 c.5 (C.54:30A-49 et seq.), reduced by the applicable reduction
41 percentage, if any, for the current assessment year determined
42 pursuant to paragraphs (2), (3) and (4) or paragraph (5) of subsection
43 d. of section 67 of P.L.1997, c.162 (C.48:2-21.34) less credits
44 described in subsection d. of this section, if any.

45 d. Any excess of the estimated payment made pursuant to
46 paragraph (1) or (2) of subsection c. of this section over the liability

1 determined pursuant to subsection a. of this section shall be treated as
2 a credit against the estimated payment for the subsequent assessment
3 year and reduce the amount of the estimated payment required to be
4 made for that subsequent year. Any excess of the estimated payment
5 made pursuant to paragraph (2) of subsection c. of this section over
6 the liability for the final year of the transitional energy facility
7 assessment shall be utilized as a nonrefundable credit with an unlimited
8 carryforward against that remitter's corporation business tax liability
9 in the subsequent privilege period year. Such credit shall be applied
10 in full to each estimated corporation business tax payment beginning
11 in the subsequent privilege period until fully utilized.

12 (cf: P.L.1997, c.162, s.43)

13

14 4. Section 67 of P.L.1997, c.162 (C.48:2-21.34) is amended to
15 read as follows:

16 67. a. As used in this section:

17 "Base rates" means the rates, including minimum bills, charged for
18 utility commodities or service subject to the board's jurisdiction, other
19 than the rates charged under a utility's levelized energy adjustment
20 clause, hereinafter "LEAC," or levelized gas adjustment clause,
21 hereinafter "LGAC," or equivalent rate provision;

22 "Base year" means the calendar year 1996;

23 "Board" means the Board of Public Utilities;

24 "Sales and use tax" means the sales and use tax liability computed
25 on sales and use of energy and utility service as defined in section 2 of
26 P.L.1966, c.30 (C.54:32B-2);

27 "Utility" means a public utility subject to regulation by the board
28 pursuant to Title 48 of the Revised Statutes; and

29 "Utility service" means the supply, transmission, distribution or
30 transportation of electricity, natural gas or telecommunications
31 services or any combination of such commodities, processes or
32 services.

33 b. No later than 60 days after the date this act is enacted, each
34 electric, gas and telecommunications utility subject to the provisions
35 of this act shall file with the board, and shall simultaneously provide
36 copies to the Director of the Division of the Ratepayer Advocate,
37 revised tariffs and such other supporting schedules, narrative and
38 documentation required by this act, as set forth in this section, to
39 reflect in the utility's rates the changes in tax liability effected pursuant
40 to this act. No later than 90 days after the date of the utility's filing,
41 and after determining that the filing and the rate changes provided for
42 therein are in compliance with the provisions of this act, the board
43 shall approve the utility's filing and associated rates for billing to the
44 utility's customers, effective for utility service rendered on and after
45 January 1, 1998. If the board determines that the utility's filing and the
46 associated rate changes provided for therein are not in compliance

1 with the provisions of this act, the board shall require the utility to
2 amend or otherwise modify its filing to render it in compliance. The
3 board may also permit the rates provided for in the utility's filing to be
4 implemented on an interim basis pending the board's final
5 determination in the event the board, in its discretion, determines that
6 due to the filing's complexity, or for other valid reasons, including but
7 not limited to the enactment of this act after June 30, 1997, additional
8 time is needed for the board to complete its review of the filing. If the
9 rates approved by the board upon its final determination are less than
10 the rates implemented on an interim basis, the difference shall be
11 refunded to the utility's customers with interest computed in
12 accordance with N.J.A.C.14:3-7.5(c). The rate adjustments
13 implemented pursuant to this act shall not constitute a fixing of rates
14 pursuant to R.S.48:2-21 and shall not be subject to the hearing
15 requirements set forth in that section.

16 c. As of the effective date of the rate changes implemented
17 pursuant to this act, and except for rates applicable to sales that were
18 or are currently exempt from the unit-based energy taxes formerly
19 imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) and rates
20 applicable to sales to which section 59 of P.L.1997, c.162
21 (C.48:2-21.31) applies, the board shall remove from the base rates of
22 each electric public utility and gas public utility the unit tax rates
23 included therein for the recovery of those unit-based energy taxes, and
24 include therein provision for the recovery of corporation business tax
25 imposed pursuant to P.L.1945, c.162 (C.54:10A-1 et seq.), and
26 additionally shall authorize the collection of the sales and use tax
27 imposed pursuant to P.L.1966, c.30 (C.54:32B-1 et seq.), as follows:

28 (1) The base rates of each gas and electric utility shall be reduced
29 by the amount of the unit-based energy taxes per kilowatthour or per
30 therm included therein.

31 (2) The provision for corporation business tax initially included in
32 the base rates of each gas and electric utility shall be based on the
33 utility's after-tax net income earned in the base year as booked, unless
34 the board determines, in its discretion, that such income as booked is
35 unusually high or low or otherwise unrepresentative of the utility's
36 prospective net income, in which case the utility's base year net income
37 shall be adjusted as determined by the board.

38 To permit the board to make this determination, in addition to
39 including in its filing schedules showing its net income earned in the
40 base year as booked, the utility shall include adjustments to such
41 booked income to eliminate the effect of revenues, expenses and
42 extraordinary or other charges that are non-recurring, atypical, or
43 both, including, but not limited to an adjustment to eliminate the effect
44 of unusually hot or cold weather, and that would otherwise make the
45 utility's base year net income unusually high or low or otherwise
46 unrepresentative of the utility's prospective net income. If the

1 adjustment is being made to eliminate the effect of unusually hot or
 2 cold weather, associated revenue and expense adjustments shall also
 3 be made. Subject to the board's approval, such adjusted income shall
 4 be the basis for the calculation of the initial provision for corporation
 5 business tax to be included in the utility's base rates.

6 The utility shall also include a calculation of its rate of return on
 7 common equity achieved in the base year, both as booked and as
 8 adjusted in accordance with the foregoing. The calculation shall be
 9 made employing the methodology set forth in N.J.A.C.14:12-4.2(b)1,
 10 and shall separately show the effect of reflecting adjustments to the
 11 calculation, if any, that may have been employed historically in
 12 establishing the utility's rate of return on common equity allowed for
 13 ratemaking purposes. The utility's filing shall also include copies of its
 14 audited financial statements for the base year and associated quarterly
 15 and other reports filed with the Securities and Exchange Commission.

16 To reflect the provision for corporation business tax in base rates,
 17 the demand charges, or charges per kilowatt, decatherm or million
 18 cubic feet; the energy charges, or charges per kilowatthour or per
 19 therm; and the customer charges, or charges other than demand and
 20 energy charges, set forth in each base rate schedule, and the floor price
 21 employed in parity rate schedules, included in the utility's tariff filed
 22 with and approved by the board shall be increased by amounts
 23 determined by multiplying such charges by the adjustment factor, "A
 24 e, g" derived below:

25

$$26 \quad A_{e, g} = (I_{e, g}) \times [Rs / (1 - Re)]$$

27

$$28 \quad (Br_{e, g})$$

29

30 where:

31

32 "A e, g" means the adjustment factor applicable to electric base
 33 rates (e), gas base rates (g), or both, other than rates applicable to
 34 sales that were exempt from unit-based energy taxes formerly imposed
 35 pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) or to which section
 36 59 of P.L.1997, c.162 (C.48:2-21.31) applies;

37 "I e, g" means the utility's base year after-tax net income from
 38 electric or gas sales, or both, and transportation service subject to the
 39 board's jurisdiction and other operating revenue if such revenue is
 40 reflected in the utility's cost of service for ratemaking purposes,
 41 adjusted as approved by the board;

42 "Br e, g" means the utility's base year revenue from base rates
 43 applicable to electric or gas sales, or both, and transportation service
 44 subject to the board's jurisdiction, but excluding sales that were
 45 exempt from unit-based energy taxes formerly imposed pursuant to
 46 P.L.1940, c.5 (C.54:30A-49 et seq.) or to which section 59 of

1 P.L.1997, c.162 (C.48:2-21.31) applies;

2 "Rs" means the corporation business tax rate, expressed as a
3 decimal;

4 "Rf" means the applicable federal corporation income tax rate
5 expressed as a decimal; and

6 "Re" equals $R_s + R_f(1-R_s)$.

7 The utility shall account for the changes in tax liability provided for
8 by this act effective January 1, 1998. Such accounting shall include
9 the recording on the utility's income statement and balance sheet of
10 deferred corporation business tax defined, for book accounting
11 purposes, as differences in corporation business tax expense arising
12 from timing differences in the recognition of revenue and expenses for
13 book and tax purposes.

14 (3) When billed to the utility's customers, the adjusted base rate
15 charges determined pursuant to paragraphs (1), (2), and (4) of this
16 subsection, and the charges determined pursuant to the utility's
17 levelized energy adjustment clause, levelized gas adjustment clause, or
18 both, as determined both upon the effective date of the rate changes
19 authorized by this act and as revised prospectively in accordance with
20 the utility's tariff filed with and approved by the board, and the
21 transitional energy facility assessment unit rate surcharges, hereinafter,
22 "TEFA unit rate surcharges," determined in accordance with
23 subsection d. of this section, shall be increased by an amount
24 determined by multiplying such charges by the sales and use tax rate
25 imposed under P.L.1966, c.30 (C.54:32B-1 et seq.). In addition to the
26 utility's rates for service included in its tariff, for informational
27 purposes the tariff shall include such rates after application of the sales
28 and use tax authorized by this section.

29 (4) The utility's filing with the board to implement the rate changes
30 provided for by this act shall include an analysis, description, and
31 quantification of the effect of the changes in rates and tax payments
32 implemented pursuant to this act on the utility's requirement for cash
33 working capital, and if such requirement is less than the cash working
34 capital allowed for the collection and payment of unit-based energy
35 taxes formerly imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et
36 seq.) in determining the utility's base rates in effect prior to the rate
37 changes implemented pursuant to this act, and to the extent the
38 working capital reduction is not offset by a reduction in net deferred
39 taxes as provided for below, such base rates shall be reduced by the
40 reduction in the utility's revenue requirement associated with the
41 remaining reduction in the working capital requirement not so offset,
42 if any. The reduction in working capital shall be determined by using
43 the same methodology employed in establishing the working capital
44 allowance related to unit-based energy taxes reflected in the utility's
45 base rates in effect prior to the rate changes implemented pursuant to
46 this act. The reduction in the utility's revenue requirement associated

1 with the reduced working capital requirement shall be calculated using
2 the utility's last overall rate of return allowed by the board, including
3 provision for federal income taxes and the corporation business tax
4 implemented pursuant to this act payable on the equity portion of the
5 return, and shall be implemented on the effective date of the rate
6 changes provided for, and in the manner set forth in paragraph (2) of
7 this subsection.

8 If the utility's requirement for cash working capital is increased as
9 a result of the changes in rates and tax payments implemented pursuant
10 to this act, the utility may accrue carrying costs, calculated at its last
11 overall rate of return allowed by the board and applied on a simple
12 annual interest basis without compounding, on the increased working
13 capital requirement and request recovery of such carrying costs in a
14 rate proceeding before the board.

15 The working capital-related base rate changes and carrying cost
16 accruals shall be subject to the board's approval, and shall not be
17 included in the determination of the TEFA unit tax surcharges
18 provided for in subsection d. of this section.

19 The utility's filing with the board to implement the rate changes
20 provided for by this act shall also include an analysis, description and
21 quantification of net deferred taxes. For the purposes of this section,
22 "net deferred taxes" means deferred corporation business taxes, net of
23 federal deferred income taxes, associated with the tax and rate changes
24 implemented pursuant to this act, including deferred corporation
25 business tax recorded in accordance with section 4 of P.L.1945, c.162
26 (C.54:10A-4), projected for the calendar year in which this act takes
27 effect and for each year of the tax life of the asset giving rise to the
28 deferred corporation business taxes pursuant to section 4 of P.L.1945,
29 c.162 (C.54:10A-4).

30 If the change in such net deferred taxes projected for the calendar
31 year in which the rate changes implemented pursuant to this act takes
32 effect is negative and if the utility's requirement for working capital is
33 reduced as a result of the changes in rates and tax payments
34 implemented pursuant to this act, the working capital-related rate
35 reduction that otherwise would have been implemented pursuant to
36 this subsection shall be treated as set forth in subparagraph (a) or (b)
37 of this paragraph. For the purposes of this act, a change in net
38 deferred taxes is considered negative when it reduces an existing
39 deferred tax liability or creates a deferred tax asset on the utility's
40 balance sheet. An appropriate rate adjustment for the working capital
41 impacts of this act, reflecting all relevant facts and circumstances at
42 the time of the adjustment, shall be made in the year when the earlier
43 of the following events occur:

44 (a) The year in which the reduction in carrying costs assumed for
45 the rate reduction for working capital that would have been made but
46 for this paragraph is no longer required to offset, on a present value

1 basis, the annual carrying costs calculated on the accumulated balance
2 of negative net deferred taxes projected to be recorded by the utility,
3 its successors and assigns, over the tax life of the single asset account
4 giving rise to such net deferred taxes pursuant to section 4 of
5 P.L.1945, c.162 (C.54:10A-4). For the purposes of this subparagraph
6 (a):

7 (i) Carrying costs and present values are to be computed using the
8 weighted average after-tax rate of return approved by the board in the
9 utility's last base rate proceeding.

10 (ii) The accumulated balance of such negative net deferred taxes
11 shall include net deferred taxes associated with all assets and liabilities
12 originally placed in service by the utility and held by the utility or a
13 company affiliated with the utility regardless of whether or not such
14 assets continue to be subject to regulation by the New Jersey Board of
15 Public Utilities.

16 (b) The year in which both an appropriate working capital
17 adjustment and the accumulated balance of negative deferred taxes, as
18 described in (ii) of subparagraph (a) of this paragraph (4), are reflected
19 in the utility's rate base in a rate proceeding before the board. It is the
20 intent of this section to fully compensate utilities on a present value
21 basis, for the carrying costs associated with negative net deferred taxes
22 arising as a result of this act, and to remit to ratepayers any credit due
23 them as a result of any overcompensation as may have occurred due
24 to the treatment of working capital and deferred taxes as set forth
25 herein or in subparagraph (a) of this paragraph (4). At the time the
26 above base rate adjustment is made, an analysis shall be made to
27 determine if such carrying costs have been or will be fully recovered
28 pursuant to the intent of this provision and any additional credit or
29 charge to ratepayers to adjust for ratepayer overpayments or
30 underpayments, if any shall be addressed.

31 If the change in net deferred taxes is positive, the increase shall be
32 added to, or increase, the reduction in the utility's requirement for
33 working capital if the requirement is reduced as a result of the rate and
34 tax payment changes implemented pursuant to this act, or subtracted
35 from the working capital requirement if it is increased, and the
36 resultant net working capital requirement shall be reflected in rates or
37 accrue carrying costs in the same manner as prescribed for changes in
38 the utility's requirement for working capital above.

39 The deferred tax-related rate changes or carrying cost accruals shall
40 be subject to the board's approval and shall not be included in the
41 determination of the TEFA unit rate surcharges provided for in
42 subsection d. of this section.

43 d. (1) Electric and gas utilities shall file, for the board's review and
44 approval, initial TEFA unit rate surcharges determined by deducting
45 from each unit-based energy tax unit tax rate effective January 1, 1997
46 the following: (a) An amount per kilowatthour or per therm

1 determined by multiplying the total revenue received in the base year
2 from sales to which that unit tax rate would have been applicable by
3 the factor $R_u/(1 + R_u)$, where R_u is the sales and use tax rate imposed
4 under P.L.1966, c.30 (C.54:32B-1 et seq.) expressed as a decimal, and
5 dividing the result by the kilowatthours or therms billed in that unit tax
6 rate class in the base year; and (b) An amount per kilowatthour or per
7 therm determined by dividing the revenue that would have been
8 received in the base year from the inclusion, in the manner prescribed
9 in paragraph (2) of subsection c. of this section, of the corporation
10 business tax in the rates applicable to sales billed in that unit tax rate
11 class by the kilowatthours or therms billed in that rate class. In each
12 case, the determination shall reflect the effect of adjustments that
13 affect the level of sales and revenue, if any, as provided in subsection
14 c. of this section. Of the resultant rate per kilowatthour or per therm,
15 the portion for recovery of the utility's transitional energy facilities
16 assessment liability shall be determined by multiplying such rate by the
17 factor $(1 - R_s)$, where R_s is the corporation business tax rate expressed
18 as a decimal. The TEFA unit rate surcharges shall constitute
19 non-bypassable wires and/or mains charges of the utility, and shall be
20 applied to all sales within the customer classes to which they apply,
21 regardless of whether such customers are purchasing bundled or
22 unbundled services from the utility, but shall not be applied to sales
23 that were or are currently exempt from unit-based energy taxes
24 formerly imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) or
25 to which section 59 of P.L.1997, c.162 (C.48:2-21.31) applies.

26 If, following the effective date of this act, a customer taking
27 bundled service from the utility shall elect to obtain its requirements
28 from another supplier and take transportation or wheeling service from
29 the utility, the TEFA unit rate surcharge applicable to the bundled
30 service shall continue to apply to the transportation or wheeling
31 service. The TEFA components of the unit rate surcharges determined
32 pursuant to this subsection (the components of the surcharges
33 remaining after deducting the provision for corporation business tax
34 included therein) shall be used to determine the transitional energy
35 facility assessment liability pursuant to sections 36 through 49 of
36 P.L.1997, c.162 (C.54:30A-100 through C.54:30A-113).

37 (2) Unless reduced pursuant to paragraphs (3) and (4) of this
38 subsection, the initial TEFA unit rate surcharges are to be reduced
39 annually on January 1, 1999 through January 1, [2003] 2001 by the
40 following percentages:

41	January 1, 1999,	20%
42		
43	January 1, 2000,	40%
44		
45	January 1, 2001,	60%

1 [January 1, 2002, 80%

2

3 January 1, 2003, 100%]

4 (3) For each year beginning with calendar year 1998 and ending
5 with calendar year [2002] 2001, the TEFA surcharge adjustment shall
6 be determined as the difference between:

7 (a) The sum of the estimated, or actual when known, (i) TEFA
8 liabilities, as defined in section 43 of P.L.1997, c.162 (C.54:30A-107),
9 and sales and use taxes collected and corporation business taxes
10 booked for the year 1998 by the gas and electric utilities and other
11 entities subject to the TEFA provisions of this act (the year 1998
12 liability), and (ii) the TEFA liabilities of those utilities and entities in
13 all years following the year 1998 through the year in which a
14 determination is being made pursuant to this subsection (the
15 determination year); and

16 (b) The sum of (i) the total of each remitter's base year liability, as
17 defined in section 37 of P.L.1997, c.162 (C.54:30A-101), and (ii) the
18 cumulative TEFA obligation, defined as the sum through the
19 determination year of the amounts calculated by multiplying, for the
20 applicable year, the percentage in the second column of the following
21 table:

22

Determination Year	% of Year 1998 TEFA
-----	-----
1999	80%
2000	60%
[2001	40%
2002	20%]

23

24 by the Year 1998 TEFA,

25

26 where the Year 1998 TEFA is calculated as the total of each remitter's
27 base year liability less the sales and use taxes collected and the
28 corporation business taxes booked for the privilege period ending in
29 calendar year 1998 by the gas and electric utilities and other entities
30 subject to the TEFA provisions of this act. For purposes of this
31 subsection, the amounts assumed for the determination year, including
32 the year 1998 liability when first determined for the purposes of this
33 subsection, shall be estimates based on nine months of actual data
34 through and including the month of September, and three months of
35

1 data forecast for the months of October through December.

2 (4) If the TEFA surcharge adjustment determined for the
 3 determination year is positive (that is, if the amount determined
 4 pursuant to subparagraph (a) of paragraph (3) of this subsection is
 5 greater than the amount determined pursuant to subparagraph (b) of
 6 paragraph (3) of this subsection), no reduction shall be made in the
 7 reduction in the TEFA unit rate surcharges provided for in paragraph
 8 (2) of this subsection for the year following the determination year.
 9 If the TEFA surcharge adjustment is negative, the reduction in the
 10 TEFA unit rate surcharges that otherwise would have been
 11 implemented on January 1 of the year following the determination year
 12 pursuant to paragraph (2) of this subsection shall be reduced by an
 13 amount (by percentage points) equal to the percentage the TEFA
 14 surcharge adjustment is of the total of the base year transitional energy
 15 facility assessment of all remitters, as defined in section 37 of
 16 P.L.1997, c.162 (C.54:30A-101), provided however, that such
 17 reduction in the reduction in the TEFA unit rate surcharges shall not
 18 exceed the percentage shown in paragraph (2) of this subsection for
 19 that year; and provided further that in the first two years, that such
 20 reduction shall not exceed 10 percentage points for each year.

21 (5) (a) The TEFA unit rate surcharges for calendar years 2002
 22 through 2004 shall be the same as the TEFA unit rate surcharges in
 23 effect for calendar year 2001.

24 (b) The TEFA unit rate surcharges in effect for calendar year 2004
 25 shall be reduced annually on January 1, 2005 through January 1, 2006
 26 by the following percentages:

27 January 1, 2005 33%

28

29 January 1, 2006 67%

30 e. The utility's filing with the board to implement the rate changes
 31 provided for by this act shall include proof of revenue schedules that
 32 show for each rate schedule included in the utility's tariff, aggregated
 33 by unit-based energy tax unit tax classes, the number of customers
 34 billed under the rate schedule, the billing determinants of such
 35 customers (i.e. the kilowatts of billing demand and kilowatthours of
 36 electric energy consumed, and the million cubic feet/decatherm subject
 37 to gas capacity-related charges and decatherm of gas consumed) and
 38 the associated revenue, both as booked in the base year and on a pro
 39 forma basis reflecting the rate changes implemented pursuant to this
 40 act. The proof of revenue shall additionally show the amount of
 41 unit-based energy taxes included in the base year revenue as booked,
 42 the unit-based energy taxes that would have been collected at the
 43 unit-based energy tax unit tax rates effective January 1, 1997, if
 44 different, as well as the corporation business tax, sales and use tax and
 45 transitional energy facility assessment revenue that would have been
 46 collected or received on a pro forma basis if the rates implemented

1 pursuant to this act had been in effect in the base year.

2 f. The board may, in its discretion, permit the rate changes
3 provided for this act to be implemented as part of a pending base rate
4 case or other proceeding in which the utility's rates are to be changed,
5 provided that the effective date of the changes is not delayed beyond
6 the date on which the changes would have been implemented under
7 subsection c. of this section. The board may also, pursuant to its
8 powers provided by law, permit or require further modifications in the
9 implementation of this section to address unforeseen consequences
10 arising out of the implementation of this act.

