

48:2-21.34

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2008 **CHAPTER:** 32

NJSA: 48:2-21.34 (Delays phase-out schedule of transitional energy facility assessment unit rate surcharges)

BILL NO: A2807 (Substituted for S2045)

SPONSOR(S) Quigley and others

DATE INTRODUCED: June 12, 2008

COMMITTEE: **ASSEMBLY:** Budget

SENATE: ---

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: **ASSEMBLY:** June 23, 2008

SENATE: June 23, 2008

DATE OF APPROVAL: June 30, 2008

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (Original version of bill enacted)

A2807

SPONSOR'S STATEMENT: (Begins on page 13 of original bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes

SENATE: No

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: Yes

S2045

SPONSOR'S STATEMENT: (Begins on page 13 of original bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: Yes

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: Yes

VETO MESSAGE: No

(continued)

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: Yes

"Tough new state regulations crack down on school waste," Asbury Park Press, 7-8-08, p. __

"To the letter of the law," The Times, 7-8-08, p. __

LAW

P.L. 2008, CHAPTER 32, *approved June 30, 2008*
Assembly, No. 2807

1 **AN ACT** delaying 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 and concerning the proceeds
4 therefrom.

5

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

8

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

11 67. a. As used in this section:

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

17 "Base year" means the calendar year 1996;

18 "Board" means the Board of Public Utilities;

19 "Manufacturing facility" means a facility:

20 (1) with respect to which the owner of the facility shall have
21 entered into an off-tariff rate agreement with an electric public
22 utility, pursuant to the provisions of P.L.1995, c.180 (C.48:2-21.24
23 et seq.);

24 (2) that manufactures products made from using "postconsumer
25 material," as that term is defined in section 247.3 of title 40, Code
26 of Federal Regulations, and other recovered material feedstocks that
27 meet the requirements of the Comprehensive Procurement
28 Guideline For Products Containing Recovered Materials as
29 promulgated by the United States Environmental Protection Agency
30 in section 247.1 et seq. of title 40, Code of Federal Regulations,
31 pursuant to the "Resource Conservation and Recovery Act,"
32 Pub.L.94-580 (42 U.S.C. s.6901 et seq.) and Executive Order No.
33 13101, issued by the President of the United States on September
34 14, 1998, provided that at least 75 percent of the manufacturing
35 facility's total annual sales dollar volume of such products that are
36 produced in New Jersey meet the recycled content standards within
37 such guidelines;

38 (3) for which a "comprehensive energy audit," as that term is
39 defined in section 2 of P.L.1995, c.180 (C.48:2-21.25), shall have

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 been undertaken within 90 days after the effective date of P.L.2007,
2 c.94 (C.48:2-21.36 et al.), which audit shall have evaluated cost-
3 effective energy efficiency and conservation measures as part of the
4 efforts to reduce energy costs;

5 (4) that has been in operation in this State for at least 25 years as
6 of the effective date of P.L.2007, c.94 (C.48:2-21.36 et al.); and

7 (5) at which at least 800 employees are employed on the first
8 business or work day after the expiration of such off-tariff rate
9 agreement.

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

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

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

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

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

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

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

24 To permit the board to make this determination, in addition to
25 including in its filing schedules showing its net income earned in
26 the base year as booked, the utility shall include adjustments to such
27 booked income to eliminate the effect of revenues, expenses and
28 extraordinary or other charges that are non-recurring, atypical, or
29 both, including, but not limited to an adjustment to eliminate the
30 effect of unusually hot or cold weather, and that would otherwise
31 make the utility's base year net income unusually high or low or
32 otherwise unrepresentative of the utility's prospective net income.
33 If the adjustment is being made to eliminate the effect of unusually
34 hot or cold weather, associated revenue and expense adjustments
35 shall also be made. Subject to the board's approval, such adjusted
36 income shall be the basis for the calculation of the initial provision
37 for corporation business tax to be included in the utility's base rates.

38 The utility shall also include a calculation of its rate of return on
39 common equity achieved in the base year, both as booked and as
40 adjusted in accordance with the foregoing. The calculation shall be
41 made employing the methodology set forth in N.J.A.C.14:12-
42 4.2(b)1, and shall separately show the effect of reflecting
43 adjustments to the calculation, if any, that may have been employed
44 historically in establishing the utility's rate of return on common
45 equity allowed for ratemaking purposes. The utility's filing shall
46 also include copies of its audited financial statements for the base
47 year and associated quarterly and other reports filed with the
48 Securities and Exchange Commission.

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

$$10 \quad A e, g = \frac{(I e, g) \times (Rs/(1-Re))}{11 \quad \text{-----}} \\ 12 \quad \quad \quad \quad \quad \quad \quad (Br e, g)$$

13 where:

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

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

24 "Br e, g" means the utility's base year revenue from base rates
25 applicable to electric or gas sales, or both, and transportation
26 service subject to the board's jurisdiction, but excluding sales that
27 were exempt from unit-based energy taxes formerly imposed
28 pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) or to which section
29 59 of P.L.1997, c.162 (C.48:2-21.31) applies;

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

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

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

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

42 (3) When billed to the utility's customers, the adjusted base rate
43 charges determined pursuant to paragraphs (1), (2), and (4) of this
44 subsection, and the charges determined pursuant to the utility's
45 levelized energy adjustment clause, levelized gas adjustment clause,
46 or both, as determined both upon the effective date of the rate
47 changes authorized by this act and as revised prospectively in
48 accordance with the utility's tariff filed with and approved by the

1 board, and the transitional energy facility assessment unit rate
2 surcharges, hereinafter, "TEFA unit rate surcharges," determined in
3 accordance with subsection d. of this section, shall be increased by
4 an amount determined by multiplying such charges by the sales and
5 use tax rate imposed under P.L.1966, c.30 (C.54:32B-1 et seq.). In
6 addition to the utility's rates for service included in its tariff, for
7 informational purposes the tariff shall include such rates after
8 application of the sales and use tax authorized by this section.

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

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

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

46 The utility's filing with the board to implement the rate changes
47 provided for by this act shall also include an analysis, description
48 and quantification of net deferred taxes. For the purposes of this

1 section, "net deferred taxes" means deferred corporation business
2 taxes, net of federal deferred income taxes, associated with the tax
3 and rate changes implemented pursuant to this act, including
4 deferred corporation business tax recorded in accordance with
5 section 4 of P.L.1945, c.162 (C.54:10A-4), projected for the
6 calendar year in which this act takes effect and for each year of the
7 tax life of the asset giving rise to the deferred corporation business
8 taxes pursuant to section 4 of P.L.1945, c.162 (C.54:10A-4).

