

48:3-51

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2001 **CHAPTER:** 242
NJSA: 48:3-51 (Verification of agreements to change electricity/gas suppliers)
BILL NO: S1908 (Substituted for A3185)

SPONSOR(S): Inverso and Bennett

DATE INTRODUCED: December 4, 2000

COMMITTEE: **ASSEMBLY:** ----
SENATE: Economic Growth

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** June 28, 2001
SENATE: June 7, 2001

DATE OF APPROVAL: September 6, 2001

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (1st reprint enacted)

(Amendments during passage denoted by superscript numbers)

S1908

SPONSORS STATEMENT: (Begins on page 15 of original bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: Yes

FLOOR AMENDMENT STATEMENTS: No

LEGISLATIVE FISCAL ESTIMATE: No

A3185

SPONSORS STATEMENT: (Begins on page 15 of original bill) Yes

Bill and Sponsors Statement identical to S1908

COMMITTEE STATEMENT:

ASSEMBLY: Yes

Identical to Senate Statement to S1908

SENATE: No

FLOOR AMENDMENT STATEMENTS:

No

LEGISLATIVE FISCAL ESTIMATE:

No

VETO MESSAGE:

No

GOVERNOR'S PRESS RELEASE ON SIGNING:

No

FOLLOWING WERE PRINTED:

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SENATE, No. 1908

STATE OF NEW JERSEY
209th LEGISLATURE

INTRODUCED DECEMBER 4, 2000

Sponsored by:

Senator PETER A. INVERSO

District 14 (Mercer and Middlesex)

Senator JOHN O. BENNETT

District 12 (Monmouth)

SYNOPSIS

Provides additional means of verification of agreement to change electricity or natural gas suppliers.

CURRENT VERSION OF TEXT

As introduced.



S1908 INVERSO, BENNETT

2

1 **AN ACT** concerning electric power and gas suppliers and amending
2 P.L.1999, c.23.

3

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

6

7 1. Section 3 of P.L.1999, c.23 (C.48:3-51) is amended to read as
8 follows:

9 3. As used in this act:

10 "Assignee" means a person to which an electric public utility or
11 another assignee assigns, sells or transfers, other than as security, all
12 or a portion of its right to or interest in bondable transition property.
13 Except as specifically provided in this act, an assignee shall not be
14 subject to the public utility requirements of Title 48 or any rules or
15 regulations adopted pursuant thereto;

16 "Basic gas supply service" means gas supply service that is provided
17 to any customer that has not chosen an alternative gas supplier,
18 whether or not the customer has received offers as to competitive
19 supply options, including, but not limited to, any customer that cannot
20 obtain such service for any reason, including non-payment for services.
21 Basic gas supply service is not a competitive service and shall be fully
22 regulated by the board;

23 "Basic generation service" means electric generation service that is
24 provided, pursuant to section 9 of this act, to any customer that has
25 not chosen an alternative electric power supplier, whether or not the
26 customer has received offers as to competitive supply options,
27 including, but not limited to, any customer that cannot obtain such
28 service from an electric power supplier for any reason, including
29 non-payment for services. Basic generation service is not a
30 competitive service and shall be fully regulated by the board;

31 "Board" means the New Jersey Board of Public Utilities or any
32 successor agency;

33 "Bondable stranded costs" means any stranded costs of an electric
34 public utility approved by the board for recovery pursuant to the
35 provisions of this act, together with, as approved by the board: (1) the
36 cost of retiring existing debt or equity capital of the electric public
37 utility, including accrued interest, premium and other fees, costs and
38 charges relating thereto, with the proceeds of the financing of
39 bondable transition property; (2) if requested by an electric public
40 utility in its application for a bondable stranded costs rate order,
41 federal, State and local tax liabilities associated with stranded costs
42 recovery or the transfer or financing of such property or both,
43 including taxes, whose recovery period is modified by the effect of a

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 stranded costs recovery order, a bondable stranded costs rate order or
2 both; and (3) the costs incurred to issue, service or refinance transition
3 bonds, including interest, acquisition or redemption premium, and
4 other financing costs, whether paid upon issuance or over the life of
5 the transition bonds, including, but not limited to, credit
6 enhancements, service charges, overcollateralization, interest rate cap,
7 swap or collar, yield maintenance, maturity guarantee or other hedging
8 agreements, equity investments, operating costs and other related fees,
9 costs and charges, or to assign, sell or otherwise transfer bondable
10 transition property;

11 "Bondable stranded costs rate order" means one or more
12 irrevocable written orders issued by the board pursuant to this act
13 which determines the amount of bondable stranded costs and the initial
14 amount of transition bond charges authorized to be imposed to recover
15 such bondable stranded costs, including the costs to be financed from
16 the proceeds of the transition bonds, as well as on-going costs
17 associated with servicing and credit enhancing the transition bonds,
18 and provides the electric public utility specific authority to issue or
19 cause to be issued, directly or indirectly, transition bonds through a
20 financing entity and related matters as provided in this act, which order
21 shall become effective immediately upon the written consent of the
22 related electric public utility to such order as provided in this act;

23 "Bondable transition property" means the property consisting of the
24 irrevocable right to charge, collect and receive, and be paid from
25 collections of, transition bond charges in the amount necessary to
26 provide for the full recovery of bondable stranded costs which are
27 determined to be recoverable in a bondable stranded costs rate order,
28 all rights of the related electric public utility under such bondable
29 stranded costs rate order including, without limitation, all rights to
30 obtain periodic adjustments of the related transition bond charges
31 pursuant to subsection b. of section 15 of this act, and all revenues,
32 collections, payments, money and proceeds arising under, or with
33 respect to, all of the foregoing;

34 "Broker" means a duly licensed electric power supplier that assumes
35 the contractual and legal responsibility for the sale of electric
36 generation service, transmission or other services to end-use retail
37 customers, but does not take title to any of the power sold, or a duly
38 licensed gas supplier that assumes the contractual and legal obligation
39 to provide gas supply service to end-use retail customers, but does not
40 take title to the gas;

41 "Buydown" means an arrangement or arrangements involving the
42 buyer and seller in a given power purchase contract and, in some cases
43 third parties, for consideration to be given by the buyer in order to
44 effectuate a reduction in the pricing, or the restructuring of other
45 terms to reduce the overall cost of the power contract, for the
46 remaining succeeding period of the purchased power arrangement or

1 arrangements;

2 "Buyout" means an arrangement or arrangements involving the
3 buyer and seller in a given power purchase contract and, in some cases
4 third parties, for consideration to be given by the buyer in order to
5 effectuate a termination of such power purchase contract;

6 "Class I renewable energy" means electric energy produced from
7 solar technologies, photovoltaic technologies, wind energy, fuel cells,
8 geothermal technologies, wave or tidal action, and methane gas from
9 landfills or a biomass facility, provided that the biomass is cultivated
10 and harvested in a sustainable manner;

11 "Class II renewable energy" means electric energy produced at a
12 resource recovery facility or hydropower facility, provided that such
13 facility is located where retail competition is permitted and provided
14 further that the Commissioner of Environmental Protection has
15 determined that such facility meets the highest environmental
16 standards and minimizes any impacts to the environment and local
17 communities;

18 "Competitive service" means any service offered by an electric
19 public utility or a gas public utility that the board determines to be
20 competitive pursuant to section 8 or section 10 of this act or that is
21 not regulated by the board;

22 "Comprehensive resource analysis" means an analysis including, but
23 not limited to, an assessment of existing market barriers to the
24 implementation of energy efficiency and renewable technologies that
25 are not or cannot be delivered to customers through a competitive
26 marketplace;

27 "Customer" means any person that is an end user and is connected
28 to any part of the transmission and distribution system within an
29 electric public utility's service territory or a gas public utility's service
30 territory within this State;

31 "Customer account service" means metering, billing, or such other
32 administrative activity associated with maintaining a customer account;

33 "Demand side management" means the management of customer
34 demand for energy service through the implementation of
35 cost-effective energy efficiency technologies, including, but not limited
36 to, installed conservation, load management and energy efficiency
37 measures on and in the residential, commercial, industrial, institutional
38 and governmental premises and facilities in this State;

39 "Electric generation service" means the provision of retail electric
40 energy and capacity which is generated off-site from the location at
41 which the consumption of such electric energy and capacity is metered
42 for retail billing purposes, including agreements and arrangements
43 related thereto;

44 "Electric power generator" means an entity that proposes to
45 construct, own, lease or operate, or currently owns, leases or operates,
46 an electric power production facility that will sell or does sell at least

1 90 percent of its output, either directly or through a marketer, to a
2 customer or customers located at sites that are not on or contiguous
3 to the site on which the facility will be located or is located. The
4 designation of an entity as an electric power generator for the
5 purposes of this act shall not, in and of itself, affect the entity's status
6 as an exempt wholesale generator under the Public Utility Holding
7 Company Act of 1935, 15 U.S.C. s.79 et seq.;

8 "Electric power supplier" means a person or entity that is duly
9 licensed pursuant to the provisions of this act to offer and to assume
10 the contractual and legal responsibility to provide electric generation
11 service to retail customers, and includes load serving entities,
12 marketers and brokers that offer or provide electric generation service
13 to retail customers. The term excludes an electric public utility that
14 provides electric generation service only as a basic generation service
15 pursuant to section 9 of this act;

16 "Electric public utility" means a public utility, as that term is defined
17 in R.S.48:2-13, that transmits and distributes electricity to end users
18 within this State;

19 "Electric related service" means a service that is directly related to
20 the consumption of electricity by an end user, including, but not
21 limited to, the installation of demand side management measures at the
22 end user's premises, the maintenance, repair or replacement of
23 appliances, lighting, motors or other energy-consuming devices at the
24 end user's premises, and the provision of energy consumption
25 measurement and billing services;

26 "Electronic signature" means an electronic sound, symbol or
27 process, attached to, or logically associated with, a contract or other
28 record, and executed or adopted by a person with the intent to sign the
29 record;