11 g. Customers of the utility who are exempt from the sales and use
12 tax imposed on sales of gas and/or electricity or as a result of rate
13 changes occurring prior to the effective date of this act or for other
14 valid reasons are due a refund of sales or use tax inadvertently
15 imposed on such customers as a result of implementing the rate
16 changes provided for by this act shall file with the State Treasurer to
17 obtain such refunds. The State Treasurer shall promptly notify the
18 utility of customers granted refunds under this provision in order to
19 prevent additional collections of the sales and use tax from such
20 customers.

21 h. Public utilities providing telecommunications service regulated
22 by the board shall file for the board's review and approval revised
23 tariffs that eliminate from the rates applicable to such service the
24 excise tax liability included therein pursuant to P.L.1940, c.4
25 (C.54:30A-16 et seq.), and shall include therein the corporation
26 business tax calculated using the methodology used in calculating the
27 adjustment factor set forth in paragraph (2) of subsection c. of this
28 section. Subsection d. of this section shall not apply to
29 telecommunication utilities, and telecommunication utilities subject to
30 a plan of regulation other than rate base/rate of return shall
31 additionally not be required to file the rate of return information
32 required by paragraph (2) of subsection c. Such utilities shall,
33 however, include a narrative and/or other documentation as required
34 by the board to support the reasonableness of the after-tax income,
35 which may be adjusted to eliminate the effect of non-recurring or other
36 atypical events, on which the corporate business tax inclusion in rates
37 is based. Telecommunications utilities shall comply with all other
38 applicable provisions of this section.

39 i. (1) The board shall not adjust the rates of a public utility, as
40 provided in subsections c. and d. of this section, for a purchase by a
41 cogenerator of natural gas and the transportation of that gas, that is
42 exempt from sales and use tax pursuant to paragraph (2) of subsection
43 b. of section 26 of P.L.1997, c.162 (C.54:32B-8.46). The board shall
44 not allocate, in any future rate case, any sales and use tax, corporation
45 business tax, or transitional energy facility assessment to rates for this
46 purpose.

1 (2) The board shall adjust the rates, as provided in subsection c. of
2 this section, for a purchase by a cogenerator of any quantity of natural
3 gas and the transportation of that gas that is not exempt from sales and
4 use tax pursuant to paragraph (2) of subsection b. of section 26 of
5 P.L.1997, c.162 (C.54:32B-8.46).

6 (3) For the purposes of this section, "cogenerator" means a person
7 or business entity that owns or operates a cogeneration facility in the
8 State of New Jersey, which facility is a plant, installation or other
9 structure whose primary purpose is the sequential production of
10 electricity and steam or other forms of useful energy which are used
11 for industrial, commercial, heating or cooling purposes, and which is
12 designated by the Federal Energy Regulatory Commission, or its
13 successor, as a "qualifying facility" pursuant to the provisions of the
14 "Public Utility Regulatory Policies Act of 1978," Pub.L.95-617.
15 (cf: P.L.1997, c.162, s.67)

16

17 5. Section 2 of P.L.1993, c.171 (C.54:10A-5.17) is amended to
18 read as follows:

19 2. For the purposes of this act:

20 "Control," with respect to a corporation, means ownership, directly
21 or indirectly, of stock possessing 50% or more of the total combined
22 voting power of all classes of the stock of the corporation entitled to
23 vote; "control," with respect to a trust, means ownership, directly or
24 indirectly, of 50% or more of the beneficial interest in the principal or
25 income of the trust. The ownership of stock in a corporation, of a
26 capital or profits interest in a partnership or association or of a
27 beneficial interest in a trust shall be determined in accordance with the
28 rules for constructive ownership of stock provided in subsection (c) of
29 section 267 of the federal Internal Revenue Code of 1986, 26 U.S.C.
30 s.267, other than paragraph (3) of subsection (c) of that section.

31 "Controlled group" means one or more chains of corporations
32 connected through stock ownership with a common parent corporation
33 if stock possessing at least 50% of the voting power of all classes of
34 stock of each of the corporations is owned directly or indirectly by one
35 or more of the corporations; and the common parent owns directly
36 stock possessing at least 50% of the voting power of all classes of
37 stock of at least one of the other corporations.

38 "Director" means the Director of the Division of Taxation in the
39 Department of the Treasury.

40 "Full-time employee" means an employee working for the taxpayer
41 for at least 140 hours per month at a wage not less than the State or
42 federal minimum wage, if either minimum wage provision is applicable
43 to the business, on a permanent basis, which does not include
44 employment that is temporary or seasonal.

45 "Investment credit base" means the cost of qualified equipment. The
46 cost of qualified equipment shall not include the value of equipment

1 given in trade or exchange for the equipment purchased for business
2 relocation or expansion. If equipment is damaged or destroyed by fire,
3 flood, storm or other casualty, or is stolen, the cost of replacement
4 equipment shall not include any insurance proceeds received in
5 compensation for the loss. In the case of self-constructed equipment,
6 the cost thereof shall be the amount properly charged to the capital
7 account for depreciation in accordance with federal income tax law.
8 The cost of equipment acquired by written lease is the minimum
9 amount required by the agreement, agreements, contract or contracts
10 to be paid over the term of the lease, provided however, that the
11 minimum amount shall not include any amount required to be paid, as
12 determined by the director, after the expiration of the useful life of the
13 equipment.

14 "Number of new employees" means the increase in the average
15 number of full-time employees and full-time employee equivalents
16 residing and domiciled in this State employed at work locations in this
17 State from the employment base year to the employment measurement
18 year. The employment base year is the tax year immediately preceding
19 the tax year for which the credit pursuant to section 3 of P.L.1993,
20 c.171 (C.54:10A-5.18), is allowed, provided that if the taxpayer was
21 not subject to tax and did not have a tax year immediately precede the
22 tax year for which a credit pursuant to section 3 of P.L.1993, c.171
23 (C.54:10A-5.18), was allowed the employment base year is the tax
24 year in which the credit pursuant to section 3 of P.L.1993, c.171
25 (C.54:10A-5.18), was allowed. The measurement year is the tax year
26 immediately following the tax year in which the credit pursuant to
27 section 3 of P.L.1993, c.171 (C.54:10A-5.18), was allowed. The
28 hours of part-time employees shall be aggregated to determine the
29 number of full-time employee equivalents.

30 "Part-time employee" means an employee working for the taxpayer
31 for at least 20 hours per week for at least six months during the tax
32 year.

33 "Purchase" means any acquisition of property, including an
34 acquisition pursuant to a lease, but only if:

35 a. the property is not acquired from a person whose relationship to
36 the person acquiring it would result in the disallowance of deductions
37 under section 267 or subsection (b) of section 707 of the federal
38 Internal Revenue Code of 1986, 26 U.S.C.s.267 or s.707;

39 b. the property is not acquired by one member of a controlled
40 group from another member of the same controlled group. The
41 director may waive this requirement if the property was acquired from
42 a related person for its then fair market value; and

43 c. the basis of the property for federal income tax purposes, in the
44 hands of the person acquiring it, is not determined:

45 (1) in whole or in part by reference to the federal adjusted basis of
46 such property in the hands of the person from whom it was acquired;

1 or

2 (2) under subsection (e) of section 1014 of the federal Internal
3 Revenue Code of 1986, 26 U.S.C.s.1014.

4 "Qualified equipment" means machinery, apparatus or equipment
5 acquired by purchase for use or consumption by the taxpayer directly
6 and primarily in the production of tangible personal property by
7 manufacturing, processing, assembling or refining, as defined pursuant
8 to subsection a. of section 25 of P.L.1980, c.105 (C.54:32B-8.13),
9 having a useful life of four or more years, placed in service in this
10 State and machinery, apparatus or equipment acquired by purchase for
11 use or consumption directly and primarily in the generation of
12 electricity as defined pursuant to subsection b. of section 25 of
13 P.L.1980, c.105 (C.54:32B-8.13) to the point of connection to the
14 grid, or in the generation of thermal energy, having a useful life of four
15 or more years, placed in service in this State. Qualified equipment does
16 not include tangible personal property which the taxpayer contracts or
17 agrees to lease or rent to another person or licenses another person to
18 use.

19 "Related person" means:

20 a. a corporation, partnership, association or trust controlled by the
21 taxpayer;

22 b. an individual, corporation, partnership, association or trust that
23 is in control of the taxpayer;

24 c. a corporation, partnership, association or trust controlled by an
25 individual, corporation, partnership, association or trust that is in
26 control of the taxpayer; or

27 d. a member of the same controlled group as the taxpayer.

28 "Tax year" means the fiscal or calendar accounting year of a
29 taxpayer.

30 (cf: P.L.1993, c.171, s.2)

31

32 ¹[6. Section 4 of P.L.1993, c.171 (C.54:10A-5.19) is amended to
33 read as follows:

34 4. a. A taxpayer allowed a credit under section 3 of P.L.1993,
35 c.171 (C.54:10A-5.18), with respect to the investment credit base,
36 shall be allowed a credit for the increase in employment by the
37 taxpayer determined by the number of new employees for each of the
38 two tax years next succeeding the tax year for which the credit under
39 section 3 of P.L.1993, c.171 (C.54:10A-5.18), is allowed, in an
40 amount equal to 3% of the investment credit base, not to exceed a
41 maximum allowed amount for each of the two tax years of \$1,000
42 multiplied by the number of new employees.

43 b. The tax imposed for the tax year pursuant to section 5 of
44 P.L.1945, c.162, shall first be reduced by the amount of any credit
45 allowed pursuant to section 19 of P.L.1983, c.303 (C.52:27H-78),
46 then by any credit allowed pursuant to section 12 of P.L.1985, c.227

1 (C.55:19-13), then by any credit allowed pursuant to section 42 of
2 P.L.1987, c.102 (C.54:10A-5.3), and then by any credit allowed
3 pursuant to section 3 of P.L.1993, c.171 (C.54:10A-5.18), prior to
4 applying any credits allowable pursuant to this section. Credits
5 allowable pursuant to this section shall be applied in the order of the
6 tax year of the credit allowed pursuant to section 3 of P.L.1993, c.171
7 (C.54:10A-5.18), to which the credit under this section relates and
8 then by the order of the credits' tax years. The amount of the credits
9 applied under this section and section 3 of P.L.1993, c.171
10 (C.54:10A-5.18), against the tax imposed pursuant to section 5 of
11 P.L.1945, c.162, for a tax year shall not exceed 50% of the tax liability
12 otherwise due and shall not reduce the tax liability to an amount less
13 than the statutory minimum provided in subsection (e) of section 5 of
14 P.L.1945, c.162.

15 c. The amount of tax year credit otherwise allowable under
16 subsection a. of this section which cannot be applied for the tax year
17 due to the limitations of subsection b. of this section may be carried
18 over, if necessary, to the seven tax years following a credit's tax year.
19 Provided however, that a taxpayer may not carry over any amount of
20 credit or credits allowed under subsection a. of this section to a tax
21 year during which a corporate acquisition with respect to which the
22 taxpayer was a target corporation occurred or during which the
23 taxpayer was a party to a merger or a consolidation, or to any
24 subsequent tax year, if the credit was allowed for a tax year prior to
25 the year of acquisition, merger or consolidation; provided further,
26 however, that if in the case of a corporate merger or corporate
27 consolidation the taxpayer can demonstrate, through the submission
28 of a copy of the plan of merger or consolidation and such other
29 evidence as may be required by the director, the identity of the
30 constituent corporation which was the acquiring person, a credit
31 allowed to the acquiring person may be carried over by the taxpayer.
32 "Acquiring person" means the constituent corporation the stockholders
33 of which own the largest proportion of the total voting power in the
34 surviving or consolidated corporation after the merger or
35 consolidation.

36 d. (1) With respect to equipment that is three-year property, as
37 described in subsection (e) of section 168 of the federal Internal
38 Revenue Code of 1986, 26 U.S.C.s.168, which is disposed of or
39 ceases to be qualified equipment prior to the end of the 36 month
40 period following being placed in service in this State, the amount of
41 credit allowed shall be that portion of the credit provided for in
42 subsection a. of this section which represents the ratio which the
43 months of qualified use bear to 36, and the difference between the
44 credit taken and the credit allowed for actual use shall be forfeited.
45 Additionally, except when the property is damaged or destroyed by
46 fire, flood, storm or other casualty, or is stolen, the taxpayer shall

1 redetermine the amount of credit allowed for the tax year of the credit
2 by reducing the investment credit base by the cost of the amount of the
3 disposed or disqualified equipment. If the redetermination of the
4 credit results in an increase in final liability for any tax year in which
5 the credit was applied, then, notwithstanding the four year limitation
6 of subsection b. of R.S.54:49-6 to the contrary, the amount of unpaid
7 liability, if any, shall be considered a deficiency for the purposes of the
8 State [Tax] Uniform Tax Procedure Law, R.S.54:48-1 et seq. The
9 amount of credit allowed for actual use shall be determined by
10 multiplying the original credit by the ratio which the months of
11 qualified use bear to 36.

12 (2) With respect to property other than that described in
13 subparagraph (1) of this subsection which is disposed of or ceases to
14 be qualified equipment prior to the end of the 60 month period
15 following being placed in service in this State, the amount of credit
16 allowed shall be that portion of the credit provided for in subsection
17 a. of this section which represents the ratio which the months of
18 qualified use bear to 60, and the difference between the credit taken
19 and the credit allowed for actual use shall be forfeited. Additionally,
20 except when the property is damaged or destroyed by fire, flood,
21 storm or other casualty, or is stolen, the taxpayer shall redetermine the
22 amount of credit allowed for the tax year of the credit by reducing the
23 investment credit base by the cost of the amount of the disposed or
24 disqualified equipment. If the redetermination of the credit results in
25 an increase in final liability for any tax year in which the credit was
26 applied, then, notwithstanding the four year limitation of subsection b.
27 of R.S.54:49-6 to the contrary, the amount of unpaid liability, if any,
28 shall be considered a deficiency for the purposes of the State [Tax]
29 Uniform Tax Procedure Law, R.S.54:48-1 et seq. The amount of
30 credit allowed for actual use shall be determined by multiplying the
31 original credit by the ratio which the months of qualified use bear to
32 60.

33 e. A taxpayer that claims a credit pursuant to this section shall not
34 be eligible to receive a grant pursuant to the "Business Relocation
35 Assistance Act," P.L.1996, c.25 (C.34:1B-112 et seq.) or the
36 "Business Employment Incentive Program Act," P.L.1996, c.26
37 (C.34:1B-124 et seq.).

38 (cf: P.L.1993, c.171, s.4)]¹

39

40 ¹[7.] 6.¹ This act shall take effect ¹[shall take effect]¹
41 immediately ¹and be retroactive to January 1, 2002,¹ and
42 ¹[sections]section¹ 5 ¹[and 6]¹ shall apply to tax years beginning on
43 and after January 1 ¹[next following enactment] , 2002¹.

STATEMENT TO

[First Reprint]

SENATE, No. 2773

with Senate Floor Amendments
(Proposed By Senator LITTELL)

ADOPTED: DECEMBER 17, 2001

This amendment deletes the extension of the manufacturing equipment and employment investment tax credit for electric energy and thermal energy production.

[Second Reprint]
SENATE, No. 2773

STATE OF NEW JERSEY
209th LEGISLATURE

INTRODUCED DECEMBER 6, 2001

Sponsored by:

Senator ROBERT E. LITTELL

District 24 (Sussex, Hunterdon and Morris)

Senator WAYNE R. BRYANT

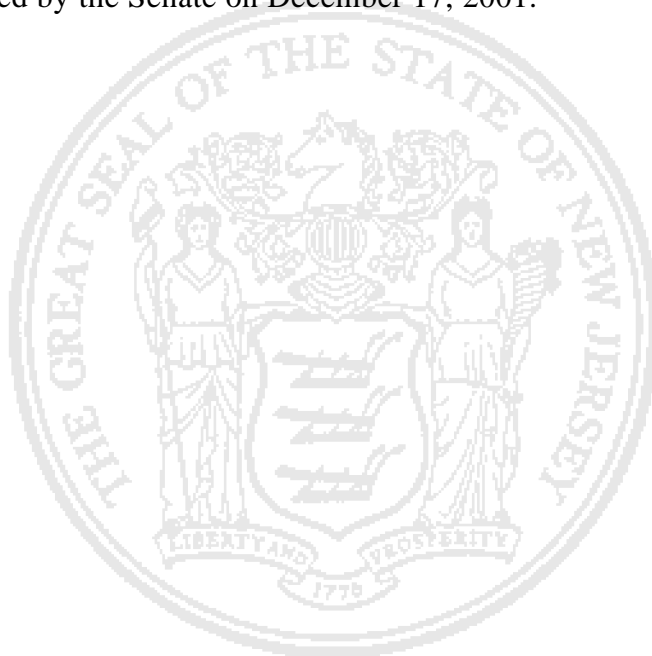
District 5 (Camden and Gloucester)

SYNOPSIS

Changes phase-out of transitional energy facility assessment (TEFA) unit rate surcharges on certain energy sales.

CURRENT VERSION OF TEXT

As amended by the Senate on December 17, 2001.



1 AN ACT changing the phase-out schedule of the transitional energy
2 facility assessment (TEFA) unit rate surcharges on certain energy
3 sales and ²[providing a corporation business tax credit for certain
4 investments in qualified electric and thermal energy generation
5 equipment,]² amending P.L.1997, c.162 ²[and P.L.1993, c.171]².
6

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

9
10 1. Section 38 of P.L.1997, c.162 (C.54:30A-102) is amended to
11 read as follows:

12 38. Each remitter's transitional energy facility assessment shall be
13 established pursuant to section 67 of P.L.1997, c.162 (C.48:2-21.34).
14 Under no circumstances shall an assessment be made under this act for
15 any year commencing after December 31, [2002] 2006.
16 (cf: P.L.1997, c.162, s.38)
17

18 2. Section 41 of P.L.1997, c.162 (C.54:30A-105) is amended to
19 read as follows:

20 41. a. Every remitter shall on or before October 15, 1998, and on
21 or before October 15, in each year thereafter for years in which the
22 transitional energy facility assessment is imposed, return to the
23 Director of the Division of Taxation in the Department of the Treasury
24 and the Board of Public Utilities a statement in such form, manner and
25 detail as the director shall require showing the [following:

26 (1) Sales and use tax collected and use tax liability through
27 September 30 of the current calendar year;

28 (2) Estimated sales tax collections and use tax liability for the
29 period from October 1 through December 31 of the current calendar
30 year;

31 (3) Estimated corporation business tax, including negative and
32 positive deferred corporation business taxes shown separately, for the
33 current privilege period based upon actual taxable income from
34 January 1 through September 30 and estimated taxable income from
35 October 1 through December 31; and

36 (4) Actual] actual transitional energy facility assessment liability
37 from January 1 through September 30 and estimated liability from
38 October 1 through December 31 for the current calendar year.

39 b. On or before November 15, 1998, and on or before November
40 15 of each year thereafter for years in which the transitional energy
41 facility assessment is imposed, the State Treasurer shall, with the

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SBA committee amendments adopted December 13, 2001.

² Senate floor amendments adopted December 17, 2001.

1 cooperation of the Board of Public Utilities, calculate the percentage
2 reduction, as may be applicable, in the initial TEFA unit rate
3 surcharges or the calendar year 2001 TEFA unit rate surcharges based
4 upon the formula set forth in section 67 of P.L.1997, c.162
5 (C.48:2-21.34) and the board shall report the amount of such
6 reduction, if any, to the remitters subject to the transitional energy
7 facility assessment.

8 c. Every remitter shall on or before February 1, 1998 file with the
9 director a statement showing:

10 (1) The total public utility tax advance payments paid in the initial
11 year pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.); and

12 (2) The remitter's base year liability and each of the amounts
13 described in subsections (a), (b) and (c) in the definition of "base year
14 transitional energy facility assessment" in section 37 of P.L.1997,
15 c.162 (C.54:30A-101).

16 d. For any remitter owning or holding both gas and electric
17 facilities and conducting both gas and electric business in this State
18 each of the amounts reported on the return required to be filed
19 pursuant to subsection c. shall be allocated by the director between
20 those operations in the proportion that the sum of the unit-based taxes
21 bore to the whole of the unit-based taxes in the base year or such other
22 allocation methodology as the director shall prescribe.

23 e. The statements required pursuant to this section shall be
24 subscribed and sworn to by the president, a vice-president or chief
25 officer of the corporation preparing each statement. Any remitter
26 refusing or neglecting to make the statements herein provided for shall
27 forfeit and pay to the State of New Jersey the sum of \$100 per day for
28 each day of such refusal or neglect, to be recovered in an action at law
29 in the name of the State and which, when recovered, shall be paid into
30 the State Treasury. It shall be the duty of the director to certify any
31 such default to the Attorney General of the State who, thereupon, shall
32 prosecute an action at law for each penalty.

33 f. The Director of the Division of Taxation shall audit and verify
34 the statements filed by remitters whenever and in such respects the
35 director shall deem necessary or advisable. The director may require
36 any remitter to supply additional data and information in such form,
37 manner, and detail as the director shall request, whenever the director
38 may deem it necessary or helpful, for the proper performance of the
39 director's duties under this act.

40 g. The director may, by regulation, additionally require that all
41 filings required for the calculation and certification of assessment to
42 be paid by remitters established pursuant to this act shall be made in
43 an electronic form. The form and content of the electronic filing
44 message, the circumstances under which the electronic filing message
45 shall serve as a substitute for the filing of another return and the means
46 by which remitters shall be determined to be subject to this electronic

1 filing requirement shall be prescribed by the director.

2 For the purpose of this act "electronic filing" or "electronic filings"
3 means any message that is initiated through an electronic terminal,
4 telecommunication device, or computer for the purpose of fulfilling the
5 reporting responsibilities set forth hereinabove.

6 (cf: P.L.1997, c.162, s.41)

7

8 3. Section 43 of P.L.1997, c.162 (C.54:30A-107) is amended to
9 read as follows:

10 43. a. (1) The liability for the transitional energy facility
11 assessment made against any remitter in the first year of assessment
12 shall be an amount equal to TEFA unit rate surcharges (excluding the
13 provision for corporation business taxes included therein) determined
14 in section 67 of P.L.1997, c.162 (C.48:2-21.34) multiplied by the
15 associated therms of natural gas and kilowatthours of electricity sold
16 or transported for sale to ultimate consumers in New Jersey in the first
17 year plus any advances paid in the initial year pursuant to P.L.1940,
18 c.5 (C.54:30A-49 et seq.) by that remitter.