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

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

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

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

41 (b) The year in which both an appropriate working capital
42 adjustment and the accumulated balance of negative deferred taxes,
43 as described in (ii) of subparagraph (a) of this paragraph (4), are
44 reflected in the utility's rate base in a rate proceeding before the
45 board. It is the intent of this section to fully compensate utilities on
46 a present value basis, for the carrying costs associated with negative
47 net deferred taxes arising as a result of this act, and to remit to
48 ratepayers any credit due them as a result of any overcompensation

1 as may have occurred due to the treatment of working capital and
2 deferred taxes as set forth herein or in subparagraph (a) of this
3 paragraph (4). At the time the above base rate adjustment is made,
4 an analysis shall be made to determine if such carrying costs have
5 been or will be fully recovered pursuant to the intent of this
6 provision and any additional credit or charge to ratepayers to adjust
7 for ratepayer overpayments or underpayments, if any shall be
8 addressed.

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

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

21 d. (1) Electric and gas utilities shall file, for the board's review
22 and approval, initial TEFA unit rate surcharges determined by
23 deducting from each unit-based energy tax unit tax rate effective
24 January 1, 1997 the following:

25 (a) An amount per kilowatthour or per therm determined by
26 multiplying the total revenue received in the base year from sales to
27 which that unit tax rate would have been applicable by the factor
28 $R_u/(1 + R_u)$, where R_u is the sales and use tax rate imposed under
29 P.L.1966, c.30 (C.54:32B-1 et seq.) expressed as a decimal, and
30 dividing the result by the kilowatthours or therms billed in that unit
31 tax rate class in the base year; and

32 (b) An amount per kilowatthour or per therm determined by
33 dividing the revenue that would have been received in the base year
34 from the inclusion, in the manner prescribed in paragraph (2) of
35 subsection c. of this section, of the corporation business tax in the
36 rates applicable to sales billed in that unit tax rate class by the
37 kilowatthours or therms billed in that rate class. In each case, the
38 determination shall reflect the effect of adjustments that affect the
39 level of sales and revenue, if any, as provided in subsection c. of
40 this section. Of the resultant rate per kilowatthour or per therm, the
41 portion for recovery of the utility's transitional energy facilities
42 assessment liability shall be determined by multiplying such rate by
43 the factor $(1 - R_s)$, where R_s is the corporation business tax rate
44 expressed as a decimal.

45 The TEFA unit rate surcharges shall constitute non-bypassable
46 wires and/or mains charges of the utility, and shall be applied to all
47 sales within the customer classes to which they apply, regardless of

1 whether such customers are purchasing bundled or unbundled
2 services from the utility, but shall not be applied to sales:

3 (i) that were or are currently exempt from unit-based energy
4 taxes formerly imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et
5 seq.) or to which section 59 of P.L.1997, c.162 (C.48:2-21.31)
6 applies, and

7 (ii) for a period of seven years commencing on the first day after
8 the expiration of an off-tariff rate agreement, entered into or
9 negotiated pursuant to the provisions of P.L.1995, c.180 (C.48:2-
10 21.24 et seq.), to a manufacturing facility for use or consumption
11 directly and primarily in the production of tangible personal
12 property, other than energy.

13 Notwithstanding the provisions of the exemption provided in this
14 sub-subparagraph (ii) of subparagraph (b) of paragraph (1) of
15 subsection d. of this section, the TEFA unit rate surcharge shall be
16 applied to the sales to the owner of the manufacturing facility and
17 the owner shall be refunded an amount equal to the TEFA unit rate
18 surcharge paid by the filing, within 30 days following the close of a
19 calendar quarter in which the exemption applies, of a claim with the
20 New Jersey Division of Taxation for a refund of the TEFA unit rate
21 surcharge paid, which refund shall be paid within 30 days of the
22 refund claim being filed. Proof of claim for refund shall be made
23 by the submission of such records and other documentation as the
24 Director of the Division of Taxation may require. If the owner of
25 the manufacturing facility at any time during the exemption period
26 relocates the manufacturing facility to a location outside of this
27 State, the owner shall pay to the Director of the Division of
28 Taxation the amount of TEFA unit rate surcharge for which an
29 exemption shall have been allowed and refund obtained under this
30 section. The State Treasurer shall notify the director of the
31 relocation of a manufacturing facility to a location outside of this
32 State, and the director shall issue a tax assessment for the recapture
33 of tax, equal to the amount of TEFA unit rate surcharge for which
34 an exemption shall have been allowed and refund obtained under
35 this section. The recapture of tax shall be a State tax subject to the
36 State Uniform Tax Procedure Law, R.S.54:48-1 et seq., and shall be
37 deposited in the General Fund.

38 If, following the effective date of this act, a customer taking
39 bundled service from the utility shall elect to obtain its
40 requirements from another supplier and take transportation or
41 wheeling service from the utility, the TEFA unit rate surcharge
42 applicable to the bundled service shall continue to apply to the
43 transportation or wheeling service. The TEFA components of the
44 unit rate surcharges determined pursuant to this subsection (the
45 components of the surcharges remaining after deducting the
46 provision for corporation business tax included therein) shall be
47 used to determine the transitional energy facility assessment

1 liability pursuant to sections 36 through 49 of P.L.1997, c.162
2 (C.54:30A-100 through C.54:30A-113).

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

7	January 1, 1999,	20%
8	January 1, 2000,	40%
9	January 1, 2001,	60%

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

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

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

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

34 by the Year 1998 TEFA,

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

46 (4) If the TEFA surcharge adjustment determined for the
47 determination year is positive (that is, if the amount determined
48 pursuant to subparagraph (a) of paragraph (3) of this subsection is

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

18 (5) (a) The TEFA unit rate surcharges for calendar years 2002
19 through ~~2008~~ 2011 shall be the same as the TEFA unit rate
20 surcharges in effect for calendar year 2001.

21 (b) The TEFA unit rate surcharges in effect for calendar year
22 ~~2008~~ 2011 shall be reduced on January 1, ~~2009~~ 2012 and
23 January 1, ~~2010~~ 2013 by the following percentages:

24	January 1, 2009 <u>2012</u>	25%
25	January 1, 2010 <u>2013</u>	50%

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

45 f. The board may, in its discretion, permit the rate changes
46 provided for in this act to be implemented as part of a pending base
47 rate case or other proceeding in which the utility's rates are to be

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

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

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

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

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

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

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

13 (cf: P.L. 2007, c.94, s.2)

14

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

17 38. Each remitter's transitional energy facility assessment shall
18 be established pursuant to section 67 of P.L.1997, c.162 (C.48:2-
19 21.34). Under no circumstances shall an assessment be made under
20 this act for any year commencing after December 31, **[2010]** 2013.

21 (cf: P.L.2004, c.43, s.1)

22

23 3. (New section) The TEFA unit rate surcharge revenue realized
24 during the 2009 State fiscal year attributable to the amendment
25 made to section 67 of P.L.1997, c.162 (C.48:2-21.3) in section 1 of
26 P.L.2008, c. (pending before the Legislature as this bill), is
27 dedicated during that fiscal year to support State funds provided to
28 hospitals in this State and to support State funds provided for
29 Medicaid funding for nursing homes in this State.

