

54:30A-102

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2004 **CHAPTER:** 43
NJSA: 54:30A-102 (Transitional facility unit rate surcharges)
BILL NO: A3102 (Substituted for S1654)

SPONSOR(S) Caraballo

DATE INTRODUCED: June 14, 2004

COMMITTEE: **ASSEMBLY:** Budget

SENATE: ---

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: **ASSEMBLY:** June 24, 2004

SENATE: June 24, 2004

DATE OF APPROVAL: June 29, 2004

FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) (Original version of bill enacted)

A3102

[SPONSOR'S STATEMENT:](#) (Begins on page 12 of original bill) [Yes](#)

COMMITTEE STATEMENT: [ASSEMBLY:](#) [Yes](#)

SENATE: No

FLOOR AMENDMENT STATEMENT: No

[LEGISLATIVE FISCAL ESTIMATE:](#) [Yes](#)

S1654

[SPONSOR'S STATEMENT:](#) (Begins on page 12 of original bill) [Yes](#)

Bill and Sponsors Statement identical to A3102

COMMITTEE STATEMENT: **ASSEMBLY:** No

[SENATE:](#) [Yes](#)
Identical to Assembly Statement to A3102

FLOOR AMENDMENT STATEMENT: No

[LEGISLATIVE FISCAL ESTIMATE:](#) [Yes](#)
Identical to fiscal estimate for A3102

VETO MESSAGE: No

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No

P.L. 2004, CHAPTER 43, *approved June 29, 2004*
Assembly, No. 3102

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, **[2006]** 2010.
14 (cf: P.L.2001, c.433, s.1)

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

18 67. a. As used in this section:

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

24 "Base year" means the calendar year 1996;

25 "Board" means the Board of Public Utilities;

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

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

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

35 b. No later than 60 days after the date this act is enacted, each
36 electric, gas and telecommunications utility subject to the provisions
37 of this act shall file with the board, and shall simultaneously provide
38 copies to the Director of the Division of the Ratepayer Advocate,
39 revised tariffs and such other supporting schedules, narrative and
40 documentation required by this act, as set forth in this section, to
41 reflect in the utility's rates the changes in tax liability effected pursuant

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 to this act. No later than 90 days after the date of the utility's filing,
2 and after determining that the filing and the rate changes provided for
3 therein are in compliance with the provisions of this act, the board
4 shall approve the utility's filing and associated rates for billing to the
5 utility's customers, effective for utility service rendered on and after
6 January 1, 1998. If the board determines that the utility's filing and the
7 associated rate changes provided for therein are not in compliance
8 with the provisions of this act, the board shall require the utility to
9 amend or otherwise modify its filing to render it in compliance. The
10 board may also permit the rates provided for in the utility's filing to be
11 implemented on an interim basis pending the board's final
12 determination in the event the board, in its discretion, determines that
13 due to the filing's complexity, or for other valid reasons, including but
14 not limited to the enactment of this act after June 30, 1997, additional
15 time is needed for the board to complete its review of the filing. If the
16 rates approved by the board upon its final determination are less than
17 the rates implemented on an interim basis, the difference shall be
18 refunded to the utility's customers with interest computed in
19 accordance with N.J.A.C.14:3-7.5(c). The rate adjustments
20 implemented pursuant to this act shall not constitute a fixing of rates
21 pursuant to R.S.48:2-21 and shall not be subject to the hearing
22 requirements set forth in that section.

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

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

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

45 To permit the board to make this determination, in addition to
46 including in its filing schedules showing its net income earned in the

1 base year as booked, the utility shall include adjustments to such
 2 booked income to eliminate the effect of revenues, expenses and
 3 extraordinary or other charges that are non-recurring, atypical, or
 4 both, including, but not limited to an adjustment to eliminate the effect
 5 of unusually hot or cold weather, and that would otherwise make the
 6 utility's base year net income unusually high or low or otherwise
 7 unrepresentative of the utility's prospective net income. If the
 8 adjustment is being made to eliminate the effect of unusually hot or
 9 cold weather, associated revenue and expense adjustments shall also
 10 be made. Subject to the board's approval, such adjusted income shall
 11 be the basis for the calculation of the initial provision for corporation
 12 business tax to be included in the utility's base rates.