19 (2) The liability for the transitional energy facility assessment made
20 against any remitter for each year subsequent to the first year shall be
21 an amount equal to the TEFA unit rate surcharges (excluding the
22 provision for corporation business taxes included therein) calculated
23 in section 67 of P.L.1997, c.162 (C.48:2-21.34) for that year
24 multiplied by the associated therms of natural gas and kilowatthours
25 of electricity sold or transported for sale to ultimate consumers in New
26 Jersey in that year.

27 b. A credit against the liability determined pursuant to paragraph
28 (1) of subsection a. of this section shall be taken in the first year by the
29 remitter in the amount of all advances paid in the initial year pursuant
30 to P.L.1940, c.5 (C.54:30A-49 et seq.).

31 c. (1) Each remitter shall make an estimated payment on May 15
32 of the first assessment year in the amount of the base year transitional
33 energy facility assessment.

34 (2) Subsequent to the first year, each remitter shall make an
35 estimated payment on May 15 of each assessment year in which the
36 transitional energy facility assessment is in effect, in an amount equal
37 to the transitional energy facility assessment liability described in
38 subsection a. of this section for the immediately preceding assessment
39 year, excluding advances paid in the initial year pursuant to P.L.1940,
40 c.5 (C.54:30A-49 et seq.), reduced by the applicable reduction
41 percentage, if any, for the current assessment year determined
42 pursuant to paragraphs (2), (3) and (4) or paragraph (5) of subsection
43 d. of section 67 of P.L.1997, c.162 (C.48:2-21.34) less credits
44 described in subsection d. of this section, if any.

45 d. Any excess of the estimated payment made pursuant to
46 paragraph (1) or (2) of subsection c. of this section over the liability

1 determined pursuant to subsection a. of this section shall be treated as
2 a credit against the estimated payment for the subsequent assessment
3 year and reduce the amount of the estimated payment required to be
4 made for that subsequent year. Any excess of the estimated payment
5 made pursuant to paragraph (2) of subsection c. of this section over
6 the liability for the final year of the transitional energy facility
7 assessment shall be utilized as a nonrefundable credit with an unlimited
8 carryforward against that remitter's corporation business tax liability
9 in the subsequent privilege period year. Such credit shall be applied
10 in full to each estimated corporation business tax payment beginning
11 in the subsequent privilege period until fully utilized.

12 (cf: P.L.1997, c.162, s.43)

13

14 4. Section 67 of P.L.1997, c.162 (C.48:2-21.34) is amended to
15 read as follows:

16 67. a. As used in this section:

17 "Base rates" means the rates, including minimum bills, charged for
18 utility commodities or service subject to the board's jurisdiction, other
19 than the rates charged under a utility's levelized energy adjustment
20 clause, hereinafter "LEAC," or levelized gas adjustment clause,
21 hereinafter "LGAC," or equivalent rate provision;

22 "Base year" means the calendar year 1996;

23 "Board" means the Board of Public Utilities;

24 "Sales and use tax" means the sales and use tax liability computed
25 on sales and use of energy and utility service as defined in section 2 of
26 P.L.1966, c.30 (C.54:32B-2);

27 "Utility" means a public utility subject to regulation by the board
28 pursuant to Title 48 of the Revised Statutes; and

29 "Utility service" means the supply, transmission, distribution or
30 transportation of electricity, natural gas or telecommunications
31 services or any combination of such commodities, processes or
32 services.

33 b. No later than 60 days after the date this act is enacted, each
34 electric, gas and telecommunications utility subject to the provisions
35 of this act shall file with the board, and shall simultaneously provide
36 copies to the Director of the Division of the Ratepayer Advocate,
37 revised tariffs and such other supporting schedules, narrative and
38 documentation required by this act, as set forth in this section, to
39 reflect in the utility's rates the changes in tax liability effected pursuant
40 to this act. No later than 90 days after the date of the utility's filing,
41 and after determining that the filing and the rate changes provided for
42 therein are in compliance with the provisions of this act, the board
43 shall approve the utility's filing and associated rates for billing to the
44 utility's customers, effective for utility service rendered on and after
45 January 1, 1998. If the board determines that the utility's filing and the
46 associated rate changes provided for therein are not in compliance

1 with the provisions of this act, the board shall require the utility to
2 amend or otherwise modify its filing to render it in compliance. The
3 board may also permit the rates provided for in the utility's filing to be
4 implemented on an interim basis pending the board's final
5 determination in the event the board, in its discretion, determines that
6 due to the filing's complexity, or for other valid reasons, including but
7 not limited to the enactment of this act after June 30, 1997, additional
8 time is needed for the board to complete its review of the filing. If the
9 rates approved by the board upon its final determination are less than
10 the rates implemented on an interim basis, the difference shall be
11 refunded to the utility's customers with interest computed in
12 accordance with N.J.A.C.14:3-7.5(c). The rate adjustments
13 implemented pursuant to this act shall not constitute a fixing of rates
14 pursuant to R.S.48:2-21 and shall not be subject to the hearing
15 requirements set forth in that section.

16 c. As of the effective date of the rate changes implemented
17 pursuant to this act, and except for rates applicable to sales that were
18 or are currently exempt from the unit-based energy taxes formerly
19 imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) and rates
20 applicable to sales to which section 59 of P.L.1997, c.162
21 (C.48:2-21.31) applies, the board shall remove from the base rates of
22 each electric public utility and gas public utility the unit tax rates
23 included therein for the recovery of those unit-based energy taxes, and
24 include therein provision for the recovery of corporation business tax
25 imposed pursuant to P.L.1945, c.162 (C.54:10A-1 et seq.), and
26 additionally shall authorize the collection of the sales and use tax
27 imposed pursuant to P.L.1966, c.30 (C.54:32B-1 et seq.), as follows:

28 (1) The base rates of each gas and electric utility shall be reduced
29 by the amount of the unit-based energy taxes per kilowatthour or per
30 therm included therein.

31 (2) The provision for corporation business tax initially included in
32 the base rates of each gas and electric utility shall be based on the
33 utility's after-tax net income earned in the base year as booked, unless
34 the board determines, in its discretion, that such income as booked is
35 unusually high or low or otherwise unrepresentative of the utility's
36 prospective net income, in which case the utility's base year net income
37 shall be adjusted as determined by the board.

38 To permit the board to make this determination, in addition to
39 including in its filing schedules showing its net income earned in the
40 base year as booked, the utility shall include adjustments to such
41 booked income to eliminate the effect of revenues, expenses and
42 extraordinary or other charges that are non-recurring, atypical, or
43 both, including, but not limited to an adjustment to eliminate the effect
44 of unusually hot or cold weather, and that would otherwise make the
45 utility's base year net income unusually high or low or otherwise
46 unrepresentative of the utility's prospective net income. If the

1 adjustment is being made to eliminate the effect of unusually hot or
 2 cold weather, associated revenue and expense adjustments shall also
 3 be made. Subject to the board's approval, such adjusted income shall
 4 be the basis for the calculation of the initial provision for corporation
 5 business tax to be included in the utility's base rates.

6 The utility shall also include a calculation of its rate of return on
 7 common equity achieved in the base year, both as booked and as
 8 adjusted in accordance with the foregoing. The calculation shall be
 9 made employing the methodology set forth in N.J.A.C.14:12-4.2(b)1,
 10 and shall separately show the effect of reflecting adjustments to the
 11 calculation, if any, that may have been employed historically in
 12 establishing the utility's rate of return on common equity allowed for
 13 ratemaking purposes. The utility's filing shall also include copies of its
 14 audited financial statements for the base year and associated quarterly
 15 and other reports filed with the Securities and Exchange Commission.

16 To reflect the provision for corporation business tax in base rates,
 17 the demand charges, or charges per kilowatt, decatherm or million
 18 cubic feet; the energy charges, or charges per kilowatthour or per
 19 therm; and the customer charges, or charges other than demand and
 20 energy charges, set forth in each base rate schedule, and the floor price
 21 employed in parity rate schedules, included in the utility's tariff filed
 22 with and approved by the board shall be increased by amounts
 23 determined by multiplying such charges by the adjustment factor, "A
 24 e, g" derived below:

25

$$26 \quad A_{e, g} = (I_{e, g}) \times [Rs / (1 - Re)]$$

27

$$28 \quad (Br_{e, g})$$

29

30 where:

31

32 "A e, g" means the adjustment factor applicable to electric base
 33 rates (e), gas base rates (g), or both, other than rates applicable to
 34 sales that were exempt from unit-based energy taxes formerly imposed
 35 pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) or to which section
 36 59 of P.L.1997, c.162 (C.48:2-21.31) applies;

37 "I e, g" means the utility's base year after-tax net income from
 38 electric or gas sales, or both, and transportation service subject to the
 39 board's jurisdiction and other operating revenue if such revenue is
 40 reflected in the utility's cost of service for ratemaking purposes,
 41 adjusted as approved by the board;

42 "Br e, g" means the utility's base year revenue from base rates
 43 applicable to electric or gas sales, or both, and transportation service
 44 subject to the board's jurisdiction, but excluding sales that were
 45 exempt from unit-based energy taxes formerly imposed pursuant to
 46 P.L.1940, c.5 (C.54:30A-49 et seq.) or to which section 59 of

1 P.L.1997, c.162 (C.48:2-21.31) applies;

2 "Rs" means the corporation business tax rate, expressed as a
3 decimal;

4 "Rf" means the applicable federal corporation income tax rate
5 expressed as a decimal; and

6 "Re" equals $R_s + R_f(1-R_s)$.

7 The utility shall account for the changes in tax liability provided for
8 by this act effective January 1, 1998. Such accounting shall include
9 the recording on the utility's income statement and balance sheet of
10 deferred corporation business tax defined, for book accounting
11 purposes, as differences in corporation business tax expense arising
12 from timing differences in the recognition of revenue and expenses for
13 book and tax purposes.

14 (3) When billed to the utility's customers, the adjusted base rate
15 charges determined pursuant to paragraphs (1), (2), and (4) of this
16 subsection, and the charges determined pursuant to the utility's
17 levelized energy adjustment clause, levelized gas adjustment clause, or
18 both, as determined both upon the effective date of the rate changes
19 authorized by this act and as revised prospectively in accordance with
20 the utility's tariff filed with and approved by the board, and the
21 transitional energy facility assessment unit rate surcharges, hereinafter,
22 "TEFA unit rate surcharges," determined in accordance with
23 subsection d. of this section, shall be increased by an amount
24 determined by multiplying such charges by the sales and use tax rate
25 imposed under P.L.1966, c.30 (C.54:32B-1 et seq.). In addition to the
26 utility's rates for service included in its tariff, for informational
27 purposes the tariff shall include such rates after application of the sales
28 and use tax authorized by this section.

29 (4) The utility's filing with the board to implement the rate changes
30 provided for by this act shall include an analysis, description, and
31 quantification of the effect of the changes in rates and tax payments
32 implemented pursuant to this act on the utility's requirement for cash
33 working capital, and if such requirement is less than the cash working
34 capital allowed for the collection and payment of unit-based energy
35 taxes formerly imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et
36 seq.) in determining the utility's base rates in effect prior to the rate
37 changes implemented pursuant to this act, and to the extent the
38 working capital reduction is not offset by a reduction in net deferred
39 taxes as provided for below, such base rates shall be reduced by the
40 reduction in the utility's revenue requirement associated with the
41 remaining reduction in the working capital requirement not so offset,
42 if any. The reduction in working capital shall be determined by using
43 the same methodology employed in establishing the working capital
44 allowance related to unit-based energy taxes reflected in the utility's
45 base rates in effect prior to the rate changes implemented pursuant to
46 this act. The reduction in the utility's revenue requirement associated

1 with the reduced working capital requirement shall be calculated using
2 the utility's last overall rate of return allowed by the board, including
3 provision for federal income taxes and the corporation business tax
4 implemented pursuant to this act payable on the equity portion of the
5 return, and shall be implemented on the effective date of the rate
6 changes provided for, and in the manner set forth in paragraph (2) of
7 this subsection.

8 If the utility's requirement for cash working capital is increased as
9 a result of the changes in rates and tax payments implemented pursuant
10 to this act, the utility may accrue carrying costs, calculated at its last
11 overall rate of return allowed by the board and applied on a simple
12 annual interest basis without compounding, on the increased working
13 capital requirement and request recovery of such carrying costs in a
14 rate proceeding before the board.

15 The working capital-related base rate changes and carrying cost
16 accruals shall be subject to the board's approval, and shall not be
17 included in the determination of the TEFA unit tax surcharges
18 provided for in subsection d. of this section.

19 The utility's filing with the board to implement the rate changes
20 provided for by this act shall also include an analysis, description and
21 quantification of net deferred taxes. For the purposes of this section,
22 "net deferred taxes" means deferred corporation business taxes, net of
23 federal deferred income taxes, associated with the tax and rate changes
24 implemented pursuant to this act, including deferred corporation
25 business tax recorded in accordance with section 4 of P.L.1945, c.162
26 (C.54:10A-4), projected for the calendar year in which this act takes
27 effect and for each year of the tax life of the asset giving rise to the
28 deferred corporation business taxes pursuant to section 4 of P.L.1945,
29 c.162 (C.54:10A-4).

30 If the change in such net deferred taxes projected for the calendar
31 year in which the rate changes implemented pursuant to this act takes
32 effect is negative and if the utility's requirement for working capital is
33 reduced as a result of the changes in rates and tax payments
34 implemented pursuant to this act, the working capital-related rate
35 reduction that otherwise would have been implemented pursuant to
36 this subsection shall be treated as set forth in subparagraph (a) or (b)
37 of this paragraph. For the purposes of this act, a change in net
38 deferred taxes is considered negative when it reduces an existing
39 deferred tax liability or creates a deferred tax asset on the utility's
40 balance sheet. An appropriate rate adjustment for the working capital
41 impacts of this act, reflecting all relevant facts and circumstances at
42 the time of the adjustment, shall be made in the year when the earlier
43 of the following events occur:

44 (a) The year in which the reduction in carrying costs assumed for
45 the rate reduction for working capital that would have been made but
46 for this paragraph is no longer required to offset, on a present value

1 basis, the annual carrying costs calculated on the accumulated balance
2 of negative net deferred taxes projected to be recorded by the utility,
3 its successors and assigns, over the tax life of the single asset account
4 giving rise to such net deferred taxes pursuant to section 4 of
5 P.L.1945, c.162 (C.54:10A-4). For the purposes of this subparagraph
6 (a):

7 (i) Carrying costs and present values are to be computed using the
8 weighted average after-tax rate of return approved by the board in the
9 utility's last base rate proceeding.

10 (ii) The accumulated balance of such negative net deferred taxes
11 shall include net deferred taxes associated with all assets and liabilities
12 originally placed in service by the utility and held by the utility or a
13 company affiliated with the utility regardless of whether or not such
14 assets continue to be subject to regulation by the New Jersey Board of
15 Public Utilities.

16 (b) The year in which both an appropriate working capital
17 adjustment and the accumulated balance of negative deferred taxes, as
18 described in (ii) of subparagraph (a) of this paragraph (4), are reflected
19 in the utility's rate base in a rate proceeding before the board. It is the
20 intent of this section to fully compensate utilities on a present value
21 basis, for the carrying costs associated with negative net deferred taxes
22 arising as a result of this act, and to remit to ratepayers any credit due
23 them as a result of any overcompensation as may have occurred due
24 to the treatment of working capital and deferred taxes as set forth
25 herein or in subparagraph (a) of this paragraph (4). At the time the
26 above base rate adjustment is made, an analysis shall be made to
27 determine if such carrying costs have been or will be fully recovered
28 pursuant to the intent of this provision and any additional credit or
29 charge to ratepayers to adjust for ratepayer overpayments or
30 underpayments, if any shall be addressed.

31 If the change in net deferred taxes is positive, the increase shall be
32 added to, or increase, the reduction in the utility's requirement for
33 working capital if the requirement is reduced as a result of the rate and
34 tax payment changes implemented pursuant to this act, or subtracted
35 from the working capital requirement if it is increased, and the
36 resultant net working capital requirement shall be reflected in rates or
37 accrue carrying costs in the same manner as prescribed for changes in
38 the utility's requirement for working capital above.

39 The deferred tax-related rate changes or carrying cost accruals shall
40 be subject to the board's approval and shall not be included in the
41 determination of the TEFA unit rate surcharges provided for in
42 subsection d. of this section.

43 d. (1) Electric and gas utilities shall file, for the board's review and
44 approval, initial TEFA unit rate surcharges determined by deducting
45 from each unit-based energy tax unit tax rate effective January 1, 1997
46 the following: (a) An amount per kilowatthour or per therm

1 determined by multiplying the total revenue received in the base year
 2 from sales to which that unit tax rate would have been applicable by
 3 the factor $R_u/(1 + R_u)$, where R_u is the sales and use tax rate imposed
 4 under P.L.1966, c.30 (C.54:32B-1 et seq.) expressed as a decimal, and
 5 dividing the result by the kilowatthours or therms billed in that unit tax
 6 rate class in the base year; and (b) An amount per kilowatthour or per
 7 therm determined by dividing the revenue that would have been
 8 received in the base year from the inclusion, in the manner prescribed
 9 in paragraph (2) of subsection c. of this section, of the corporation
 10 business tax in the rates applicable to sales billed in that unit tax rate
 11 class by the kilowatthours or therms billed in that rate class. In each
 12 case, the determination shall reflect the effect of adjustments that
 13 affect the level of sales and revenue, if any, as provided in subsection
 14 c. of this section. Of the resultant rate per kilowatthour or per therm,
 15 the portion for recovery of the utility's transitional energy facilities
 16 assessment liability shall be determined by multiplying such rate by the
 17 factor $(1 - R_s)$, where R_s is the corporation business tax rate expressed
 18 as a decimal. The TEFA unit rate surcharges shall constitute
 19 non-bypassable wires and/or mains charges of the utility, and shall be
 20 applied to all sales within the customer classes to which they apply,
 21 regardless of whether such customers are purchasing bundled or
 22 unbundled services from the utility, but shall not be applied to sales
 23 that were or are currently exempt from unit-based energy taxes
 24 formerly imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) or
 25 to which section 59 of P.L.1997, c.162 (C.48:2-21.31) applies.

26 If, following the effective date of this act, a customer taking
 27 bundled service from the utility shall elect to obtain its requirements
 28 from another supplier and take transportation or wheeling service from
 29 the utility, the TEFA unit rate surcharge applicable to the bundled
 30 service shall continue to apply to the transportation or wheeling
 31 service. The TEFA components of the unit rate surcharges determined
 32 pursuant to this subsection (the components of the surcharges
 33 remaining after deducting the provision for corporation business tax
 34 included therein) shall be used to determine the transitional energy
 35 facility assessment liability pursuant to sections 36 through 49 of
 36 P.L.1997, c.162 (C.54:30A-100 through C.54:30A-113).

37 (2) Unless reduced pursuant to paragraphs (3) and (4) of this
 38 subsection, the initial TEFA unit rate surcharges are to be reduced
 39 annually on January 1, 1999 through January 1, [2003] 2001 by the
 40 following percentages:

41	January 1, 1999,	20%
42		
43	January 1, 2000,	40%
44		
45	January 1, 2001,	60%

1 [January 1, 2002, 80%

2

3 January 1, 2003, 100%]

4 (3) For each year beginning with calendar year 1998 and ending
5 with calendar year [2002] 2001, the TEFA surcharge adjustment shall
6 be determined as the difference between:

7 (a) The sum of the estimated, or actual when known, (i) TEFA
8 liabilities, as defined in section 43 of P.L.1997, c.162 (C.54:30A-107),
9 and sales and use taxes collected and corporation business taxes
10 booked for the year 1998 by the gas and electric utilities and other
11 entities subject to the TEFA provisions of this act (the year 1998
12 liability), and (ii) the TEFA liabilities of those utilities and entities in
13 all years following the year 1998 through the year in which a
14 determination is being made pursuant to this subsection (the
15 determination year); and

16 (b) The sum of (i) the total of each remitter's base year liability, as
17 defined in section 37 of P.L.1997, c.162 (C.54:30A-101), and (ii) the
18 cumulative TEFA obligation, defined as the sum through the
19 determination year of the amounts calculated by multiplying, for the
20 applicable year, the percentage in the second column of the following
21 table:

22

Determination Year	% of Year 1998 TEFA
-----	-----
1999	80%
2000	60%
[2001	40%
2002	20%]

35

36 by the Year 1998 TEFA,

37

38 where the Year 1998 TEFA is calculated as the total of each remitter's
39 base year liability less the sales and use taxes collected and the
40 corporation business taxes booked for the privilege period ending in
41 calendar year 1998 by the gas and electric utilities and other entities
42 subject to the TEFA provisions of this act. For purposes of this
43 subsection, the amounts assumed for the determination year, including
44 the year 1998 liability when first determined for the purposes of this
45 subsection, shall be estimates based on nine months of actual data
46 through and including the month of September, and three months of

1 data forecast for the months of October through December.

2 (4) If the TEFA surcharge adjustment determined for the
3 determination year is positive (that is, if the amount determined
4 pursuant to subparagraph (a) of paragraph (3) of this subsection is
5 greater than the amount determined pursuant to subparagraph (b) of
6 paragraph (3) of this subsection), no reduction shall be made in the
7 reduction in the TEFA unit rate surcharges provided for in paragraph
8 (2) of this subsection for the year following the determination year.
9 If the TEFA surcharge adjustment is negative, the reduction in the
10 TEFA unit rate surcharges that otherwise would have been
11 implemented on January 1 of the year following the determination year
12 pursuant to paragraph (2) of this subsection shall be reduced by an
13 amount (by percentage points) equal to the percentage the TEFA
14 surcharge adjustment is of the total of the base year transitional energy
15 facility assessment of all remitters, as defined in section 37 of
16 P.L.1997, c.162 (C.54:30A-101), provided however, that such
17 reduction in the reduction in the TEFA unit rate surcharges shall not
18 exceed the percentage shown in paragraph (2) of this subsection for
19 that year; and provided further that in the first two years, that such
20 reduction shall not exceed 10 percentage points for each year.

21 (5) (a) The TEFA unit rate surcharges for calendar years 2002
22 through 2004 shall be the same as the TEFA unit rate surcharges in
23 effect for calendar year 2001.