30

31 4. This act shall take effect immediately.

32

33

34

STATEMENT

35

36 This bill will freeze transitional energy facility assessment
37 (TEFA) unit rate surcharges at calendar year 2008 rates for 2009,
38 2010, and 2011, and then reduce those surcharges in calendar years
39 2012 and 2013. After December 31, 2013 the TEFA assessments
40 will be eliminated.

41 TEFA was created in 1997 when the taxation of utilities was
42 shifted from a gross receipts tax to a combination of the corporation
43 business tax and the sales and use tax. The TEFA was established as
44 a transitional mechanism to phase in over several years the net
45 reduction in tax revenue from utilities. Legislation extended the
46 original phase-in schedule in 2001, in 2004, and again in 2006. The
47 Governor's budget proposal assumed that TEFA would raise \$184
48 million in FY 2009. Under this bill the total would increase to \$246

1 million.

2 The TEFA unit rate surcharge revenue realized during the 2009
3 State fiscal year attributable to this bill is dedicated during that
4 fiscal year to support State funds provided to hospitals in this State
5 and to support State funds provided for Medicaid funding for
6 nursing homes in this State.

7

8

9

10

11 Delays phase-out schedule of transitional energy facility
12 assessment unit rate surcharges.

ASSEMBLY, No. 2807

STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED JUNE 12, 2008

Sponsored by:

**Assemblywoman JOAN M. QUIGLEY
District 32 (Bergen and Hudson)**

Co-Sponsored by:

Senator Lesniak

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/24/2008)

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2

1 AN ACT delaying 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 and concerning the proceeds
4 therefrom.

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

8
9 1. Section 67 of P.L.1997, c.162 (C.48:2-21.34) is amended to
10 read as follows:

11 67. a. As used in this section:

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

17 "Base year" means the calendar year 1996;

18 "Board" means the Board of Public Utilities;

19 "Manufacturing facility" means a facility:

20 (1) with respect to which the owner of the facility shall have
21 entered into an off-tariff rate agreement with an electric public
22 utility, pursuant to the provisions of P.L.1995, c.180 (C.48:2-21.24
23 et seq.);

24 (2) that manufactures products made from using "postconsumer
25 material," as that term is defined in section 247.3 of title 40, Code
26 of Federal Regulations, and other recovered material feedstocks that
27 meet the requirements of the Comprehensive Procurement
28 Guideline For Products Containing Recovered Materials as
29 promulgated by the United States Environmental Protection Agency
30 in section 247.1 et seq. of title 40, Code of Federal Regulations,
31 pursuant to the "Resource Conservation and Recovery Act,"
32 Pub.L.94-580 (42 U.S.C. s.6901 et seq.) and Executive Order No.
33 13101, issued by the President of the United States on September
34 14, 1998, provided that at least 75 percent of the manufacturing
35 facility's total annual sales dollar volume of such products that are
36 produced in New Jersey meet the recycled content standards within
37 such guidelines;

38 (3) for which a "comprehensive energy audit," as that term is
39 defined in section 2 of P.L.1995, c.180 (C.48:2-21.25), shall have
40 been undertaken within 90 days after the effective date of P.L.2007,
41 c.94 (C.48:2-21.36 et al.), which audit shall have evaluated cost-
42 effective energy efficiency and conservation measures as part of the
43 efforts to reduce energy costs;

44 (4) that has been in operation in this State for at least 25 years as
45 of the effective date of P.L.2007, c.94 (C.48:2-21.36 et al.); and

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 (5) at which at least 800 employees are employed on the first
2 business or work day after the expiration of such off-tariff rate
3 agreement.

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

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

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

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

43 c. As of the effective date of the rate changes implemented
44 pursuant to this act, and except for rates applicable to sales that
45 were or are currently exempt from the unit-based energy taxes
46 formerly imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.)
47 and rates applicable to sales to which section 59 of P.L.1997, c.162
48 (C.48:2-21.31) applies, the board shall remove from the base rates

1 of each electric public utility and gas public utility the unit tax rates
2 included therein for the recovery of those unit-based energy taxes,
3 and include therein provision for the recovery of corporation
4 business tax imposed pursuant to P.L.1945, c.162 (C.54:10A-1 et
5 seq.), and additionally shall authorize the collection of the sales and
6 use tax imposed pursuant to P.L.1966, c.30 (C.54:32B-1 et seq.), as
7 follows:

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

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

18 To permit the board to make this determination, in addition to
19 including in its filing schedules showing its net income earned in
20 the base year as booked, the utility shall include adjustments to such
21 booked income to eliminate the effect of revenues, expenses and
22 extraordinary or other charges that are non-recurring, atypical, or
23 both, including, but not limited to an adjustment to eliminate the
24 effect of unusually hot or cold weather, and that would otherwise
25 make the utility's base year net income unusually high or low or
26 otherwise unrepresentative of the utility's prospective net income.
27 If the adjustment is being made to eliminate the effect of unusually
28 hot or cold weather, associated revenue and expense adjustments
29 shall also be made. Subject to the board's approval, such adjusted
30 income shall be the basis for the calculation of the initial provision
31 for corporation business tax to be included in the utility's base rates.

32 The utility shall also include a calculation of its rate of return on
33 common equity achieved in the base year, both as booked and as
34 adjusted in accordance with the foregoing. The calculation shall be
35 made employing the methodology set forth in N.J.A.C.14:12-
36 4.2(b)1, and shall separately show the effect of reflecting
37 adjustments to the calculation, if any, that may have been employed
38 historically in establishing the utility's rate of return on common
39 equity allowed for ratemaking purposes. The utility's filing shall
40 also include copies of its audited financial statements for the base
41 year and associated quarterly and other reports filed with the
42 Securities and Exchange Commission.

43 To reflect the provision for corporation business tax in base
44 rates, the demand charges, or charges per kilowatt, decatherm or
45 million cubic feet; the energy charges, or charges per kilowatthour
46 or per therm; and the customer charges, or charges other than
47 demand and energy charges, set forth in each base rate schedule,
48 and the floor price employed in parity rate schedules, included in

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1 the utility's tariff filed with and approved by the board shall be
2 increased by amounts determined by multiplying such charges by
3 the adjustment factor, "A e, g" derived below:

$$4 \quad A e, g = \frac{((I e, g) \times (Rs/(1-Re)))}{5 \quad \text{-----}} \\ 6 \quad \quad \quad (Br e, g)$$

7 where:

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

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

18 "Br e, g" means the utility's base year revenue from base rates
19 applicable to electric or gas sales, or both, and transportation
20 service subject to the board's jurisdiction, but excluding sales that
21 were exempt from unit-based energy taxes formerly imposed
22 pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) or to which section
23 59 of P.L.1997, c.162 (C.48:2-21.31) applies;

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

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

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

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

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

1 informational purposes the tariff shall include such rates after
2 application of the sales and use tax authorized by this section.