30 "Energy agent" means a person that is duly registered pursuant to
31 the provisions of this act, that arranges the sale of retail electricity or
32 electric related services or retail gas supply or gas related services
33 between government aggregators or private aggregators and electric
34 power suppliers or gas suppliers, but does not take title to the electric
35 or gas sold;

36 "Energy consumer" means a business or residential consumer of
37 electric generation service or gas supply service located within the
38 territorial jurisdiction of a government aggregator;

39 "Financing entity" means an electric public utility, a special purpose
40 entity, or any other assignee of bondable transition property, which
41 issues transition bonds. Except as specifically provided in this act, a
42 financing entity which is not itself an electric public utility shall not be
43 subject to the public utility requirements of Title 48 or any rules or
44 regulations adopted pursuant thereto;

45 "Gas public utility" means a public utility, as that term is defined in
46 R.S.48:2-13, that distributes gas to end users within this State;

1 "Gas related service" means a service that is directly related to the
2 consumption of gas by an end user, including, but not limited to, the
3 installation of demand side management measures at the end user's
4 premises, the maintenance, repair or replacement of appliances or
5 other energy-consuming devices at the end user's premises, and the
6 provision of energy consumption measurement and billing services;

7 "Gas supplier" means a person that is duly licensed pursuant to the
8 provisions of this act to offer and assume the contractual and legal
9 obligation to provide gas supply service to retail customers, and
10 includes, but is not limited to, marketers and brokers. A non-public
11 utility affiliate of a public utility holding company may be a gas
12 supplier, but a gas public utility or any subsidiary of a gas utility is not
13 a gas supplier. In the event that a gas public utility is not part of a
14 holding company legal structure, a related competitive business
15 segment of that gas public utility may be a gas supplier, provided that
16 related competitive business segment is structurally separated from the
17 gas public utility, and provided that the interactions between the gas
18 public utility and the related competitive business segment are subject
19 to the affiliate relations standards adopted by the board pursuant to
20 subsection k. of section 10 of this act;

21 "Gas supply service" means the provision to customers of the retail
22 commodity of gas, but does not include any regulated distribution
23 service;

24 "Government aggregator" means any government entity subject to
25 the requirements of the "Local Public Contracts Law," P.L.1971,
26 c.198 (C.40A:11-1 et seq.), the "Public School Contracts Law,"
27 N.J.S.18A:18A-1 et seq., or the "County College Contracts Law,"
28 P.L.1982, c.189 (C.18A:64A-25.1 et seq.), that enters into a written
29 contract with a licensed electric power supplier or a licensed gas
30 supplier for: (1) the provision of electric generation service, electric
31 related service, gas supply service, or gas related service for its own
32 use or the use of other government aggregators; or (2) if a municipal
33 or county government, the provision of electric generation service or
34 gas supply service on behalf of business or residential customers within
35 its territorial jurisdiction;

36 "Government energy aggregation program" means a program and
37 procedure pursuant to which a government aggregator enters into a
38 written contract for the provision of electric generation service or gas
39 supply service on behalf of business or residential customers within its
40 territorial jurisdiction;

41 "Governmental entity" means any federal, state, municipal, local or
42 other governmental department, commission, board, agency, court,
43 authority or instrumentality having competent jurisdiction;

44 "Market transition charge" means a charge imposed pursuant to
45 section 13 of this act by an electric public utility, at a level determined
46 by the board, on the electric public utility customers for a limited

1 duration transition period to recover stranded costs created as a result
2 of the introduction of electric power supply competition pursuant to
3 the provisions of this act;

4 "Marketer" means a duly licensed electric power supplier that takes
5 title to electric energy and capacity, transmission and other services
6 from electric power generators and other wholesale suppliers and then
7 assumes contractual and legal obligation to provide electric generation
8 service, and may include transmission and other services, to an end-use
9 retail customer or customers, or a duly licensed gas supplier that takes
10 title to gas and then assumes the contractual and legal obligation to
11 provide gas supply service to an end-use customer or customers;

12 "Net proceeds" means proceeds less transaction and other related
13 costs as determined by the board;

14 "Net revenues" means revenues less related expenses, including
15 applicable taxes, as determined by the board;

16 "On-site generation facility" means a generation facility, and
17 equipment and services appurtenant to electric sales by such facility to
18 the end use customer located on the property or on property
19 contiguous to the property on which the end user is located. An
20 on-site generation facility shall not be considered a public utility. The
21 property of the end use customer and the property on which the
22 on-site generation facility is located shall be considered contiguous if
23 they are geographically located next to each other, but may be
24 otherwise separated by an easement, public thoroughfare,
25 transportation or utility-owned right-of-way;

26 "Person" means an individual, partnership, corporation, association,
27 trust, limited liability company, governmental entity or other legal
28 entity;

29 "Private aggregator" means a non-government aggregator that is a
30 duly-organized business or non-profit organization authorized to do
31 business in this State that enters into a contract with a duly licensed
32 electric power supplier for the purchase of electric energy and
33 capacity, or with a duly licensed gas supplier for the purchase of gas
34 supply service, on behalf of multiple end-use customers by combining
35 the loads of those customers;

36 "Public utility holding company" means: (1) any company that,
37 directly or indirectly, owns, controls, or holds with power to vote, ten
38 percent or more of the outstanding voting securities of an electric
39 public utility or a gas public utility or of a company which is a public
40 utility holding company by virtue of this definition, unless the
41 Securities and Exchange Commission, or its successor, by order
42 declares such company not to be a public utility holding company
43 under the Public Utility Holding Company Act of 1935, 15 U.S.C. s.79
44 et seq., or its successor; or (2) any person that the Securities and
45 Exchange Commission, or its successor, determines, after notice and
46 opportunity for hearing, directly or indirectly, to exercise, either alone

1 or pursuant to an arrangement or understanding with one or more
2 other persons, such a controlling influence over the management or
3 policies of an electric public utility or a gas public utility or public
4 utility holding company as to make it necessary or appropriate in the
5 public interest or for the protection of investors or consumers that
6 such person be subject to the obligations, duties, and liabilities
7 imposed in the Public Utility Holding Company Act of 1935 or its
8 successor;

9 "Regulatory asset" means an asset recorded on the books of an
10 electric public utility or gas public utility pursuant to the Statement of
11 Financial Accounting Standards, No. 71, entitled "Accounting for the
12 Effects of Certain Types of Regulation," or any successor standard and
13 as deemed recoverable by the board;

14 "Related competitive business segment of an electric public utility
15 or gas public utility" means any business venture of an electric public
16 utility or gas public utility including, but not limited to, functionally
17 separate business units, joint ventures, and partnerships, that offers to
18 provide or provides competitive services;

19 "Related competitive business segment of a public utility holding
20 company" means any business venture of a public utility holding
21 company, including, but not limited to, functionally separate business
22 units, joint ventures, and partnerships and subsidiaries, that offers to
23 provide or provides competitive services, but does not include any
24 related competitive business segments of an electric public utility or
25 gas public utility;

26 "Resource recovery facility" means a solid waste facility
27 constructed and operated for the incineration of solid waste for energy
28 production and the recovery of metals and other materials for reuse;

29 "Restructuring related costs" means reasonably incurred costs
30 directly related to the restructuring of the electric power industry,
31 including the closure, sale, functional separation and divestiture of
32 generation and other competitive utility assets by a public utility, or
33 the provision of competitive services as such costs are determined by
34 the board, and which are not stranded costs as defined in this act but
35 may include, but not be limited to, investments in management
36 information systems, and which shall include expenses related to
37 employees affected by restructuring which result in efficiencies and
38 which result in benefits to ratepayers, such as training or retraining at
39 the level equivalent to one year's training at a vocational or technical
40 school or county community college, the provision of severance pay
41 of two weeks of base pay for each year of full-time employment, and
42 a maximum of 24 months' continued health care coverage. Except as
43 to expenses related to employees affected by restructuring,
44 "restructuring related costs" shall not include going forward costs;

45 "Retail choice" means the ability of retail customers to shop for
46 electric generation or gas supply service from electric power or gas

1 suppliers, or opt to receive basic generation service or basic gas
2 service, and the ability of an electric power or gas supplier to offer
3 electric generation service or gas supply service to retail customers,
4 consistent with the provisions of this act;

5 "Shopping credit" means an amount deducted from the bill of an
6 electric public utility customer to reflect the fact that such customer
7 has switched to an electric power supplier and no longer takes basic
8 generation service from the electric public utility;

9 "Social program" means a program implemented with board
10 approval to provide assistance to a group of disadvantaged customers,
11 to provide protection to consumers, or to accomplish a particular
12 societal goal, and includes, but is not limited to, the winter moratorium
13 program, utility practices concerning "bad debt" customers, low
14 income assistance, deferred payment plans, weatherization programs,
15 and late payment and deposit policies, but does not include any
16 demand side management program or any environmental requirements
17 or controls;

18 "Societal benefits charge" means a charge imposed by an electric
19 public utility, at a level determined by the board, pursuant to, and in
20 accordance with, section 12 of this act;

21 "Stranded cost" means the amount by which the net cost of an
22 electric public utility's electric generating assets or electric power
23 purchase commitments, as determined by the board consistent with the
24 provisions of this act, exceeds the market value of those assets or
25 contractual commitments in a competitive supply marketplace and the
26 costs of buydowns or buyouts of power purchase contracts;

27 "Stranded costs recovery order" means each order issued by the
28 board in accordance with subsection c. of section 13 of this act which
29 sets forth the amount of stranded costs, if any, the board has
30 determined an electric public utility is eligible to recover and collect
31 in accordance with the standards set forth in section 13 and the
32 recovery mechanisms therefor;

33 "Transition bond charge" means a charge, expressed as an amount
34 per kilowatt hour, that is authorized by and imposed on electric public
35 utility ratepayers pursuant to a bondable stranded costs rate order, as
36 modified at any time pursuant to the provisions of this act;

37 "Transition bonds" means bonds, notes, certificates of participation
38 or beneficial interest or other evidences of indebtedness or ownership
39 issued pursuant to an indenture, contract or other agreement of an
40 electric public utility or a financing entity, the proceeds of which are
41 used, directly or indirectly, to recover, finance or refinance bondable
42 stranded costs and which are, directly or indirectly, secured by or
43 payable from bondable transition property. References in this act to
44 principal, interest, and acquisition or redemption premium with respect
45 to transition bonds which are issued in the form of certificates of
46 participation or beneficial interest or other evidences of ownership

1 shall refer to the comparable payments on such securities;

2 "Transmission and distribution system" means, with respect to an
3 electric public utility, any facility or equipment that is used for the
4 transmission, distribution or delivery of electricity to the customers of
5 the electric public utility including, but not limited to, the land,
6 structures, meters, lines, switches and all other appurtenances thereof
7 and thereto, owned or controlled by the electric public utility within
8 this State; and

9 "Universal service" means any service approved by the board with
10 the purpose of assisting low-income residential customers in obtaining
11 or retaining electric generation or delivery service.

