

**LEGISLATIVE HISTORY CHECKLIST**  
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(Public utilities--certain--flex  
 rates, alternative regulation)

**NJSA:** 48:2-21.24

**LAWS OF:** 1995 **CHAPTER:** 180

**BILL NO:** S1940

**SPONSOR(S):** Kyrillos and others

**DATE INTRODUCED:** March 30, 1995

**COMMITTEE:** **ASSEMBLY:** ---  
**SENATE:** Natural Resources

**AMENDED DURING PASSAGE:** Yes Amendments during passage  
 First reprint enacted denoted by superscript numbers

**DATE OF PASSAGE:** **ASSEMBLY:** June 19, 1995  
**SENATE:** June 12, 1995

**DATE OF APPROVAL:** July 10, 1995

**FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:**

**SPONSOR STATEMENT:** Yes

**COMMITTEE STATEMENT:** **ASSEMBLY:** No  
**SENATE:** Yes

**FISCAL NOTE:** No

**VETO MESSAGE:** No

**MESSAGE ON SIGNING:** Yes

**FOLLOWING WERE PRINTED:**

**REPORTS:** No

**HEARINGS:** No

See newspaper clippings--attached:  
 "Utility rate discounts signed into law," 7-21-95, Courier News.  
 "Utility flex rating, signed into law," 7-21-95, Asbury park Press.  
 "New utilities bill goes to governor," 6-20-95, Asbury Park Press.

974.90 New Jersey. Legislature. Senate. Natural Resources, Trade &  
 P976 Economic Development Committee.  
 1995a Committee meeting on S.1940 and A.91, held May 30, 1995.  
 Trenton, 1995.

KBG:pp

[FIRST REPRINT]

SENATE, No. 1940

STATE OF NEW JERSEY

INTRODUCED MARCH 30, 1995

By Senators KYRILLOS, GIRGENTI and Sinagra

1 AN ACT concerning <sup>1</sup>[public]<sup>1</sup> gas and electric <sup>1</sup>public<sup>1</sup> utility  
2 rates and supplementing chapter 2 of Title 48 of the Revised  
3 Statutes.

4  
5 BE IT ENACTED *by the Senate and General Assembly of the*  
6 *State of New Jersey:*

7 1. The Legislature finds and declares that it is the policy of  
8 the State to foster the production and delivery of electricity and  
9 natural gas in such a manner as to lower costs and rates and  
10 improve the quality and choices of service for all of the State's  
11 consumers and to thereby ensure that New Jersey remains  
12 economically competitive on a regional, national and  
13 international basis; to implement programs which effectuate the  
14 economic development goals of attracting and retaining business,  
15 maintaining and creating jobs and enhancing the economic  
16 vitality of the State; to achieve federal and State environmental  
17 objectives in a cost effective manner; to promote secure energy  
18 supplies and service to end users, and the efficient use,  
19 production and procurement of energy; to maintain universal  
20 access to reliable electric and gas utility service; and to reduce  
21 unnecessary and costly regulatory oversight.

22 The Legislature further finds and declares that competitive  
23 market forces can produce improved quality and choices of  
24 energy services at lower costs, as well as promote efficiency,  
25 reduce regulatory delay, foster productivity and innovation; that  
26 in a fully competitive marketplace, traditional utility regulation  
27 may not be required to protect the public interest; and that to  
28 varying degrees, competitive forces now pervade the wholesale  
29 electric power and natural gas markets and some segments of the  
30 retail markets in these industries.

31 <sup>1</sup>The Legislature further finds and declares that the Division of  
32 the Ratepayer Advocate has the authority, pursuant to  
33 Reorganization Plan No. 001-1994, to appear before the Board of  
34 Public Utilities in any matters that affect the rates of public  
35 utility customers; that this act does not modify that authority;  
36 and that the Division of the Ratepayer Advocate therefore has  
37 full authority to intervene in matters filed with the Board of  
38 Public Utilities that are authorized by this act.<sup>1</sup>

39 The Legislature therefore determines that, whenever  
40 practicable, in the interests of ratepayers and otherwise  
41 consistent with the policy goals of this act, the Board of Public  
42 Utilities should implement programs that promote a transition to  
43 a market-based, competitive environment for the production and  
44 delivery of natural gas and electricity; that during a transitional

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup> Senate SNT committee amendments adopted June 8, 1995.

1 phase aimed at achieving the long-term goal of lower electricity  
2 and natural gas costs to consumers, it may be necessary for the  
3 Board of Public Utilities to implement short-term measures to  
4 promote and enhance economic development and employment in  
5 the State and otherwise permit utilities to compete for customers  
6 with competitive alternatives; that transitional programs that  
7 align ratepayer and utility interests in cost management and  
8 foster greater innovation and productivity gains within the utility  
9 can help achieve the policy goals of this act; that during the  
10 transition to a market-based, competitive environment, the  
11 Board of Public Utilities must adopt guidelines that ensure that  
12 the transitional regulation produces tangible benefits for  
13 ratepayers as compared to the traditional form of regulation and  
14 that no cross-subsidization exists between or among classes of  
15 customers; and that the Board of Public Utilities should, subject  
16 to the provisions of this act, continue to regulate the price and  
17 quality of electricity and natural gas service under traditional  
18 rate base, rate of return regulation in those segments of the  
19 marketplace where full and effective competition does not exist  
20 or whenever the board determines that energy consumers are  
21 better served thereby.