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

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

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

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

1 tax life of the asset giving rise to the deferred corporation business
2 taxes pursuant to section 4 of P.L.1945, c.162 (C.54:10A-4).

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

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

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

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

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

1 for ratepayer overpayments or underpayments, if any shall be
2 addressed.

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

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

15 d. (1) Electric and gas utilities shall file, for the board's review
16 and approval, initial TEFA unit rate surcharges determined by
17 deducting from each unit-based energy tax unit tax rate effective
18 January 1, 1997 the following:

19 (a) An amount per kilowatthour or per therm determined by
20 multiplying the total revenue received in the base year from sales to
21 which that unit tax rate would have been applicable by the factor
22 $R_u/(1 + R_u)$, where R_u is the sales and use tax rate imposed under
23 P.L.1966, c.30 (C.54:32B-1 et seq.) expressed as a decimal, and
24 dividing the result by the kilowatthours or therms billed in that unit
25 tax rate class in the base year; and

26 (b) An amount per kilowatthour or per therm determined by
27 dividing the revenue that would have been received in the base year
28 from the inclusion, in the manner prescribed in paragraph (2) of
29 subsection c. of this section, of the corporation business tax in the
30 rates applicable to sales billed in that unit tax rate class by the
31 kilowatthours or therms billed in that rate class. In each case, the
32 determination shall reflect the effect of adjustments that affect the
33 level of sales and revenue, if any, as provided in subsection c. of
34 this section. Of the resultant rate per kilowatthour or per therm, the
35 portion for recovery of the utility's transitional energy facilities
36 assessment liability shall be determined by multiplying such rate by
37 the factor $(1 - R_s)$, where R_s is the corporation business tax rate
38 expressed as a decimal.

39 The TEFA unit rate surcharges shall constitute non-bypassable
40 wires and/or mains charges of the utility, and shall be applied to all
41 sales within the customer classes to which they apply, regardless of
42 whether such customers are purchasing bundled or unbundled
43 services from the utility, but shall not be applied to sales:

44 (i) that were or are currently exempt from unit-based energy
45 taxes formerly imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et
46 seq.) or to which section 59 of P.L.1997, c.162 (C.48:2-21.31)
47 applies, and

48 (ii) for a period of seven years commencing on the first day after

1 the expiration of an off-tariff rate agreement, entered into or
2 negotiated pursuant to the provisions of P.L.1995, c.180 (C.48:2-
3 21.24 et seq.), to a manufacturing facility for use or consumption
4 directly and primarily in the production of tangible personal
5 property, other than energy.

6 Notwithstanding the provisions of the exemption provided in this
7 sub-subparagraph (ii) of subparagraph (b) of paragraph (1) of
8 subsection d. of this section, the TEFA unit rate surcharge shall be
9 applied to the sales to the owner of the manufacturing facility and
10 the owner shall be refunded an amount equal to the TEFA unit rate
11 surcharge paid by the filing, within 30 days following the close of a
12 calendar quarter in which the exemption applies, of a claim with the
13 New Jersey Division of Taxation for a refund of the TEFA unit rate
14 surcharge paid, which refund shall be paid within 30 days of the
15 refund claim being filed. Proof of claim for refund shall be made
16 by the submission of such records and other documentation as the
17 Director of the Division of Taxation may require. If the owner of
18 the manufacturing facility at any time during the exemption period
19 relocates the manufacturing facility to a location outside of this
20 State, the owner shall pay to the Director of the Division of
21 Taxation the amount of TEFA unit rate surcharge for which an
22 exemption shall have been allowed and refund obtained under this
23 section. The State Treasurer shall notify the director of the
24 relocation of a manufacturing facility to a location outside of this
25 State, and the director shall issue a tax assessment for the recapture
26 of tax, equal to the amount of TEFA unit rate surcharge for which
27 an exemption shall have been allowed and refund obtained under
28 this section. The recapture of tax shall be a State tax subject to the
29 State Uniform Tax Procedure Law, R.S.54:48-1 et seq., and shall be
30 deposited in the General Fund.

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

47	January 1, 1999,	20%
48	January 1, 2000,	40%

1 January 1, 2001, 60%

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

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

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

	Determination Year	% of
		Year 1998
		TEFA

	1999	80%
	2000	60%

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

38 (4) If the TEFA surcharge adjustment determined for the
 39 determination year is positive (that is, if the amount determined
 40 pursuant to subparagraph (a) of paragraph (3) of this subsection is
 41 greater than the amount determined pursuant to subparagraph (b) of
 42 paragraph (3) of this subsection), no reduction shall be made in the
 43 reduction in the TEFA unit rate surcharges provided for in
 44 paragraph (2) of this subsection for the year following the
 45 determination year. If the TEFA surcharge adjustment is negative,
 46 the reduction in the TEFA unit rate surcharges that otherwise would
 47 have been implemented on January 1 of the year following the
 48 determination year pursuant to paragraph (2) of this subsection shall

1 be reduced by an amount (by percentage points) equal to the
2 percentage the TEFA surcharge adjustment is of the total of the
3 base year transitional energy facility assessment of all remitters, as
4 defined in section 37 of P.L.1997, c.162 (C.54:30A-101), provided
5 however, that such reduction in the reduction in the TEFA unit rate
6 surcharges shall not exceed the percentage shown in paragraph (2)
7 of this subsection for that year; and provided further that in the first
8 two years, that such reduction shall not exceed 10 percentage points
9 for each year.

10 (5) (a) The TEFA unit rate surcharges for calendar years 2002
11 through ~~2008~~ 2011 shall be the same as the TEFA unit rate
12 surcharges in effect for calendar year 2001.

13 (b) The TEFA unit rate surcharges in effect for calendar year
14 ~~2008~~ 2011 shall be reduced on January 1, ~~2009~~ 2012 and
15 January 1, ~~2010~~ 2013 by the following percentages:

16	January 1, 2009 <u>2012</u>	25%
17	January 1, 2010 <u>2013</u>	50%

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

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

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

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

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

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

43 (3) For the purposes of this section, "cogenerator" means a
44 person or business entity that owns or operates a cogeneration
45 facility in the State of New Jersey, which facility is a plant,
46 installation or other structure whose primary purpose is the
47 sequential production of electricity and steam or other forms of
48 useful energy which are used for industrial, commercial, heating or

1 cooling purposes, and which is designated by the Federal Energy
2 Regulatory Commission, or its successor, as a "qualifying facility"
3 pursuant to the provisions of the "Public Utility Regulatory Policies
4 Act of 1978," Pub.L.95-617.