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

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

32

$$33 \quad A_{e, g} = \frac{(I_{e, g}) \times [R_s / (1 - R_e)]}{(B_{e, g})}$$

34

$$35 \quad (B_{e, g})$$

36

37 where:

38

39 "A e, g" means the adjustment factor applicable to electric base
 40 rates (e), gas base rates (g), or both, other than rates applicable to
 41 sales that were exempt from unit-based energy taxes formerly imposed
 42 pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) or to which section
 43 59 of P.L.1997, c.162 (C.48:2-21.31) applies;

44 "I e, g" means the utility's base year after-tax net income from
 45 electric or gas sales, or both, and transportation service subject to the
 46 board's jurisdiction and other operating revenue if such revenue is

1 reflected in the utility's cost of service for ratemaking purposes,
2 adjusted as approved by the board;

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

9

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

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

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

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

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

37 (4) The utility's filing with the board to implement the rate changes
38 provided for by this act shall include an analysis, description, and
39 quantification of the effect of the changes in rates and tax payments
40 implemented pursuant to this act on the utility's requirement for cash
41 working capital, and if such requirement is less than the cash working
42 capital allowed for the collection and payment of unit-based energy
43 taxes formerly imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et
44 seq.) in determining the utility's base rates in effect prior to the rate
45 changes implemented pursuant to this act, and to the extent the
46 working capital reduction is not offset by a reduction in net deferred

1 taxes as provided for below, such base rates shall be reduced by the
2 reduction in the utility's revenue requirement associated with the
3 remaining reduction in the working capital requirement not so offset,
4 if any. The reduction in working capital shall be determined by using
5 the same methodology employed in establishing the working capital
6 allowance related to unit-based energy taxes reflected in the utility's
7 base rates in effect prior to the rate changes implemented pursuant to
8 this act. The reduction in the utility's revenue requirement associated
9 with the reduced working capital requirement shall be calculated using
10 the utility's last overall rate of return allowed by the board, including
11 provision for federal income taxes and the corporation business tax
12 implemented pursuant to this act payable on the equity portion of the
13 return, and shall be implemented on the effective date of the rate
14 changes provided for, and in the manner set forth in paragraph (2) of
15 this subsection.

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

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

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

38 If the change in such net deferred taxes projected for the calendar
39 year in which the rate changes implemented pursuant to this act takes
40 effect is negative and if the utility's requirement for working capital is
41 reduced as a result of the changes in rates and tax payments
42 implemented pursuant to this act, the working capital-related rate
43 reduction that otherwise would have been implemented pursuant to
44 this subsection shall be treated as set forth in subparagraph (a) or (b)
45 of this paragraph. For the purposes of this act, a change in net
46 deferred taxes is considered negative when it reduces an existing

1 deferred tax liability or creates a deferred tax asset on the utility's
2 balance sheet. An appropriate rate adjustment for the working capital
3 impacts of this act, reflecting all relevant facts and circumstances at
4 the time of the adjustment, shall be made in the year when the earlier
5 of the following events occur:

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

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

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

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

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

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

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

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

45 (2) Unless reduced pursuant to paragraphs (3) and (4) of this
46 subsection, the initial TEFA unit rate surcharges are to be reduced

1 annually on January 1, 1999 through January 1, 2001 by the following
2 percentages:

3		
4	January 1, 1999,	20%
5	January 1, 2000,	40%
6	January 1, 2001,	60%
7		

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

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

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

26		
27	Determination Year	% of
28		Year 1998
29		TEFA
30	-----	
31	1999	80%
32	2000	60%
33		

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] 2006 shall be the same as the TEFA unit rate
 21 surcharges in effect for calendar year 2001.

22 (b) The TEFA unit rate surcharges in effect for calendar year
 23 [2004] 2006 shall be reduced annually on January 1, [2005] 2007
 24 through January 1, [2006] 2010 by the following percentages:

25		
26	[January 1, 2005	33%
27	January 1, 2006	67%]
28	<u>January 1, 2007</u>	<u>20%</u>
29	<u>January 1, 2008</u>	<u>40%</u>
30	<u>January 1, 2009</u>	<u>60%</u>
31	<u>January 1, 2010</u>	<u>80%</u>
32		

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

1 different, as well as the corporation business tax, sales and use tax and
2 transitional energy facility assessment revenue that would have been
3 collected or received on a pro forma basis if the rates implemented
4 pursuant to this act had been in effect in the base year.