24 (b) The TEFA unit rate surcharges in effect for calendar year 2004
25 shall be reduced annually on January 1, 2005 through January 1, 2006
26 by the following percentages:

27 January 1, 2005 33%

28

29 January 1, 2006 67%

30 e. The utility's filing with the board to implement the rate changes
31 provided for by this act shall include proof of revenue schedules that
32 show for each rate schedule included in the utility's tariff, aggregated
33 by unit-based energy tax unit tax classes, the number of customers
34 billed under the rate schedule, the billing determinants of such
35 customers (i.e. the kilowatts of billing demand and kilowatthours of
36 electric energy consumed, and the million cubic feet/decatherm subject
37 to gas capacity-related charges and decatherm of gas consumed) and
38 the associated revenue, both as booked in the base year and on a pro
39 forma basis reflecting the rate changes implemented pursuant to this
40 act. The proof of revenue shall additionally show the amount of
41 unit-based energy taxes included in the base year revenue as booked,
42 the unit-based energy taxes that would have been collected at the
43 unit-based energy tax unit tax rates effective January 1, 1997, if
44 different, as well as the corporation business tax, sales and use tax and
45 transitional energy facility assessment revenue that would have been
46 collected or received on a pro forma basis if the rates implemented

1 pursuant to this act had been in effect in the base year.

2 f. The board may, in its discretion, permit the rate changes
3 provided for this act to be implemented as part of a pending base rate
4 case or other proceeding in which the utility's rates are to be changed,
5 provided that the effective date of the changes is not delayed beyond
6 the date on which the changes would have been implemented under
7 subsection c. of this section. The board may also, pursuant to its
8 powers provided by law, permit or require further modifications in the
9 implementation of this section to address unforeseen consequences
10 arising out of the implementation of this act.

11 g. Customers of the utility who are exempt from the sales and use
12 tax imposed on sales of gas and/or electricity or as a result of rate
13 changes occurring prior to the effective date of this act or for other
14 valid reasons are due a refund of sales or use tax inadvertently
15 imposed on such customers as a result of implementing the rate
16 changes provided for by this act shall file with the State Treasurer to
17 obtain such refunds. The State Treasurer shall promptly notify the
18 utility of customers granted refunds under this provision in order to
19 prevent additional collections of the sales and use tax from such
20 customers.

21 h. Public utilities providing telecommunications service regulated
22 by the board shall file for the board's review and approval revised
23 tariffs that eliminate from the rates applicable to such service the
24 excise tax liability included therein pursuant to P.L.1940, c.4
25 (C.54:30A-16 et seq.), and shall include therein the corporation
26 business tax calculated using the methodology used in calculating the
27 adjustment factor set forth in paragraph (2) of subsection c. of this
28 section. Subsection d. of this section shall not apply to
29 telecommunication utilities, and telecommunication utilities subject to
30 a plan of regulation other than rate base/rate of return shall
31 additionally not be required to file the rate of return information
32 required by paragraph (2) of subsection c. Such utilities shall,
33 however, include a narrative and/or other documentation as required
34 by the board to support the reasonableness of the after-tax income,
35 which may be adjusted to eliminate the effect of non-recurring or other
36 atypical events, on which the corporate business tax inclusion in rates
37 is based. Telecommunications utilities shall comply with all other
38 applicable provisions of this section.

39 i. (1) The board shall not adjust the rates of a public utility, as
40 provided in subsections c. and d. of this section, for a purchase by a
41 cogenerator of natural gas and the transportation of that gas, that is
42 exempt from sales and use tax pursuant to paragraph (2) of subsection
43 b. of section 26 of P.L.1997, c.162 (C.54:32B-8.46). The board shall
44 not allocate, in any future rate case, any sales and use tax, corporation
45 business tax, or transitional energy facility assessment to rates for this
46 purpose.

1 (2) The board shall adjust the rates, as provided in subsection c. of
2 this section, for a purchase by a cogenerator of any quantity of natural
3 gas and the transportation of that gas that is not exempt from sales and
4 use tax pursuant to paragraph (2) of subsection b. of section 26 of
5 P.L.1997, c.162 (C.54:32B-8.46).

6 (3) For the purposes of this section, "cogenerator" means a person
7 or business entity that owns or operates a cogeneration facility in the
8 State of New Jersey, which facility is a plant, installation or other
9 structure whose primary purpose is the sequential production of
10 electricity and steam or other forms of useful energy which are used
11 for industrial, commercial, heating or cooling purposes, and which is
12 designated by the Federal Energy Regulatory Commission, or its
13 successor, as a "qualifying facility" pursuant to the provisions of the
14 "Public Utility Regulatory Policies Act of 1978," Pub.L.95-617.
15 (cf: P.L.1997, c.162, s.67)

16

17 ²[5. Section 2 of P.L.1993, c.171 (C.54:10A-5.17) is amended to
18 read as follows:

19 2. For the purposes of this act:

20 "Control," with respect to a corporation, means ownership, directly
21 or indirectly, of stock possessing 50% or more of the total combined
22 voting power of all classes of the stock of the corporation entitled to
23 vote; "control," with respect to a trust, means ownership, directly or
24 indirectly, of 50% or more of the beneficial interest in the principal or
25 income of the trust. The ownership of stock in a corporation, of a
26 capital or profits interest in a partnership or association or of a
27 beneficial interest in a trust shall be determined in accordance with the
28 rules for constructive ownership of stock provided in subsection (c) of
29 section 267 of the federal Internal Revenue Code of 1986, 26 U.S.C.
30 s.267, other than paragraph (3) of subsection (c) of that section.

31 "Controlled group" means one or more chains of corporations
32 connected through stock ownership with a common parent corporation
33 if stock possessing at least 50% of the voting power of all classes of
34 stock of each of the corporations is owned directly or indirectly by one
35 or more of the corporations; and the common parent owns directly
36 stock possessing at least 50% of the voting power of all classes of
37 stock of at least one of the other corporations.

38 "Director" means the Director of the Division of Taxation in the
39 Department of the Treasury.

40 "Full-time employee" means an employee working for the taxpayer
41 for at least 140 hours per month at a wage not less than the State or
42 federal minimum wage, if either minimum wage provision is applicable
43 to the business, on a permanent basis, which does not include
44 employment that is temporary or seasonal.

45 "Investment credit base" means the cost of qualified equipment. The
46 cost of qualified equipment shall not include the value of equipment

1 given in trade or exchange for the equipment purchased for business
2 relocation or expansion. If equipment is damaged or destroyed by fire,
3 flood, storm or other casualty, or is stolen, the cost of replacement
4 equipment shall not include any insurance proceeds received in
5 compensation for the loss. In the case of self-constructed equipment,
6 the cost thereof shall be the amount properly charged to the capital
7 account for depreciation in accordance with federal income tax law.
8 The cost of equipment acquired by written lease is the minimum
9 amount required by the agreement, agreements, contract or contracts
10 to be paid over the term of the lease, provided however, that the
11 minimum amount shall not include any amount required to be paid, as
12 determined by the director, after the expiration of the useful life of the
13 equipment.

14 "Number of new employees" means the increase in the average
15 number of full-time employees and full-time employee equivalents
16 residing and domiciled in this State employed at work locations in this
17 State from the employment base year to the employment measurement
18 year. The employment base year is the tax year immediately preceding
19 the tax year for which the credit pursuant to section 3 of P.L.1993,
20 c.171 (C.54:10A-5.18), is allowed, provided that if the taxpayer was
21 not subject to tax and did not have a tax year immediately precede the
22 tax year for which a credit pursuant to section 3 of P.L.1993, c.171
23 (C.54:10A-5.18), was allowed the employment base year is the tax
24 year in which the credit pursuant to section 3 of P.L.1993, c.171
25 (C.54:10A-5.18), was allowed. The measurement year is the tax year
26 immediately following the tax year in which the credit pursuant to
27 section 3 of P.L.1993, c.171 (C.54:10A-5.18), was allowed. The
28 hours of part-time employees shall be aggregated to determine the
29 number of full-time employee equivalents.

30 "Part-time employee" means an employee working for the taxpayer
31 for at least 20 hours per week for at least six months during the tax
32 year.

33 "Purchase" means any acquisition of property, including an
34 acquisition pursuant to a lease, but only if:

35 a. the property is not acquired from a person whose relationship to
36 the person acquiring it would result in the disallowance of deductions
37 under section 267 or subsection (b) of section 707 of the federal
38 Internal Revenue Code of 1986, 26 U.S.C.s.267 or s.707;

39 b. the property is not acquired by one member of a controlled
40 group from another member of the same controlled group. The
41 director may waive this requirement if the property was acquired from
42 a related person for its then fair market value; and

43 c. the basis of the property for federal income tax purposes, in the
44 hands of the person acquiring it, is not determined:

45 (1) in whole or in part by reference to the federal adjusted basis of
46 such property in the hands of the person from whom it was acquired;

1 or

2 (2) under subsection (e) of section 1014 of the federal Internal
3 Revenue Code of 1986, 26 U.S.C.s.1014.

4 "Qualified equipment" means machinery, apparatus or equipment
5 acquired by purchase for use or consumption by the taxpayer directly
6 and primarily in the production of tangible personal property by
7 manufacturing, processing, assembling or refining, as defined pursuant
8 to subsection a. of section 25 of P.L.1980, c.105 (C.54:32B-8.13),
9 having a useful life of four or more years, placed in service in this
10 State and machinery, apparatus or equipment acquired by purchase for
11 use or consumption directly and primarily in the generation of
12 electricity as defined pursuant to subsection b. of section 25 of
13 P.L.1980, c.105 (C.54:32B-8.13) to the point of connection to the
14 grid, or in the generation of thermal energy, having a useful life of four
15 or more years, placed in service in this State. Qualified equipment does
16 not include tangible personal property which the taxpayer contracts or
17 agrees to lease or rent to another person or licenses another person to
18 use.

19 "Related person" means:

20 a. a corporation, partnership, association or trust controlled by the
21 taxpayer;

22 b. an individual, corporation, partnership, association or trust that
23 is in control of the taxpayer;

24 c. a corporation, partnership, association or trust controlled by an
25 individual, corporation, partnership, association or trust that is in
26 control of the taxpayer; or

27 d. a member of the same controlled group as the taxpayer.

28 "Tax year" means the fiscal or calendar accounting year of a
29 taxpayer.

30 (cf: P.L.1993, c.171, s.2)]²

31

32 ¹[6. Section 4 of P.L.1993, c.171 (C.54:10A-5.19) is amended to
33 read as follows:

34 4. a. A taxpayer allowed a credit under section 3 of P.L.1993,
35 c.171 (C.54:10A-5.18), with respect to the investment credit base,
36 shall be allowed a credit for the increase in employment by the
37 taxpayer determined by the number of new employees for each of the
38 two tax years next succeeding the tax year for which the credit under
39 section 3 of P.L.1993, c.171 (C.54:10A-5.18), is allowed, in an
40 amount equal to 3% of the investment credit base, not to exceed a
41 maximum allowed amount for each of the two tax years of \$1,000
42 multiplied by the number of new employees.

43 b. The tax imposed for the tax year pursuant to section 5 of
44 P.L.1945, c.162, shall first be reduced by the amount of any credit
45 allowed pursuant to section 19 of P.L.1983, c.303 (C.52:27H-78),
46 then by any credit allowed pursuant to section 12 of P.L.1985, c.227

1 (C.55:19-13), then by any credit allowed pursuant to section 42 of
2 P.L.1987, c.102 (C.54:10A-5.3), and then by any credit allowed
3 pursuant to section 3 of P.L.1993, c.171 (C.54:10A-5.18), prior to
4 applying any credits allowable pursuant to this section. Credits
5 allowable pursuant to this section shall be applied in the order of the
6 tax year of the credit allowed pursuant to section 3 of P.L.1993, c.171
7 (C.54:10A-5.18), to which the credit under this section relates and
8 then by the order of the credits' tax years. The amount of the credits
9 applied under this section and section 3 of P.L.1993, c.171
10 (C.54:10A-5.18), against the tax imposed pursuant to section 5 of
11 P.L.1945, c.162, for a tax year shall not exceed 50% of the tax liability
12 otherwise due and shall not reduce the tax liability to an amount less
13 than the statutory minimum provided in subsection (e) of section 5 of
14 P.L.1945, c.162.

15 c. The amount of tax year credit otherwise allowable under
16 subsection a. of this section which cannot be applied for the tax year
17 due to the limitations of subsection b. of this section may be carried
18 over, if necessary, to the seven tax years following a credit's tax year.
19 Provided however, that a taxpayer may not carry over any amount of
20 credit or credits allowed under subsection a. of this section to a tax
21 year during which a corporate acquisition with respect to which the
22 taxpayer was a target corporation occurred or during which the
23 taxpayer was a party to a merger or a consolidation, or to any
24 subsequent tax year, if the credit was allowed for a tax year prior to
25 the year of acquisition, merger or consolidation; provided further,
26 however, that if in the case of a corporate merger or corporate
27 consolidation the taxpayer can demonstrate, through the submission
28 of a copy of the plan of merger or consolidation and such other
29 evidence as may be required by the director, the identity of the
30 constituent corporation which was the acquiring person, a credit
31 allowed to the acquiring person may be carried over by the taxpayer.
32 "Acquiring person" means the constituent corporation the stockholders
33 of which own the largest proportion of the total voting power in the
34 surviving or consolidated corporation after the merger or
35 consolidation.

36 d. (1) With respect to equipment that is three-year property, as
37 described in subsection (e) of section 168 of the federal Internal
38 Revenue Code of 1986, 26 U.S.C.s.168, which is disposed of or
39 ceases to be qualified equipment prior to the end of the 36 month
40 period following being placed in service in this State, the amount of
41 credit allowed shall be that portion of the credit provided for in
42 subsection a. of this section which represents the ratio which the
43 months of qualified use bear to 36, and the difference between the
44 credit taken and the credit allowed for actual use shall be forfeited.
45 Additionally, except when the property is damaged or destroyed by
46 fire, flood, storm or other casualty, or is stolen, the taxpayer shall

1 redetermine the amount of credit allowed for the tax year of the credit
 2 by reducing the investment credit base by the cost of the amount of the
 3 disposed or disqualified equipment. If the redetermination of the
 4 credit results in an increase in final liability for any tax year in which
 5 the credit was applied, then, notwithstanding the four year limitation
 6 of subsection b. of R.S.54:49-6 to the contrary, the amount of unpaid
 7 liability, if any, shall be considered a deficiency for the purposes of the
 8 State [Tax] Uniform Tax Procedure Law, R.S.54:48-1 et seq. The
 9 amount of credit allowed for actual use shall be determined by
 10 multiplying the original credit by the ratio which the months of
 11 qualified use bear to 36.

12 (2) With respect to property other than that described in
 13 subparagraph (1) of this subsection which is disposed of or ceases to
 14 be qualified equipment prior to the end of the 60 month period
 15 following being placed in service in this State, the amount of credit
 16 allowed shall be that portion of the credit provided for in subsection
 17 a. of this section which represents the ratio which the months of
 18 qualified use bear to 60, and the difference between the credit taken
 19 and the credit allowed for actual use shall be forfeited. Additionally,
 20 except when the property is damaged or destroyed by fire, flood,
 21 storm or other casualty, or is stolen, the taxpayer shall redetermine the
 22 amount of credit allowed for the tax year of the credit by reducing the
 23 investment credit base by the cost of the amount of the disposed or
 24 disqualified equipment. If the redetermination of the credit results in
 25 an increase in final liability for any tax year in which the credit was
 26 applied, then, notwithstanding the four year limitation of subsection b.
 27 of R.S.54:49-6 to the contrary, the amount of unpaid liability, if any,
 28 shall be considered a deficiency for the purposes of the State [Tax]
 29 Uniform Tax Procedure Law, R.S.54:48-1 et seq. The amount of
 30 credit allowed for actual use shall be determined by multiplying the
 31 original credit by the ratio which the months of qualified use bear to
 32 60.

33 e. A taxpayer that claims a credit pursuant to this section shall not
 34 be eligible to receive a grant pursuant to the "Business Relocation
 35 Assistance Act," P.L.1996, c.25 (C.34:1B-112 et seq.) or the
 36 "Business Employment Incentive Program Act," P.L.1996, c.26
 37 (C.34:1B-124 et seq.).

38 (cf: P.L.1993, c.171, s.4)]¹

39

40 ¹[7.] ²[6.] ^{5.}² This act shall take effect ¹[shall take effect]¹
 41 immediately ¹and be retroactive to January 1, 2002 [² and
 42 ¹[sections] section¹ ⁵ ¹[and 6]¹ shall apply to tax years beginning on
 43 and after January 1 ¹[next following enactment] , 2002¹]².

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 4045 and
SENATE, No. 2773

STATE OF NEW JERSEY
209th LEGISLATURE

ADOPTED DECEMBER 20, 2001

Sponsored by:

Assemblyman ALBIO SIRES

District 33 (Hudson)

Assemblyman GERALD H. ZECKER

District 34 (Essex and Passaic)

Senator ROBERT E. LITTELL

District 24 (Sussex, Hunterdon and Morris)

Senator WAYNE R. BRYANT

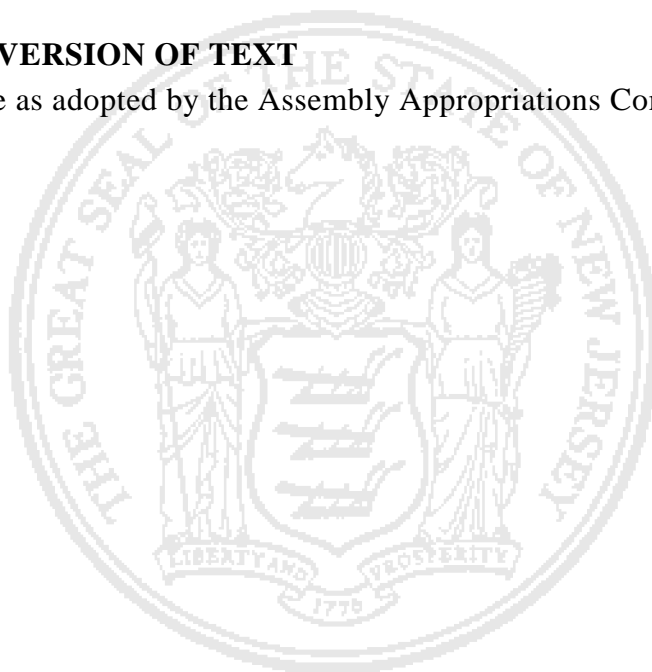
District 5 (Camden and Gloucester)

SYNOPSIS

Changes phase-out of transitional energy facility assessment (TEFA) unit rate surcharges on certain energy sales.

CURRENT VERSION OF TEXT

Substitute as adopted by the Assembly Appropriations Committee.



1 **AN ACT** changing the phase-out schedule of the transitional energy
2 facility assessment (TEFA) unit rate surcharges on certain energy
3 sales and amending P.L.1997, c.162.

4

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

7

8 1. Section 38 of P.L.1997, c.162 (C.54:30A-102) is amended to
9 read as follows:

10 38. Each remitter's transitional energy facility assessment shall be
11 established pursuant to section 67 of P.L.1997, c.162 (C.48:2-21.34).
12 Under no circumstances shall an assessment be made under this act for
13 any year commencing after December 31, **[2002]** 2006.
14 (cf: P.L.1997, c.162, s.38)

15

16 2. Section 41 of P.L.1997, c.162 (C.54:30A-105) is amended to
17 read as follows:

18 41. a. Every remitter shall on or before October 15, 1998, and on
19 or before October 15, in each year thereafter for years in which the
20 transitional energy facility assessment is imposed, return to the
21 Director of the Division of Taxation in the Department of the Treasury
22 and the Board of Public Utilities a statement in such form, manner and
23 detail as the director shall require showing the **[**following:

24 (1) Sales and use tax collected and use tax liability through
25 September 30 of the current calendar year;

26 (2) Estimated sales tax collections and use tax liability for the
27 period from October 1 through December 31 of the current calendar
28 year;

29 (3) Estimated corporation business tax, including negative and
30 positive deferred corporation business taxes shown separately, for the
31 current privilege period based upon actual taxable income from
32 January 1 through September 30 and estimated taxable income from
33 October 1 through December 31; and

34 (4) **Actual]** actual transitional energy facility assessment liability
35 from January 1 through September 30 and estimated liability from
36 October 1 through December 31 for the current calendar year.

37 b. On or before November 15, 1998, and on or before November
38 15 of each year thereafter for years in which the transitional energy
39 facility assessment is imposed, the State Treasurer shall, with the
40 cooperation of the Board of Public Utilities, calculate the percentage
41 reduction, as may be applicable, in the initial TEFA unit rate
42 surcharges or the calendar year 2001 TEFA unit rate surcharges based
43 upon the formula set forth in section 67 of P.L.1997, c.162

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 (C.48:2-21.34) and the board shall report the amount of such
2 reduction, if any, to the remitters subject to the transitional energy
3 facility assessment.

4 c. Every remitter shall on or before February 1, 1998 file with the
5 director a statement showing:

6 (1) The total public utility tax advance payments paid in the initial
7 year pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.); and

8 (2) The remitter's base year liability and each of the amounts
9 described in subsections (a), (b) and (c) in the definition of "base year
10 transitional energy facility assessment" in section 37 of P.L.1997,
11 c.162 (C.54:30A-101).

12 d. For any remitter owning or holding both gas and electric
13 facilities and conducting both gas and electric business in this State
14 each of the amounts reported on the return required to be filed
15 pursuant to subsection c. shall be allocated by the director between
16 those operations in the proportion that the sum of the unit-based taxes
17 bore to the whole of the unit-based taxes in the base year or such other
18 allocation methodology as the director shall prescribe.

19 e. The statements required pursuant to this section shall be
20 subscribed and sworn to by the president, a vice-president or chief
21 officer of the corporation preparing each statement. Any remitter
22 refusing or neglecting to make the statements herein provided for shall
23 forfeit and pay to the State of New Jersey the sum of \$100 per day for
24 each day of such refusal or neglect, to be recovered in an action at law
25 in the name of the State and which, when recovered, shall be paid into
26 the State Treasury. It shall be the duty of the director to certify any
27 such default to the Attorney General of the State who, thereupon, shall
28 prosecute an action at law for each penalty.

29 f. The Director of the Division of Taxation shall audit and verify
30 the statements filed by remitters whenever and in such respects the
31 director shall deem necessary or advisable. The director may require
32 any remitter to supply additional data and information in such form,
33 manner, and detail as the director shall request, whenever the director
34 may deem it necessary or helpful, for the proper performance of the
35 director's duties under this act.

36 g. The director may, by regulation, additionally require that all
37 filings required for the calculation and certification of assessment to
38 be paid by remitters established pursuant to this act shall be made in
39 an electronic form. The form and content of the electronic filing
40 message, the circumstances under which the electronic filing message
41 shall serve as a substitute for the filing of another return and the means
42 by which remitters shall be determined to be subject to this electronic
43 filing requirement shall be prescribed by the director.