22 <sup>1</sup>The Legislature further determines that alternative forms of  
23 regulation shall be designed to achieve the State's objective of  
24 lowering rates for New Jersey consumers.<sup>1</sup>

25 2. As used in this act:

26 <sup>1</sup>["Alternative"] "Alternative<sup>1</sup> form of regulation" means a  
27 form of regulation of electric or gas utility services other than  
28 traditional rate base, rate of return regulation as embodied in  
29 Title 48 of the Revised Statutes, to be determined by the board;

30 <sup>1</sup>"Base rate case" means an open, public hearing before the  
31 Board of Public Utilities to consider a filing by a public utility for  
32 a change in base rates, which includes an analysis of the public  
33 utility's income statement and balance sheet for the purpose of  
34 determining the level of revenues necessary to afford the public  
35 utility an opportunity to earn a fair and reasonable rate of return  
36 on prudently incurred capital investment in the public utility's  
37 rate base;<sup>1</sup>

38 "Board" means the Board of Public Utilities or any successor  
39 agency;

40 "Competitive market" means a market for a particular utility  
41 service that is characterized by the existence of a number of  
42 purveyors, the availability of like or substitute service, ease of  
43 market entry, and such other standards as may be adopted by the  
44 board;

45 "Comprehensive energy audit" means an assessment of all  
46 energy-using systems to determine the consumption  
47 characteristics of a building <sup>1</sup>[. The assessment (1) identifies]  
48 which shall (1) identify<sup>1</sup> the type, size, and rate of energy  
49 consumption of such building, including industrial processes in the  
50 building; (2) <sup>1</sup>[determines] identify<sup>1</sup> appropriate energy  
51 conservation maintenance and operating procedures; and (3)  
52 <sup>1</sup>[indicates] indicate<sup>1</sup> the need, if any, for the acquisition and  
53 installation of energy conservation measures;

54 "Cross subsidization" means an undue transfer of cost

1 allocation or revenue recovery responsibility;

2 "Demand <sup>1</sup>[Side Management"] side management"<sup>1</sup> means the  
3 management of a public utility's existing or future capacity or  
4 energy needs through the implementation of cost-effective  
5 energy efficiency technologies, including, but not limited to,  
6 installed conservation, load management and energy efficiency  
7 measures in the residential, commercial, industrial, institutional  
8 and governmental premises and facilities in the State;

9 <sup>1</sup>"Off-tariff rate" means a rate for utility service charged by  
10 a utility to a retail customer that is the result of a negotiation  
11 between the utility and the customer, rather than being based  
12 solely on a cost-of-service based tariff rate;<sup>1</sup>

13 "Marginal energy and capacity cost" means the incremental  
14 increase in a utility's energy and capacity costs associated with  
15 providing an additional increment of utility service, over a  
16 specified time period;

17 "Market pricing" means charging a negotiated price for utility  
18 service which is based upon the price available in a competitive  
19 marketplace, as opposed to a cost-of-service based tariff rate;  
20 and

21 <sup>1</sup>"Off-tariff rate" means a rate for utility service charged by a  
22 utility to a retail customer that is the result of a negotiation  
23 between the utility and the customer, rather than being based  
24 solely on a cost-of-service based tariff rate;<sup>1</sup>

25 "Revenue erosion" means a reduction in revenues received by  
26 <sup>1</sup>[the] <sup>a</sup> utility resulting from the <sup>1</sup>[provisions] provision<sup>1</sup> of an  
27 off-tariff rate to a customer, as measured by the difference  
28 between the cost-of-service based tariff rate and the off-tariff  
29 rate, <sup>1</sup>[multiplied by] as applied to<sup>1</sup> the sales to that customer.

30 3. a. No later than <sup>1</sup>[45] 90<sup>1</sup> days from the effective date of  
31 this act <sup>1</sup>and notwithstanding any provision of the  
32 "Administrative Procedure Act," P.L.1968, c.410 (C. 52:14B-1 et  
33 seq.) to the contrary<sup>1</sup>, the Board of Public Utilities shall initiate  
34 a proceeding and shall adopt, after notice <sup>1</sup>[and] <sup>1</sup>,  
35 the opportunity for comment <sup>1</sup>, and public hearing<sup>1</sup>, specific  
36 standards regarding <sup>1</sup>[floor] minimum<sup>1</sup> prices <sup>1</sup>[and margins] <sup>1</sup>,  
37 confidentiality standards<sup>1</sup>, maximum contract duration, filing  
38 requirements, and such other standards as the board may  
39 determine are necessary for off-tariff rate agreements  
40 consistent with this act. <sup>1</sup>Any subsequent modification of the  
41 standards that is adopted by the board shall be adopted pursuant  
42 to the "Administrative Procedure Act," P.L.1968, c.410  
43 (C. 52:14B-1 et seq.).<sup>1</sup>

44 b. After the adoption by the board of specific standards  
45 pursuant to subsection a. of this section, an electric public utility  
46 may <sup>1</sup>[negotiate], within seven years of the effective date of this  
47 act, enter into<sup>1</sup> an off-tariff rate agreement with an individual  
48 retail customer <sup>1</sup>[. The] pursuant to the provisions of sections 3  
49 and 4 of this act. The provisions of sections 3 and 4 of this act  
50 shall not apply to an off-tariff rate agreement entered into by an  
51 electric public utility after that seven-year period, except as  
52 otherwise provided by the board. Notwithstanding the seven-year  
53 limitation imposed pursuant to this subsection, an off-tariff rate  
54 agreement that is entered into during that seven-year period

1 shall remain in effect until its expiration pursuant to the terms of  
2 the agreement.