5 (cf: P.L. 2007, c.94, s.2)

6

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

9 38. Each remitter's transitional energy facility assessment shall
10 be established pursuant to section 67 of P.L.1997, c.162 (C.48:2-
11 21.34). Under no circumstances shall an assessment be made under
12 this act for any year commencing after December 31, **[2010]** 2013.

13 (cf: P.L.2004, c.43, s.1)

14

15 3. (New section) The TEFA unit rate surcharge revenue realized
16 during the 2009 State fiscal year attributable to the amendment
17 made to section 67 of P.L.1997, c.162 (C.48:2-21.3) in section 1 of
18 P.L.2008, c. (pending before the Legislature as this bill), is
19 dedicated during that fiscal year to support State funds provided to
20 hospitals in this State and to support State funds provided for
21 Medicaid funding for nursing homes in this State.

22

23 4. This act shall take effect immediately.

24

25

26

STATEMENT

27

28 This bill will freeze transitional energy facility assessment
29 (TEFA) unit rate surcharges at calendar year 2008 rates for 2009,
30 2010, and 2011, and then reduce those surcharges in calendar years
31 2012 and 2013. After December 31, 2013 the TEFA assessments
32 will be eliminated.

33 TEFA was created in 1997 when the taxation of utilities was
34 shifted from a gross receipts tax to a combination of the corporation
35 business tax and the sales and use tax. The TEFA was established as
36 a transitional mechanism to phase in over several years the net
37 reduction in tax revenue from utilities. Legislation extended the
38 original phase-in schedule in 2001, in 2004, and again in 2006. The
39 Governor's budget proposal assumed that TEFA would raise \$184
40 million in FY 2009. Under this bill the total would increase to \$246
41 million.

42 The TEFA unit rate surcharge revenue realized during the 2009
43 State fiscal year attributable to this bill is dedicated during that
44 fiscal year to support State funds provided to hospitals in this State
45 and to support State funds provided for Medicaid funding for
46 nursing homes in this State.

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2807

STATE OF NEW JERSEY

DATED: JUNE 19, 2008

The Assembly Budget Committee reports favorably Assembly Bill No. 2807.

The bill will freeze transitional energy facility assessment (TEFA) unit rate surcharges at calendar year 2008 rates for 2009, 2010, and 2011, and then reduce those surcharges in calendar years 2012 and 2013. After December 31, 2013 the TEFA assessments will be eliminated.

TEFA was created 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. Legislation extended the original phase-in schedule in 2001, in 2004, and again in 2006. The Governor's budget proposal assumed that TEFA would raise \$184 million in FY 2009. Under this bill the total would increase to \$246 million.

The TEFA unit rate surcharge revenue realized during the 2009 State fiscal year attributable to this bill is dedicated during that fiscal year to support State funds provided to hospitals in this State and to support State funds provided for Medicaid funding for nursing homes in this State.

FISCAL IMPACT:

Although the Department of the Treasury has not submitted an official estimate for this bill, the department has indicated in FY 2009 Executive Budget Resolution No.148.00, submitted to the Legislature for consideration in the FY 2009 Budget Bill, that FY 2009 TEFA collections will be increased by \$62.0 million, from an estimated \$183.7 million under current law to \$245.7 million.

The Office of Legislative Services notes that the bill will generate total additional State revenue during the proposed phase-out delay of \$737 million over several fiscal years: \$62.0 million in FY 2009, \$122.8 million in FY 2010, \$245.7 million in FY 2011, \$183.7 million in FY 2012, and \$122.9 million in FY 2013. TEFA surcharges will be fully phased out by FY 2014.

FY 2009 TEFA collections from the postponed phase-out, an estimated \$62 million, are dedicated during FY 2009 to support State

funds provided to hospitals in this State and to support State funds provided for Medicaid funding for nursing homes in this State.

LEGISLATIVE FISCAL ESTIMATE
ASSEMBLY, No. 2807
STATE OF NEW JERSEY
213th LEGISLATURE

DATED: JUNE 23, 2008

SUMMARY

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

Type of Impact: Five-Year State General Fund Revenue Gain.

Agencies Affected: Department of the Treasury;
 Department of Health and Senior Services.

Office of Legislative Services Estimate

Fiscal Impact	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>FY 2012</u>	<u>FY 2013</u>
State Revenue Gain	\$62,000,000	\$122,800,000	\$245,700,000	\$183,700,000	\$122,900,000

- The Office of Legislative Services (OLS) projects that the bill would generate \$737 million in additional State General Fund revenue from FY 2009 through FY 2013. Transitional energy facility assessment (TEFA) surcharges would be phased out by FY 2014.
- FY 2009 collections from the bill, an estimated \$62 million, would be dedicated to hospitals and Medicaid funding for nursing homes. The dedication would not be repeated thereafter. The OLS does not interpret the dedication as an additional cost to the State, as the bill does not create new spending requirements.

BILL DESCRIPTION

Assembly Bill No. 2807 of 2008 would freeze TEFA unit rate surcharges at calendar year 2008 rates for 2009, 2010, and 2011, and then reduce those surcharges by 25 percent in calendar year 2012 and by 50 percent relative to calendar year 2008 in calendar year 2013. After December 31, 2013, the assessment would be eliminated. The revenue realized during the 2009 fiscal year attributable to this bill would be dedicated to hospitals and Medicaid funding for nursing homes.

Existing statutes lower TEFA surcharges by 25 percent in calendar year 2009 and by 50 percent over calendar year 2008 in calendar year 2010, before eliminating it January 1, 2010.

FISCAL ANALYSIS

EXECUTIVE BRANCH

The Department of the Treasury has not submitted an official estimate for this bill. It has indicated in FY 2008-2009 Budget Resolution No. 148.00, however, that the bill should raise FY 2009 TEFA collections by \$62.0 million, from an estimated \$183.7 million under current law to \$245.7 million.

OFFICE OF LEGISLATIVE SERVICES

The OLS projects that the bill would generate \$737 million in additional State General Fund revenue from FY 2009 through FY 2013. It concurs with the Executive that the bill would generate an extra \$62.0 million in FY 2009. The agency also projects that the bill would yield an additional \$122.8 million in FY 2010, \$245.7 million in FY 2011, \$183.7 million in FY 2012, and \$122.9 million in FY 2013. TEFA surcharges would be phased out by FY 2014. These estimates assume that annual TEFA collections absent the phase-out would equal \$245.7 million, the amount of estimated FY 2009 collections.

The table compares anticipated TEFA collections under current law to those under the legislation. FY 2009 TEFA collections from the postponed phase-out, an estimated \$62 million, would be dedicated to hospitals and Medicaid funding for nursing homes. The dedication would not be repeated thereafter. The OLS does not interpret the dedication as an additional cost to the State, as the bill does not create new spending requirements.