12 (cf: P.L.1999, c.23, s.3)

13

14 2. Section 36 of P.L.1999, c.23 (C.48:3-85) is amended to read as
15 follows:

16 36. a. Notwithstanding any provisions of the "Administrative
17 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary,
18 the board, in consultation with the Division of Consumer Affairs in the
19 Department of Law and Public Safety, shall initiate a proceeding and
20 shall adopt, after notice, provision of the opportunity for comment,
21 and public hearing, interim consumer protection standards for electric
22 power suppliers or gas suppliers, within 90 days of [the effective date
23 of this act] February 9, 1999, including, but not limited to, standards
24 for collections, credit, contracts, authorized changes of an energy
25 consumer's electric power supplier or gas supplier, for the prohibition
26 of discriminatory marketing, for advertising and for disclosure. Such
27 standards shall be effective as regulations immediately upon filing with
28 the Office of Administrative Law and shall be effective for a period not
29 to exceed 18 months, and may, thereafter, be amended, adopted or
30 readopted by the board in accordance with the provisions of the
31 "Administrative Procedure Act."

32 (1) Contract standards shall include, but not be limited to,
33 requirements that electric power supply contracts or gas supply
34 contracts must conspicuously disclose the duration of the contract;
35 state the price per kilowatt hour or per therm or other pricing
36 determinant approved by the board; have the customer's written
37 signature; the customer's electronic signature; an audio recording of
38 a telephone call initiated by the customer; independent, third-party
39 verification, in accordance with section 37 of P.L.1999, c.23
40 (C.48:3-86), of a telephone call initiated by an electric power supplier,
41 gas supplier or private aggregator; or such alternative forms of
42 verification as the board, in consultation with the Division of
43 Consumer Affairs, may permit for switching electric power suppliers
44 or gas suppliers and for contract renewal; and include termination
45 procedures, notice of any fees, and toll-free or local telephone
46 numbers for the electric power supplier or gas supplier and for the

1 board.

2 (2) Standards for the prohibition of discriminatory marketing
3 standards shall provide at a minimum that a decision made by an
4 electric power supplier or a gas supplier to accept or reject a customer
5 shall not be based on race, color, national origin, age, gender, religion,
6 source of income, receipt of public benefits, family status, sexual
7 preference, or geographic location. The board shall adopt reporting
8 requirements to monitor compliance with such standards.

9 (3) Advertising standards for electric power suppliers or gas
10 suppliers shall provide, at a minimum, that optional charges to the
11 consumer will not be added to any advertised cost per kilowatt hour
12 or per therm, and that the only unit of measurement that may be used
13 in advertisements is cost per kilowatt hour or per therm, unless
14 otherwise approved by the board. If an electric power supplier or gas
15 supplier does not advertise using cost per kilowatt hour or per therm,
16 the electric power supplier or gas supplier shall provide, at the
17 consumer's request, an estimate of the cost per kilowatt hour or per
18 therm. Any optional charges to the consumer shall be identified
19 separately and denoted as optional.

20 (4) Credit standards shall include, at a minimum, that the credit
21 requirements used to make offer decisions must be the same for all
22 residential customers and that electric power suppliers, gas suppliers
23 and private aggregators not impose unreasonable income or credit
24 requirements.

25 (5) Billing standards shall include, at a minimum, provisions
26 prohibiting electric public utilities, gas public utilities, electric power
27 suppliers and gas suppliers from charging a fee to residential
28 customers for either the commencement or termination of electric
29 generation service or gas supply service.

30 b. (1) An electric power supplier, a gas supplier, an electric
31 public utility, and a gas public utility shall not disclose, sell or transfer
32 individual proprietary information, including, but not limited to, a
33 customer's name, address, telephone number, energy usage and electric
34 power payment history, to a third party without the written consent of
35 the customer. Whenever such individual proprietary information is
36 disclosed, sold or transferred, upon the written consent of the
37 customer, it may be used only for the provision of continued electric
38 generation service, electric related service, gas supply service or gas
39 related service to that customer. In the case of a transfer or sale of a
40 business, customer consent shall not be required for the transfer of
41 customer proprietary information to the subsequent owner of the
42 business for maintaining the continuation of such services.

43 (2) An electric power supplier, a gas supplier, a gas public utility
44 or an electric public utility may use individual proprietary information
45 that it has obtained by virtue of its provision of electric generation
46 service, electric related service, gas supply service or gas related

1 service to:

2 (a) Initiate, render, bill and collect for such services to the extent
3 otherwise authorized to provide billing and collection services;

4 (b) Protect the rights or property of the electric power supplier,
5 gas supplier or public utility; and

6 (c) Protect consumers of such services and other electric power
7 suppliers, gas suppliers or electric and gas public utilities from
8 fraudulent, abusive or unlawful use of, or subscription to, such
9 services.

10 c. The board shall establish and maintain a database for the
11 purpose of recording customer complaints concerning electric and gas
12 public utilities, electric power suppliers, gas suppliers, private
13 aggregators, and energy agents.

14 d. The board, in consultation with the Division of Consumer
15 Affairs in the Department of Law and Public Safety, shall establish, or
16 cause to be established, a multi-lingual electric and gas consumer
17 education program. The goal of the consumer education program shall
18 be to educate residential, small business, and special needs consumers
19 about the implications for consumers of the restructuring of the
20 electric power and gas industries. The consumer education program
21 shall include, but need not be limited to, the dissemination of
22 information to enable consumers to make informed choices among
23 available electricity and gas services and suppliers, notification of
24 residential electric and gas customers of the right to submit their
25 names to the board pursuant to paragraph (1) of subsection e. of this
26 section, and the communication to consumers of the consumer
27 protection provisions of this act.

28 The board shall ensure the neutrality of the content and message of
29 advertisements and materials.

30 The board shall promulgate standards for the recovery of consumer
31 education program costs from customers which include reasonable
32 measures and criteria to judge the success of the program in enhancing
33 customer understanding of retail choice.

34 e. (1) Residential electric or gas customers may submit their
35 names in writing to the board for inclusion on a list established by the
36 board of customers not wanting to receive telephone solicitations by
37 electric power suppliers, gas suppliers or private aggregators.

38 (2) As a condition of licensing, pursuant to standards adopted by
39 the board, an electric power supplier, gas supplier or private
40 aggregator shall not engage in telephone solicitation of any residential
41 electric or gas customer, as appropriate, whose name is on the list
42 established by the board, pursuant to paragraph (1) of this subsection.

43 (cf: P.L.1999, c.23, s.36)

44

45 3. Section 37 of P.L.1999, c.23 (C.48:3-86) is amended to read as
46 follows:

1 37. a. Notwithstanding any provisions of the "Administrative
2 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary,
3 the board, in consultation with the Division of Consumer Affairs in the
4 Department of Law and Public Safety, shall initiate a proceeding and
5 shall adopt, after notice, provision of the opportunity for comment,
6 and public hearing, interim standards for electric power suppliers or
7 gas suppliers, within 90 days of [the effective date of this act]
8 February 9, 1999, to prevent and establish penalties for unauthorized
9 changes of a consumer's electric power supplier or gas supplier, a
10 practice commonly known as "slamming." Such standards shall be
11 effective as regulations immediately upon filing with the Office of
12 Administrative Law and shall be effective for a period not to exceed
13 18 months, and may, thereafter, be amended, adopted or readopted by
14 the board in accordance with the provisions of the "Administrative
15 Procedure Act."

16 b. Standards for the prohibition of unauthorized changes in a
17 customer's electric power supplier or gas supplier shall include:

18 (1) An electric power supplier, an electric public utility, a gas
19 supplier or a gas public utility shall not cause an unauthorized change
20 in a customer's electric power supplier or gas supplier, a practice
21 known as "slamming." A change in a customer's electric power
22 supplier or gas supplier, except for a change, if otherwise lawfully
23 executed pursuant to the provisions of P.L.1999, c.23 (C.48:3-49 et
24 seq.), that results in the customer's taking service from a provider of
25 basic generation service or basic gas supply service, shall be deemed
26 to be unauthorized unless the customer has done so affirmatively and
27 voluntarily and the supplier has obtained the customer's approval
28 [either through a], which approval shall be evidenced by the
29 customer's written signature; the customer's electronic signature; an
30 audio recording of a telephone call initiated by the customer;
31 independent, third-party verification, in accordance with paragraph (2)
32 of this subsection, of a telephone call initiated by an electric power
33 supplier, electric public utility, gas supplier or gas public utility; or
34 such alternative forms of verification as the board, in consultation with
35 the Division of Consumer Affairs, may permit;

36 (2) (a) A company performing independent, third-party verification
37 shall: (i) be independent from the entity that seeks to provide the new
38 service; (ii) not be directly or indirectly managed, controlled, directed
39 or owned, wholly or in part, by the entity that seeks to provide the
40 new service, or by any affiliate of that entity; (iii) operate from
41 facilities physically separate from those of the entity that seeks to
42 provide the new service; and (iv) not derive any commission or
43 compensation based upon the number of sales confirmed;

44 (b) A company performing independent, third-party verification
45 shall obtain a customer's oral confirmation regarding the change and
46 shall record that confirmation by obtaining appropriate verification

1 data. The record shall be available to the customer upon request.
2 Information obtained from a customer through confirmation shall not
3 be used for marketing purposes:

4 (3) An electric power supplier, an electric public utility, a gas
5 supplier or a gas public utility shall not fail to cause a change in a
6 customer's electric power supplier or gas supplier, within a period of
7 time determined to be appropriate by the board, when a supplier or
8 utility is in receipt of a change order provided that such change order
9 has been received in a manner that complies with federal and State
10 rules and regulations, including as provided in this subsection;

11 [(3)] (4) The acts of an agent of an electric power supplier, an
12 electric public utility, a gas supplier or a gas public utility shall be
13 considered the acts of the electric power supplier, electric public
14 utility, gas supplier or gas public utility.