3 c. An<sup>1</sup> off-tariff rate agreement shall be filed with the board  
4 <sup>1</sup>[on a confidential basis]<sup>1</sup> a minimum of <sup>1</sup>[15 business] <sup>1</sup>30<sup>1</sup> days  
5 prior to its effective date along with sufficient information to  
6 demonstrate that the off-tariff rate agreement meets the  
7 conditions established in subsection <sup>1</sup>[c.] d.<sup>1</sup> of this section and  
8 the standards established pursuant to subsection a. of this  
9 section. <sup>1</sup>[The] The entire agreement shall be available to the  
10 public, except that a public utility may petition the board to keep  
11 confidential certain parts of the agreement or supporting  
12 documentation that are competitively sensitive. Upon petition by  
13 the public utility, the board may classify as confidential any part  
14 of the agreement that is found to contain competitively sensitive  
15 information that, if revealed, would harm the competitive  
16 position of either party to the agreement. A copy of the  
17 off-tariff rate agreement and supporting information shall be  
18 served simultaneously upon the Director of the Division of the  
19 Ratepayer Advocate, or its successor agency. The staff of the  
20 board and the division shall have full access to all portions of the  
21 agreement and to any supporting documentation, subject to a  
22 standard non-disclosure agreement to be approved by the board.  
23 The board or its staff shall review the agreement, and upon  
24 review the<sup>1</sup> board may <sup>1</sup>delay its implementation if it requires  
25 additional time to review the agreement or shall<sup>1</sup> disapprove the  
26 agreement upon a finding that it does not meet the conditions  
27 established in subsection <sup>1</sup>[c.] d.<sup>1</sup> of this section and the  
28 standards established pursuant to subsection a. of this section. If  
29 the board does not <sup>1</sup>[disapprove the agreement prior to its  
30 effective date] issue notice that it is delaying implementation for  
31 further review or that it disapproves the agreement<sup>1</sup>, the utility  
32 may implement the off-tariff rate agreement.

33 <sup>1</sup>[c. Upon application by an electric public utility, the board  
34 may permit and the utility may implement, via a tariff or service  
35 agreement, an off-tariff rate that provides] An off-tariff rate  
36 agreement implemented pursuant to this subsection shall not  
37 include any reduction in the gross receipts and franchise tax.

38 d. An off-tariff rate agreement implemented pursuant to this  
39 section may establish<sup>1</sup> a price for electricity to a retail customer  
40 that is different from, but in no case higher than, that specified  
41 in the utility's current cost-of-service based tariff rate  
42 otherwise applicable to that customer, <sup>1</sup>and shall be<sup>1</sup> subject to  
43 the following conditions:

44 (1) There shall be no <sup>1</sup>retroactive<sup>1</sup> recovery by the utility  
45 from its general ratepayer base of <sup>1</sup>any<sup>1</sup> revenue erosion <sup>1</sup>[which]  
46 that<sup>1</sup> occurs prior to the conclusion of the utility's next base  
47 rate case. Subsequent to the conclusion of the utility's next base  
48 rate case, any such recovery shall be prospective only and in  
49 accordance with <sup>1</sup>[subsection f. of this]<sup>1</sup> section <sup>1</sup>4 of this act<sup>1</sup> .

50 (2) In no event shall any customer be required to enter into an  
51 off-tariff rate agreement.

52 (3) The off-tariff rate at a minimum shall equal the sum of the  
53 following: the utility's marginal energy and capacity cost over  
54 the term of the off-tariff rate agreement, the per kilowatt hour

1 contribution to demand side management program costs as  
2 otherwise chargeable under the standard applicable rate schedule,  
3 and a floor margin to be specified by the board pursuant to  
4 subsection a. of this section <sup>1</sup>, which shall constitute the  
5 minimum contribution by an off-tariff customer toward a public  
6 utility's fixed costs<sup>1</sup>.

7 (4) Evidence of a comprehensive energy audit of the  
8 <sup>1</sup>[customer] customer's<sup>1</sup> facility must be submitted to the utility  
9 prior to the effective date of the off-tariff rate agreement <sup>1</sup>, in  
10 order to ensure that the customer has evaluated cost-effective  
11 energy efficiency and demand side management measures at its  
12 facility as part of its efforts to reduce electricity costs<sup>1</sup>.

13 (5) The term of the off-tariff rate agreement shall not exceed  
14 a maximum number of years, to be specified by the board  
15 pursuant to subsection a. of this section, except that the term of  
16 an off-tariff rate agreement may exceed the maximum contract  
17 term established by the board, only with the prior review and  
18 approval of the board on a case by case basis.