Actual and Estimated TEFA Revenue Collections				
(in \$ million)				
Fiscal Year	Current Law	A-2807	Difference	Dedication
2006	\$254.0	\$254.0	\$0	\$0
2007	\$217.4	\$217.4	\$0	\$0
2008 est.	\$257.3	\$257.3	\$0	\$0
2009 est.	\$183.7	\$245.7	\$62.0	\$62.0
2010 est.	\$122.9	\$245.7	\$122.8	\$0
2011 est.	\$0	\$245.7	\$245.7	\$0
2012 est.	\$0	\$183.7	\$183.7	\$0
2013 est.	\$0	\$122.9	\$122.9	\$0
2014 est.	\$0	\$0	\$0	\$0

Section: Revenue, Finance and Appropriations

*Analyst: Thomas Koenig
Associate Fiscal Analyst*

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

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C. 52:13B-1 et seq.).

SENATE, No. 2045

STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED JUNE 12, 2008

Sponsored by:

Senator RAYMOND J. LESNIAK

District 20 (Union)

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT delaying 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 and concerning the proceeds
4 therefrom.

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

8
9 1. Section 67 of P.L.1997, c.162 (C.48:2-21.34) is amended to
10 read as follows:

11 67. a. As used in this section:

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

17 "Base year" means the calendar year 1996;

18 "Board" means the Board of Public Utilities;

19 "Manufacturing facility" means a facility:

20 (1) with respect to which the owner of the facility shall have
21 entered into an off-tariff rate agreement with an electric public
22 utility, pursuant to the provisions of P.L.1995, c.180 (C.48:2-21.24
23 et seq.);

24 (2) that manufactures products made from using "postconsumer
25 material," as that term is defined in section 247.3 of title 40, Code
26 of Federal Regulations, and other recovered material feedstocks that
27 meet the requirements of the Comprehensive Procurement
28 Guideline For Products Containing Recovered Materials as
29 promulgated by the United States Environmental Protection Agency
30 in section 247.1 et seq. of title 40, Code of Federal Regulations,
31 pursuant to the "Resource Conservation and Recovery Act,"
32 Pub.L.94-580 (42 U.S.C. s.6901 et seq.) and Executive Order No.
33 13101, issued by the President of the United States on September
34 14, 1998, provided that at least 75 percent of the manufacturing
35 facility's total annual sales dollar volume of such products that are
36 produced in New Jersey meet the recycled content standards within
37 such guidelines;

38 (3) for which a "comprehensive energy audit," as that term is
39 defined in section 2 of P.L.1995, c.180 (C.48:2-21.25), shall have
40 been undertaken within 90 days after the effective date of P.L.2007,
41 c.94 (C.48:2-21.36 et al.), which audit shall have evaluated cost-
42 effective energy efficiency and conservation measures as part of the
43 efforts to reduce energy costs;

44 (4) that has been in operation in this State for at least 25 years as
45 of the effective date of P.L.2007, c.94 (C.48:2-21.36 et al.); and

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 (5) at which at least 800 employees are employed on the first
2 business or work day after the expiration of such off-tariff rate
3 agreement.

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

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

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

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

43 c. As of the effective date of the rate changes implemented
44 pursuant to this act, and except for rates applicable to sales that
45 were or are currently exempt from the unit-based energy taxes
46 formerly imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.)
47 and rates applicable to sales to which section 59 of P.L.1997, c.162
48 (C.48:2-21.31) applies, the board shall remove from the base rates

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1 of each electric public utility and gas public utility the unit tax rates
2 included therein for the recovery of those unit-based energy taxes,
3 and include therein provision for the recovery of corporation
4 business tax imposed pursuant to P.L.1945, c.162 (C.54:10A-1 et
5 seq.), and additionally shall authorize the collection of the sales and
6 use tax imposed pursuant to P.L.1966, c.30 (C.54:32B-1 et seq.), as
7 follows:

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

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

18 To permit the board to make this determination, in addition to
19 including in its filing schedules showing its net income earned in
20 the base year as booked, the utility shall include adjustments to such
21 booked income to eliminate the effect of revenues, expenses and
22 extraordinary or other charges that are non-recurring, atypical, or
23 both, including, but not limited to an adjustment to eliminate the
24 effect of unusually hot or cold weather, and that would otherwise
25 make the utility's base year net income unusually high or low or
26 otherwise unrepresentative of the utility's prospective net income.
27 If the adjustment is being made to eliminate the effect of unusually
28 hot or cold weather, associated revenue and expense adjustments
29 shall also be made. Subject to the board's approval, such adjusted
30 income shall be the basis for the calculation of the initial provision
31 for corporation business tax to be included in the utility's base rates.

32 The utility shall also include a calculation of its rate of return on
33 common equity achieved in the base year, both as booked and as
34 adjusted in accordance with the foregoing. The calculation shall be
35 made employing the methodology set forth in N.J.A.C.14:12-
36 4.2(b)1, and shall separately show the effect of reflecting
37 adjustments to the calculation, if any, that may have been employed
38 historically in establishing the utility's rate of return on common
39 equity allowed for ratemaking purposes. The utility's filing shall
40 also include copies of its audited financial statements for the base
41 year and associated quarterly and other reports filed with the
42 Securities and Exchange Commission.

43 To reflect the provision for corporation business tax in base
44 rates, the demand charges, or charges per kilowatt, decatherm or
45 million cubic feet; the energy charges, or charges per kilowatthour
46 or per therm; and the customer charges, or charges other than
47 demand and energy charges, set forth in each base rate schedule,
48 and the floor price employed in parity rate schedules, included in

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1 the utility's tariff filed with and approved by the board shall be
2 increased by amounts determined by multiplying such charges by
3 the adjustment factor, "A e, g" derived below:

$$4 \quad A \text{ e, g} = \frac{((I \text{ e, g}) \times (Rs/(1-Re)))}{5 \quad \text{-----}} \\ 6 \quad \quad \quad (Br \text{ e, g})$$

7 where:

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

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

18 "Br e, g" means the utility's base year revenue from base rates
19 applicable to electric or gas sales, or both, and transportation
20 service subject to the board's jurisdiction, but excluding sales that
21 were exempt from unit-based energy taxes formerly imposed
22 pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) or to which section
23 59 of P.L.1997, c.162 (C.48:2-21.31) applies;

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

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

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

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

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

1 informational purposes the tariff shall include such rates after
2 application of the sales and use tax authorized by this section.

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

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

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

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

1 tax life of the asset giving rise to the deferred corporation business
2 taxes pursuant to section 4 of P.L.1945, c.162 (C.54:10A-4).

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

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

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

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

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

1 for ratepayer overpayments or underpayments, if any shall be
2 addressed.