15 c. A customer's new electric power supplier, electric public utility,
16 gas supplier or gas public utility shall notify the customer of the
17 change in the customer's electric or gas supplier within 30 days in a
18 manner to be determined by the board.

19 d. Bills to customers from an electric power supplier, electric
20 public utility, gas supplier or gas public utility shall contain the name
21 and telephone number of each supplier for whom billing is provided,
22 and any other information deemed applicable by the board.

23 e. In addition to any other penalties, fines or remedies authorized
24 by law, any electric power supplier, electric public utility, gas supplier
25 or gas public utility that violates this section and collects charges for
26 electric power supply or gas supply services from a customer or
27 through an entity providing customer account services shall be liable
28 to the electric power supplier, electric public utility, gas supplier or
29 gas public utility previously selected by the customer in an amount
30 equal to all charges paid by the customer after such violation in
31 accordance with such procedures as the board may prescribe. Any
32 electric power supplier, electric public utility, gas supplier or gas
33 public utility that violates this section shall also be liable for a civil
34 penalty pursuant to section 34 of [this act] P.L.1999, c.23
35 (C.48:3-83); and the board is hereby authorized to revoke the license
36 of any entity that violates this section.

37 (cf: P.L.1999, c.23, s.37)

38

39 4. Section 41 of P.L.1999, c.23 (C.48:3-90) is amended to read
40 as follows:

41 41. a. A private aggregator shall register with the board, which shall
42 include the filing of basic information pertaining to the supplier, such
43 as name, address, telephone number, and company background and
44 profile. A private aggregator shall provide annual updates of this
45 information to the board. The registration shall also include evidence
46 of financial integrity, as determined by the board, and evidence that the

1 private aggregator has knowledge of the energy industry.

2 b. Any residential customer that elects to purchase electric
3 generation service or gas supply service, after the implementation of
4 gas unbundling pursuant to section 10 of [this act] P.L.1999, c.23
5 (C.48:3-58), through a private aggregator must do so affirmatively and
6 voluntarily, either through a written signature; the customer's
7 electronic signature; an audio recording of a telephone call initiated by
8 the customer; independent, third-party verification, in accordance with
9 section 37 of P.L.1999, c.23 (C.48:3-86), of a telephone call initiated
10 by a private aggregator; or such alternative forms of verification as the
11 board, in consultation with the Division of Consumer Affairs in the
12 Department of Law and Public Safety, may permit.
13 (cf: P.L.1999, c.23, s.41)

14

15 5. This act shall take effect immediately.

16

17

18

STATEMENT

19

20 The purpose of this bill is to increase customer choice by providing
21 additional means of verification of agreement to change electricity or
22 natural gas suppliers. The verification options are consistent with the
23 medium of the transaction, i.e., an electronic signature for Internet
24 transactions, audio recording (which can include such technologies as
25 interactive voice response) of telephone calls initiated by the customer,
26 or independent, third-party verification of telephone calls initiated by
27 an energy supplier or aggregator, in addition to the "wet signature"
28 and such other methods as the Board of Public Utilities (BPU) may
29 approve. The term "electronic signature" is defined to have the same
30 meaning as that term is used in the recently enacted federal "Electronic
31 Signatures in Global and National Commerce Act," Pub.L.106-229. By
32 the use of this common definition, this legislation is consistent with the
33 BPU's recently initiated Internet sign-up program.

34 The bill allows residential electric or gas customers to submit their
35 names in writing to the BPU for inclusion on a list of customers not
36 wanting to receive telephone solicitations by electric power suppliers,
37 gas suppliers and private aggregators. Electric power suppliers, gas
38 suppliers or private aggregators would then be prohibited from
39 engaging in telephone solicitation of any residential electric or gas
40 customer whose name is on the list established by the BPU. Similar
41 restrictions have been implemented as part of the utility industry
42 restructuring programs in California, Connecticut, Delaware, Maine,
43 Ohio, Rhode Island and Texas.

44 The bill also requires that consumers be notified of their right to be
45 included in the list, as part of the currently mandated consumer
46 education program.

SENATE ECONOMIC GROWTH, AGRICULTURE AND
TOURISM COMMITTEE

STATEMENT TO

SENATE, No. 1908

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 24, 2001

The Senate Economic Growth, Agriculture and Tourism Committee reports favorably Senate Bill No. 1908 with committee amendments.

The purpose of this bill, as amended, is to increase customer choice by providing additional means of verification of agreement to change electricity or natural gas suppliers. The verification options are consistent with the medium of the transaction, i.e., an electronic signature for Internet transactions, audio recording (which can include such technologies as interactive voice response) of telephone calls initiated by the customer, or independent, third-party verification of telephone calls initiated by an energy supplier or aggregator, in addition to the "wet signature" and such other methods as the Board of Public Utilities (BPU) may approve. The term "electronic signature" is defined to have the same meaning as that term is used in the recently enacted federal "Electronic Signatures in Global and National Commerce Act," Pub.L.106-229. By the use of this common definition, this legislation is consistent with the BPU's recently initiated Internet sign-up program.

The bill allows residential electric or gas customers to submit their names in writing to the BPU for inclusion on a list of customers not wanting to receive telephone solicitations by electric power suppliers, gas suppliers and private aggregators. Electric power suppliers, gas suppliers or private aggregators would then be prohibited from engaging in telephone solicitation of any residential electric or gas customer whose name is on the list established by the BPU.

The bill also requires that consumers be notified of their right to be included in the list, as part of the currently mandated consumer education program.

Under the provisions of the bill, unauthorized changes in a customer's electric power or gas supplier are prohibited unless the change results in a customer's taking service from a provider of basic (electric) generation service or basic gas supply service. The committee amended this section of the bill to eliminate that exemption.

[First Reprint]

SENATE, No. 1908

STATE OF NEW JERSEY
209th LEGISLATURE

INTRODUCED DECEMBER 4, 2000

Sponsored by:

Senator PETER A. INVERSO

District 14 (Mercer and Middlesex)

Senator JOHN O. BENNETT

District 12 (Monmouth)

Co-Sponsored by:

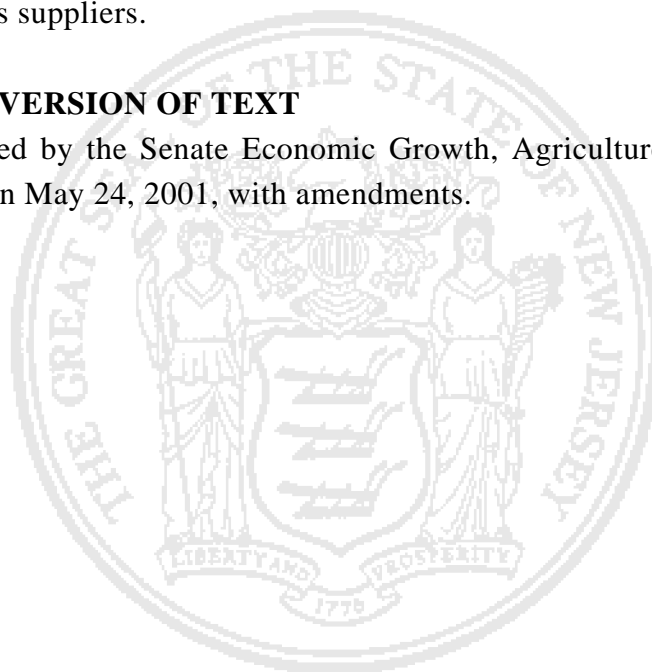
**Senators Kosco, Matheussen, Zane, Cafiero, Assemblyman Bagger and
Assemblywoman Heck**

SYNOPSIS

Provides additional means of verification of agreement to change electricity or natural gas suppliers.

CURRENT VERSION OF TEXT

As reported by the Senate Economic Growth, Agriculture and Tourism Committee on May 24, 2001, with amendments.



(Sponsorship Updated As Of: 6/29/2001)

1 AN ACT concerning electric power and gas suppliers and amending
2 P.L.1999, c.23.

3

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

6

7 1. Section 3 of P.L.1999, c.23 (C.48:3-51) is amended to read as
8 follows:

9 3. As used in this act:

10 "Assignee" means a person to which an electric public utility or
11 another assignee assigns, sells or transfers, other than as security, all
12 or a portion of its right to or interest in bondable transition property.
13 Except as specifically provided in this act, an assignee shall not be
14 subject to the public utility requirements of Title 48 or any rules or
15 regulations adopted pursuant thereto;

16 "Basic gas supply service" means gas supply service that is provided
17 to any customer that has not chosen an alternative gas supplier,
18 whether or not the customer has received offers as to competitive
19 supply options, including, but not limited to, any customer that cannot
20 obtain such service for any reason, including non-payment for services.
21 Basic gas supply service is not a competitive service and shall be fully
22 regulated by the board;

23 "Basic generation service" means electric generation service that is
24 provided, pursuant to section 9 of this act, to any customer that has
25 not chosen an alternative electric power supplier, whether or not the
26 customer has received offers as to competitive supply options,
27 including, but not limited to, any customer that cannot obtain such
28 service from an electric power supplier for any reason, including
29 non-payment for services. Basic generation service is not a
30 competitive service and shall be fully regulated by the board;

31 "Board" means the New Jersey Board of Public Utilities or any
32 successor agency;

33 "Bondable stranded costs" means any stranded costs of an electric
34 public utility approved by the board for recovery pursuant to the
35 provisions of this act, together with, as approved by the board: (1) the
36 cost of retiring existing debt or equity capital of the electric public
37 utility, including accrued interest, premium and other fees, costs and
38 charges relating thereto, with the proceeds of the financing of
39 bondable transition property; (2) if requested by an electric public
40 utility in its application for a bondable stranded costs rate order,
41 federal, State and local tax liabilities associated with stranded costs
42 recovery or the transfer or financing of such property or both,

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SEG committee amendments adopted May 24, 2001.