19 (6) <sup>1</sup>[Submission of] The utility shall submit any<sup>1</sup> information  
20 required by the filing requirements established pursuant to  
21 subsection a. of this section.

22 <sup>1</sup>[d. Upon notice and hearing, the board may suspend an  
23 electric public utility's implementation of additional off-tariff  
24 rate agreements with good cause. The board may suspend  
25 additional off-tariff rate agreements during the pendency of any  
26 such hearings.]<sup>1</sup>

27 e. Each electric public utility shall file with the board <sup>1</sup>and  
28 the Director of the Division of the Ratepayer Advocate<sup>1</sup>, on a  
29 periodic basis to be determined by the board, a report, which  
30 shall be made available to the public, that includes the number of  
31 off-tariff rate contracts <sup>1</sup>[effectuated] implemented<sup>1</sup>, the  
32 aggregate expected revenues and margins derived thereunder, and  
33 an estimate of the aggregate differential between the revenues  
34 produced under the off-tariff rate agreements and the revenues  
35 that would have been produced under a cost-of-service based  
36 tariff rate, so that the board can evaluate the total impact of  
37 off-tariff rate agreements on the financial integrity of the utility  
38 and on its ratepayers.

39 <sup>1</sup>[f. As part of a base rate case proceeding, an electric public  
40 utility may request and the board may approve prospective  
41 recovery of a portion of quantifiable revenue erosions resulting  
42 from existing off-tariff rate agreements. The board may approve  
43 such prospective recovery, for 80 percent of the revenue erosion,  
44 if the board determines that:

45 (1) All appropriate offsetting financial adjustments, including  
46 but not limited to sales growth, standby and backup sales to the  
47 customer, and off-system capacity sales, are credited to the  
48 revenue requirement calculation;

49 (2) The utility has developed and implemented a corporate  
50 strategy to lower its cost of producing and delivering power;

51 (3) Economic and financial analyses show that ratepayers will  
52 be paying lower rates with the implementation of an off-tariff  
53 rate agreement for a particular customer than without such  
54 implementation, or that the State will receive other tangible

1 economic benefits as a result of an off-tariff rate agreement.  
2 This determination shall be based on a demonstration, at a  
3 minimum, that:

4 (a) The customer had a viable alternative source of supply  
5 deliverable to its site; or

6 (b) The offering of the off-tariff rate was a factor in inducing  
7 the customer not to relocate its facility outside of the State to a  
8 location where power could be obtained at a lower cost; or

9 (c) The off-tariff rate was a factor in inducing the customer  
10 to relocate or expand its business in the service territory, thereby  
11 protecting or enhancing employment in the State; and

12 (4) The utility and the customer have otherwise complied with  
13 the provisions of this act and the off-tariff rate standards  
14 adopted by the board pursuant to subsection a. of this section.]

15 f. Upon notice and hearing, the board may suspend an electric  
16 public utility's implementation of additional off-tariff rate  
17 agreements based upon information in the report filed pursuant to  
18 subsection e. of this section or with other good cause. The board  
19 may suspend additional off-tariff rate agreements during the  
20 pendency of any such hearings.<sup>1</sup>

21 <sup>14.</sup> a. An electric public utility that enters into an off-tariff  
22 rate agreement pursuant to section 3 of this act shall not recover  
23 through rates any revenue erosion that occurs between the  
24 effective date of the agreement and the conclusion of the public  
25 utility's next base rate case.

26 b. As part of a base rate case proceeding, an electric public  
27 utility may request prospective recovery of a portion of the  
28 quantifiable revenue erosion resulting from an existing off-tariff  
29 rate agreement with a customer that previously purchased power  
30 from the utility under a tariff set by the board. Whenever a  
31 public utility requests partial recovery of revenue erosion from  
32 an off-tariff rate agreement, and notwithstanding any provision  
33 of subsection c. of section 3 of this act to the contrary, the  
34 entire agreement shall be available to the public, except that a  
35 public utility may petition the board to keep confidential certain  
36 parts of the agreement or supporting documentation that are  
37 competitively sensitive. Upon petition by the public utility, and  
38 after an opportunity for all interested parties to comment, the  
39 board may classify as confidential any part of the agreement that  
40 is found to contain competitively sensitive information that, if  
41 revealed, would harm the competitive position of either party to  
42 the agreement. An intervenor in the base rate case proceeding  
43 may request access to information that has been classified as  
44 confidential. The board shall grant such access, subject to an  
45 executed non-disclosure agreement, if the board determines that  
46 the intervenor's interest cannot be pursued fully in the base rate  
47 case proceeding without access to the information and that the  
48 intervenor is not a direct competitor of either party to the  
49 agreement.