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

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

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

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

1 not allocate, in any future rate case, any sales and use tax, corporation
2 business tax, or transitional energy facility assessment to rates for this
3 purpose.

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

9 (3) For the purposes of this section, "cogenerator" means a person
10 or business entity that owns or operates a cogeneration facility in the
11 State of New Jersey, which facility is a plant, installation or other
12 structure whose primary purpose is the sequential production of
13 electricity and steam or other forms of useful energy which are used
14 for industrial, commercial, heating or cooling purposes, and which is
15 designated by the Federal Energy Regulatory Commission, or its
16 successor, as a "qualifying facility" pursuant to the provisions of the
17 "Public Utility Regulatory Policies Act of 1978," Pub.L.95-617.
18 (cf: P.L.2001, c.433, s.4)

19

20 3. This act shall take effect immediately.

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23

STATEMENT

24

25 This bill will freeze transitional energy facility assessment (TEFA)
26 unit rate surcharges at calendar year 2004 rates for two years, and
27 then reduce those unit rate surcharges over a four year period from
28 calendar years 2007 through 2010. After December 31, 2010 the
29 TEFA assessments will be eliminated to comport with the original
30 planned phase-out of the tax as had been proposed in the 1997 energy
31 tax reform law.

32 TEFA was established in 1997 when the taxation of utilities was
33 shifted from a gross receipts tax to a combination of the corporation
34 business tax and the sales and use tax. The TEFA was established as
35 a transitional mechanism to phase in over several years the net
36 reduction in tax revenue from utilities. The original phase in schedule
37 was extended by legislation in 2001. Under that schedule the TEFA
38 revenue would be reduced from \$244 million in FY 2004 to \$157
39 million in FY 2005.

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43

44 Changes the phase-out schedule of the transitional energy facility
45 assessment unit rate surcharges.

ASSEMBLY, No. 3102

STATE OF NEW JERSEY

211th LEGISLATURE

INTRODUCED JUNE 14, 2004

Sponsored by:

Assemblyman WILFREDO CARABALLO

District 29 (Essex and Union)

Co-Sponsored by:

Senator Lesniak

SYNOPSIS

Changes the phase-out schedule of the transitional energy facility assessment unit rate surcharges.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/25/2004)

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2

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, **[2006]** 2010.
14 (cf: P.L.2001, c.433, s.1)

15

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

18 67. a. As used in this section:

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

24 "Base year" means the calendar year 1996;

25 "Board" means the Board of Public Utilities;

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

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

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

35 b. No later than 60 days after the date this act is enacted, each
36 electric, gas and telecommunications utility subject to the provisions
37 of this act shall file with the board, and shall simultaneously provide
38 copies to the Director of the Division of the Ratepayer Advocate,
39 revised tariffs and such other supporting schedules, narrative and
40 documentation required by this act, as set forth in this section, to
41 reflect in the utility's rates the changes in tax liability effected pursuant
42 to this act. No later than 90 days after the date of the utility's filing,
43 and after determining that the filing and the rate changes provided for

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 therein are in compliance with the provisions of this act, the board
2 shall approve the utility's filing and associated rates for billing to the
3 utility's customers, effective for utility service rendered on and after
4 January 1, 1998. If the board determines that the utility's filing and the
5 associated rate changes provided for therein are not in compliance
6 with the provisions of this act, the board shall require the utility to
7 amend or otherwise modify its filing to render it in compliance. The
8 board may also permit the rates provided for in the utility's filing to be
9 implemented on an interim basis pending the board's final
10 determination in the event the board, in its discretion, determines that
11 due to the filing's complexity, or for other valid reasons, including but
12 not limited to the enactment of this act after June 30, 1997, additional
13 time is needed for the board to complete its review of the filing. If the
14 rates approved by the board upon its final determination are less than
15 the rates implemented on an interim basis, the difference shall be
16 refunded to the utility's customers with interest computed in
17 accordance with N.J.A.C.14:3-7.5(c). The rate adjustments
18 implemented pursuant to this act shall not constitute a fixing of rates
19 pursuant to R.S.48:2-21 and shall not be subject to the hearing
20 requirements set forth in that section.