1 including taxes, whose recovery period is modified by the effect of a
2 stranded costs recovery order, a bondable stranded costs rate order or
3 both; and (3) the costs incurred to issue, service or refinance transition
4 bonds, including interest, acquisition or redemption premium, and
5 other financing costs, whether paid upon issuance or over the life of
6 the transition bonds, including, but not limited to, credit
7 enhancements, service charges, overcollateralization, interest rate cap,
8 swap or collar, yield maintenance, maturity guarantee or other hedging
9 agreements, equity investments, operating costs and other related fees,
10 costs and charges, or to assign, sell or otherwise transfer bondable
11 transition property;

12 "Bondable stranded costs rate order" means one or more
13 irrevocable written orders issued by the board pursuant to this act
14 which determines the amount of bondable stranded costs and the initial
15 amount of transition bond charges authorized to be imposed to recover
16 such bondable stranded costs, including the costs to be financed from
17 the proceeds of the transition bonds, as well as on-going costs
18 associated with servicing and credit enhancing the transition bonds,
19 and provides the electric public utility specific authority to issue or
20 cause to be issued, directly or indirectly, transition bonds through a
21 financing entity and related matters as provided in this act, which order
22 shall become effective immediately upon the written consent of the
23 related electric public utility to such order as provided in this act;

24 "Bondable transition property" means the property consisting of the
25 irrevocable right to charge, collect and receive, and be paid from
26 collections of, transition bond charges in the amount necessary to
27 provide for the full recovery of bondable stranded costs which are
28 determined to be recoverable in a bondable stranded costs rate order,
29 all rights of the related electric public utility under such bondable
30 stranded costs rate order including, without limitation, all rights to
31 obtain periodic adjustments of the related transition bond charges
32 pursuant to subsection b. of section 15 of this act, and all revenues,
33 collections, payments, money and proceeds arising under, or with
34 respect to, all of the foregoing;

35 "Broker" means a duly licensed electric power supplier that assumes
36 the contractual and legal responsibility for the sale of electric
37 generation service, transmission or other services to end-use retail
38 customers, but does not take title to any of the power sold, or a duly
39 licensed gas supplier that assumes the contractual and legal obligation
40 to provide gas supply service to end-use retail customers, but does not
41 take title to the gas;

42 "Buydown" means an arrangement or arrangements involving the
43 buyer and seller in a given power purchase contract and, in some cases
44 third parties, for consideration to be given by the buyer in order to
45 effectuate a reduction in the pricing, or the restructuring of other
46 terms to reduce the overall cost of the power contract, for the

1 remaining succeeding period of the purchased power arrangement or
2 arrangements;

3 "Buyout" means an arrangement or arrangements involving the
4 buyer and seller in a given power purchase contract and, in some cases
5 third parties, for consideration to be given by the buyer in order to
6 effectuate a termination of such power purchase contract;

7 "Class I renewable energy" means electric energy produced from
8 solar technologies, photovoltaic technologies, wind energy, fuel cells,
9 geothermal technologies, wave or tidal action, and methane gas from
10 landfills or a biomass facility, provided that the biomass is cultivated
11 and harvested in a sustainable manner;

12 "Class II renewable energy" means electric energy produced at a
13 resource recovery facility or hydropower facility, provided that such
14 facility is located where retail competition is permitted and provided
15 further that the Commissioner of Environmental Protection has
16 determined that such facility meets the highest environmental
17 standards and minimizes any impacts to the environment and local
18 communities;

19 "Competitive service" means any service offered by an electric
20 public utility or a gas public utility that the board determines to be
21 competitive pursuant to section 8 or section 10 of this act or that is
22 not regulated by the board;

23 "Comprehensive resource analysis" means an analysis including, but
24 not limited to, an assessment of existing market barriers to the
25 implementation of energy efficiency and renewable technologies that
26 are not or cannot be delivered to customers through a competitive
27 marketplace;

28 "Customer" means any person that is an end user and is connected
29 to any part of the transmission and distribution system within an
30 electric public utility's service territory or a gas public utility's service
31 territory within this State;

32 "Customer account service" means metering, billing, or such other
33 administrative activity associated with maintaining a customer account;

34 "Demand side management" means the management of customer
35 demand for energy service through the implementation of
36 cost-effective energy efficiency technologies, including, but not limited
37 to, installed conservation, load management and energy efficiency
38 measures on and in the residential, commercial, industrial, institutional
39 and governmental premises and facilities in this State;

40 "Electric generation service" means the provision of retail electric
41 energy and capacity which is generated off-site from the location at
42 which the consumption of such electric energy and capacity is metered
43 for retail billing purposes, including agreements and arrangements
44 related thereto;

45 "Electric power generator" means an entity that proposes to
46 construct, own, lease or operate, or currently owns, leases or operates,

1 an electric power production facility that will sell or does sell at least
2 90 percent of its output, either directly or through a marketer, to a
3 customer or customers located at sites that are not on or contiguous
4 to the site on which the facility will be located or is located. The
5 designation of an entity as an electric power generator for the
6 purposes of this act shall not, in and of itself, affect the entity's status
7 as an exempt wholesale generator under the Public Utility Holding
8 Company Act of 1935, 15 U.S.C. s.79 et seq.;

9 "Electric power supplier" means a person or entity that is duly
10 licensed pursuant to the provisions of this act to offer and to assume
11 the contractual and legal responsibility to provide electric generation
12 service to retail customers, and includes load serving entities,
13 marketers and brokers that offer or provide electric generation service
14 to retail customers. The term excludes an electric public utility that
15 provides electric generation service only as a basic generation service
16 pursuant to section 9 of this act;

17 "Electric public utility" means a public utility, as that term is defined
18 in R.S.48:2-13, that transmits and distributes electricity to end users
19 within this State;

20 "Electric related service" means a service that is directly related to
21 the consumption of electricity by an end user, including, but not
22 limited to, the installation of demand side management measures at the
23 end user's premises, the maintenance, repair or replacement of
24 appliances, lighting, motors or other energy-consuming devices at the
25 end user's premises, and the provision of energy consumption
26 measurement and billing services;

27 "Electronic signature" means an electronic sound, symbol or
28 process, attached to, or logically associated with, a contract or other
29 record, and executed or adopted by a person with the intent to sign the
30 record;

31 "Energy agent" means a person that is duly registered pursuant to
32 the provisions of this act, that arranges the sale of retail electricity or
33 electric related services or retail gas supply or gas related services
34 between government aggregators or private aggregators and electric
35 power suppliers or gas suppliers, but does not take title to the electric
36 or gas sold;

37 "Energy consumer" means a business or residential consumer of
38 electric generation service or gas supply service located within the
39 territorial jurisdiction of a government aggregator;

40 "Financing entity" means an electric public utility, a special purpose
41 entity, or any other assignee of bondable transition property, which
42 issues transition bonds. Except as specifically provided in this act, a
43 financing entity which is not itself an electric public utility shall not be
44 subject to the public utility requirements of Title 48 or any rules or
45 regulations adopted pursuant thereto;

46 "Gas public utility" means a public utility, as that term is defined in

1 R.S.48:2-13, that distributes gas to end users within this State;

2 "Gas related service" means a service that is directly related to the
3 consumption of gas by an end user, including, but not limited to, the
4 installation of demand side management measures at the end user's
5 premises, the maintenance, repair or replacement of appliances or
6 other energy-consuming devices at the end user's premises, and the
7 provision of energy consumption measurement and billing services;

8 "Gas supplier" means a person that is duly licensed pursuant to the
9 provisions of this act to offer and assume the contractual and legal
10 obligation to provide gas supply service to retail customers, and
11 includes, but is not limited to, marketers and brokers. A non-public
12 utility affiliate of a public utility holding company may be a gas
13 supplier, but a gas public utility or any subsidiary of a gas utility is not
14 a gas supplier. In the event that a gas public utility is not part of a
15 holding company legal structure, a related competitive business
16 segment of that gas public utility may be a gas supplier, provided that
17 related competitive business segment is structurally separated from the
18 gas public utility, and provided that the interactions between the gas
19 public utility and the related competitive business segment are subject
20 to the affiliate relations standards adopted by the board pursuant to
21 subsection k. of section 10 of this act;

22 "Gas supply service" means the provision to customers of the retail
23 commodity of gas, but does not include any regulated distribution
24 service;

25 "Government aggregator" means any government entity subject to
26 the requirements of the "Local Public Contracts Law," P.L.1971,
27 c.198 (C.40A:11-1 et seq.), the "Public School Contracts Law,"
28 N.J.S.18A:18A-1 et seq., or the "County College Contracts Law,"
29 P.L.1982, c.189 (C.18A:64A-25.1 et seq.), that enters into a written
30 contract with a licensed electric power supplier or a licensed gas
31 supplier for: (1) the provision of electric generation service, electric
32 related service, gas supply service, or gas related service for its own
33 use or the use of other government aggregators; or (2) if a municipal
34 or county government, the provision of electric generation service or
35 gas supply service on behalf of business or residential customers within
36 its territorial jurisdiction;

37 "Government energy aggregation program" means a program and
38 procedure pursuant to which a government aggregator enters into a
39 written contract for the provision of electric generation service or gas
40 supply service on behalf of business or residential customers within its
41 territorial jurisdiction;

42 "Governmental entity" means any federal, state, municipal, local or
43 other governmental department, commission, board, agency, court,
44 authority or instrumentality having competent jurisdiction;