50 c. In a base rate case proceeding at which an electric public  
51 utility requests, pursuant to subsection b. of this section,  
52 prospective recovery of revenue erosion, the board may approve  
53 prospective recovery of 50 percent of the revenue erosion  
54 occurring after the conclusion of that base rate case proceeding,

1 in order to ensure that ratepayers shall not bear a greater portion  
 2 of the revenue erosion resulting from the off-tariff rate  
 3 agreement than the public utility, if the board determines that:

4 (1) All appropriate offsetting financial adjustments, including  
 5 but not limited to sales growth, standby and backup sales to the  
 6 customer, and off-system capacity sales, are credited to the  
 7 revenue requirement calculation and that the utility is not  
 8 already achieving a fair and reasonable rate of return;

9 (2) The utility has developed and implemented a corporate  
 10 strategy to lower its cost of producing and delivering power;

11 (3) Ratepayers are paying lower rates with the implementation  
 12 of an off-tariff rate agreement for a particular customer than  
 13 without such implementation, because the off-tariff rate  
 14 agreement allowed the utility to continue to maintain the  
 15 customer and thus to continue to receive the customer's  
 16 contribution to the fixed costs of the public utility. A  
 17 determination that the public utility's ratepayers are paying  
 18 lower rates will therefore include a finding that the customer  
 19 receiving the off-tariff rate;

20 (a) Had a viable alternative source of power deliverable to its  
 21 site and, had it not received the off-tariff rate, would have  
 22 ceased to obtain its power primarily from the public utility; or

23 (b) Would have relocated its facility outside of the State to a  
 24 location where power could be obtained at a lower cost, had it  
 25 not received the off-tariff rate; and

26 (4) The utility and the customer have otherwise complied with  
 27 the provisions of this act and the off-tariff rate standards  
 28 adopted by the board pursuant to subsection a. of section 3 of this  
 29 act.<sup>1</sup>

30 <sup>1</sup>[4.] 5.<sup>1</sup> a. An electric or gas public utility may petition the  
 31 Board of Public Utilities to be regulated under an alternative  
 32 form of regulation, for the setting of prices for all or a portion of  
 33 its retail customer base, for the recovery in rates of a particular  
 34 asset or expenditure, or for the purpose of creating incentives  
 35 consistent with the provisions of this act. The public utility shall  
 36 submit its plan for an alternative form of regulation with its  
 37 petition. The public utility shall also file its petition and plan  
 38 concurrently with the Director of the Division of the Ratepayer  
 39 Advocate, or its successor. The public utility shall provide,  
 40 within 15 days of the filing of its petition and plan, <sup>1</sup>[public]<sup>1</sup>  
 41 notice of the <sup>1</sup>specific<sup>1</sup> filing <sup>1</sup>[in a form and scope of  
 42 distribution deemed appropriate by the board] to the clerk of  
 43 each municipality, to the clerk of each Board of Chosen  
 44 Freeholders, and to each county executive, in the service  
 45 territory of the public utility. The public utility shall also  
 46 provide, within 15 days of the filing, public notice to its  
 47 customers of the filing, either by notice in a newspaper that has a  
 48 general circulation in its service territory or by bill inserts as  
 49 directed by the board<sup>1</sup>. The board shall review the plan and may  
 50 approve the plan, or approve <sup>1</sup>it<sup>1</sup> with modifications <sup>1,1</sup> if <sup>1</sup>[it]  
 51 the board<sup>1</sup> finds, after notice and hearing, that the plan <sup>1</sup>[:

52 (1) Will be consistent with the goals and provisions of this act,  
 53 and produce tangible benefits for the customers of the utility  
 54 relative to the pre-existing regulatory standards embodied in



1 Title 48 of the Revised Statutes;

2 (2) Will create incentives for the utility to lower its costs and  
3 rates and will improve efficiency and productivity relative to the  
4 pre-existing regulatory standards embodied in Title 48 of the  
5 Revised Statutes;

6 (3) Will maintain or improve pre-existing service quality  
7 standards, except that an individual customer may voluntarily  
8 agree to accept lower quality service. Utilities shall continue to  
9 be required to provide safe, adequate and proper service pursuant  
10 to R.S.48:2-23;

11 (4) Will not result in the cross-subsidization or undue shifting  
12 of pre-existing benefits or assets among or between groups of  
13 utility customers or between the portion of the utility's business  
14 or operations subject to the alternative form of regulation and  
15 the portion of the utility's business or operations that is not  
16 subject to the alternative form of regulation;

17 (5) Will reduce regulatory delay and cost;

18 (6) Is in the public interest and will produce just and  
19 reasonable rates; and

20 (7) Will enhance economic development in the State.] will  
21 provide benefits to customers of the public utility relative to the  
22 pre-existing regulatory standards embodied in Title 48 of the  
23 Revised Statutes based upon a finding that the plan:

24 (1) Is designed to achieve the State's objective of producing  
25 lower rates for New Jersey consumers;

26 (2) Will provide incentives for the utility to lower its costs and  
27 rates;

28 (3) Will provide incentives to improve utility efficiency and  
29 productivity;

30 (4) Will foster the long-term production and delivery of  
31 electricity or natural gas in a manner that will improve the  
32 quality and choices of service;

33 (5) Includes a mechanism for the board to monitor and review  
34 the plan on a periodic basis over its term and to take appropriate  
35 actions if it is found that the plan is not achieving its intended  
36 results;

37 (6) Will maintain or improve pre-existing service quality  
38 standards, except that an individual customer may agree to  
39 accept lower quality service. A public utility shall continue to  
40 provide safe, adequate and proper service pursuant to R.S.48:2-23;