44 For the purpose of this act "electronic filing" or "electronic filings"
45 means any message that is initiated through an electronic terminal,

1 telecommunication device, or computer for the purpose of fulfilling the
2 reporting responsibilities set forth hereinabove.

3 (cf: P.L.1997, c.162, s.41)

4

5 3. Section 43 of P.L.1997, c.162 (C.54:30A-107) is amended to
6 read as follows:

7 43. a. (1) The liability for the transitional energy facility
8 assessment made against any remitter in the first year of assessment
9 shall be an amount equal to TEFA unit rate surcharges (excluding the
10 provision for corporation business taxes included therein) determined
11 in section 67 of P.L.1997, c.162 (C.48:2-21.34) multiplied by the
12 associated therms of natural gas and kilowatthours of electricity sold
13 or transported for sale to ultimate consumers in New Jersey in the first
14 year plus any advances paid in the initial year pursuant to P.L.1940,
15 c.5 (C.54:30A-49 et seq.) by that remitter.

16 (2) The liability for the transitional energy facility assessment
17 made against any remitter for each year subsequent to the first year
18 shall be an amount equal to the TEFA unit rate surcharges (excluding
19 the provision for corporation business taxes included therein)
20 calculated in section 67 of P.L.1997, c.162 (C.48:2-21.34) for that
21 year multiplied by the associated therms of natural gas and
22 kilowatthours of electricity sold or transported for sale to ultimate
23 consumers in New Jersey in that year.

24 b. A credit against the liability determined pursuant to paragraph
25 (1) of subsection a. of this section shall be taken in the first year by the
26 remitter in the amount of all advances paid in the initial year pursuant
27 to P.L.1940, c.5 (C.54:30A-49 et seq.).

28 c. (1) Each remitter shall make an estimated payment on May 15
29 of the first assessment year in the amount of the base year transitional
30 energy facility assessment.

31 (2) Subsequent to the first year, each remitter shall make an
32 estimated payment on May 15 of each assessment year in which the
33 transitional energy facility assessment is in effect, in an amount equal
34 to the transitional energy facility assessment liability described in
35 subsection a. of this section for the immediately preceding assessment
36 year, excluding advances paid in the initial year pursuant to P.L.1940,
37 c.5 (C.54:30A-49 et seq.), reduced by the applicable reduction
38 percentage, if any, for the current assessment year determined
39 pursuant to paragraphs (2), (3) and (4) or paragraph (5) of subsection
40 d. of section 67 of P.L.1997, c.162 (C.48:2-21.34) less credits
41 described in subsection d. of this section, if any.

42 d. Any excess of the estimated payment made pursuant to
43 paragraph (1) or (2) of subsection c. of this section over the liability
44 determined pursuant to subsection a. of this section shall be treated as
45 a credit against the estimated payment for the subsequent assessment
46 year and reduce the amount of the estimated payment required to be

1 made for that subsequent year. Any excess of the estimated payment
2 made pursuant to paragraph (2) of subsection c. of this section over
3 the liability for the final year of the transitional energy facility
4 assessment shall be utilized as a nonrefundable credit with an unlimited
5 carryforward against that remitter's corporation business tax liability
6 in the subsequent privilege period year. Such credit shall be applied
7 in full to each estimated corporation business tax payment beginning
8 in the subsequent privilege period until fully utilized.
9 (cf: P.L.1997, c.162, s.43)

10

11 4. Section 67 of P.L.1997, c.162 (C.48:2-21.34) is amended to
12 read as follows:

13 67. a. As used in this section:

14 "Base rates" means the rates, including minimum bills, charged for
15 utility commodities or service subject to the board's jurisdiction, other
16 than the rates charged under a utility's levelized energy adjustment
17 clause, hereinafter "LEAC," or levelized gas adjustment clause,
18 hereinafter "LGAC," or equivalent rate provision;

19 "Base year" means the calendar year 1996;

20 "Board" means the Board of Public Utilities;

21 "Sales and use tax" means the sales and use tax liability computed
22 on sales and use of energy and utility service as defined in section 2 of
23 P.L.1966, c.30 (C.54:32B-2);

24 "Utility" means a public utility subject to regulation by the board
25 pursuant to Title 48 of the Revised Statutes; and

26 "Utility service" means the supply, transmission, distribution or
27 transportation of electricity, natural gas or telecommunications
28 services or any combination of such commodities, processes or
29 services.

30 b. No later than 60 days after the date this act is enacted, each
31 electric, gas and telecommunications utility subject to the provisions
32 of this act shall file with the board, and shall simultaneously provide
33 copies to the Director of the Division of the Ratepayer Advocate,
34 revised tariffs and such other supporting schedules, narrative and
35 documentation required by this act, as set forth in this section, to
36 reflect in the utility's rates the changes in tax liability effected pursuant
37 to this act. No later than 90 days after the date of the utility's filing,
38 and after determining that the filing and the rate changes provided for
39 therein are in compliance with the provisions of this act, the board
40 shall approve the utility's filing and associated rates for billing to the
41 utility's customers, effective for utility service rendered on and after
42 January 1, 1998. If the board determines that the utility's filing and the
43 associated rate changes provided for therein are not in compliance
44 with the provisions of this act, the board shall require the utility to
45 amend or otherwise modify its filing to render it in compliance. The
46 board may also permit the rates provided for in the utility's filing to be

1 implemented on an interim basis pending the board's final
2 determination in the event the board, in its discretion, determines that
3 due to the filing's complexity, or for other valid reasons, including but
4 not limited to the enactment of this act after June 30, 1997, additional
5 time is needed for the board to complete its review of the filing. If the
6 rates approved by the board upon its final determination are less than
7 the rates implemented on an interim basis, the difference shall be
8 refunded to the utility's customers with interest computed in
9 accordance with N.J.A.C.14:3-7.5(c). The rate adjustments
10 implemented pursuant to this act shall not constitute a fixing of rates
11 pursuant to R.S.48:2-21 and shall not be subject to the hearing
12 requirements set forth in that section.

13 c. As of the effective date of the rate changes implemented
14 pursuant to this act, and except for rates applicable to sales that were
15 or are currently exempt from the unit-based energy taxes formerly
16 imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) and rates
17 applicable to sales to which section 59 of P.L.1997, c.162
18 (C.48:2-21.31) applies, the board shall remove from the base rates of
19 each electric public utility and gas public utility the unit tax rates
20 included therein for the recovery of those unit-based energy taxes, and
21 include therein provision for the recovery of corporation business tax
22 imposed pursuant to P.L.1945, c.162 (C.54:10A-1 et seq.), and
23 additionally shall authorize the collection of the sales and use tax
24 imposed pursuant to P.L.1966, c.30 (C.54:32B-1 et seq.), as follows:

25 (1) The base rates of each gas and electric utility shall be reduced
26 by the amount of the unit-based energy taxes per kilowatthour or per
27 therm included therein.

28 (2) The provision for corporation business tax initially included in
29 the base rates of each gas and electric utility shall be based on the
30 utility's after-tax net income earned in the base year as booked, unless
31 the board determines, in its discretion, that such income as booked is
32 unusually high or low or otherwise unrepresentative of the utility's
33 prospective net income, in which case the utility's base year net income
34 shall be adjusted as determined by the board.

35 To permit the board to make this determination, in addition to
36 including in its filing schedules showing its net income earned in the
37 base year as booked, the utility shall include adjustments to such
38 booked income to eliminate the effect of revenues, expenses and
39 extraordinary or other charges that are non-recurring, atypical, or
40 both, including, but not limited to an adjustment to eliminate the effect
41 of unusually hot or cold weather, and that would otherwise make the
42 utility's base year net income unusually high or low or otherwise
43 unrepresentative of the utility's prospective net income. If the
44 adjustment is being made to eliminate the effect of unusually hot or
45 cold weather, associated revenue and expense adjustments shall also
46 be made. Subject to the board's approval, such adjusted income shall

1 be the basis for the calculation of the initial provision for corporation
2 business tax to be included in the utility's base rates.

3 The utility shall also include a calculation of its rate of return on
4 common equity achieved in the base year, both as booked and as
5 adjusted in accordance with the foregoing. The calculation shall be
6 made employing the methodology set forth in N.J.A.C.14:12-4.2(b)1,
7 and shall separately show the effect of reflecting adjustments to the
8 calculation, if any, that may have been employed historically in
9 establishing the utility's rate of return on common equity allowed for
10 ratemaking purposes. The utility's filing shall also include copies of its
11 audited financial statements for the base year and associated quarterly
12 and other reports filed with the Securities and Exchange Commission.

13 To reflect the provision for corporation business tax in base rates,
14 the demand charges, or charges per kilowatt, decatherm or million
15 cubic feet; the energy charges, or charges per kilowatthour or per
16 therm; and the customer charges, or charges other than demand and
17 energy charges, set forth in each base rate schedule, and the floor price
18 employed in parity rate schedules, included in the utility's tariff filed
19 with and approved by the board shall be increased by amounts
20 determined by multiplying such charges by the adjustment factor, "A
21 e, g" derived below:

22

$$23 \quad A_{e, g} = (I_{e, g} \times [Rs / (1 - Re)])$$

24

$$25 \quad (Br_{e, g})$$

26

27 where:

28

29 "A e, g" means the adjustment factor applicable to electric base
30 rates (e), gas base rates (g), or both, other than rates applicable to
31 sales that were exempt from unit-based energy taxes formerly imposed
32 pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) or to which section
33 59 of P.L.1997, c.162 (C.48:2-21.31) applies;

34 "I e, g" means the utility's base year after-tax net income from
35 electric or gas sales, or both, and transportation service subject to the
36 board's jurisdiction and other operating revenue if such revenue is
37 reflected in the utility's cost of service for ratemaking purposes,
38 adjusted as approved by the board;

39 "Br e, g" means the utility's base year revenue from base rates
40 applicable to electric or gas sales, or both, and transportation service
41 subject to the board's jurisdiction, but excluding sales that were
42 exempt from unit-based energy taxes formerly imposed pursuant to
43 P.L.1940, c.5 (C.54:30A-49 et seq.) or to which section 59 of
44 P.L.1997, c.162 (C.48:2-21.31) applies;

45 "Rs" means the corporation business tax rate, expressed as a
46 decimal;

1 "Rf" means the applicable federal corporation income tax rate
2 expressed as a decimal; and

3 "Re" equals $R_s + R_f(1-R_s)$.

4 The utility shall account for the changes in tax liability provided for
5 by this act effective January 1, 1998. Such accounting shall include
6 the recording on the utility's income statement and balance sheet of
7 deferred corporation business tax defined, for book accounting
8 purposes, as differences in corporation business tax expense arising
9 from timing differences in the recognition of revenue and expenses for
10 book and tax purposes.

11 (3) When billed to the utility's customers, the adjusted base rate
12 charges determined pursuant to paragraphs (1), (2), and (4) of this
13 subsection, and the charges determined pursuant to the utility's
14 levelized energy adjustment clause, levelized gas adjustment clause, or
15 both, as determined both upon the effective date of the rate changes
16 authorized by this act and as revised prospectively in accordance with
17 the utility's tariff filed with and approved by the board, and the
18 transitional energy facility assessment unit rate surcharges, hereinafter,
19 "TEFA unit rate surcharges," determined in accordance with
20 subsection d. of this section, shall be increased by an amount
21 determined by multiplying such charges by the sales and use tax rate
22 imposed under P.L.1966, c.30 (C.54:32B-1 et seq.). In addition to the
23 utility's rates for service included in its tariff, for informational
24 purposes the tariff shall include such rates after application of the sales
25 and use tax authorized by this section.

26 (4) The utility's filing with the board to implement the rate
27 changes provided for by this act shall include an analysis, description,
28 and quantification of the effect of the changes in rates and tax
29 payments implemented pursuant to this act on the utility's requirement
30 for cash working capital, and if such requirement is less than the cash
31 working capital allowed for the collection and payment of unit-based
32 energy taxes formerly imposed pursuant to P.L.1940, c.5
33 (C.54:30A-49 et seq.) in determining the utility's base rates in effect
34 prior to the rate changes implemented pursuant to this act, and to the
35 extent the working capital reduction is not offset by a reduction in net
36 deferred taxes as provided for below, such base rates shall be reduced
37 by the reduction in the utility's revenue requirement associated with
38 the remaining reduction in the working capital requirement not so
39 offset, if any. The reduction in working capital shall be determined by
40 using the same methodology employed in establishing the working
41 capital allowance related to unit-based energy taxes reflected in the
42 utility's base rates in effect prior to the rate changes implemented
43 pursuant to this act. The reduction in the utility's revenue requirement
44 associated with the reduced working capital requirement shall be
45 calculated using the utility's last overall rate of return allowed by the
46 board, including provision for federal income taxes and the

1 corporation business tax implemented pursuant to this act payable on
2 the equity portion of the return, and shall be implemented on the
3 effective date of the rate changes provided for, and in the manner set
4 forth in paragraph (2) of this subsection.

5 If the utility's requirement for cash working capital is increased as
6 a result of the changes in rates and tax payments implemented pursuant
7 to this act, the utility may accrue carrying costs, calculated at its last
8 overall rate of return allowed by the board and applied on a simple
9 annual interest basis without compounding, on the increased working
10 capital requirement and request recovery of such carrying costs in a
11 rate proceeding before the board.

12 The working capital-related base rate changes and carrying cost
13 accruals shall be subject to the board's approval, and shall not be
14 included in the determination of the TEFA unit tax surcharges
15 provided for in subsection d. of this section.

16 The utility's filing with the board to implement the rate changes
17 provided for by this act shall also include an analysis, description and
18 quantification of net deferred taxes. For the purposes of this section,
19 "net deferred taxes" means deferred corporation business taxes, net of
20 federal deferred income taxes, associated with the tax and rate changes
21 implemented pursuant to this act, including deferred corporation
22 business tax recorded in accordance with section 4 of P.L.1945, c.162
23 (C.54:10A-4), projected for the calendar year in which this act takes
24 effect and for each year of the tax life of the asset giving rise to the
25 deferred corporation business taxes pursuant to section 4 of P.L.1945,
26 c.162 (C.54:10A-4).

27 If the change in such net deferred taxes projected for the calendar
28 year in which the rate changes implemented pursuant to this act takes
29 effect is negative and if the utility's requirement for working capital is
30 reduced as a result of the changes in rates and tax payments
31 implemented pursuant to this act, the working capital-related rate
32 reduction that otherwise would have been implemented pursuant to
33 this subsection shall be treated as set forth in subparagraph (a) or (b)
34 of this paragraph. For the purposes of this act, a change in net
35 deferred taxes is considered negative when it reduces an existing
36 deferred tax liability or creates a deferred tax asset on the utility's
37 balance sheet. An appropriate rate adjustment for the working capital
38 impacts of this act, reflecting all relevant facts and circumstances at
39 the time of the adjustment, shall be made in the year when the earlier
40 of the following events occur:

41 (a) The year in which the reduction in carrying costs assumed for
42 the rate reduction for working capital that would have been made but
43 for this paragraph is no longer required to offset, on a present value
44 basis, the annual carrying costs calculated on the accumulated balance
45 of negative net deferred taxes projected to be recorded by the utility,
46 its successors and assigns, over the tax life of the single asset account

1 giving rise to such net deferred taxes pursuant to section 4 of
2 P.L.1945, c.162 (C.54:10A-4). For the purposes of this subparagraph
3 (a):

4 (i) Carrying costs and present values are to be computed using the
5 weighted average after-tax rate of return approved by the board in the
6 utility's last base rate proceeding.

7 (ii) The accumulated balance of such negative net deferred taxes
8 shall include net deferred taxes associated with all assets and liabilities
9 originally placed in service by the utility and held by the utility or a
10 company affiliated with the utility regardless of whether or not such
11 assets continue to be subject to regulation by the New Jersey Board of
12 Public Utilities.

13 (b) The year in which both an appropriate working capital
14 adjustment and the accumulated balance of negative deferred taxes, as
15 described in (ii) of subparagraph (a) of this paragraph (4), are reflected
16 in the utility's rate base in a rate proceeding before the board. It is the
17 intent of this section to fully compensate utilities on a present value
18 basis, for the carrying costs associated with negative net deferred taxes
19 arising as a result of this act, and to remit to ratepayers any credit due
20 them as a result of any overcompensation as may have occurred due
21 to the treatment of working capital and deferred taxes as set forth
22 herein or in subparagraph (a) of this paragraph (4). At the time the
23 above base rate adjustment is made, an analysis shall be made to
24 determine if such carrying costs have been or will be fully recovered
25 pursuant to the intent of this provision and any additional credit or
26 charge to ratepayers to adjust for ratepayer overpayments or
27 underpayments, if any shall be addressed.

28 If the change in net deferred taxes is positive, the increase shall be
29 added to, or increase, the reduction in the utility's requirement for
30 working capital if the requirement is reduced as a result of the rate and
31 tax payment changes implemented pursuant to this act, or subtracted
32 from the working capital requirement if it is increased, and the
33 resultant net working capital requirement shall be reflected in rates or
34 accrue carrying costs in the same manner as prescribed for changes in
35 the utility's requirement for working capital above.

36 The deferred tax-related rate changes or carrying cost accruals
37 shall be subject to the board's approval and shall not be included in the
38 determination of the TEFA unit rate surcharges provided for in
39 subsection d. of this section.

40 d. (1) Electric and gas utilities shall file, for the board's review
41 and approval, initial TEFA unit rate surcharges determined by
42 deducting from each unit-based energy tax unit tax rate effective
43 January 1, 1997 the following: (a) An amount per kilowatthour or per
44 therm determined by multiplying the total revenue received in the base
45 year from sales to which that unit tax rate would have been applicable
46 by the factor $Ru/(1 + Ru)$, where Ru is the sales and use tax rate

1 imposed under P.L.1966, c.30 (C.54:32B-1 et seq.) expressed as a
2 decimal, and dividing the result by the kilowatthours or therms billed
3 in that unit tax rate class in the base year; and (b) An amount per
4 kilowatthour or per therm determined by dividing the revenue that
5 would have been received in the base year from the inclusion, in the
6 manner prescribed in paragraph (2) of subsection c. of this section, of
7 the corporation business tax in the rates applicable to sales billed in
8 that unit tax rate class by the kilowatthours or therms billed in that
9 rate class. In each case, the determination shall reflect the effect of
10 adjustments that affect the level of sales and revenue, if any, as
11 provided in subsection c. of this section. Of the resultant rate per
12 kilowatthour or per therm, the portion for recovery of the utility's
13 transitional energy facilities assessment liability shall be determined by
14 multiplying such rate by the factor $(1 - R_s)$, where R_s is the
15 corporation business tax rate expressed as a decimal. The TEFA unit
16 rate surcharges shall constitute non-bypassable wires and/or mains
17 charges of the utility, and shall be applied to all sales within the
18 customer classes to which they apply, regardless of whether such
19 customers are purchasing bundled or unbundled services from the
20 utility, but shall not be applied to sales that were or are currently
21 exempt from unit-based energy taxes formerly imposed pursuant to
22 P.L.1940, c.5 (C.54:30A-49 et seq.) or to which section 59 of
23 P.L.1997, c.162 (C.48:2-21.31) applies.

24 If, following the effective date of this act, a customer taking
25 bundled service from the utility shall elect to obtain its requirements
26 from another supplier and take transportation or wheeling service from
27 the utility, the TEFA unit rate surcharge applicable to the bundled
28 service shall continue to apply to the transportation or wheeling
29 service. The TEFA components of the unit rate surcharges determined
30 pursuant to this subsection (the components of the surcharges
31 remaining after deducting the provision for corporation business tax
32 included therein) shall be used to determine the transitional energy
33 facility assessment liability pursuant to sections 36 through 49 of
34 P.L.1997, c.162 (C.54:30A-100 through C.54:30A-113).

35 (2) Unless reduced pursuant to paragraphs (3) and (4) of this
36 subsection, the initial TEFA unit rate surcharges are to be reduced
37 annually on January 1, 1999 through January 1, [2003] 2001 by the
38 following percentages:

39		
40	January 1, 1999,	20%
41		
42	January 1, 2000,	40%
43		
44	January 1, 2001,	60%
45		
46	[January 1, 2002,	80%

1 January 1, 2003, 100%]

2

3 (3) For each year beginning with calendar year 1998 and ending
4 with calendar year [2002] 2001, the TEFA surcharge adjustment shall
5 be determined as the difference between:

6 (a) The sum of the estimated, or actual when known, (i) TEFA
7 liabilities, as defined in section 43 of P.L.1997, c.162 (C.54:30A-107),
8 and sales and use taxes collected and corporation business taxes
9 booked for the year 1998 by the gas and electric utilities and other
10 entities subject to the TEFA provisions of this act (the year 1998
11 liability), and (ii) the TEFA liabilities of those utilities and entities in
12 all years following the year 1998 through the year in which a
13 determination is being made pursuant to this subsection (the
14 determination year); and

15 (b) The sum of (i) the total of each remitter's base year liability, as
16 defined in section 37 of P.L.1997, c.162 (C.54:30A-101), and (ii) the
17 cumulative TEFA obligation, defined as the sum through the
18 determination year of the amounts calculated by multiplying, for the
19 applicable year, the percentage in the second column of the following
20 table:

21

22	Determination Year	% of
23		Year 1998
24		TEFA
25	-----	-----
26		
27	1999	80%
28		
29	2000	60%
30		
31	[2001	40%
32		
33	2002	20%]

34

35 by the Year 1998 TEFA,

36

37 where the Year 1998 TEFA is calculated as the total of each remitter's
38 base year liability less the sales and use taxes collected and the
39 corporation business taxes booked for the privilege period ending in
40 calendar year 1998 by the gas and electric utilities and other entities
41 subject to the TEFA provisions of this act. For purposes of this
42 subsection, the amounts assumed for the determination year, including
43 the year 1998 liability when first determined for the purposes of this
44 subsection, shall be estimates based on nine months of actual data
45 through and including the month of September, and three months of
46 data forecast for the months of October through December.

1 (4) If the TEFA surcharge adjustment determined for the
 2 determination year is positive (that is, if the amount determined
 3 pursuant to subparagraph (a) of paragraph (3) of this subsection is
 4 greater than the amount determined pursuant to subparagraph (b) of
 5 paragraph (3) of this subsection), no reduction shall be made in the
 6 reduction in the TEFA unit rate surcharges provided for in paragraph
 7 (2) of this subsection for the year following the determination year.
 8 If the TEFA surcharge adjustment is negative, the reduction in the
 9 TEFA unit rate surcharges that otherwise would have been
 10 implemented on January 1 of the year following the determination year
 11 pursuant to paragraph (2) of this subsection shall be reduced by an
 12 amount (by percentage points) equal to the percentage the TEFA
 13 surcharge adjustment is of the total of the base year transitional energy
 14 facility assessment of all remitters, as defined in section 37 of
 15 P.L.1997, c.162 (C.54:30A-101), provided however, that such
 16 reduction in the reduction in the TEFA unit rate surcharges shall not
 17 exceed the percentage shown in paragraph (2) of this subsection for
 18 that year; and provided further that in the first two years, that such
 19 reduction shall not exceed 10 percentage points for each year.