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

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

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

43 To permit the board to make this determination, in addition to
44 including in its filing schedules showing its net income earned in the
45 base year as booked, the utility shall include adjustments to such
46 booked income to eliminate the effect of revenues, expenses and

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1 extraordinary or other charges that are non-recurring, atypical, or
2 both, including, but not limited to an adjustment to eliminate the effect
3 of unusually hot or cold weather, and that would otherwise make the
4 utility's base year net income unusually high or low or otherwise
5 unrepresentative of the utility's prospective net income. If the
6 adjustment is being made to eliminate the effect of unusually hot or
7 cold weather, associated revenue and expense adjustments shall also
8 be made. Subject to the board's approval, such adjusted income shall
9 be the basis for the calculation of the initial provision for corporation
10 business tax to be included in the utility's base rates.

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

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

30

31
$$A e, g = \frac{(I e, g) \times [Rs/(1-Re)]}{(Br e,g)}$$

34

35 where:

36

37 "A e, g" means the adjustment factor applicable to electric base
38 rates (e), gas base rates (g), or both, other than rates applicable to
39 sales that were exempt from unit-based energy taxes formerly imposed
40 pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) or to which section
41 59 of P.L.1997, c.162 (C.48:2-21.31) applies;

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

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

7

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

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

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

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

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

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

1 remaining reduction in the working capital requirement not so offset,
2 if any. The reduction in working capital shall be determined by using
3 the same methodology employed in establishing the working capital
4 allowance related to unit-based energy taxes reflected in the utility's
5 base rates in effect prior to the rate changes implemented pursuant to
6 this act. The reduction in the utility's revenue requirement associated
7 with the reduced working capital requirement shall be calculated using
8 the utility's last overall rate of return allowed by the board, including
9 provision for federal income taxes and the corporation business tax
10 implemented pursuant to this act payable on the equity portion of the
11 return, and shall be implemented on the effective date of the rate
12 changes provided for, and in the manner set forth in paragraph (2) of
13 this subsection.

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

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

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

36 If the change in such net deferred taxes projected for the calendar
37 year in which the rate changes implemented pursuant to this act takes
38 effect is negative and if the utility's requirement for working capital is
39 reduced as a result of the changes in rates and tax payments
40 implemented pursuant to this act, the working capital-related rate
41 reduction that otherwise would have been implemented pursuant to
42 this subsection shall be treated as set forth in subparagraph (a) or (b)
43 of this paragraph. For the purposes of this act, a change in net
44 deferred taxes is considered negative when it reduces an existing
45 deferred tax liability or creates a deferred tax asset on the utility's
46 balance sheet. An appropriate rate adjustment for the working capital

1 impacts of this act, reflecting all relevant facts and circumstances at
2 the time of the adjustment, shall be made in the year when the earlier
3 of the following events occur:

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

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

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

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

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

45 The deferred tax-related rate changes or carrying cost accruals shall
46 be subject to the board's approval and shall not be included in the

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1 determination of the TEFA unit rate surcharges provided for in
2 subsection d. of this section.

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

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

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

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1	January 1, 1999,	20%
2	January 1, 2000,	40%
3	January 1, 2001,	60%

4
5 (3) For each year beginning with calendar year 1998 and ending
6 with calendar year 2001, the TEFA surcharge adjustment shall be
7 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:

23		
24	Determination Year	% of
25		Year 1998
26		TEFA
27	-----	-----
28	1999	80%
29	2000	60%

30
31 by the Year 1998 TEFA,

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

43 (4) If the TEFA surcharge adjustment determined for the
44 determination year is positive (that is, if the amount determined
45 pursuant to subparagraph (a) of paragraph (3) of this subsection is
46 greater than the amount determined pursuant to subparagraph (b) of

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

16 (5) (a) The TEFA unit rate surcharges for calendar years 2002
 17 through ~~[2004]~~ 2006 shall be the same as the TEFA unit rate
 18 surcharges in effect for calendar year 2001.

19 (b) The TEFA unit rate surcharges in effect for calendar year
 20 ~~[2004]~~ 2006 shall be reduced annually on January 1, ~~[2005]~~ 2007
 21 through January 1, ~~[2006]~~ 2010 by the following percentages:

22		
23	[January 1, 2005	33%
24	January 1, 2006	67%]
25	<u>January 1, 2007</u>	<u>20%</u>
26	<u>January 1, 2008</u>	<u>40%</u>
27	<u>January 1, 2009</u>	<u>60%</u>
28	<u>January 1, 2010</u>	<u>80%</u>
29		

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/deca-therm 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.2001, c.433, s.4)

16

17 3. This act shall take effect immediately.