41 (7) Will not result in cross-subsidization among or between  
42 groups of utility customers, or between the portion of the  
43 utility's business or operations subject to the alternative form of  
44 regulation and the portion of the utility's business or operations  
45 that is not subject to the alternative form of regulation;

46 (8) Will reduce regulatory delay and cost;

47 (9) Is in the public interest and will produce just and  
48 reasonable rates; and

49 (10) Will enhance economic development in the State.<sup>1</sup>

50 b. Consistent with the provisions of this act, and provided that  
51 the plan meets the standards established in subsection a. of this  
52 section, the board may approve a plan for an alternative form of  
53 regulation that permits a gas or electric public utility to establish  
54 a rate for a group of retail customers without a finding of rate

1 base and reasonable rate of return pursuant to the pre-existing  
2 provisions of Title 48 of the Revised Statutes, if the board  
3 determines that <sup>1</sup>the rate being charged by the utility to a retail  
4 customer is no lower than a minimum price that is determined by  
5 the board to prevent anti-competitive pricing and that<sup>1</sup> :

6 (1) The group of customers has access to a competitive market  
7 for supply of power to its site and that market pricing for that  
8 group of customers is thereby appropriate; or

9 (2) The group of customers has otherwise voluntarily agreed in  
10 writing to accept a price that has not been established based upon  
11 rate base and reasonable rate of return standards pursuant to  
12 Title 48 of the Revised Statutes; or

13 (3) At the time of the plan's approval, the level of retail  
14 prices of the utility for the group of customers is determined to  
15 be reasonably reflective of the level necessary to produce a fair  
16 and reasonable rate of return pursuant to a current evaluation  
17 under pre-existing standards of Title 48 of the Revised Statutes,  
18 and that the plan provides mechanisms for prospective  
19 adjustments to rates <sup>1</sup>[which will ensure that rates remain  
20 reflective of the cost-of-service based tariff rate] that will track  
21 trends in utility rates<sup>1</sup> .

22 c. Consistent with the provisions of this act, and provided that  
23 the plan meets the standards established in subsection a. of this  
24 section, the board may approve a plan for an alternative form of  
25 regulation for a newly-constructed or acquired energy and  
26 capacity supply of a gas or electric public utility, including any  
27 transmission facilities directly associated with a generating unit,  
28 which regulation provides for a revenue requirement calculation  
29 that differs from the rate base, rate of return formula required  
30 by pre-existing standards of Title 48 of the Revised Statutes, if  
31 the board finds that:

32 (1) An asset, commodity or service comparable to that being  
33 provided by the utility could have been obtained from any one of  
34 many purveyors or suppliers in a competitive marketplace, and an  
35 opportunity was afforded those purveyors or suppliers to offer  
36 such an alternative source of energy and capacity supply; and

37 (2) The cost being charged to consumers by the utility under  
38 the alternative plan reflects the market price for that asset,  
39 commodity or service.

40 d. An alternative regulation plan as provided for in this section  
41 shall not include any mechanism for <sup>1</sup>[recovery] :

42 (1) Recovery<sup>1</sup> of revenue erosion from other ratepayers <sup>1</sup>; or

43 (2) A reduction in the gross receipts and franchise tax<sup>1</sup> .

44 e. The board may require an independent audit or such  
45 accounting and reporting systems from electric and gas utilities  
46 as are necessary to allow a proper allocation of investments,  
47 costs or expenses for all services provided under the provisions of  
48 this act that are subject to the jurisdiction of the board.

49 <sup>1</sup>6. The Board of Public Utilities shall submit a report to the  
50 Legislature on the implementation of this act on December 1 of  
51 the third year following the effective date of this act and every  
52 four years thereafter. This report shall include the status of any  
53 investigations of programs to implement a restructuring of the  
54 electric power industry.<sup>1</sup>

1       <sup>1</sup>7. Nothing in this act shall be construed to alter or diminish  
2 in any way the authority of the Division of the Ratepayer  
3 Advocate to participate in any proceeding before the Board of  
4 Public Utilities that may affect the rates that are charged to  
5 customers of an electric public utility.<sup>1</sup>

6       <sup>1</sup>[5.] 8.<sup>1</sup> This act shall take effect immediately.

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11       \_\_\_\_\_

12       Authorizes off-tariff rates and alternative regulation for certain  
public utilities.

1 and that the plan provides mechanisms for prospective  
2 adjustments to rates which will ensure that rates remain  
3 reflective of the cost-of-service based tariff rate.

4 c. Consistent with the provisions of this act, and provided that  
5 the plan meets the standards established in subsection a. of this  
6 section, the board may approve a plan for an alternative form of  
7 regulation for a newly-constructed or acquired energy and  
8 capacity supply of a gas or electric public utility, including any  
9 transmission facilities directly associated with a generating unit,  
10 which regulation provides for a revenue requirement calculation  
11 that differs from the rate base, rate of return formula required  
12 by pre-existing standards of Title 48 of the Revised Statutes, if  
13 the board finds that:

14 (1) An asset, commodity or service comparable to that being  
15 provided by the utility could have been obtained from any one of  
16 many purveyors or suppliers in a competitive marketplace, and an  
17 opportunity was afforded those purveyors or suppliers to offer  
18 such an alternative source of energy and capacity supply; and

19 (2) The cost being charged to consumers by the utility under  
20 the alternative plan reflects the market price for that asset,  
21 commodity or service.