45 "Market transition charge" means a charge imposed pursuant to
46 section 13 of this act by an electric public utility, at a level determined

1 by the board, on the electric public utility customers for a limited
2 duration transition period to recover stranded costs created as a result
3 of the introduction of electric power supply competition pursuant to
4 the provisions of this act;

5 "Marketer" means a duly licensed electric power supplier that takes
6 title to electric energy and capacity, transmission and other services
7 from electric power generators and other wholesale suppliers and then
8 assumes contractual and legal obligation to provide electric generation
9 service, and may include transmission and other services, to an end-use
10 retail customer or customers, or a duly licensed gas supplier that takes
11 title to gas and then assumes the contractual and legal obligation to
12 provide gas supply service to an end-use customer or customers;

13 "Net proceeds" means proceeds less transaction and other related
14 costs as determined by the board;

15 "Net revenues" means revenues less related expenses, including
16 applicable taxes, as determined by the board;

17 "On-site generation facility" means a generation facility, and
18 equipment and services appurtenant to electric sales by such facility to
19 the end use customer located on the property or on property
20 contiguous to the property on which the end user is located. An
21 on-site generation facility shall not be considered a public utility. The
22 property of the end use customer and the property on which the
23 on-site generation facility is located shall be considered contiguous if
24 they are geographically located next to each other, but may be
25 otherwise separated by an easement, public thoroughfare,
26 transportation or utility-owned right-of-way;

27 "Person" means an individual, partnership, corporation, association,
28 trust, limited liability company, governmental entity or other legal
29 entity;

30 "Private aggregator" means a non-government aggregator that is a
31 duly-organized business or non-profit organization authorized to do
32 business in this State that enters into a contract with a duly licensed
33 electric power supplier for the purchase of electric energy and
34 capacity, or with a duly licensed gas supplier for the purchase of gas
35 supply service, on behalf of multiple end-use customers by combining
36 the loads of those customers;

37 "Public utility holding company" means: (1) any company that,
38 directly or indirectly, owns, controls, or holds with power to vote, ten
39 percent or more of the outstanding voting securities of an electric
40 public utility or a gas public utility or of a company which is a public
41 utility holding company by virtue of this definition, unless the
42 Securities and Exchange Commission, or its successor, by order
43 declares such company not to be a public utility holding company
44 under the Public Utility Holding Company Act of 1935, 15 U.S.C. s.79
45 et seq., or its successor; or (2) any person that the Securities and
46 Exchange Commission, or its successor, determines, after notice and

1 opportunity for hearing, directly or indirectly, to exercise, either alone
2 or pursuant to an arrangement or understanding with one or more
3 other persons, such a controlling influence over the management or
4 policies of an electric public utility or a gas public utility or public
5 utility holding company as to make it necessary or appropriate in the
6 public interest or for the protection of investors or consumers that
7 such person be subject to the obligations, duties, and liabilities
8 imposed in the Public Utility Holding Company Act of 1935 or its
9 successor;

10 "Regulatory asset" means an asset recorded on the books of an
11 electric public utility or gas public utility pursuant to the Statement of
12 Financial Accounting Standards, No. 71, entitled "Accounting for the
13 Effects of Certain Types of Regulation," or any successor standard and
14 as deemed recoverable by the board;

15 "Related competitive business segment of an electric public utility
16 or gas public utility" means any business venture of an electric public
17 utility or gas public utility including, but not limited to, functionally
18 separate business units, joint ventures, and partnerships, that offers to
19 provide or provides competitive services;

20 "Related competitive business segment of a public utility holding
21 company" means any business venture of a public utility holding
22 company, including, but not limited to, functionally separate business
23 units, joint ventures, and partnerships and subsidiaries, that offers to
24 provide or provides competitive services, but does not include any
25 related competitive business segments of an electric public utility or
26 gas public utility;

27 "Resource recovery facility" means a solid waste facility
28 constructed and operated for the incineration of solid waste for energy
29 production and the recovery of metals and other materials for reuse;

30 "Restructuring related costs" means reasonably incurred costs
31 directly related to the restructuring of the electric power industry,
32 including the closure, sale, functional separation and divestiture of
33 generation and other competitive utility assets by a public utility, or
34 the provision of competitive services as such costs are determined by
35 the board, and which are not stranded costs as defined in this act but
36 may include, but not be limited to, investments in management
37 information systems, and which shall include expenses related to
38 employees affected by restructuring which result in efficiencies and
39 which result in benefits to ratepayers, such as training or retraining at
40 the level equivalent to one year's training at a vocational or technical
41 school or county community college, the provision of severance pay
42 of two weeks of base pay for each year of full-time employment, and
43 a maximum of 24 months' continued health care coverage. Except as
44 to expenses related to employees affected by restructuring,
45 "restructuring related costs" shall not include going forward costs;

46 "Retail choice" means the ability of retail customers to shop for

1 electric generation or gas supply service from electric power or gas
2 suppliers, or opt to receive basic generation service or basic gas
3 service, and the ability of an electric power or gas supplier to offer
4 electric generation service or gas supply service to retail customers,
5 consistent with the provisions of this act;

6 "Shopping credit" means an amount deducted from the bill of an
7 electric public utility customer to reflect the fact that such customer
8 has switched to an electric power supplier and no longer takes basic
9 generation service from the electric public utility;

10 "Social program" means a program implemented with board
11 approval to provide assistance to a group of disadvantaged customers,
12 to provide protection to consumers, or to accomplish a particular
13 societal goal, and includes, but is not limited to, the winter moratorium
14 program, utility practices concerning "bad debt" customers, low
15 income assistance, deferred payment plans, weatherization programs,
16 and late payment and deposit policies, but does not include any
17 demand side management program or any environmental requirements
18 or controls;

19 "Societal benefits charge" means a charge imposed by an electric
20 public utility, at a level determined by the board, pursuant to, and in
21 accordance with, section 12 of this act;

22 "Stranded cost" means the amount by which the net cost of an
23 electric public utility's electric generating assets or electric power
24 purchase commitments, as determined by the board consistent with the
25 provisions of this act, exceeds the market value of those assets or
26 contractual commitments in a competitive supply marketplace and the
27 costs of buydowns or buyouts of power purchase contracts;

28 "Stranded costs recovery order" means each order issued by the
29 board in accordance with subsection c. of section 13 of this act which
30 sets forth the amount of stranded costs, if any, the board has
31 determined an electric public utility is eligible to recover and collect
32 in accordance with the standards set forth in section 13 and the
33 recovery mechanisms therefor;

34 "Transition bond charge" means a charge, expressed as an amount
35 per kilowatt hour, that is authorized by and imposed on electric public
36 utility ratepayers pursuant to a bondable stranded costs rate order, as
37 modified at any time pursuant to the provisions of this act;

38 "Transition bonds" means bonds, notes, certificates of participation
39 or beneficial interest or other evidences of indebtedness or ownership
40 issued pursuant to an indenture, contract or other agreement of an
41 electric public utility or a financing entity, the proceeds of which are
42 used, directly or indirectly, to recover, finance or refinance bondable
43 stranded costs and which are, directly or indirectly, secured by or
44 payable from bondable transition property. References in this act to
45 principal, interest, and acquisition or redemption premium with respect
46 to transition bonds which are issued in the form of certificates of

1 participation or beneficial interest or other evidences of ownership
2 shall refer to the comparable payments on such securities;

3 "Transmission and distribution system" means, with respect to an
4 electric public utility, any facility or equipment that is used for the
5 transmission, distribution or delivery of electricity to the customers of
6 the electric public utility including, but not limited to, the land,
7 structures, meters, lines, switches and all other appurtenances thereof
8 and thereto, owned or controlled by the electric public utility within
9 this State; and

10 "Universal service" means any service approved by the board with
11 the purpose of assisting low-income residential customers in obtaining
12 or retaining electric generation or delivery service.

13 (cf: P.L.1999, c.23, s.3)

14

15 2. Section 36 of P.L.1999, c.23 (C.48:3-85) is amended to read as
16 follows:

17 36. a. Notwithstanding any provisions of the "Administrative
18 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary,
19 the board, in consultation with the Division of Consumer Affairs in the
20 Department of Law and Public Safety, shall initiate a proceeding and
21 shall adopt, after notice, provision of the opportunity for comment,
22 and public hearing, interim consumer protection standards for electric
23 power suppliers or gas suppliers, within 90 days of [the effective date
24 of this act] February 9, 1999, including, but not limited to, standards
25 for collections, credit, contracts, authorized changes of an energy
26 consumer's electric power supplier or gas supplier, for the prohibition
27 of discriminatory marketing, for advertising and for disclosure. Such
28 standards shall be effective as regulations immediately upon filing with
29 the Office of Administrative Law and shall be effective for a period not
30 to exceed 18 months, and may, thereafter, be amended, adopted or
31 readopted by the board in accordance with the provisions of the
32 "Administrative Procedure Act."

33 (1) Contract standards shall include, but not be limited to,
34 requirements that electric power supply contracts or gas supply
35 contracts must conspicuously disclose the duration of the contract;
36 state the price per kilowatt hour or per therm or other pricing
37 determinant approved by the board; have the customer's written
38 signature; the customer's electronic signature; an audio recording of
39 a telephone call initiated by the customer; independent, third-party
40 verification, in accordance with section 37 of P.L.1999, c.23
41 (C.48:3-86), of a telephone call initiated by an electric power supplier,
42 gas supplier or private aggregator; or such alternative forms of
43 verification as the board, in consultation with the Division of
44 Consumer Affairs, may permit for switching electric power suppliers
45 or gas suppliers and for contract renewal; and include termination
46 procedures, notice of any fees, and toll-free or local telephone

1 numbers for the electric power supplier or gas supplier and for the
2 board.

3 (2) Standards for the prohibition of discriminatory marketing
4 standards shall provide at a minimum that a decision made by an
5 electric power supplier or a gas supplier to accept or reject a customer
6 shall not be based on race, color, national origin, age, gender, religion,
7 source of income, receipt of public benefits, family status, sexual
8 preference, or geographic location. The board shall adopt reporting
9 requirements to monitor compliance with such standards.