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

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

15 d. (1) Electric and gas utilities shall file, for the board's review
16 and approval, initial TEFA unit rate surcharges determined by
17 deducting from each unit-based energy tax unit tax rate effective
18 January 1, 1997 the following:

19 (a) An amount per kilowatthour or per therm determined by
20 multiplying the total revenue received in the base year from sales to
21 which that unit tax rate would have been applicable by the factor
22 $R_u/(1 + R_u)$, where R_u is the sales and use tax rate imposed under
23 P.L.1966, c.30 (C.54:32B-1 et seq.) expressed as a decimal, and
24 dividing the result by the kilowatthours or therms billed in that unit
25 tax rate class in the base year; and

26 (b) An amount per kilowatthour or per therm determined by
27 dividing the revenue that would have been received in the base year
28 from the inclusion, in the manner prescribed in paragraph (2) of
29 subsection c. of this section, of the corporation business tax in the
30 rates applicable to sales billed in that unit tax rate class by the
31 kilowatthours or therms billed in that rate class. In each case, the
32 determination shall reflect the effect of adjustments that affect the
33 level of sales and revenue, if any, as provided in subsection c. of
34 this section. Of the resultant rate per kilowatthour or per therm, the
35 portion for recovery of the utility's transitional energy facilities
36 assessment liability shall be determined by multiplying such rate by
37 the factor $(1 - R_s)$, where R_s is the corporation business tax rate
38 expressed as a decimal.

39 The TEFA unit rate surcharges shall constitute non-bypassable
40 wires and/or mains charges of the utility, and shall be applied to all
41 sales within the customer classes to which they apply, regardless of
42 whether such customers are purchasing bundled or unbundled
43 services from the utility, but shall not be applied to sales:

44 (i) that were or are currently exempt from unit-based energy
45 taxes formerly imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et
46 seq.) or to which section 59 of P.L.1997, c.162 (C.48:2-21.31)
47 applies, and

48 (ii) for a period of seven years commencing on the first day after

1 the expiration of an off-tariff rate agreement, entered into or
2 negotiated pursuant to the provisions of P.L.1995, c.180 (C.48:2-
3 21.24 et seq.), to a manufacturing facility for use or consumption
4 directly and primarily in the production of tangible personal
5 property, other than energy.

6 Notwithstanding the provisions of the exemption provided in this
7 sub-subparagraph (ii) of subparagraph (b) of paragraph (1) of
8 subsection d. of this section, the TEFA unit rate surcharge shall be
9 applied to the sales to the owner of the manufacturing facility and
10 the owner shall be refunded an amount equal to the TEFA unit rate
11 surcharge paid by the filing, within 30 days following the close of a
12 calendar quarter in which the exemption applies, of a claim with the
13 New Jersey Division of Taxation for a refund of the TEFA unit rate
14 surcharge paid, which refund shall be paid within 30 days of the
15 refund claim being filed. Proof of claim for refund shall be made
16 by the submission of such records and other documentation as the
17 Director of the Division of Taxation may require. If the owner of
18 the manufacturing facility at any time during the exemption period
19 relocates the manufacturing facility to a location outside of this
20 State, the owner shall pay to the Director of the Division of
21 Taxation the amount of TEFA unit rate surcharge for which an
22 exemption shall have been allowed and refund obtained under this
23 section. The State Treasurer shall notify the director of the
24 relocation of a manufacturing facility to a location outside of this
25 State, and the director shall issue a tax assessment for the recapture
26 of tax, equal to the amount of TEFA unit rate surcharge for which
27 an exemption shall have been allowed and refund obtained under
28 this section. The recapture of tax shall be a State tax subject to the
29 State Uniform Tax Procedure Law, R.S.54:48-1 et seq., and shall be
30 deposited in the General Fund.

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

47	January 1, 1999,	20%
48	January 1, 2000,	40%

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1 January 1, 2001, 60%

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

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

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

20	Determination Year	% of
21		Year 1998
22		TEFA
23	-----	-----
24	1999	80%
25	2000	60%

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

38 (4) If the TEFA surcharge adjustment determined for the
39 determination year is positive (that is, if the amount determined
40 pursuant to subparagraph (a) of paragraph (3) of this subsection is
41 greater than the amount determined pursuant to subparagraph (b) of
42 paragraph (3) of this subsection), no reduction shall be made in the
43 reduction in the TEFA unit rate surcharges provided for in
44 paragraph (2) of this subsection for the year following the
45 determination year. If the TEFA surcharge adjustment is negative,
46 the reduction in the TEFA unit rate surcharges that otherwise would
47 have been implemented on January 1 of the year following the
48 determination year pursuant to paragraph (2) of this subsection shall

1 be reduced by an amount (by percentage points) equal to the
2 percentage the TEFA surcharge adjustment is of the total of the
3 base year transitional energy facility assessment of all remitters, as
4 defined in section 37 of P.L.1997, c.162 (C.54:30A-101), provided
5 however, that such reduction in the reduction in the TEFA unit rate
6 surcharges shall not exceed the percentage shown in paragraph (2)
7 of this subsection for that year; and provided further that in the first
8 two years, that such reduction shall not exceed 10 percentage points
9 for each year.

10 (5) (a) The TEFA unit rate surcharges for calendar years 2002
11 through ~~2008~~ 2011 shall be the same as the TEFA unit rate
12 surcharges in effect for calendar year 2001.

13 (b) The TEFA unit rate surcharges in effect for calendar year
14 ~~2008~~ 2011 shall be reduced on January 1, ~~2009~~ 2012 and
15 January 1, ~~2010~~ 2013 by the following percentages:

16	January 1, 2009 <u>2012</u>	25%
17	January 1, 2010 <u>2013</u>	50%

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

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

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

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

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

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

43 (3) For the purposes of this section, "cogenerator" means a
44 person or business entity that owns or operates a cogeneration
45 facility in the State of New Jersey, which facility is a plant,
46 installation or other structure whose primary purpose is the
47 sequential production of electricity and steam or other forms of
48 useful energy which are used for industrial, commercial, heating or

1 cooling purposes, and which is designated by the Federal Energy
2 Regulatory Commission, or its successor, as a "qualifying facility"
3 pursuant to the provisions of the "Public Utility Regulatory Policies
4 Act of 1978," Pub.L.95-617.

5 (cf: P.L. 2007, c.94, s.2)

6

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

9 38. Each remitter's transitional energy facility assessment shall
10 be established pursuant to section 67 of P.L.1997, c.162 (C.48:2-
11 21.34). Under no circumstances shall an assessment be made under
12 this act for any year commencing after December 31, **[2010]** 2013.

13 (cf: P.L.2004, c.43, s.1)

14

15 3. (New section) The TEFA unit rate surcharge revenue realized
16 during the 2009 State fiscal year attributable to the amendment
17 made to section 67 of P.L.1997, c.162 (C.48:2-21.3) in section 1 of
18 P.L.2008, c. (pending before the Legislature as this bill), is
19 dedicated during that fiscal year to support State funds provided to
20 hospitals in this State and to support State funds provided for
21 Medicaid funding for nursing homes in this State.