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STATEMENT

21

22 This bill will freeze transitional energy facility assessment (TEFA)
23 unit rate surcharges at calendar year 2004 rates for two years, and
24 then reduce those unit rate surcharges over a four year period from
25 calendar years 2007 through 2010. After December 31, 2010 the
26 TEFA assessments will be eliminated to comport with the original
27 planned phase-out of the tax as had been proposed in the 1997 energy
28 tax reform law.

29 TEFA was established in 1997 when the taxation of utilities was
30 shifted from a gross receipts tax to a combination of the corporation
31 business tax and the sales and use tax. The TEFA was established as
32 a transitional mechanism to phase in over several years the net
33 reduction in tax revenue from utilities. The original phase in schedule
34 was extended by legislation in 2001. Under that schedule the TEFA
35 revenue would be reduced from \$244 million in FY 2004 to \$157
36 million in FY 2005.

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3102

STATE OF NEW JERSEY

DATED: JUNE 15, 2004

The Assembly Budget Committee reports favorably Assembly Bill No. 3102.

Assembly Bill No. 3102 freezes transitional energy facility assessment (TEFA) unit rate surcharges at calendar year 2004 rates for two years, and then reduces those unit rate surcharges over a four year period from calendar years 2007 through 2010. After December 31, 2010, the TEFA assessments are eliminated to comport with the original planned phase-out of the tax as had been proposed in the 1997 energy tax reform law.

TEFA was established in 1997, when the taxation of utilities was shifted from a gross receipts tax to a combination of the corporation business tax and the sales and use tax. TEFA was established as a transitional mechanism to phase in over several years the net reduction in tax revenue from utilities. The original phase in schedule was extended by legislation in 2001. Under that schedule, the TEFA revenue is reduced from \$244 million in FY 2004 to \$158 million in FY 2005.

FISCAL IMPACT

The Office of Legislative Services projects the following impact from the enactment of this bill:

TEFA Revenue (\$ millions)			
	Current Law	A3102	Impact
FY05	158	235	77
FY06	79	235	156
FY07	0	188	188
FY08	0	141	141
FY09	0	94	94
FY10	0	47	47

As TEFA is a unit rate surcharge, actual TEFA revenues will depend on the rate and the quantity of energy purchased during a year.

LEGISLATIVE FISCAL ESTIMATE
ASSEMBLY, No. 3102
STATE OF NEW JERSEY
211th LEGISLATURE

DATED: JUNE 30, 2004

SUMMARY

Synopsis: Changes the phase-out schedule of the transitional energy facility assessment unit rate surcharges.

Type of Impact: Increase State Revenue

Agencies Affected: Department of the Treasury

Office of Legislative Services Estimate

Fiscal Impact	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>
State Revenue	\$77 million	\$156 million	\$188 million

- ! The Department of the Treasury has indicated, in various budget documents, that the TEFA should raise \$235 million in Fiscal Year 2005 under a freeze of the unit rate surcharges, \$77 million more than under current law.
- ! The Office of Legislative Services (OLS) concurs with the Executive estimate of the fiscal impact in Fiscal Year 2005. In addition, the OLS notes the State will continue to receive additional revenues through Fiscal Year 2010

BILL DESCRIPTION

Assembly Bill No. 3102 of 2004 will freeze transitional energy facility assessment (TEFA) unit rate surcharges at calendar year 2004 rates for two years, and then reduce those unit rate surcharges over a four year period from calendar years 2007 through 2010. After December 31, 2010 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.

TEFA was established in 1997 when the taxation of utilities was shifted from a gross receipts tax to a combination of the corporation business tax and the sales and use tax. The TEFA was established as a transitional mechanism to phase in over several years the net reduction in tax revenue from utilities. The original phase in schedule was extended by legislation in 2001. Under that schedule the TEFA revenue would be reduced from \$244 million in FY 2004 to \$157 million in FY 2005.