22 d. An alternative regulation plan as provided for in this section  
23 shall not include any mechanism for recovery of revenue erosion  
24 from other ratepayers.

25 e. The board may require an independent audit or such  
26 accounting and reporting systems from electric and gas utilities  
27 as are necessary to allow a proper allocation of investments,  
28 costs or expenses for all services provided under the provisions of  
29 this act that are subject to the jurisdiction of the board.

30 5. This act shall take effect immediately.

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#### STATEMENT

34

35 This bill consists of two main parts. First, it authorizes the  
36 Board of Public Utilities (BPU) to permit electric utilities to  
37 provide an off-tariff (flex) rate to a retail customer under  
38 certain conditions. Second, the bill authorizes the BPU to  
39 approve, upon petition by a gas or electric utility, an alternative  
40 form of regulation for some part of the utility's business.  
41 Off-tariff rates would be exceptions allowed within the present  
42 system of rate base, rate of return regulation, whereas  
43 alternative regulation would entail a new formula that allows gas  
44 or electricity rates to be set outside the traditional rate base  
45 rate of return system.

46 The first part of the bill would clarify the BPU's authority to  
47 permit off-tariff rates and will set criteria that a utility must  
48 meet. These criteria are:

49

50 (1) A utility cannot seek or obtain recovery of any revenues to  
51 pay for the off-tariff rate granted to a customer until the  
52 utility's next base rate case and any such revenue recovery  
53 must be prospective from the time of the base rate case.

54 (2) A customer may not be required to accept an off-tariff

1 rate and may still decide to purchase its power from another  
2 generator.

3 (3) The off-tariff rate must be equal at a minimum to the  
4 utility's marginal cost plus a demand side management (DSM)  
5 contribution plus a floor margin to be specified by the board.

6 (4) The customer must conduct a comprehensive energy audit  
7 and submit the results to the utility prior to obtaining the  
8 off-tariff rate.

9 (5) The maximum term for off-tariff rate agreements will be  
10 set by the BPU.

11

12 The BPU is required to initiate a proceeding within 45 days of  
13 the effective date of the act to adopt specific standards for the  
14 approval of off-tariff rate agreements. After adoption of the  
15 standards by the BPU, a utility may enter into an off-tariff rate  
16 agreement with a customer, subject to board approval. The board  
17 may suspend implementation of an off-tariff rate agreement with  
18 good cause.

19 The bill allows the board in a base rate case proceeding to  
20 approve recovery of 80 percent of the revenue erosion occurring  
21 after the off-tariff rate agreement, if the following conditions  
22 are met:

23

24 (1) The calculation of the amount of revenue erosion suffered  
25 by the utility must include offsetting gains by the utility, such  
26 as sales growth;

27 (2) The utility must demonstrate that it has implemented a  
28 corporate strategy to lower its cost of producing and delivering  
29 power. This provision protects the remaining ratepayers from  
30 supporting an inefficient utility; and

31 (3) Other ratepayers or the State must be better off with the  
32 off-tariff rate than without it. This determination takes into  
33 account the possibility that a customer that does not receive  
34 an off-tariff rate might leave the State or purchase power  
35 from an alternative source, thus resulting in a complete loss of  
36 contribution to the utility's fixed cost from that customer.

37

38 The second part of the bill authorizes the board, upon petition  
39 by an electric or gas utility, to permit an alternative form of  
40 regulation for (1) setting prices for all or some portion of its  
41 customer base; (2) recovery in rates of a particular asset or  
42 expenditure; or (3) creating incentives consistent with the act.

43 The board may approve the proposed plan, after notice and  
44 hearing, if it finds that the plan:

45

46 (1) Produces tangible benefits for the utility's customers  
47 relative to traditional regulation;

48 (2) Creates incentives for the utility to lower its costs and  
49 improve efficiency;

50 (3) Maintains pre-existing service quality standards;

51 (4) Does not result in cross-subsidization among or between  
52 groups of utility customers, or between the portion of the  
53 utility's business subject to the alternative regulation and the  
54 portion subject to traditional regulation;

- 1 (5) Reduces regulatory delay and cost;  
2 (6) Is in the public interest and produces just and reasonable  
3 rates; and  
4 (7) Enhances economic development in the State.

5  
6 In addition to the criteria listed above, the board must make  
7 additional findings for certain kinds of alternative regulation. If  
8 the regulation permits the utility to set a price for a group of  
9 customers without a finding of rate base and rate of return, the  
10 board must find that: (1) the group of customers has access to a  
11 competitive market for power supply; or (2) the group of  
12 customers voluntarily accepts the alternative price; or (3) the  
13 rates for the group would be reflective of a fair and reasonable  
14 rate of return for the utility.

15 If the alternative regulation provides for the recovery in rates  
16 of a particular asset or capacity supply using a calculation  
17 different from the traditional rate base, rate of return formula,  
18 the board must find that: (1) there was bidding for the new  
19 capacity in a competitive market; and (2) the rates under the  
20 alternative plan reflect the market price.