10 (3) Advertising standards for electric power suppliers or gas
11 suppliers shall provide, at a minimum, that optional charges to the
12 consumer will not be added to any advertised cost per kilowatt hour
13 or per therm, and that the only unit of measurement that may be used
14 in advertisements is cost per kilowatt hour or per therm, unless
15 otherwise approved by the board. If an electric power supplier or gas
16 supplier does not advertise using cost per kilowatt hour or per therm,
17 the electric power supplier or gas supplier shall provide, at the
18 consumer's request, an estimate of the cost per kilowatt hour or per
19 therm. Any optional charges to the consumer shall be identified
20 separately and denoted as optional.

21 (4) Credit standards shall include, at a minimum, that the credit
22 requirements used to make offer decisions must be the same for all
23 residential customers and that electric power suppliers, gas suppliers
24 and private aggregators not impose unreasonable income or credit
25 requirements.

26 (5) Billing standards shall include, at a minimum, provisions
27 prohibiting electric public utilities, gas public utilities, electric power
28 suppliers and gas suppliers from charging a fee to residential
29 customers for either the commencement or termination of electric
30 generation service or gas supply service.

31 b. (1) An electric power supplier, a gas supplier, an electric
32 public utility, and a gas public utility shall not disclose, sell or transfer
33 individual proprietary information, including, but not limited to, a
34 customer's name, address, telephone number, energy usage and electric
35 power payment history, to a third party without the written consent of
36 the customer. Whenever such individual proprietary information is
37 disclosed, sold or transferred, upon the written consent of the
38 customer, it may be used only for the provision of continued electric
39 generation service, electric related service, gas supply service or gas
40 related service to that customer. In the case of a transfer or sale of a
41 business, customer consent shall not be required for the transfer of
42 customer proprietary information to the subsequent owner of the
43 business for maintaining the continuation of such services.

44 (2) An electric power supplier, a gas supplier, a gas public utility
45 or an electric public utility may use individual proprietary information
46 that it has obtained by virtue of its provision of electric generation

1 service, electric related service, gas supply service or gas related
2 service to:

3 (a) Initiate, render, bill and collect for such services to the extent
4 otherwise authorized to provide billing and collection services;

5 (b) Protect the rights or property of the electric power supplier,
6 gas supplier or public utility; and

7 (c) Protect consumers of such services and other electric power
8 suppliers, gas suppliers or electric and gas public utilities from
9 fraudulent, abusive or unlawful use of, or subscription to, such
10 services.

11 c. The board shall establish and maintain a database for the
12 purpose of recording customer complaints concerning electric and gas
13 public utilities, electric power suppliers, gas suppliers, private
14 aggregators, and energy agents.

15 d. The board, in consultation with the Division of Consumer
16 Affairs in the Department of Law and Public Safety, shall establish, or
17 cause to be established, a multi-lingual electric and gas consumer
18 education program. The goal of the consumer education program shall
19 be to educate residential, small business, and special needs consumers
20 about the implications for consumers of the restructuring of the
21 electric power and gas industries. The consumer education program
22 shall include, but need not be limited to, the dissemination of
23 information to enable consumers to make informed choices among
24 available electricity and gas services and suppliers, notification of
25 residential electric and gas customers of the right to submit their
26 names to the board pursuant to paragraph (1) of subsection e. of this
27 section. and the communication to consumers of the consumer
28 protection provisions of this act.

29 The board shall ensure the neutrality of the content and message of
30 advertisements and materials.

31 The board shall promulgate standards for the recovery of consumer
32 education program costs from customers which include reasonable
33 measures and criteria to judge the success of the program in enhancing
34 customer understanding of retail choice.

35 e. (1) Residential electric or gas customers may submit their
36 names in writing to the board for inclusion on a list established by the
37 board of customers not wanting to receive telephone solicitations by
38 electric power suppliers, gas suppliers or private aggregators.

39 (2) As a condition of licensing, pursuant to standards adopted by
40 the board, an electric power supplier, gas supplier or private
41 aggregator shall not engage in telephone solicitation of any residential
42 electric or gas customer, as appropriate, whose name is on the list
43 established by the board, pursuant to paragraph (1) of this subsection.

44 (cf: P.L.1999, c.23, s.36)

45

46 3. Section 37 of P.L.1999, c.23 (C.48:3-86) is amended to read as

1 follows:

2 37. a. Notwithstanding any provisions of the "Administrative
3 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary,
4 the board, in consultation with the Division of Consumer Affairs in the
5 Department of Law and Public Safety, shall initiate a proceeding and
6 shall adopt, after notice, provision of the opportunity for comment,
7 and public hearing, interim standards for electric power suppliers or
8 gas suppliers, within 90 days of [the effective date of this act]
9 February 9, 1999, to prevent and establish penalties for unauthorized
10 changes of a consumer's electric power supplier or gas supplier, a
11 practice commonly known as "slamming." Such standards shall be
12 effective as regulations immediately upon filing with the Office of
13 Administrative Law and shall be effective for a period not to exceed
14 18 months, and may, thereafter, be amended, adopted or readopted by
15 the board in accordance with the provisions of the "Administrative
16 Procedure Act."

17 b. Standards for the prohibition of unauthorized changes in a
18 customer's electric power supplier or gas supplier shall include:

19 (1) An electric power supplier, an electric public utility, a gas
20 supplier or a gas public utility shall not cause an unauthorized change
21 in a customer's electric power supplier or gas supplier, a practice
22 known as "slamming." A change in a customer's electric power
23 supplier or gas supplier ¹[, except for a change, if otherwise lawfully
24 executed pursuant to the provisions of P.L.1999, c.23 (C.48:3-49 et
25 seq.), that results in the customer's taking service from a provider of
26 basic generation service or basic gas supply service,]¹ shall be deemed
27 to be unauthorized unless the customer has done so affirmatively and
28 voluntarily and the supplier has obtained the customer's approval
29 [either through a], which approval shall be evidenced by the
30 customer's written signature; the customer's electronic signature; an
31 audio recording of a telephone call initiated by the customer;
32 independent, third-party verification, in accordance with paragraph (2)
33 of this subsection, of a telephone call initiated by an electric power
34 supplier, electric public utility, gas supplier or gas public utility; or
35 or such alternative forms of verification as the board, in consultation with
36 the Division of Consumer Affairs, may permit;

37 (2) (a) A company performing independent, third-party verification
38 shall: (i) be independent from the entity that seeks to provide the new
39 service; (ii) not be directly or indirectly managed, controlled, directed
40 or owned, wholly or in part, by the entity that seeks to provide the
41 new service, or by any affiliate of that entity; (iii) operate from
42 facilities physically separate from those of the entity that seeks to
43 provide the new service; and (iv) not derive any commission or
44 compensation based upon the number of sales confirmed;

45 (b) A company performing independent, third-party verification
46 shall obtain a customer's oral confirmation regarding the change and

1 shall record that confirmation by obtaining appropriate verification
2 data. The record shall be available to the customer upon request.
3 Information obtained from a customer through confirmation shall not
4 be used for marketing purposes:

5 (3) An electric power supplier, an electric public utility, a gas
6 supplier or a gas public utility shall not fail to cause a change in a
7 customer's electric power supplier or gas supplier, within a period of
8 time determined to be appropriate by the board, when a supplier or
9 utility is in receipt of a change order provided that such change order
10 has been received in a manner that complies with federal and State
11 rules and regulations, including as provided in this subsection;

12 [(3)] (4) The acts of an agent of an electric power supplier, an
13 electric public utility, a gas supplier or a gas public utility shall be
14 considered the acts of the electric power supplier, electric public
15 utility, gas supplier or gas public utility.

16 c. A customer's new electric power supplier, electric public utility,
17 gas supplier or gas public utility shall notify the customer of the
18 change in the customer's electric or gas supplier within 30 days in a
19 manner to be determined by the board.

20 d. Bills to customers from an electric power supplier, electric
21 public utility, gas supplier or gas public utility shall contain the name
22 and telephone number of each supplier for whom billing is provided,
23 and any other information deemed applicable by the board.

24 e. In addition to any other penalties, fines or remedies authorized
25 by law, any electric power supplier, electric public utility, gas supplier
26 or gas public utility that violates this section and collects charges for
27 electric power supply or gas supply services from a customer or
28 through an entity providing customer account services shall be liable
29 to the electric power supplier, electric public utility, gas supplier or
30 gas public utility previously selected by the customer in an amount
31 equal to all charges paid by the customer after such violation in
32 accordance with such procedures as the board may prescribe. Any
33 electric power supplier, electric public utility, gas supplier or gas
34 public utility that violates this section shall also be liable for a civil
35 penalty pursuant to section 34 of [this act] P.L.1999, c.23
36 (C.48:3-83); and the board is hereby authorized to revoke the license
37 of any entity that violates this section.

38 (cf: P.L.1999, c.23, s.37)

39
40 4. Section 41 of P.L.1999, c.23 (C.48:3-90) is amended to read
41 as follows:

42 41. a. A private aggregator shall register with the board, which shall
43 include the filing of basic information pertaining to the supplier, such
44 as name, address, telephone number, and company background and
45 profile. A private aggregator shall provide annual updates of this
46 information to the board. The registration shall also include evidence

1 of financial integrity, as determined by the board, and evidence that the
2 private aggregator has knowledge of the energy industry.

3 b. Any residential customer that elects to purchase electric
4 generation service or gas supply service, after the implementation of
5 gas unbundling pursuant to section 10 of [this act] P.L.1999, c.23
6 (C.48:3-58), through a private aggregator must do so affirmatively and
7 voluntarily, either through a written signature; the customer's
8 electronic signature; an audio recording of a telephone call initiated by
9 the customer; independent, third-party verification, in accordance with
10 section 37 of P.L.1999, c.23 (C.48:3-86), of a telephone call initiated
11 by a private aggregator; or such alternative forms of verification as the
12 board, in consultation with the Division of Consumer Affairs in the
13 Department of Law and Public Safety, may permit.