20 (5) (a) The TEFA unit rate surcharges for calendar years 2002
 21 through 2004 shall be the same as the TEFA unit rate surcharges in
 22 effect for calendar year 2001.

23 (b) The TEFA unit rate surcharges in effect for calendar year 2004
 24 shall be reduced annually on January 1, 2005 through January 1, 2006
 25 by the following percentages:

26 January 1, 2005 33%

27

28 January 1, 2006 67%

29 e. The utility's filing with the board to implement the rate changes
 30 provided for by this act shall include proof of revenue schedules that
 31 show for each rate schedule included in the utility's tariff, aggregated
 32 by unit-based energy tax unit tax classes, the number of customers
 33 billed under the rate schedule, the billing determinants of such
 34 customers (i.e. the kilowatts of billing demand and kilowatthours of
 35 electric energy consumed, and the million cubic feet/deca-therm subject
 36 to gas capacity-related charges and decatherm of gas consumed) and
 37 the associated revenue, both as booked in the base year and on a pro
 38 forma basis reflecting the rate changes implemented pursuant to this
 39 act. The proof of revenue shall additionally show the amount of
 40 unit-based energy taxes included in the base year revenue as booked,
 41 the unit-based energy taxes that would have been collected at the
 42 unit-based energy tax unit tax rates effective January 1, 1997, if
 43 different, as well as the corporation business tax, sales and use tax and
 44 transitional energy facility assessment revenue that would have been
 45 collected or received on a pro forma basis if the rates implemented
 46 pursuant to this act had been in effect in the base year.

1 f. The board may, in its discretion, permit the rate changes
2 provided for this act to be implemented as part of a pending base rate
3 case or other proceeding in which the utility's rates are to be changed,
4 provided that the effective date of the changes is not delayed beyond
5 the date on which the changes would have been implemented under
6 subsection c. of this section. The board may also, pursuant to its
7 powers provided by law, permit or require further modifications in the
8 implementation of this section to address unforeseen consequences
9 arising out of the implementation of this act.

10 g. Customers of the utility who are exempt from the sales and use
11 tax imposed on sales of gas and/or electricity or as a result of rate
12 changes occurring prior to the effective date of this act or for other
13 valid reasons are due a refund of sales or use tax inadvertently
14 imposed on such customers as a result of implementing the rate
15 changes provided for by this act shall file with the State Treasurer to
16 obtain such refunds. The State Treasurer shall promptly notify the
17 utility of customers granted refunds under this provision in order to
18 prevent additional collections of the sales and use tax from such
19 customers.

20 h. Public utilities providing telecommunications service regulated
21 by the board shall file for the board's review and approval revised
22 tariffs that eliminate from the rates applicable to such service the
23 excise tax liability included therein pursuant to P.L.1940, c.4
24 (C.54:30A-16 et seq.), and shall include therein the corporation
25 business tax calculated using the methodology used in calculating the
26 adjustment factor set forth in paragraph (2) of subsection c. of this
27 section. Subsection d. of this section shall not apply to
28 telecommunication utilities, and telecommunication utilities subject to
29 a plan of regulation other than rate base/rate of return shall
30 additionally not be required to file the rate of return information
31 required by paragraph (2) of subsection c. Such utilities shall,
32 however, include a narrative and/or other documentation as required
33 by the board to support the reasonableness of the after-tax income,
34 which may be adjusted to eliminate the effect of non-recurring or other
35 atypical events, on which the corporate business tax inclusion in rates
36 is based. Telecommunications utilities shall comply with all other
37 applicable provisions of this section.

38 i. (1) The board shall not adjust the rates of a public utility, as
39 provided in subsections c. and d. of this section, for a purchase by a
40 cogenerator of natural gas and the transportation of that gas, that is
41 exempt from sales and use tax pursuant to paragraph (2) of subsection
42 b. of section 26 of P.L.1997, c.162 (C.54:32B-8.46). The board shall
43 not allocate, in any future rate case, any sales and use tax, corporation
44 business tax, or transitional energy facility assessment to rates for this
45 purpose.

46 (2) The board shall adjust the rates, as provided in subsection c.

1 of this section, for a purchase by a cogenerator of any quantity of
2 natural gas and the transportation of that gas that is not exempt from
3 sales and use tax pursuant to paragraph (2) of subsection b. of section
4 26 of P.L.1997, c.162 (C.54:32B-8.46).

5 (3) For the purposes of this section, "cogenerator" means a person
6 or business entity that owns or operates a cogeneration facility in the
7 State of New Jersey, which facility is a plant, installation or other
8 structure whose primary purpose is the sequential production of
9 electricity and steam or other forms of useful energy which are used
10 for industrial, commercial, heating or cooling purposes, and which is
11 designated by the Federal Energy Regulatory Commission, or its
12 successor, as a "qualifying facility" pursuant to the provisions of the
13 "Public Utility Regulatory Policies Act of 1978," Pub.L.95-617.
14 (cf: P.L.1997, c.162, s.67)

15

16 5. This act shall take effect immediately and be retroactive to
17 January 1, 2002.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, No. 4045 and SENATE, No. 2773**

STATE OF NEW JERSEY

DATED: DECEMBER 20, 2001

The Assembly Appropriations Committee reports favorably a committee substitute for Assembly Bill No. 4045 and Senate Bill No. 2773.

The committee substitute for Assembly Bill No. 4045 and Senate Bill No. 2773 will freeze transitional energy facility assessment (TEFA) unit rate surcharges at calendar year 2001 rates for a three year-period from calendar years 2002 through 2004 and then reduce that unit rate surcharge ratably over the next two year period from calendar years 2005 through 2006. After December 31, 2006 the TEFA assessments will be eliminated to comport with the original planned phase-out of the tax as had been proposed in the 1997 energy tax reform law.

During the years leading up to 1997, New Jersey had the highest rate of energy taxation in the nation. The original purpose of the "Transitional Energy Facility Assessment Act," enacted as part of the 1997 energy tax reform law was to reduce over time New Jersey's energy tax rate from approximately 13.5% of the price of energy toward the national average of 7.5%. However, the Legislature in enacting that law recognized that such a reduction would be accomplished gradually over a period of years in order to minimize the fiscal impact of that reduction on the State budget.

This substitute holds the current year TEFA unit rate surcharges at their current level during fiscal years 2002 through 2004 and then reduces those unit rate surcharges during fiscal years 2005 through 2006. The substitute eliminates the TEFA unit rate surcharge as a source of revenue during fiscal year 2007 and for fiscal years thereafter.

FISCAL IMPACT

The Office of Legislative Services (OLS) estimates that this substitute will increase State revenue from the TEFA by about \$800.8 million between Fiscal Years 2002 and 2006. The table below displays the estimated annual revenue amounts compared to current law. The OLS notes that actual revenue amounts may be subject to fluctuations in the number of actual units. The phase-out includes a 33% reduction

in 2005 from the 2001 unit rates, a 67% reduction in 2006, and a 100% reduction in 2007. Amounts in each year through 2007 are also subject to adjustments due to overpayments or underpayments of estimated payments. The largest annual revenue amounts of \$231.8 million will affect Fiscal Years 2003 and 2004.

Estimated Changes to the Transitional Energy Facility Assessment \$ Millions			
Year	Current Law	Estimated Per Bill	Difference
2001	\$231.8	\$231.8	\$0.0
2002	\$126.4	\$231.8	\$105.4
2003	\$0.0	\$231.8	\$231.8
2004	\$0.0	\$231.8	\$231.8
2005	\$0.0	\$155.3	\$155.3
2006	\$0.0	\$76.5	\$76.5
2007	\$0.0	\$0.0	\$0.0
Total:			\$800.8

P.L. 2001, CHAPTER 433, *approved January 8, 2002*

Assembly Committee Substitute for
Assembly, No. 4045 and Senate, No. 2773

1 **AN ACT** changing the phase-out schedule of the transitional energy
2 facility assessment (TEFA) unit rate surcharges on certain energy
3 sales and amending P.L.1997, c.162.

4

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

7

8 1. Section 38 of P.L.1997, c.162 (C.54:30A-102) is amended to
9 read as follows:

10 38. Each remitter's transitional energy facility assessment shall be
11 established pursuant to section 67 of P.L.1997, c.162 (C.48:2-21.34).
12 Under no circumstances shall an assessment be made under this act for
13 any year commencing after December 31, [2002] 2006.

14 (cf: P.L.1997, c.162, s.38)

15

16 2. Section 41 of P.L.1997, c.162 (C.54:30A-105) is amended to
17 read as follows:

18 41. a. Every remitter shall on or before October 15, 1998, and on
19 or before October 15, in each year thereafter for years in which the
20 transitional energy facility assessment is imposed, return to the
21 Director of the Division of Taxation in the Department of the Treasury
22 and the Board of Public Utilities a statement in such form, manner and
23 detail as the director shall require showing the [following:

24 (1) Sales and use tax collected and use tax liability through
25 September 30 of the current calendar year;

26 (2) Estimated sales tax collections and use tax liability for the
27 period from October 1 through December 31 of the current calendar
28 year;

29 (3) Estimated corporation business tax, including negative and
30 positive deferred corporation business taxes shown separately, for the
31 current privilege period based upon actual taxable income from
32 January 1 through September 30 and estimated taxable income from
33 October 1 through December 31; and

34 (4) Actual] actual transitional energy facility assessment liability
35 from January 1 through September 30 and estimated liability from
36 October 1 through December 31 for the current calendar year.

37 b. On or before November 15, 1998, and on or before November
38 15 of each year thereafter for years in which the transitional energy
39 facility assessment is imposed, the State Treasurer shall, with the
40 cooperation of the Board of Public Utilities, calculate the percentage

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 reduction, as may be applicable, in the initial TEFA unit rate
2 surcharges or the calendar year 2001 TEFA unit rate surcharges based
3 upon the formula set forth in section 67 of P.L.1997, c.162
4 (C.48:2-21.34) and the board shall report the amount of such
5 reduction, if any, to the remitters subject to the transitional energy
6 facility assessment.

7 c. Every remitter shall on or before February 1, 1998 file with the
8 director a statement showing:

9 (1) The total public utility tax advance payments paid in the initial
10 year pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.); and

11 (2) The remitter's base year liability and each of the amounts
12 described in subsections (a), (b) and (c) in the definition of "base year
13 transitional energy facility assessment" in section 37 of P.L.1997,
14 c.162 (C.54:30A-101).

15 d. For any remitter owning or holding both gas and electric
16 facilities and conducting both gas and electric business in this State
17 each of the amounts reported on the return required to be filed
18 pursuant to subsection c. shall be allocated by the director between
19 those operations in the proportion that the sum of the unit-based taxes
20 bore to the whole of the unit-based taxes in the base year or such other
21 allocation methodology as the director shall prescribe.

22 e. The statements required pursuant to this section shall be
23 subscribed and sworn to by the president, a vice-president or chief
24 officer of the corporation preparing each statement. Any remitter
25 refusing or neglecting to make the statements herein provided for shall
26 forfeit and pay to the State of New Jersey the sum of \$100 per day for
27 each day of such refusal or neglect, to be recovered in an action at law
28 in the name of the State and which, when recovered, shall be paid into
29 the State Treasury. It shall be the duty of the director to certify any
30 such default to the Attorney General of the State who, thereupon, shall
31 prosecute an action at law for each penalty.

32 f. The Director of the Division of Taxation shall audit and verify
33 the statements filed by remitters whenever and in such respects the
34 director shall deem necessary or advisable. The director may require
35 any remitter to supply additional data and information in such form,
36 manner, and detail as the director shall request, whenever the director
37 may deem it necessary or helpful, for the proper performance of the
38 director's duties under this act.

39 g. The director may, by regulation, additionally require that all
40 filings required for the calculation and certification of assessment to
41 be paid by remitters established pursuant to this act shall be made in
42 an electronic form. The form and content of the electronic filing
43 message, the circumstances under which the electronic filing message
44 shall serve as a substitute for the filing of another return and the means
45 by which remitters shall be determined to be subject to this electronic
46 filing requirement shall be prescribed by the director.

1 For the purpose of this act "electronic filing" or "electronic filings"
2 means any message that is initiated through an electronic terminal,
3 telecommunication device, or computer for the purpose of fulfilling the
4 reporting responsibilities set forth hereinabove.

5 (cf: P.L.1997, c.162, s.41)

6
7 3. Section 43 of P.L.1997, c.162 (C.54:30A-107) is amended to
8 read as follows:

9 43. a. (1) The liability for the transitional energy facility
10 assessment made against any remitter in the first year of assessment
11 shall be an amount equal to TEFA unit rate surcharges (excluding the
12 provision for corporation business taxes included therein) determined
13 in section 67 of P.L.1997, c.162 (C.48:2-21.34) multiplied by the
14 associated therms of natural gas and kilowatthours of electricity sold
15 or transported for sale to ultimate consumers in New Jersey in the first
16 year plus any advances paid in the initial year pursuant to P.L.1940,
17 c.5 (C.54:30A-49 et seq.) by that remitter.

18 (2) The liability for the transitional energy facility assessment
19 made against any remitter for each year subsequent to the first year
20 shall be an amount equal to the TEFA unit rate surcharges (excluding
21 the provision for corporation business taxes included therein)
22 calculated in section 67 of P.L.1997, c.162 (C.48:2-21.34) for that
23 year multiplied by the associated therms of natural gas and
24 kilowatthours of electricity sold or transported for sale to ultimate
25 consumers in New Jersey in that year.

26 b. A credit against the liability determined pursuant to paragraph
27 (1) of subsection a. of this section shall be taken in the first year by the
28 remitter in the amount of all advances paid in the initial year pursuant
29 to P.L.1940, c.5 (C.54:30A-49 et seq.).

30 c. (1) Each remitter shall make an estimated payment on May 15
31 of the first assessment year in the amount of the base year transitional
32 energy facility assessment.

33 (2) Subsequent to the first year, each remitter shall make an
34 estimated payment on May 15 of each assessment year in which the
35 transitional energy facility assessment is in effect, in an amount equal
36 to the transitional energy facility assessment liability described in
37 subsection a. of this section for the immediately preceding assessment
38 year, excluding advances paid in the initial year pursuant to P.L.1940,
39 c.5 (C.54:30A-49 et seq.), reduced by the applicable reduction
40 percentage, if any, for the current assessment year determined
41 pursuant to paragraphs (2), (3) and (4) or paragraph (5) of subsection
42 d. of section 67 of P.L.1997, c.162 (C.48:2-21.34) less credits
43 described in subsection d. of this section, if any.

44 d. Any excess of the estimated payment made pursuant to
45 paragraph (1) or (2) of subsection c. of this section over the liability
46 determined pursuant to subsection a. of this section shall be treated as

1 a credit against the estimated payment for the subsequent assessment
2 year and reduce the amount of the estimated payment required to be
3 made for that subsequent year. Any excess of the estimated payment
4 made pursuant to paragraph (2) of subsection c. of this section over
5 the liability for the final year of the transitional energy facility
6 assessment shall be utilized as a nonrefundable credit with an unlimited
7 carryforward against that remitter's corporation business tax liability
8 in the subsequent privilege period year. Such credit shall be applied
9 in full to each estimated corporation business tax payment beginning
10 in the subsequent privilege period until fully utilized.

11 (cf: P.L.1997, c.162, s.43)

12

13 4. Section 67 of P.L.1997, c.162 (C.48:2-21.34) is amended to
14 read as follows:

15 67. a. As used in this section:

16 "Base rates" means the rates, including minimum bills, charged for
17 utility commodities or service subject to the board's jurisdiction, other
18 than the rates charged under a utility's levelized energy adjustment
19 clause, hereinafter "LEAC," or levelized gas adjustment clause,
20 hereinafter "LGAC," or equivalent rate provision;

21 "Base year" means the calendar year 1996;

22 "Board" means the Board of Public Utilities;

23 "Sales and use tax" means the sales and use tax liability computed
24 on sales and use of energy and utility service as defined in section 2 of
25 P.L.1966, c.30 (C.54:32B-2);

26 "Utility" means a public utility subject to regulation by the board
27 pursuant to Title 48 of the Revised Statutes; and

28 "Utility service" means the supply, transmission, distribution or
29 transportation of electricity, natural gas or telecommunications
30 services or any combination of such commodities, processes or
31 services.

32 b. No later than 60 days after the date this act is enacted, each
33 electric, gas and telecommunications utility subject to the provisions
34 of this act shall file with the board, and shall simultaneously provide
35 copies to the Director of the Division of the Ratepayer Advocate,
36 revised tariffs and such other supporting schedules, narrative and
37 documentation required by this act, as set forth in this section, to
38 reflect in the utility's rates the changes in tax liability effected pursuant
39 to this act. No later than 90 days after the date of the utility's filing,
40 and after determining that the filing and the rate changes provided for
41 therein are in compliance with the provisions of this act, the board
42 shall approve the utility's filing and associated rates for billing to the
43 utility's customers, effective for utility service rendered on and after
44 January 1, 1998. If the board determines that the utility's filing and the
45 associated rate changes provided for therein are not in compliance
46 with the provisions of this act, the board shall require the utility to

1 amend or otherwise modify its filing to render it in compliance. The
2 board may also permit the rates provided for in the utility's filing to be
3 implemented on an interim basis pending the board's final
4 determination in the event the board, in its discretion, determines that
5 due to the filing's complexity, or for other valid reasons, including but
6 not limited to the enactment of this act after June 30, 1997, additional
7 time is needed for the board to complete its review of the filing. If the
8 rates approved by the board upon its final determination are less than
9 the rates implemented on an interim basis, the difference shall be
10 refunded to the utility's customers with interest computed in
11 accordance with N.J.A.C.14:3-7.5(c). The rate adjustments
12 implemented pursuant to this act shall not constitute a fixing of rates
13 pursuant to R.S.48:2-21 and shall not be subject to the hearing
14 requirements set forth in that section.

15 c. As of the effective date of the rate changes implemented
16 pursuant to this act, and except for rates applicable to sales that were
17 or are currently exempt from the unit-based energy taxes formerly
18 imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) and rates
19 applicable to sales to which section 59 of P.L.1997, c.162
20 (C.48:2-21.31) applies, the board shall remove from the base rates of
21 each electric public utility and gas public utility the unit tax rates
22 included therein for the recovery of those unit-based energy taxes, and
23 include therein provision for the recovery of corporation business tax
24 imposed pursuant to P.L.1945, c.162 (C.54:10A-1 et seq.), and
25 additionally shall authorize the collection of the sales and use tax
26 imposed pursuant to P.L.1966, c.30 (C.54:32B-1 et seq.), as follows:

27 (1) The base rates of each gas and electric utility shall be reduced
28 by the amount of the unit-based energy taxes per kilowatthour or per
29 therm included therein.

30 (2) The provision for corporation business tax initially included in
31 the base rates of each gas and electric utility shall be based on the
32 utility's after-tax net income earned in the base year as booked, unless
33 the board determines, in its discretion, that such income as booked is
34 unusually high or low or otherwise unrepresentative of the utility's
35 prospective net income, in which case the utility's base year net income
36 shall be adjusted as determined by the board.

37 To permit the board to make this determination, in addition to
38 including in its filing schedules showing its net income earned in the
39 base year as booked, the utility shall include adjustments to such
40 booked income to eliminate the effect of revenues, expenses and
41 extraordinary or other charges that are non-recurring, atypical, or
42 both, including, but not limited to an adjustment to eliminate the effect
43 of unusually hot or cold weather, and that would otherwise make the
44 utility's base year net income unusually high or low or otherwise
45 unrepresentative of the utility's prospective net income. If the
46 adjustment is being made to eliminate the effect of unusually hot or

1 cold weather, associated revenue and expense adjustments shall also
 2 be made. Subject to the board's approval, such adjusted income shall
 3 be the basis for the calculation of the initial provision for corporation
 4 business tax to be included in the utility's base rates.

5 The utility shall also include a calculation of its rate of return on
 6 common equity achieved in the base year, both as booked and as
 7 adjusted in accordance with the foregoing. The calculation shall be
 8 made employing the methodology set forth in N.J.A.C.14:12-4.2(b)1,
 9 and shall separately show the effect of reflecting adjustments to the
 10 calculation, if any, that may have been employed historically in
 11 establishing the utility's rate of return on common equity allowed for
 12 ratemaking purposes. The utility's filing shall also include copies of its
 13 audited financial statements for the base year and associated quarterly
 14 and other reports filed with the Securities and Exchange Commission.

15 To reflect the provision for corporation business tax in base rates,
 16 the demand charges, or charges per kilowatt, decatherm or million
 17 cubic feet; the energy charges, or charges per kilowatthour or per
 18 therm; and the customer charges, or charges other than demand and
 19 energy charges, set forth in each base rate schedule, and the floor price
 20 employed in parity rate schedules, included in the utility's tariff filed
 21 with and approved by the board shall be increased by amounts
 22 determined by multiplying such charges by the adjustment factor, "A
 23 e, g" derived below:

24

25
$$A_{e, g} = (I_{e, g} \times [Rs / (1 - Re)])$$

26

27
$$(Br_{e, g})$$

28

29 where:

30

31 "A e, g" means the adjustment factor applicable to electric base
 32 rates (e), gas base rates (g), or both, other than rates applicable to
 33 sales that were exempt from unit-based energy taxes formerly imposed
 34 pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) or to which section
 35 59 of P.L.1997, c.162 (C.48:2-21.31) applies;

36 "I e, g" means the utility's base year after-tax net income from
 37 electric or gas sales, or both, and transportation service subject to the
 38 board's jurisdiction and other operating revenue if such revenue is
 39 reflected in the utility's cost of service for ratemaking purposes,
 40 adjusted as approved by the board;

41 "Br e, g" means the utility's base year revenue from base rates
 42 applicable to electric or gas sales, or both, and transportation service
 43 subject to the board's jurisdiction, but excluding sales that were
 44 exempt from unit-based energy taxes formerly imposed pursuant to
 45 P.L.1940, c.5 (C.54:30A-49 et seq.) or to which section 59 of
 46 P.L.1997, c.162 (C.48:2-21.31) applies;

1 "Rs" means the corporation business tax rate, expressed as a
2 decimal;

3 "Rf" means the applicable federal corporation income tax rate
4 expressed as a decimal; and

5 "Re" equals $R_s + R_f(1-R_s)$.