FISCAL ANALYSIS

EXECUTIVE BRANCH

The Department of the Treasury has indicated, in various budget documents, that the TEFA should raise \$235 million in Fiscal Year 2005 under a freeze of the unit rate surcharges, \$77 million more than under current law. It is estimated that \$217 million would be allocated to the State General Fund, while \$18 million would be allocated "off-budget" for energy-supported municipal aid distributions.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services (OLS) concurs with the Executive estimate of the fiscal impact in Fiscal Year 2005. In addition, the OLS notes the State will continue to receive additional revenues through Fiscal Year 2010, as displayed in the table below.

TEFA Revenue Actual Amounts and Future Estimates		
	Current Law	S-1654
FY98	315	315
FY99	228	228
FY00	218	218
FY01	231	231
FY02	221	221
FY03	233	233
FY04 est.	249	249
FY05 est.	158	235
FY06 est.	79	235
FY07 est.	0	188
FY08 est.	0	141
FY09 est.	0	94
FY10 est.	0	47
FY11 est.	0	0

Section: *Revenue, Finance and Appropriations*

Analyst: *David J. Rosen*

Approved: *David J. Rosen*
Legislative Budget and Finance Officer

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

SENATE, No. 1654

STATE OF NEW JERSEY
211th LEGISLATURE

INTRODUCED JUNE 7, 2004

Sponsored by:

Senator RAYMOND J. LESNIAK

District 20 (Union)

SYNOPSIS

Changes the phase-out schedule of the transitional energy facility assessment unit rate surcharges.

CURRENT VERSION OF TEXT

As introduced.



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2

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, [2006] 2010.
14 (cf: P.L.2001, c.433, s.1)

15

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

18 67. a. As used in this section:

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

24 "Base year" means the calendar year 1996;

25 "Board" means the Board of Public Utilities;

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

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

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

35 b. No later than 60 days after the date this act is enacted, each
36 electric, gas and telecommunications utility subject to the provisions
37 of this act shall file with the board, and shall simultaneously provide
38 copies to the Director of the Division of the Ratepayer Advocate,
39 revised tariffs and such other supporting schedules, narrative and
40 documentation required by this act, as set forth in this section, to
41 reflect in the utility's rates the changes in tax liability effected pursuant
42 to this act. No later than 90 days after the date of the utility's filing,
43 and after determining that the filing and the rate changes provided for

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 therein are in compliance with the provisions of this act, the board
2 shall approve the utility's filing and associated rates for billing to the
3 utility's customers, effective for utility service rendered on and after
4 January 1, 1998. If the board determines that the utility's filing and the
5 associated rate changes provided for therein are not in compliance
6 with the provisions of this act, the board shall require the utility to
7 amend or otherwise modify its filing to render it in compliance. The
8 board may also permit the rates provided for in the utility's filing to be
9 implemented on an interim basis pending the board's final
10 determination in the event the board, in its discretion, determines that
11 due to the filing's complexity, or for other valid reasons, including but
12 not limited to the enactment of this act after June 30, 1997, additional
13 time is needed for the board to complete its review of the filing. If the
14 rates approved by the board upon its final determination are less than
15 the rates implemented on an interim basis, the difference shall be
16 refunded to the utility's customers with interest computed in
17 accordance with N.J.A.C.14:3-7.5(c). The rate adjustments
18 implemented pursuant to this act shall not constitute a fixing of rates
19 pursuant to R.S.48:2-21 and shall not be subject to the hearing
20 requirements set forth in that section.

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

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

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

43 To permit the board to make this determination, in addition to
44 including in its filing schedules showing its net income earned in the
45 base year as booked, the utility shall include adjustments to such
46 booked income to eliminate the effect of revenues, expenses and

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1 extraordinary or other charges that are non-recurring, atypical, or
2 both, including, but not limited to an adjustment to eliminate the effect
3 of unusually hot or cold weather, and that would otherwise make the
4 utility's base year net income unusually high or low or otherwise
5 unrepresentative of the utility's prospective net income. If the
6 adjustment is being made to eliminate the effect of unusually hot or
7 cold weather, associated revenue and expense adjustments shall also
8 be made. Subject to the board's approval, such adjusted income shall
9 be the basis for the calculation of the initial provision for corporation
10 business tax to be included in the utility's base rates.