22

23 4. This act shall take effect immediately.

24

25

26

STATEMENT

27

28 This bill will freeze transitional energy facility assessment
29 (TEFA) unit rate surcharges at calendar year 2008 rates for 2009,
30 2010, and 2011, and then reduce those surcharges in calendar years
31 2012 and 2013. After December 31, 2013 the TEFA assessments
32 will be eliminated.

33 TEFA was created in 1997 when the taxation of utilities was
34 shifted from a gross receipts tax to a combination of the corporation
35 business tax and the sales and use tax. The TEFA was established as
36 a transitional mechanism to phase in over several years the net
37 reduction in tax revenue from utilities. Legislation extended the
38 original phase-in schedule in 2001, in 2004, and again in 2006. The
39 Governor's budget proposal assumed that TEFA would raise \$184
40 million in FY 2009. Under this bill the total would increase to \$246
41 million.

42 The TEFA unit rate surcharge revenue realized during the 2009
43 State fiscal year attributable to this bill is dedicated during that
44 fiscal year to support State funds provided to hospitals in this State
45 and to support State funds provided for Medicaid funding for
46 nursing homes in this State.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 2045

STATE OF NEW JERSEY

DATED: JUNE 19, 2008

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2045.

The bill will freeze transitional energy facility assessment (TEFA) unit rate surcharges at calendar year 2008 rates for 2009, 2010, and 2011, and then reduce those surcharges in calendar years 2012 and 2013. After December 31, 2013 the TEFA assessments will be eliminated.

TEFA was created 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. Legislation extended the original phase-in schedule in 2001, in 2004, and again in 2006. The Governor's budget proposal assumed that TEFA would raise \$184 million in FY 2009. Under this bill the total would increase to \$246 million.

The TEFA unit rate surcharge revenue realized during the 2009 State fiscal year attributable to this bill is dedicated during that fiscal year to support State funds provided to hospitals in this State and to support State funds provided for Medicaid funding for nursing homes in this State.

As reported, this bill is identical to Assembly Bill No. 2807.

FISCAL IMPACT:

Although the Department of the Treasury has not submitted an official estimate for this bill, the department has indicated in FY 2009 Executive Budget Resolution No.148.00, submitted to the Legislature for consideration in the FY 2009 Budget Bill, that FY 2009 TEFA collections would be increased by \$62.0 million, from an estimated \$183.7 million under current law to \$245.7 million.

The Office of Legislative Services notes that the bill would generate total additional State revenue during the proposed phase-out delay of \$737 million over several fiscal years: \$62.0 million in FY 2009, \$122.8 million in FY 2010, \$245.7 million in FY 2011, \$183.7 million in FY 2012, and \$122.9 million in FY 2013. TEFA surcharges would be fully phased out by FY 2014.

FY 2009 TEFA collections from the postponed phase-out, an estimated \$62 million, are dedicated during FY 2009 to support State funds provided to hospitals in this State and to support State funds provided for Medicaid funding for nursing homes in this State.

LEGISLATIVE FISCAL ESTIMATE
SENATE, No. 2045
STATE OF NEW JERSEY
213th LEGISLATURE

DATED: JUNE 23, 2008

SUMMARY

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

Type of Impact: Five-Year State General Fund Revenue Gain.

Agencies Affected: Department of the Treasury;
Department of Health and Senior Services.

Office of Legislative Services Estimate

Fiscal Impact	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>FY 2012</u>	<u>FY 2013</u>
State Revenue Gain	\$62,000,000	\$122,800,000	\$245,700,000	\$183,700,000	\$122,900,000

- The Office of Legislative Services (OLS) projects that the bill would generate \$737 million in additional State General Fund revenue from FY 2009 through FY 2013. Transitional energy facility assessment (TEFA) surcharges would be phased out by FY 2014.
- FY 2009 collections from the bill, an estimated \$62 million, would be dedicated to hospitals and Medicaid funding for nursing homes. The dedication would not be repeated thereafter. The OLS does not interpret the dedication as an additional cost to the State, as the bill does not create new spending requirements.

BILL DESCRIPTION

Senate Bill No. 2045 of 2008 would freeze TEFA unit rate surcharges at calendar year 2008 rates for 2009, 2010, and 2011, and then reduce those surcharges by 25 percent in calendar year 2012 and by 50 percent relative to calendar year 2008 in calendar year 2013. After December 31, 2013, the assessment would be eliminated. The revenue realized during the 2009 fiscal year attributable to this bill would be dedicated to hospitals and Medicaid funding for nursing homes.

Existing statutes lower TEFA surcharges by 25 percent in calendar year 2009 and by 50 percent over calendar year 2008 in calendar year 2010, before eliminating it January 1, 2010.

FISCAL ANALYSIS

EXECUTIVE BRANCH

The Department of the Treasury has not submitted an official estimate for this bill. It has indicated in FY 2008-2009 Budget Resolution No. 148.00, however, that the bill should raise FY 2009 TEFA collections by \$62.0 million, from an estimated \$183.7 million under current law to \$245.7 million.

OFFICE OF LEGISLATIVE SERVICES

The OLS projects that the bill would generate \$737 million in additional State General Fund revenue from FY 2009 through FY 2013. It concurs with the Executive that the bill would generate an extra \$62.0 million in FY 2009. The agency also projects that the bill would yield an additional \$122.8 million in FY 2010, \$245.7 million in FY 2011, \$183.7 million in FY 2012, and \$122.9 million in FY 2013. TEFA surcharges would be phased out by FY 2014. These estimates assume that annual TEFA collections absent the phase-out would equal \$245.7 million, the amount of estimated FY 2009 collections.

The table compares anticipated TEFA collections under current law to those under the legislation. FY 2009 TEFA collections from the postponed phase-out, an estimated \$62 million, would be dedicated to hospitals and Medicaid funding for nursing homes. The dedication would not be repeated thereafter. The OLS does not interpret the dedication as an additional cost to the State, as the bill does not create new spending requirements.

Actual and Estimated TEFA Revenue Collections				
(in \$ million)				
Fiscal Year	Current Law	S-2045	Difference	Dedication
2006	\$254.0	\$254.0	\$0	\$0
2007	\$217.4	\$217.4	\$0	\$0
2008 est.	\$257.3	\$257.3	\$0	\$0
2009 est.	\$183.7	\$245.7	\$62.0	\$62.0
2010 est.	\$122.9	\$245.7	\$122.8	\$0
2011 est.	\$0	\$245.7	\$245.7	\$0
2012 est.	\$0	\$183.7	\$183.7	\$0
2013 est.	\$0	\$122.9	\$122.9	\$0
2014 est.	\$0	\$0	\$0	\$0

Section: Revenue, Finance and Appropriations

*Analyst: Thomas Koenig
Associate Fiscal Analyst*

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

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C. 52:13B-1 et seq.).