6 The utility shall account for the changes in tax liability provided for
7 by this act effective January 1, 1998. Such accounting shall include
8 the recording on the utility's income statement and balance sheet of
9 deferred corporation business tax defined, for book accounting
10 purposes, as differences in corporation business tax expense arising
11 from timing differences in the recognition of revenue and expenses for
12 book and tax purposes.

13 (3) When billed to the utility's customers, the adjusted base rate
14 charges determined pursuant to paragraphs (1), (2), and (4) of this
15 subsection, and the charges determined pursuant to the utility's
16 levelized energy adjustment clause, levelized gas adjustment clause, or
17 both, as determined both upon the effective date of the rate changes
18 authorized by this act and as revised prospectively in accordance with
19 the utility's tariff filed with and approved by the board, and the
20 transitional energy facility assessment unit rate surcharges, hereinafter,
21 "TEFA unit rate surcharges," determined in accordance with
22 subsection d. of this section, shall be increased by an amount
23 determined by multiplying such charges by the sales and use tax rate
24 imposed under P.L.1966, c.30 (C.54:32B-1 et seq.). In addition to the
25 utility's rates for service included in its tariff, for informational
26 purposes the tariff shall include such rates after application of the sales
27 and use tax authorized by this section.

28 (4) The utility's filing with the board to implement the rate
29 changes provided for by this act shall include an analysis, description,
30 and quantification of the effect of the changes in rates and tax
31 payments implemented pursuant to this act on the utility's requirement
32 for cash working capital, and if such requirement is less than the cash
33 working capital allowed for the collection and payment of unit-based
34 energy taxes formerly imposed pursuant to P.L.1940, c.5
35 (C.54:30A-49 et seq.) in determining the utility's base rates in effect
36 prior to the rate changes implemented pursuant to this act, and to the
37 extent the working capital reduction is not offset by a reduction in net
38 deferred taxes as provided for below, such base rates shall be reduced
39 by the reduction in the utility's revenue requirement associated with
40 the remaining reduction in the working capital requirement not so
41 offset, if any. The reduction in working capital shall be determined by
42 using the same methodology employed in establishing the working
43 capital allowance related to unit-based energy taxes reflected in the
44 utility's base rates in effect prior to the rate changes implemented
45 pursuant to this act. The reduction in the utility's revenue requirement
46 associated with the reduced working capital requirement shall be

1 calculated using the utility's last overall rate of return allowed by the
2 board, including provision for federal income taxes and the
3 corporation business tax implemented pursuant to this act payable on
4 the equity portion of the return, and shall be implemented on the
5 effective date of the rate changes provided for, and in the manner set
6 forth in paragraph (2) of this subsection.

7 If the utility's requirement for cash working capital is increased as
8 a result of the changes in rates and tax payments implemented pursuant
9 to this act, the utility may accrue carrying costs, calculated at its last
10 overall rate of return allowed by the board and applied on a simple
11 annual interest basis without compounding, on the increased working
12 capital requirement and request recovery of such carrying costs in a
13 rate proceeding before the board.

14 The working capital-related base rate changes and carrying cost
15 accruals shall be subject to the board's approval, and shall not be
16 included in the determination of the TEFA unit tax surcharges
17 provided for in subsection d. of this section.

18 The utility's filing with the board to implement the rate changes
19 provided for by this act shall also include an analysis, description and
20 quantification of net deferred taxes. For the purposes of this section,
21 "net deferred taxes" means deferred corporation business taxes, net of
22 federal deferred income taxes, associated with the tax and rate changes
23 implemented pursuant to this act, including deferred corporation
24 business tax recorded in accordance with section 4 of P.L.1945, c.162
25 (C.54:10A-4), projected for the calendar year in which this act takes
26 effect and for each year of the tax life of the asset giving rise to the
27 deferred corporation business taxes pursuant to section 4 of P.L.1945,
28 c.162 (C.54:10A-4).

29 If the change in such net deferred taxes projected for the calendar
30 year in which the rate changes implemented pursuant to this act takes
31 effect is negative and if the utility's requirement for working capital is
32 reduced as a result of the changes in rates and tax payments
33 implemented pursuant to this act, the working capital-related rate
34 reduction that otherwise would have been implemented pursuant to
35 this subsection shall be treated as set forth in subparagraph (a) or (b)
36 of this paragraph. For the purposes of this act, a change in net
37 deferred taxes is considered negative when it reduces an existing
38 deferred tax liability or creates a deferred tax asset on the utility's
39 balance sheet. An appropriate rate adjustment for the working capital
40 impacts of this act, reflecting all relevant facts and circumstances at
41 the time of the adjustment, shall be made in the year when the earlier
42 of the following events occur:

43 (a) The year in which the reduction in carrying costs assumed for
44 the rate reduction for working capital that would have been made but
45 for this paragraph is no longer required to offset, on a present value
46 basis, the annual carrying costs calculated on the accumulated balance

1 of negative net deferred taxes projected to be recorded by the utility,
2 its successors and assigns, over the tax life of the single asset account
3 giving rise to such net deferred taxes pursuant to section 4 of
4 P.L.1945, c.162 (C.54:10A-4). For the purposes of this subparagraph
5 (a):

6 (i) Carrying costs and present values are to be computed using the
7 weighted average after-tax rate of return approved by the board in the
8 utility's last base rate proceeding.

9 (ii) The accumulated balance of such negative net deferred taxes
10 shall include net deferred taxes associated with all assets and liabilities
11 originally placed in service by the utility and held by the utility or a
12 company affiliated with the utility regardless of whether or not such
13 assets continue to be subject to regulation by the New Jersey Board of
14 Public Utilities.

15 (b) The year in which both an appropriate working capital
16 adjustment and the accumulated balance of negative deferred taxes, as
17 described in (ii) of subparagraph (a) of this paragraph (4), are reflected
18 in the utility's rate base in a rate proceeding before the board. It is the
19 intent of this section to fully compensate utilities on a present value
20 basis, for the carrying costs associated with negative net deferred taxes
21 arising as a result of this act, and to remit to ratepayers any credit due
22 them as a result of any overcompensation as may have occurred due
23 to the treatment of working capital and deferred taxes as set forth
24 herein or in subparagraph (a) of this paragraph (4). At the time the
25 above base rate adjustment is made, an analysis shall be made to
26 determine if such carrying costs have been or will be fully recovered
27 pursuant to the intent of this provision and any additional credit or
28 charge to ratepayers to adjust for ratepayer overpayments or
29 underpayments, if any shall be addressed.

30 If the change in net deferred taxes is positive, the increase shall be
31 added to, or increase, the reduction in the utility's requirement for
32 working capital if the requirement is reduced as a result of the rate and
33 tax payment changes implemented pursuant to this act, or subtracted
34 from the working capital requirement if it is increased, and the
35 resultant net working capital requirement shall be reflected in rates or
36 accrue carrying costs in the same manner as prescribed for changes in
37 the utility's requirement for working capital above.

38 The deferred tax-related rate changes or carrying cost accruals
39 shall be subject to the board's approval and shall not be included in the
40 determination of the TEFA unit rate surcharges provided for in
41 subsection d. of this section.

42 d. (1) Electric and gas utilities shall file, for the board's review
43 and approval, initial TEFA unit rate surcharges determined by
44 deducting from each unit-based energy tax unit tax rate effective
45 January 1, 1997 the following: (a) An amount per kilowatt-hour or per
46 therm determined by multiplying the total revenue received in the base

1 year from sales to which that unit tax rate would have been applicable
 2 by the factor $Ru/(1 + Ru)$, where Ru is the sales and use tax rate
 3 imposed under P.L.1966, c.30 (C.54:32B-1 et seq.) expressed as a
 4 decimal, and dividing the result by the kilowatthours or therms billed
 5 in that unit tax rate class in the base year; and (b) An amount per
 6 kilowatthour or per therm determined by dividing the revenue that
 7 would have been received in the base year from the inclusion, in the
 8 manner prescribed in paragraph (2) of subsection c. of this section, of
 9 the corporation business tax in the rates applicable to sales billed in
 10 that unit tax rate class by the kilowatthours or therms billed in that
 11 rate class. In each case, the determination shall reflect the effect of
 12 adjustments that affect the level of sales and revenue, if any, as
 13 provided in subsection c. of this section. Of the resultant rate per
 14 kilowatthour or per therm, the portion for recovery of the utility's
 15 transitional energy facilities assessment liability shall be determined by
 16 multiplying such rate by the factor $(1 - Rs)$, where Rs is the
 17 corporation business tax rate expressed as a decimal. The TEFA unit
 18 rate surcharges shall constitute non-bypassable wires and/or mains
 19 charges of the utility, and shall be applied to all sales within the
 20 customer classes to which they apply, regardless of whether such
 21 customers are purchasing bundled or unbundled services from the
 22 utility, but shall not be applied to sales that were or are currently
 23 exempt from unit-based energy taxes formerly imposed pursuant to
 24 P.L.1940, c.5 (C.54:30A-49 et seq.) or to which section 59 of
 25 P.L.1997, c.162 (C.48:2-21.31) applies.

26 If, following the effective date of this act, a customer taking
 27 bundled service from the utility shall elect to obtain its requirements
 28 from another supplier and take transportation or wheeling service from
 29 the utility, the TEFA unit rate surcharge applicable to the bundled
 30 service shall continue to apply to the transportation or wheeling
 31 service. The TEFA components of the unit rate surcharges determined
 32 pursuant to this subsection (the components of the surcharges
 33 remaining after deducting the provision for corporation business tax
 34 included therein) shall be used to determine the transitional energy
 35 facility assessment liability pursuant to sections 36 through 49 of
 36 P.L.1997, c.162 (C.54:30A-100 through C.54:30A-113).

37 (2) Unless reduced pursuant to paragraphs (3) and (4) of this
 38 subsection, the initial TEFA unit rate surcharges are to be reduced
 39 annually on January 1, 1999 through January 1, [2003] 2001 by the
 40 following percentages:

41		
42	January 1, 1999,	20%
43		
44	January 1, 2000,	40%
45		
46	January 1, 2001,	60%

1 [January 1, 2002, 80%
 2
 3 January 1, 2003, 100%]
 4

5 (3) For each year beginning with calendar year 1998 and ending
 6 with calendar year [2002] 2001, the TEFA surcharge adjustment shall
 7 be determined as the difference between:

8 (a) The sum of the estimated, or actual when known, (i) TEFA
 9 liabilities, as defined in section 43 of P.L.1997, c.162 (C.54:30A-107),
 10 and sales and use taxes collected and corporation business taxes
 11 booked for the year 1998 by the gas and electric utilities and other
 12 entities subject to the TEFA provisions of this act (the year 1998
 13 liability), and (ii) the TEFA liabilities of those utilities and entities in
 14 all years following the year 1998 through the year in which a
 15 determination is being made pursuant to this subsection (the
 16 determination year); and

17 (b) The sum of (i) the total of each remitter's base year liability, as
 18 defined in section 37 of P.L.1997, c.162 (C.54:30A-101), and (ii) the
 19 cumulative TEFA obligation, defined as the sum through the
 20 determination year of the amounts calculated by multiplying, for the
 21 applicable year, the percentage in the second column of the following
 22 table:

Determination Year	% of Year 1998 TEFA
-----	-----
1999	80%
2000	60%
[2001	40%
2002	20%]

37 by the Year 1998 TEFA,
 38
 39 where the Year 1998 TEFA is calculated as the total of each remitter's
 40 base year liability less the sales and use taxes collected and the
 41 corporation business taxes booked for the privilege period ending in
 42 calendar year 1998 by the gas and electric utilities and other entities
 43 subject to the TEFA provisions of this act. For purposes of this
 44 subsection, the amounts assumed for the determination year, including
 45 the year 1998 liability when first determined for the purposes of this
 46 subsection, shall be estimates based on nine months of actual data

1 through and including the month of September, and three months of
2 data forecast for the months of October through December.

3 (4) If the TEFA surcharge adjustment determined for the
4 determination year is positive (that is, if the amount determined
5 pursuant to subparagraph (a) of paragraph (3) of this subsection is
6 greater than the amount determined pursuant to subparagraph (b) of
7 paragraph (3) of this subsection), no reduction shall be made in the
8 reduction in the TEFA unit rate surcharges provided for in paragraph
9 (2) of this subsection for the year following the determination year.
10 If the TEFA surcharge adjustment is negative, the reduction in the
11 TEFA unit rate surcharges that otherwise would have been
12 implemented on January 1 of the year following the determination year
13 pursuant to paragraph (2) of this subsection shall be reduced by an
14 amount (by percentage points) equal to the percentage the TEFA
15 surcharge adjustment is of the total of the base year transitional energy
16 facility assessment of all remitters, as defined in section 37 of
17 P.L.1997, c.162 (C.54:30A-101), provided however, that such
18 reduction in the reduction in the TEFA unit rate surcharges shall not
19 exceed the percentage shown in paragraph (2) of this subsection for
20 that year; and provided further that in the first two years, that such
21 reduction shall not exceed 10 percentage points for each year.

22 (5) (a) The TEFA unit rate surcharges for calendar years 2002
23 through 2004 shall be the same as the TEFA unit rate surcharges in
24 effect for calendar year 2001.

25 (b) The TEFA unit rate surcharges in effect for calendar year 2004
26 shall be reduced annually on January 1, 2005 through January 1, 2006
27 by the following percentages:

28 January 1, 2005 33%

29

30 January 1, 2006 67%

31 e. The utility's filing with the board to implement the rate changes
32 provided for by this act shall include proof of revenue schedules that
33 show for each rate schedule included in the utility's tariff, aggregated
34 by unit-based energy tax unit tax classes, the number of customers
35 billed under the rate schedule, the billing determinants of such
36 customers (i.e. the kilowatts of billing demand and kilowatthours of
37 electric energy consumed, and the million cubic feet/decatherm subject
38 to gas capacity-related charges and decatherm of gas consumed) and
39 the associated revenue, both as booked in the base year and on a pro
40 forma basis reflecting the rate changes implemented pursuant to this
41 act. The proof of revenue shall additionally show the amount of
42 unit-based energy taxes included in the base year revenue as booked,
43 the unit-based energy taxes that would have been collected at the
44 unit-based energy tax unit tax rates effective January 1, 1997, if
45 different, as well as the corporation business tax, sales and use tax and
46 transitional energy facility assessment revenue that would have been

1 collected or received on a pro forma basis if the rates implemented
2 pursuant to this act had been in effect in the base year.

3 f. The board may, in its discretion, permit the rate changes
4 provided for this act to be implemented as part of a pending base rate
5 case or other proceeding in which the utility's rates are to be changed,
6 provided that the effective date of the changes is not delayed beyond
7 the date on which the changes would have been implemented under
8 subsection c. of this section. The board may also, pursuant to its
9 powers provided by law, permit or require further modifications in the
10 implementation of this section to address unforeseen consequences
11 arising out of the implementation of this act.

12 g. Customers of the utility who are exempt from the sales and use
13 tax imposed on sales of gas and/or electricity or as a result of rate
14 changes occurring prior to the effective date of this act or for other
15 valid reasons are due a refund of sales or use tax inadvertently
16 imposed on such customers as a result of implementing the rate
17 changes provided for by this act shall file with the State Treasurer to
18 obtain such refunds. The State Treasurer shall promptly notify the
19 utility of customers granted refunds under this provision in order to
20 prevent additional collections of the sales and use tax from such
21 customers.

22 h. Public utilities providing telecommunications service regulated
23 by the board shall file for the board's review and approval revised
24 tariffs that eliminate from the rates applicable to such service the
25 excise tax liability included therein pursuant to P.L.1940, c.4
26 (C.54:30A-16 et seq.), and shall include therein the corporation
27 business tax calculated using the methodology used in calculating the
28 adjustment factor set forth in paragraph (2) of subsection c. of this
29 section. Subsection d. of this section shall not apply to
30 telecommunication utilities, and telecommunication utilities subject to
31 a plan of regulation other than rate base/rate of return shall
32 additionally not be required to file the rate of return information
33 required by paragraph (2) of subsection c. Such utilities shall,
34 however, include a narrative and/or other documentation as required
35 by the board to support the reasonableness of the after-tax income,
36 which may be adjusted to eliminate the effect of non-recurring or other
37 atypical events, on which the corporate business tax inclusion in rates
38 is based. Telecommunications utilities shall comply with all other
39 applicable provisions of this section.

40 i. (1) The board shall not adjust the rates of a public utility, as
41 provided in subsections c. and d. of this section, for a purchase by a
42 cogenerator of natural gas and the transportation of that gas, that is
43 exempt from sales and use tax pursuant to paragraph (2) of subsection
44 b. of section 26 of P.L.1997, c.162 (C.54:32B-8.46). The board shall
45 not allocate, in any future rate case, any sales and use tax, corporation
46 business tax, or transitional energy facility assessment to rates for this

1 purpose.

2 (2) The board shall adjust the rates, as provided in subsection c.
3 of this section, for a purchase by a cogenerator of any quantity of
4 natural gas and the transportation of that gas that is not exempt from
5 sales and use tax pursuant to paragraph (2) of subsection b. of section
6 26 of P.L.1997, c.162 (C.54:32B-8.46).

7 (3) For the purposes of this section, "cogenerator" means a person
8 or business entity that owns or operates a cogeneration facility in the
9 State of New Jersey, which facility is a plant, installation or other
10 structure whose primary purpose is the sequential production of
11 electricity and steam or other forms of useful energy which are used
12 for industrial, commercial, heating or cooling purposes, and which is
13 designated by the Federal Energy Regulatory Commission, or its
14 successor, as a "qualifying facility" pursuant to the provisions of the
15 "Public Utility Regulatory Policies Act of 1978," Pub.L.95-617.
16 (cf: P.L.1997, c.162, s.67)

17

18 5. This act shall take effect immediately and be retroactive to
19 January 1, 2002.

20

21

22

23

24 _____
25 Changes phase-out of transitional energy facility assessment (TEFA)
unit rate surcharges on certain energy sales.

CHAPTER 433

AN ACT changing the phase-out schedule of the transitional energy facility assessment (TEFA) unit rate surcharges on certain energy sales and amending P.L.1997, c.162.

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

1. Section 38 of P.L.1997, c.162 (C.54:30A-102) is amended to read as follows:

C.54:30A-102 Establishment of remitter's transition energy facility assessment.

38. Each remitter's transitional energy facility assessment shall be established pursuant to section 67 of P.L.1997, c.162 (C.48:2-21.34). Under no circumstances shall an assessment be made under this act for any year commencing after December 31, 2006.

2. Section 41 of P.L.1997, c.162 (C.54:30A-105) is amended to read as follows:

C.54:30A-105 Statement of liability from remitter due October 15.

41. a. Every remitter shall on or before October 15, 1998, and on or before October 15, in each year thereafter for years in which the transitional energy facility assessment is imposed, return to the Director of the Division of Taxation in the Department of the Treasury and the Board of Public Utilities a statement in such form, manner and detail as the director shall require showing the actual transitional energy facility assessment liability from January 1 through September 30 and estimated liability from October 1 through December 31 for the current calendar year.

b. On or before November 15, 1998, and on or before November 15 of each year thereafter for years in which the transitional energy facility assessment is imposed, the State Treasurer shall, with the cooperation of the Board of Public Utilities, calculate the percentage reduction, as may be applicable, in the initial TEFA unit rate surcharges or the calendar year 2001 TEFA unit rate surcharges based upon the formula set forth in section 67 of P.L.1997, c.162 (C.48:2-21.34) and the board shall report the amount of such reduction, if any, to the remitters subject to the transitional energy facility assessment.

c. Every remitter shall on or before February 1, 1998 file with the director a statement showing:

(1) The total public utility tax advance payments paid in the initial year pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.); and

(2) The remitter's base year liability and each of the amounts described in subsections (a), (b) and (c) in the definition of "base year transitional energy facility assessment" in section 37 of P.L.1997, c.162 (C.54:30A-101).

d. For any remitter owning or holding both gas and electric facilities and conducting both gas and electric business in this State each of the amounts reported on the return required to be filed pursuant to subsection c. shall be allocated by the director between those operations in the proportion that the sum of the unit-based taxes bore to the whole of the unit-based taxes in the base year or such other allocation methodology as the director shall prescribe.

e. The statements required pursuant to this section shall be subscribed and sworn to by the president, a vice-president or chief officer of the corporation preparing each statement. Any remitter refusing or neglecting to make the statements herein provided for shall forfeit and pay to the State of New Jersey the sum of \$100 per day for each day of such refusal or neglect, to be recovered in an action at law in the name of the State and which, when recovered, shall be paid into the State Treasury. It shall be the duty of the director to certify any such default to the Attorney General of the State who, thereupon, shall prosecute an action at law for each penalty.

f. The Director of the Division of Taxation shall audit and verify the statements filed by remitters whenever and in such respects the director shall deem necessary or advisable. The director may require any remitter to supply additional data and information in such form, manner, and detail as the director shall request, whenever the director may deem it necessary or helpful, for the proper performance of the director's duties under this act.

g. The director may, by regulation, additionally require that all filings required for the calculation and certification of assessment to be paid by remitters established pursuant to this act shall be made in an electronic form. The form and content of the electronic filing message, the circumstances under which the electronic filing message shall serve as a substitute for the

filing of another return and the means by which remitters shall be determined to be subject to this electronic filing requirement shall be prescribed by the director.

For the purpose of this act "electronic filing" or "electronic filings" means any message that is initiated through an electronic terminal, telecommunication device, or computer for the purpose of fulfilling the reporting responsibilities set forth hereinabove.

3. Section 43 of P.L.1997, c.162 (C.54:30A-107) is amended to read as follows:

C.54:30A-107 Liability for TEFA assessment.

43. a. (1) The liability for the transitional energy facility assessment made against any remitter in the first year of assessment shall be an amount equal to TEFA unit rate surcharges (excluding the provision for corporation business taxes included therein) determined in section 67 of P.L.1997, c.162 (C.48:2-21.34) multiplied by the associated therms of natural gas and kilowatthours of electricity sold or transported for sale to ultimate consumers in New Jersey in the first year plus any advances paid in the initial year pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) by that remitter.

(2) The liability for the transitional energy facility assessment made against any remitter for each year subsequent to the first year shall be an amount equal to the TEFA unit rate surcharges (excluding the provision for corporation business taxes included therein) calculated in section 67 of P.L.1997, c.162 (C.48:2-21.34) for that year multiplied by the associated therms of natural gas and kilowatthours of electricity sold or transported for sale to ultimate consumers in New Jersey in that year.

b. A credit against the liability determined pursuant to paragraph (1) of subsection a. of this section shall be taken in the first year by the remitter in the amount of all advances paid in the initial year pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.).

c. (1) Each remitter shall make an estimated payment on May 15 of the first assessment year in the amount of the base year transitional energy facility assessment.