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

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

30

31
$$A_{e, g} = \frac{(I_{e, g}) \times [R_s / (1 - R_e)]}{(B_{e, g})}$$

34

35 where:

36

37 "A e, g" means the adjustment factor applicable to electric base
38 rates (e), gas base rates (g), or both, other than rates applicable to
39 sales that were exempt from unit-based energy taxes formerly imposed
40 pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) or to which section
41 59 of P.L.1997, c.162 (C.48:2-21.31) applies;

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

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

7

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

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

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

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

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

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

1 remaining reduction in the working capital requirement not so offset,
2 if any. The reduction in working capital shall be determined by using
3 the same methodology employed in establishing the working capital
4 allowance related to unit-based energy taxes reflected in the utility's
5 base rates in effect prior to the rate changes implemented pursuant to
6 this act. The reduction in the utility's revenue requirement associated
7 with the reduced working capital requirement shall be calculated using
8 the utility's last overall rate of return allowed by the board, including
9 provision for federal income taxes and the corporation business tax
10 implemented pursuant to this act payable on the equity portion of the
11 return, and shall be implemented on the effective date of the rate
12 changes provided for, and in the manner set forth in paragraph (2) of
13 this subsection.

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

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

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

36 If the change in such net deferred taxes projected for the calendar
37 year in which the rate changes implemented pursuant to this act takes
38 effect is negative and if the utility's requirement for working capital is
39 reduced as a result of the changes in rates and tax payments
40 implemented pursuant to this act, the working capital-related rate
41 reduction that otherwise would have been implemented pursuant to
42 this subsection shall be treated as set forth in subparagraph (a) or (b)
43 of this paragraph. For the purposes of this act, a change in net
44 deferred taxes is considered negative when it reduces an existing
45 deferred tax liability or creates a deferred tax asset on the utility's
46 balance sheet. An appropriate rate adjustment for the working capital

1 impacts of this act, reflecting all relevant facts and circumstances at
2 the time of the adjustment, shall be made in the year when the earlier
3 of the following events occur:

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

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

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

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

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

45 The deferred tax-related rate changes or carrying cost accruals shall
46 be subject to the board's approval and shall not be included in the

1 determination of the TEFA unit rate surcharges provided for in
2 subsection d. of this section.

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

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

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

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1	January 1, 1999,	20%
2	January 1, 2000,	40%
3	January 1, 2001,	60%

4
5 (3) For each year beginning with calendar year 1998 and ending
6 with calendar year 2001, the TEFA surcharge adjustment shall be
7 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:

23		
24	Determination Year	% of
25		Year 1998
26		TEFA
27	-----	-----
28	1999	80%
29	2000	60%

30
31 by the Year 1998 TEFA,

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

43 (4) If the TEFA surcharge adjustment determined for the
44 determination year is positive (that is, if the amount determined
45 pursuant to subparagraph (a) of paragraph (3) of this subsection is
46 greater than the amount determined pursuant to subparagraph (b) of

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

16 (5) (a) The TEFA unit rate surcharges for calendar years 2002
 17 through [2004] 2006 shall be the same as the TEFA unit rate
 18 surcharges in effect for calendar year 2001.

19 (b) The TEFA unit rate surcharges in effect for calendar year
 20 [2004] 2006 shall be reduced annually on January 1, [2005] 2007
 21 through January 1, [2006] 2010 by the following percentages:

22

23	[January 1, 2005	33%
24	January 1, 2006	67%]
25	<u>January 1, 2007</u>	<u>20%</u>
26	<u>January 1, 2008</u>	<u>40%</u>
27	<u>January 1, 2009</u>	<u>60%</u>
28	<u>January 1, 2010</u>	<u>80%</u>

29

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.2001, c.433, s.4)

16

17 3. This act shall take effect immediately.

18

19

20

STATEMENT

21

22 This bill will freeze transitional energy facility assessment (TEFA)
23 unit rate surcharges at calendar year 2004 rates for two years, and
24 then reduce those unit rate surcharges over a four year period from
25 calendar years 2007 through 2010. After December 31, 2010 the
26 TEFA assessments will be eliminated to comport with the original
27 planned phase-out of the tax as had been proposed in the 1997 energy
28 tax reform law.