21 Any alternative regulation plan approved by the board may not  
22 allow for recovery of revenue erosion from other ratepayers. The  
23 bill specifies that the board may require an independent audit of  
24 a utility to ensure a proper allocation of investments, costs or  
25 expenses.

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30 Authorizes off-tariff rates and alternative regulation for certain  
31 public utilities.

SENATE NATURAL RESOURCES, TRADE  
AND ECONOMIC DEVELOPMENT COMMITTEE

STATEMENT TO

**SENATE, No. 1940**

with committee amendments

**STATE OF NEW JERSEY**

DATED: JUNE 8, 1995

The Senate Natural Resources, Trade and Economic Development Committee reports without recommendation Senate Bill No. 1940, with committee amendments.

This bill consists of two main parts. First, it authorizes the Board of Public Utilities (BPU) to permit electric utilities to provide an off-tariff (flex) rate to a retail customer under certain conditions. Second, the bill authorizes the BPU to approve, upon petition by a gas or electric utility, an alternative form of regulation for some part of the utility's business. Off-tariff rates would be exceptions allowed within the present system of rate base, rate of return regulation, whereas alternative regulation would entail a new formula that allows gas or electric rates to be set outside the traditional rate base rate of return system. Gas and electric rates are the only areas affected by this bill: the bill does not apply to customer services such as appliance sales and service.

The first part of the bill, as amended, would require the BPU to set off-tariff rate agreement standards. After adoption of these standards, public utilities are authorized to enter into off-tariff rate agreements within seven years of the effective date of the act. An off-tariff rate agreement entered into after that seven year period would not be authorized by the act and would be subject to current standards and procedures. An off-tariff rate agreement shall be available to the public, except that, upon petition by the public utility, the board may classify certain parts of the agreement as competitively sensitive and therefore confidential. The board shall review the agreement, and may either delay its implementation for further review or disapprove the agreement. If the board neither delays implementation nor disapproves the agreement, the utility may implement it. An off-tariff rate agreement implemented under this streamlined procedure shall not include any reduction in the gross receipts and franchise tax. The board may suspend a utility's ability to negotiate off-tariff rate agreements with good cause.

An off-tariff rate must meet the following criteria:

- (1) There shall be no retroactive recovery by the utility of any revenue erosion that occurs prior to the conclusion of the utility's next base rate case.
- (2) A customer may not be required to accept an off-tariff rate.
- (3) The off-tariff rate must be equal at a minimum to the utility's marginal cost plus a demand side management (DSM) contribution plus a floor margin, which shall constitute the minimum contribution by an off-tariff customer toward the utility's fixed costs, to be specified by the board.



# OFFICE OF THE GOVERNOR NEWS RELEASE

**CN-001**

**Contact:** BECKY TAYLOR  
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**TRENTON, N.J. 08625**

**Release:** THURSDAY,  
JULY 20, 1995

Gov. Christie Whitman today signed a rate flex utility bill that balances the need to keep New Jersey open for business with the public's demand for fair, efficient and affordable service from the state's public utilities.

The legislation, S1940, allows a utility to gain Board of Public Utility approval to offer discounted rates for certain retail customers. But the utility can't seek even partial recovery of its costs unless it proves the discount was necessary to keep a customer in the state or in the utility system. It must also prove that all other ratepayers will clearly benefit by retaining the large customer at a reduced price, rather than losing the business altogether.

"This legislation is designed to bring new businesses into the state and to prevent existing businesses and the jobs they provide from leaving this state," said Gov. Whitman. "The attraction and retention of businesses will lower the cost of electricity for the average ratepayer."

Board of Public Utilities President Herbert H. Tate Jr. said, "When a large electric customer leaves the utility system, the utility can seek to recover its loss from the rest of its customers through higher electric rates. The departure causes job loss, a blow to the overall economy and the escalation of electric rates. This legislation allows a utility to seek partial recovery of discounts it offers to keep businesses in New Jersey. But it guarantees rate flexibility only if other ratepayers are better off with it than without it."

"This legislation has the strictest consumer protection standards of all rate flex bills in the nation. Prospective rate recovery has been limited to one half of what is allowed in almost all other states in the nation," Tate added.

The legislation also allows the BPU, on a case-by-case basis, to consider alternative forms of utility regulation other than the traditional rate-base, rate of return policy now in effect. All of the existing consumer protections remain in effect, but the alternative regulation will provide a transition phase between the traditional method of setting rates and the future goal of competitive market pricing without regulation.

This is achieved by creating incentives for utilities to lower costs, to improve productivity and to become more efficient. The alternative regulation will link a utility's earnings to its effectiveness in cutting costs and rates.

The bill also provides for public disclosure of all rate-making agreements, except those parts the BPU has found to contain competitively sensitive information.

The bill was sponsored by Sen. Joseph M. Kyrillos Jr. (R-Middlesex/Monmouth) and John A. Girgenti (D-Passaic). The companion Assembly bill was sponsored by Assemblymen Richard H. Bagger (R-Middlesex/Morris/Somerset/Union) and William J. Pascrell Jr. (D-Passaic).

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