(2) Subsequent to the first year, each remitter shall make an estimated payment on May 15 of each assessment year in which the transitional energy facility assessment is in effect, in an amount equal to the transitional energy facility assessment liability described in subsection a. of this section for the immediately preceding assessment year, excluding advances paid in the initial year pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.), reduced by the applicable reduction percentage, if any, for the current assessment year determined pursuant to paragraphs (2), (3) and (4) or paragraph (5) of subsection d. of section 67 of P.L.1997, c.162 (C.48:2-21.34) less credits described in subsection d. of this section, if any.

d. Any excess of the estimated payment made pursuant to paragraph (1) or (2) of subsection c. of this section over the liability determined pursuant to subsection a. of this section shall be treated as a credit against the estimated payment for the subsequent assessment year and reduce the amount of the estimated payment required to be made for that subsequent year. Any excess of the estimated payment made pursuant to paragraph (2) of subsection c. of this section over the liability for the final year of the transitional energy facility assessment shall be utilized as a nonrefundable credit with an unlimited carryforward against that remitter's corporation business tax liability in the subsequent privilege period year. Such credit shall be applied in full to each estimated corporation business tax payment beginning in the subsequent privilege period until fully utilized.

4. Section 67 of P.L.1997, c.162 (C.48:2-21.34) is amended to read as follows:

C.48:2-21.34 Definitions relative to 1997 tax changes; filings required; formulas; adjustments to rates.

67. a. As used in this section:

"Base rates" means the rates, including minimum bills, charged for utility commodities or service subject to the board's jurisdiction, other than the rates charged under a utility's levelized energy adjustment clause, hereinafter "LEAC," or levelized gas adjustment clause, hereinafter "LGAC," or equivalent rate provision;

"Base year" means the calendar year 1996;

"Board" means the Board of Public Utilities;

"Sales and use tax" means the sales and use tax liability computed on sales and use of energy and utility service as defined in section 2 of P.L.1966, c.30 (C.54:32B-2);

"Utility" means a public utility subject to regulation by the board pursuant to Title 48 of the Revised Statutes; and

"Utility service" means the supply, transmission, distribution or transportation of electricity, natural gas or telecommunications services or any combination of such commodities, processes or services.

b. No later than 60 days after the date this act is enacted, each electric, gas and telecommunications utility subject to the provisions of this act shall file with the board, and shall simultaneously provide copies to the Director of the Division of the Ratepayer Advocate, revised tariffs and such other supporting schedules, narrative and documentation required by this act, as set forth in this section, to reflect in the utility's rates the changes in tax liability effected pursuant to this act. No later than 90 days after the date of the utility's filing, and after determining that the filing and the rate changes provided for therein are in compliance with the provisions of this act, the board shall approve the utility's filing and associated rates for billing to the utility's customers, effective for utility service rendered on and after January 1, 1998. If the board determines that the utility's filing and the associated rate changes provided for therein are not in compliance with the provisions of this act, the board shall require the utility to amend or otherwise modify its filing to render it in compliance. The board may also permit the rates provided for in the utility's filing to be implemented on an interim basis pending the board's final determination in the event the board, in its discretion, determines that due to the filing's complexity, or for other valid reasons, including but not limited to the enactment of this act after June 30, 1997, additional time is needed for the board to complete its review of the filing. If the rates approved by the board upon its final determination are less than the rates implemented on an interim basis, the difference shall be refunded to the utility's customers with interest computed in accordance with N.J.A.C.14:3-7.5(c). The rate adjustments implemented pursuant to this act shall not constitute a fixing of rates pursuant to R.S.48:2-21 and shall not be subject to the hearing requirements set forth in that section.

c. As of the effective date of the rate changes implemented pursuant to this act, and except for rates applicable to sales that were or are currently exempt from the unit-based energy taxes formerly imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) and rates applicable to sales to which section 59 of P.L.1997, c.162 (C.48:2-21.31) applies, the board shall remove from the base rates of each electric public utility and gas public utility the unit tax rates included therein for the recovery of those unit-based energy taxes, and include therein provision for the recovery of corporation business tax imposed pursuant to P.L.1945, c.162 (C.54:10A-1 et seq.), and additionally shall authorize the collection of the sales and use tax imposed pursuant to P.L.1966, c.30 (C.54:32B-1 et seq.), as follows:

(1) The base rates of each gas and electric utility shall be reduced by the amount of the unit-based energy taxes per kilowatthour or per therm included therein.

(2) The provision for corporation business tax initially included in the base rates of each gas and electric utility shall be based on the utility's after-tax net income earned in the base year as booked, unless the board determines, in its discretion, that such income as booked is unusually high or low or otherwise unrepresentative of the utility's prospective net income, in which case the utility's base year net income shall be adjusted as determined by the board.

To permit the board to make this determination, in addition to including in its filing schedules showing its net income earned in the base year as booked, the utility shall include adjustments to such booked income to eliminate the effect of revenues, expenses and extraordinary or other charges that are non-recurring, atypical, or both, including, but not limited to an adjustment to eliminate the effect of unusually hot or cold weather, and that would otherwise make the utility's base year net income unusually high or low or otherwise unrepresentative of the utility's prospective net income. If the adjustment is being made to eliminate the effect of unusually hot or cold weather, associated revenue and expense adjustments shall also be made. Subject to the board's approval, such adjusted income shall be the basis for the calculation of the initial

provision for corporation business tax to be included in the utility's base rates.

The utility shall also include a calculation of its rate of return on common equity achieved in the base year, both as booked and as adjusted in accordance with the foregoing. The calculation shall be made employing the methodology set forth in N.J.A.C.14:12-4.2(b)1, and shall separately show the effect of reflecting adjustments to the calculation, if any, that may have been employed historically in establishing the utility's rate of return on common equity allowed for ratemaking purposes. The utility's filing shall also include copies of its audited financial statements for the base year and associated quarterly and other reports filed with the Securities and Exchange Commission.

To reflect the provision for corporation business tax in base rates, the demand charges, or charges per kilowatt, decatherm or million cubic feet; the energy charges, or charges per kilowatthour or per therm; and the customer charges, or charges other than demand and energy charges, set forth in each base rate schedule, and the floor price employed in parity rate schedules, included in the utility's tariff filed with and approved by the board shall be increased by amounts determined by multiplying such charges by the adjustment factor, "A e, g" derived below:

$$\frac{A e, g = (I e, g) \times [Rs / (1 - Re)]}{(Br e, g)}$$

where:

"A e, g" means the adjustment factor applicable to electric base rates (e), gas base rates (g), or both, other than rates applicable to sales that were exempt from unit-based energy taxes formerly imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) or to which section 59 of P.L.1997, c.162 (C.48:2-21.31) applies;

"I e, g" means the utility's base year after-tax net income from electric or gas sales, or both, and transportation service subject to the board's jurisdiction and other operating revenue if such revenue is reflected in the utility's cost of service for ratemaking purposes, adjusted as approved by the board;

"Br e, g" means the utility's base year revenue from base rates applicable to electric or gas sales, or both, and transportation service subject to the board's jurisdiction, but excluding sales that were exempt from unit-based energy taxes formerly imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) or to which section 59 of P.L.1997, c.162 (C.48:2-21.31) applies;

"Rs" means the corporation business tax rate, expressed as a decimal;

"Rf" means the applicable federal corporation income tax rate expressed as a decimal; and

"Re" equals $Rs + Rf(1 - Rs)$.

The utility shall account for the changes in tax liability provided for by this act effective January 1, 1998. Such accounting shall include the recording on the utility's income statement and balance sheet of deferred corporation business tax defined, for book accounting purposes, as differences in corporation business tax expense arising from timing differences in the recognition of revenue and expenses for book and tax purposes.

(3) When billed to the utility's customers, the adjusted base rate charges determined pursuant to paragraphs (1), (2), and (4) of this subsection, and the charges determined pursuant to the utility's levelized energy adjustment clause, levelized gas adjustment clause, or both, as determined both upon the effective date of the rate changes authorized by this act and as revised prospectively in accordance with the utility's tariff filed with and approved by the board, and the transitional energy facility assessment unit rate surcharges, hereinafter, "TEFA unit rate surcharges," determined in accordance with subsection d. of this section, shall be increased by an amount determined by multiplying such charges by the sales and use tax rate imposed under P.L.1966, c.30 (C.54:32B-1 et seq.). In addition to the utility's rates for service included in its tariff, for informational purposes the tariff shall include such rates after application of the sales and use tax authorized by this section.

(4) The utility's filing with the board to implement the rate changes provided for by

this act shall include an analysis, description, and quantification of the effect of the changes in rates and tax payments implemented pursuant to this act on the utility's requirement for cash working capital, and if such requirement is less than the cash working capital allowed for the collection and payment of unit-based energy taxes formerly imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) in determining the utility's base rates in effect prior to the rate changes implemented pursuant to this act, and to the extent the working capital reduction is not offset by a reduction in net deferred taxes as provided for below, such base rates shall be reduced by the reduction in the utility's revenue requirement associated with the remaining reduction in the working capital requirement not so offset, if any. The reduction in working capital shall be determined by using the same methodology employed in establishing the working capital allowance related to unit-based energy taxes reflected in the utility's base rates in effect prior to the rate changes implemented pursuant to this act. The reduction in the utility's revenue requirement associated with the reduced working capital requirement shall be calculated using the utility's last overall rate of return allowed by the board, including provision for federal income taxes and the corporation business tax implemented pursuant to this act payable on the equity portion of the return, and shall be implemented on the effective date of the rate changes provided for, and in the manner set forth in paragraph (2) of this subsection.

If the utility's requirement for cash working capital is increased as a result of the changes in rates and tax payments implemented pursuant to this act, the utility may accrue carrying costs, calculated at its last overall rate of return allowed by the board and applied on a simple annual interest basis without compounding, on the increased working capital requirement and request recovery of such carrying costs in a rate proceeding before the board.

The working capital-related base rate changes and carrying cost accruals shall be subject to the board's approval, and shall not be included in the determination of the TEFA unit tax surcharges provided for in subsection d. of this section.

The utility's filing with the board to implement the rate changes provided for by this act shall also include an analysis, description and quantification of net deferred taxes. For the purposes of this section, "net deferred taxes" means deferred corporation business taxes, net of federal deferred income taxes, associated with the tax and rate changes implemented pursuant to this act, including deferred corporation business tax recorded in accordance with section 4 of P.L.1945, c.162 (C.54:10A-4), projected for the calendar year in which this act takes effect and for each year of the tax life of the asset giving rise to the deferred corporation business taxes pursuant to section 4 of P.L.1945, c.162 (C.54:10A-4).

If the change in such net deferred taxes projected for the calendar year in which the rate changes implemented pursuant to this act takes effect is negative and if the utility's requirement for working capital is reduced as a result of the changes in rates and tax payments implemented pursuant to this act, the working capital-related rate reduction that otherwise would have been implemented pursuant to this subsection shall be treated as set forth in subparagraph (a) or (b) of this paragraph. For the purposes of this act, a change in net deferred taxes is considered negative when it reduces an existing deferred tax liability or creates a deferred tax asset on the utility's balance sheet. An appropriate rate adjustment for the working capital impacts of this act, reflecting all relevant facts and circumstances at the time of the adjustment, shall be made in the year when the earlier of the following events occur:

(a) The year in which the reduction in carrying costs assumed for the rate reduction for working capital that would have been made but for this paragraph is no longer required to offset, on a present value basis, the annual carrying costs calculated on the accumulated balance of negative net deferred taxes projected to be recorded by the utility, its successors and assigns, over the tax life of the single asset account giving rise to such net deferred taxes pursuant to section 4 of P.L.1945, c.162 (C.54:10A-4). For the purposes of this subparagraph (a):

(i) Carrying costs and present values are to be computed using the weighted average after-tax rate of return approved by the board in the utility's last base rate proceeding.

(ii) The accumulated balance of such negative net deferred taxes shall include net deferred taxes associated with all assets and liabilities originally placed in service by the utility and held by the utility or a company affiliated with the utility regardless of whether or not such assets continue to be subject to regulation by the New Jersey Board of Public Utilities.

(b) The year in which both an appropriate working capital adjustment and the accumulated balance of negative deferred taxes, as described in (ii) of subparagraph (a) of this paragraph (4), are reflected in the utility's rate base in a rate proceeding before the board. It is the intent of this section to fully compensate utilities on a present value basis, for the carrying costs associated with negative net deferred taxes arising as a result of this act, and to remit to ratepayers any credit due them as a result of any overcompensation as may have occurred due to the treatment of working capital and deferred taxes as set forth herein or in subparagraph (a) of this paragraph (4). At the time the above base rate adjustment is made, an analysis shall be made to determine if such carrying costs have been or will be fully recovered pursuant to the intent of this provision and any additional credit or charge to ratepayers to adjust for ratepayer overpayments or underpayments, if any shall be addressed.

If the change in net deferred taxes is positive, the increase shall be added to, or increase, the reduction in the utility's requirement for working capital if the requirement is reduced as a result of the rate and tax payment changes implemented pursuant to this act, or subtracted from the working capital requirement if it is increased, and the resultant net working capital requirement shall be reflected in rates or accrue carrying costs in the same manner as prescribed for changes in the utility's requirement for working capital above.

The deferred tax-related rate changes or carrying cost accruals shall be subject to the board's approval and shall not be included in the determination of the TEFA unit rate surcharges provided for in subsection d. of this section.

d. (1) Electric and gas utilities shall file, for the board's review and approval, initial TEFA unit rate surcharges determined by deducting from each unit-based energy tax unit tax rate effective January 1, 1997 the following: (a) An amount per kilowatthour or per therm determined by multiplying the total revenue received in the base year from sales to which that unit tax rate would have been applicable by the factor $R_u/(1 + R_u)$, where R_u is the sales and use tax rate imposed under P.L.1966, c.30 (C.54:32B-1 et seq.) expressed as a decimal, and dividing the result by the kilowatthours or therms billed in that unit tax rate class in the base year; and (b) An amount per kilowatthour or per therm determined by dividing the revenue that would have been received in the base year from the inclusion, in the manner prescribed in paragraph (2) of subsection c. of this section, of the corporation business tax in the rates applicable to sales billed in that unit tax rate class by the kilowatthours or therms billed in that rate class. In each case, the determination shall reflect the effect of adjustments that affect the level of sales and revenue, if any, as provided in subsection c. of this section. Of the resultant rate per kilowatthour or per therm, the portion for recovery of the utility's transitional energy facilities assessment liability shall be determined by multiplying such rate by the factor $(1 - R_s)$, where R_s is the corporation business tax rate expressed as a decimal. The TEFA unit rate surcharges shall constitute non-bypassable wires and/or mains charges of the utility, and shall be applied to all sales within the customer classes to which they apply, regardless of whether such customers are purchasing bundled or unbundled services from the utility, but shall not be applied to sales that were or are currently exempt from unit-based energy taxes formerly imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) or to which section 59 of P.L.1997, c.162 (C.48:2-21.31) applies.

If, following the effective date of this act, a customer taking bundled service from the utility shall elect to obtain its requirements from another supplier and take transportation or wheeling service from the utility, the TEFA unit rate surcharge applicable to the bundled service shall continue to apply to the transportation or wheeling service. The TEFA components of the unit rate surcharges determined pursuant to this subsection (the components of the surcharges remaining after deducting the provision for corporation business tax included therein) shall be used to determine the transitional energy facility assessment liability pursuant to sections 36 through 49 of P.L.1997, c.162 (C.54:30A-100 through C.54:30A-113).

(2) Unless reduced pursuant to paragraphs (3) and (4) of this subsection, the initial TEFA unit rate surcharges are to be reduced annually on January 1, 1999 through January 1, 2001 by the following percentages:

January 1, 1999, 20%

January 1, 2000, 40%
 January 1, 2001, 60%

(3) For each year beginning with calendar year 1998 and ending with calendar year 2001, the TEFA surcharge adjustment shall be determined as the difference between:

(a) The sum of the estimated, or actual when known, (i) TEFA liabilities, as defined in section 43 of P.L.1997, c.162 (C.54:30A-107), and sales and use taxes collected and corporation business taxes booked for the year 1998 by the gas and electric utilities and other entities subject to the TEFA provisions of this act (the year 1998 liability), and (ii) the TEFA liabilities of those utilities and entities in all years following the year 1998 through the year in which a determination is being made pursuant to this subsection (the determination year); and

(b) The sum of (i) the total of each remitter's base year liability, as defined in section 37 of P.L.1997, c.162 (C.54:30A-101), and (ii) the cumulative TEFA obligation, defined as the sum through the determination year of the amounts calculated by multiplying, for the applicable year, the percentage in the second column of the following table:

Determination Year	% of Year 1998 TEFA
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1999	80%
2000	60%

by the Year 1998 TEFA,

where the Year 1998 TEFA is calculated as the total of each remitter's base year liability less the sales and use taxes collected and the corporation business taxes booked for the privilege period ending in calendar year 1998 by the gas and electric utilities and other entities subject to the TEFA provisions of this act. For purposes of this subsection, the amounts assumed for the determination year, including the year 1998 liability when first determined for the purposes of this subsection, shall be estimates based on nine months of actual data through and including the month of September, and three months of data forecast for the months of October through December.

(4) If the TEFA surcharge adjustment determined for the determination year is positive (that is, if the amount determined pursuant to subparagraph (a) of paragraph (3) of this subsection is greater than the amount determined pursuant to subparagraph (b) of paragraph (3) of this subsection), no reduction shall be made in the reduction in the TEFA unit rate surcharges provided for in paragraph (2) of this subsection for the year following the determination year. If the TEFA surcharge adjustment is negative, the reduction in the TEFA unit rate surcharges that otherwise would have been implemented on January 1 of the year following the determination year pursuant to paragraph (2) of this subsection shall be reduced by an amount (by percentage points) equal to the percentage the TEFA surcharge adjustment is of the total of the base year transitional energy facility assessment of all remitters, as defined in section 37 of P.L.1997, c.162 (C.54:30A-101), provided however, that such reduction in the reduction in the TEFA unit rate surcharges shall not exceed the percentage shown in paragraph (2) of this subsection for that year; and provided further that in the first two years, that such reduction shall not exceed 10 percentage points for each year.

(5) (a) The TEFA unit rate surcharges for calendar years 2002 through 2004 shall be the same as the TEFA unit rate surcharges in effect for calendar year 2001.

(b) The TEFA unit rate surcharges in effect for calendar year 2004 shall be reduced annually on January 1, 2005 through January 1, 2006 by the following percentages:

January 1, 2005	33%
January 1, 2006	67%

e. The utility's filing with the board to implement the rate changes provided for by this act shall include proof of revenue schedules that show for each rate schedule included in the utility's tariff, aggregated by unit-based energy tax unit tax classes, the number of customers billed under the rate schedule, the billing determinants of such customers (i.e. the kilowatts of billing demand and kilowatthours of electric energy consumed, and the million cubic feet/decatherm subject to gas capacity-related charges and decatherm of gas consumed) and the associated revenue, both as booked in the base year and on a pro forma basis reflecting the rate changes implemented pursuant to this act. The proof of revenue shall additionally show the amount of unit-based energy taxes included in the base year revenue as booked, the unit-based energy taxes that would have been collected at the unit-based energy tax unit tax rates effective January 1, 1997, if different, as well as the corporation business tax, sales and use tax and transitional energy facility assessment revenue that would have been collected or received on a pro forma basis if the rates implemented pursuant to this act had been in effect in the base year.

f. The board may, in its discretion, permit the rate changes provided for this act to be implemented as part of a pending base rate case or other proceeding in which the utility's rates are to be changed, provided that the effective date of the changes is not delayed beyond the date on which the changes would have been implemented under subsection c. of this section. The board may also, pursuant to its powers provided by law, permit or require further modifications in the implementation of this section to address unforeseen consequences arising out of the implementation of this act.

g. Customers of the utility who are exempt from the sales and use tax imposed on sales of gas and/or electricity or as a result of rate changes occurring prior to the effective date of this act or for other valid reasons are due a refund of sales or use tax inadvertently imposed on such customers as a result of implementing the rate changes provided for by this act shall file with the State Treasurer to obtain such refunds. The State Treasurer shall promptly notify the utility of customers granted refunds under this provision in order to prevent additional collections of the sales and use tax from such customers.

h. Public utilities providing telecommunications service regulated by the board shall file for the board's review and approval revised tariffs that eliminate from the rates applicable to such service the excise tax liability included therein pursuant to P.L.1940, c.4 (C.54:30A-16 et seq.), and shall include therein the corporation business tax calculated using the methodology used in calculating the adjustment factor set forth in paragraph (2) of subsection c. of this section. Subsection d. of this section shall not apply to telecommunication utilities, and telecommunication utilities subject to a plan of regulation other than rate base/rate of return shall additionally not be required to file the rate of return information required by paragraph (2) of subsection c. Such utilities shall, however, include a narrative and/or other documentation as required by the board to support the reasonableness of the after-tax income, which may be adjusted to eliminate the effect of non-recurring or other atypical events, on which the corporate business tax inclusion in rates is based. Telecommunications utilities shall comply with all other applicable provisions of this section.

i. (1) The board shall not adjust the rates of a public utility, as provided in subsections c. and d. of this section, for a purchase by a cogenerator of natural gas and the transportation of that gas, that is exempt from sales and use tax pursuant to paragraph (2) of subsection b. of section 26 of P.L.1997, c.162 (C.54:32B-8.46). The board shall not allocate, in any future rate case, any sales and use tax, corporation business tax, or transitional energy facility assessment to rates for this purpose.

(2) The board shall adjust the rates, as provided in subsection c. of this section, for a purchase by a cogenerator of any quantity of natural gas and the transportation of that gas that is not exempt from sales and use tax pursuant to paragraph (2) of subsection b. of section 26 of P.L.1997, c.162 (C.54:32B-8.46).

(3) For the purposes of this section, "cogenerator" means a person or business entity that owns or operates a cogeneration facility in the State of New Jersey, which facility is a plant, installation or other structure whose primary purpose is the sequential production of electricity

and steam or other forms of useful energy which are used for industrial, commercial, heating or cooling purposes, and which is designated by the Federal Energy Regulatory Commission, or its successor, as a "qualifying facility" pursuant to the provisions of the "Public Utility Regulatory Policies Act of 1978," Pub.L.95-617.

5. This act shall take effect immediately and be retroactive to January 1, 2002.

Approved January 8, 2002.