29 TEFA was established in 1997 when the taxation of utilities was
30 shifted from a gross receipts tax to a combination of the corporation
31 business tax and the sales and use tax. The TEFA was established as
32 a transitional mechanism to phase in over several years the net
33 reduction in tax revenue from utilities. The original phase in schedule
34 was extended by legislation in 2001. Under that schedule the TEFA
35 revenue would be reduced from \$244 million in FY 2004 to \$157
36 million in FY 2005.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 1654

STATE OF NEW JERSEY

DATED: JUNE 14, 2004

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 1654.

This bill freezes transitional energy facility assessment (TEFA) unit rate surcharges at calendar year 2004 rates for two years, and then reduces those unit rate surcharges over a four year period from calendar years 2007 through 2010. After December 31, 2010, the TEFA assessments are eliminated to comport with the original planned phase-out of the tax as had been proposed in the 1997 energy tax reform law.

TEFA was established in 1997, when the taxation of utilities was shifted from a gross receipts tax to a combination of the corporation business tax and the sales and use tax. TEFA was established as a transitional mechanism to phase in over several years the net reduction in tax revenue from utilities. The original phase in schedule was extended by law in 2001. Under that schedule, the TEFA revenue is reduced from \$244 million in FY2004 to \$158 million in FY2005.

FISCAL IMPACT

The Office of Legislative services projects the following impact from the enactment of this bill:

TEFA Revenue (\$ millions)			
	Current Law	S1654	Impact
FY05	158	235	77
FY06	79	235	156
FY07	0	188	188
FY08	0	141	141
FY09	0	94	94
FY10	0	47	47

As TEFA is a unit rate surcharge, actual TEFA revenues will depend on the rate and the quantity of energy purchased during a year.

LEGISLATIVE FISCAL ESTIMATE
SENATE, No. 1654
STATE OF NEW JERSEY
211th LEGISLATURE

DATED: JULY 7, 2004

SUMMARY

Synopsis: Changes the phase-out schedule of the transitional energy facility assessment unit rate surcharges.

Type of Impact: Increase State Revenue

Agencies Affected: Department of the Treasury

Office of Legislative Services Estimate

Fiscal Impact	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>
State Revenue	\$77 million	\$156 million	\$188 million

- ! The Department of the Treasury has indicated, in various budget documents, that the TEFA should raise \$235 million in Fiscal Year 2005 under a freeze of the unit rate surcharges, \$77 million more than under current law.
- ! The Office of Legislative Services (OLS) concurs with the Executive estimate of the fiscal impact in Fiscal Year 2005. In addition, the OLS notes the State will continue to receive additional revenues through Fiscal Year 2010

BILL DESCRIPTION

Senate Bill No. 1654 of 2004 will freeze transitional energy facility assessment (TEFA) unit rate surcharges at calendar year 2004 rates for two years, and then reduce those unit rate surcharges over a four year period from calendar years 2007 through 2010. After December 31, 2010 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.

TEFA was established in 1997 when the taxation of utilities was shifted from a gross receipts tax to a combination of the corporation business tax and the sales and use tax. The TEFA was established as a transitional mechanism to phase in over several years the net reduction in tax revenue from utilities. The original phase in schedule was extended by legislation in 2001. Under that schedule the TEFA revenue would be reduced from \$244 million in FY 2004 to \$157 million in FY 2005.

FISCAL ANALYSIS

EXECUTIVE BRANCH

The Department of the Treasury has indicated, in various budget documents, that the TEFA should raise \$235 million in Fiscal Year 2005 under a freeze of the unit rate surcharges, \$77 million more than under current law. It is estimated that \$217 million would be allocated to the State General Fund, while \$18 million would be allocated "off-budget" for energy-supported municipal aid distributions.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services (OLS) concurs with the Executive estimate of the fiscal impact in Fiscal Year 2005. In addition, the OLS notes the State will continue to receive additional revenues through Fiscal Year 2010, as displayed in the table below.

TEFA Revenue Actual Amounts and Future Estimates		
	Current Law	S-1654
FY98	315	315
FY99	228	228
FY00	218	218
FY01	231	231
FY02	221	221
FY03	233	233
FY04 est.	249	249
FY05 est.	158	235
FY06 est.	79	235
FY07 est.	0	188
FY08 est.	0	141
FY09 est.	0	94
FY10 est.	0	47
FY11 est.	0	0

Section: *Revenue, Finance and Appropriations*

Analyst: *David J. Rosen*

Approved: *David J. Rosen*
Legislative Budget and Finance Officer

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.