14 (cf: P.L.1999, c.23, s.41)

15

16 5. This act shall take effect immediately.

ASSEMBLY, No. 3185

STATE OF NEW JERSEY 209th LEGISLATURE

INTRODUCED JANUARY 29, 2001

Sponsored by:

Assemblyman RICHARD H. BAGGER

District 22 (Middlesex, Morris, Somerset and Union)

SYNOPSIS

Provides additional means of verification of agreement to change electricity or natural gas suppliers.

CURRENT VERSION OF TEXT

As introduced.



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2

1 **AN ACT** concerning electric power and gas suppliers and amending
2 P.L.1999, c.23.

3

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

6

7 1. Section 3 of P.L.1999, c.23 (C.48:3-51) is amended to read as
8 follows:

9 3. As used in this act:

10 "Assignee" means a person to which an electric public utility or
11 another assignee assigns, sells or transfers, other than as security, all
12 or a portion of its right to or interest in bondable transition property.
13 Except as specifically provided in this act, an assignee shall not be
14 subject to the public utility requirements of Title 48 or any rules or
15 regulations adopted pursuant thereto;

16 "Basic gas supply service" means gas supply service that is provided
17 to any customer that has not chosen an alternative gas supplier,
18 whether or not the customer has received offers as to competitive
19 supply options, including, but not limited to, any customer that cannot
20 obtain such service for any reason, including non-payment for services.
21 Basic gas supply service is not a competitive service and shall be fully
22 regulated by the board;

23 "Basic generation service" means electric generation service that is
24 provided, pursuant to section 9 of this act, to any customer that has
25 not chosen an alternative electric power supplier, whether or not the
26 customer has received offers as to competitive supply options,
27 including, but not limited to, any customer that cannot obtain such
28 service from an electric power supplier for any reason, including
29 non-payment for services. Basic generation service is not a
30 competitive service and shall be fully regulated by the board;

31 "Board" means the New Jersey Board of Public Utilities or any
32 successor agency;

33 "Bondable stranded costs" means any stranded costs of an electric
34 public utility approved by the board for recovery pursuant to the
35 provisions of this act, together with, as approved by the board: (1) the
36 cost of retiring existing debt or equity capital of the electric public
37 utility, including accrued interest, premium and other fees, costs and
38 charges relating thereto, with the proceeds of the financing of
39 bondable transition property; (2) if requested by an electric public
40 utility in its application for a bondable stranded costs rate order,
41 federal, State and local tax liabilities associated with stranded costs
42 recovery or the transfer or financing of such property or both,
43 including taxes, whose recovery period is modified by the effect of a

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 stranded costs recovery order, a bondable stranded costs rate order or
2 both; and (3) the costs incurred to issue, service or refinance transition
3 bonds, including interest, acquisition or redemption premium, and
4 other financing costs, whether paid upon issuance or over the life of
5 the transition bonds, including, but not limited to, credit
6 enhancements, service charges, overcollateralization, interest rate cap,
7 swap or collar, yield maintenance, maturity guarantee or other hedging
8 agreements, equity investments, operating costs and other related fees,
9 costs and charges, or to assign, sell or otherwise transfer bondable
10 transition property;

11 "Bondable stranded costs rate order" means one or more
12 irrevocable written orders issued by the board pursuant to this act
13 which determines the amount of bondable stranded costs and the initial
14 amount of transition bond charges authorized to be imposed to recover
15 such bondable stranded costs, including the costs to be financed from
16 the proceeds of the transition bonds, as well as on-going costs
17 associated with servicing and credit enhancing the transition bonds,
18 and provides the electric public utility specific authority to issue or
19 cause to be issued, directly or indirectly, transition bonds through a
20 financing entity and related matters as provided in this act, which order
21 shall become effective immediately upon the written consent of the
22 related electric public utility to such order as provided in this act;

23 "Bondable transition property" means the property consisting of the
24 irrevocable right to charge, collect and receive, and be paid from
25 collections of, transition bond charges in the amount necessary to
26 provide for the full recovery of bondable stranded costs which are
27 determined to be recoverable in a bondable stranded costs rate order,
28 all rights of the related electric public utility under such bondable
29 stranded costs rate order including, without limitation, all rights to
30 obtain periodic adjustments of the related transition bond charges
31 pursuant to subsection b. of section 15 of this act, and all revenues,
32 collections, payments, money and proceeds arising under, or with
33 respect to, all of the foregoing;

34 "Broker" means a duly licensed electric power supplier that assumes
35 the contractual and legal responsibility for the sale of electric
36 generation service, transmission or other services to end-use retail
37 customers, but does not take title to any of the power sold, or a duly
38 licensed gas supplier that assumes the contractual and legal obligation
39 to provide gas supply service to end-use retail customers, but does not
40 take title to the gas;

41 "Buydown" means an arrangement or arrangements involving the
42 buyer and seller in a given power purchase contract and, in some cases
43 third parties, for consideration to be given by the buyer in order to
44 effectuate a reduction in the pricing, or the restructuring of other
45 terms to reduce the overall cost of the power contract, for the
46 remaining succeeding period of the purchased power arrangement or

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1 arrangements;

2 "Buyout" means an arrangement or arrangements involving the
3 buyer and seller in a given power purchase contract and, in some cases
4 third parties, for consideration to be given by the buyer in order to
5 effectuate a termination of such power purchase contract;

6 "Class I renewable energy" means electric energy produced from
7 solar technologies, photovoltaic technologies, wind energy, fuel cells,
8 geothermal technologies, wave or tidal action, and methane gas from
9 landfills or a biomass facility, provided that the biomass is cultivated
10 and harvested in a sustainable manner;

11 "Class II renewable energy" means electric energy produced at a
12 resource recovery facility or hydropower facility, provided that such
13 facility is located where retail competition is permitted and provided
14 further that the Commissioner of Environmental Protection has
15 determined that such facility meets the highest environmental
16 standards and minimizes any impacts to the environment and local
17 communities;

18 "Competitive service" means any service offered by an electric
19 public utility or a gas public utility that the board determines to be
20 competitive pursuant to section 8 or section 10 of this act or that is
21 not regulated by the board;

22 "Comprehensive resource analysis" means an analysis including, but
23 not limited to, an assessment of existing market barriers to the
24 implementation of energy efficiency and renewable technologies that
25 are not or cannot be delivered to customers through a competitive
26 marketplace;

27 "Customer" means any person that is an end user and is connected
28 to any part of the transmission and distribution system within an
29 electric public utility's service territory or a gas public utility's service
30 territory within this State;

31 "Customer account service" means metering, billing, or such other
32 administrative activity associated with maintaining a customer account;

33 "Demand side management" means the management of customer
34 demand for energy service through the implementation of
35 cost-effective energy efficiency technologies, including, but not limited
36 to, installed conservation, load management and energy efficiency
37 measures on and in the residential, commercial, industrial, institutional
38 and governmental premises and facilities in this State;

39 "Electric generation service" means the provision of retail electric
40 energy and capacity which is generated off-site from the location at
41 which the consumption of such electric energy and capacity is metered
42 for retail billing purposes, including agreements and arrangements
43 related thereto;

44 "Electric power generator" means an entity that proposes to
45 construct, own, lease or operate, or currently owns, leases or operates,
46 an electric power production facility that will sell or does sell at least

1 90 percent of its output, either directly or through a marketer, to a
2 customer or customers located at sites that are not on or contiguous
3 to the site on which the facility will be located or is located. The
4 designation of an entity as an electric power generator for the
5 purposes of this act shall not, in and of itself, affect the entity's status
6 as an exempt wholesale generator under the Public Utility Holding
7 Company Act of 1935, 15 U.S.C. s.79 et seq.;

8 "Electric power supplier" means a person or entity that is duly
9 licensed pursuant to the provisions of this act to offer and to assume
10 the contractual and legal responsibility to provide electric generation
11 service to retail customers, and includes load serving entities,
12 marketers and brokers that offer or provide electric generation service
13 to retail customers. The term excludes an electric public utility that
14 provides electric generation service only as a basic generation service
15 pursuant to section 9 of this act;

16 "Electric public utility" means a public utility, as that term is defined
17 in R.S.48:2-13, that transmits and distributes electricity to end users
18 within this State;

19 "Electric related service" means a service that is directly related to
20 the consumption of electricity by an end user, including, but not
21 limited to, the installation of demand side management measures at the
22 end user's premises, the maintenance, repair or replacement of
23 appliances, lighting, motors or other energy-consuming devices at the
24 end user's premises, and the provision of energy consumption
25 measurement and billing services;

26 "Electronic signature" means an electronic sound, symbol or
27 process, attached to, or logically associated with, a contract or other
28 record, and executed or adopted by a person with the intent to sign the
29 record;

30 "Energy agent" means a person that is duly registered pursuant to
31 the provisions of this act, that arranges the sale of retail electricity or
32 electric related services or retail gas supply or gas related services
33 between government aggregators or private aggregators and electric
34 power suppliers or gas suppliers, but does not take title to the electric
35 or gas sold;

36 "Energy consumer" means a business or residential consumer of
37 electric generation service or gas supply service located within the
38 territorial jurisdiction of a government aggregator;

39 "Financing entity" means an electric public utility, a special purpose
40 entity, or any other assignee of bondable transition property, which
41 issues transition bonds. Except as specifically provided in this act, a
42 financing entity which is not itself an electric public utility shall not be
43 subject to the public utility requirements of Title 48 or any rules or
44 regulations adopted pursuant thereto;

45 "Gas public utility" means a public utility, as that term is defined in
46 R.S.48:2-13, that distributes gas to end users within this State;

1 "Gas related service" means a service that is directly related to the
2 consumption of gas by an end user, including, but not limited to, the
3 installation of demand side management measures at the end user's
4 premises, the maintenance, repair or replacement of appliances or
5 other energy-consuming devices at the end user's premises, and the
6 provision of energy consumption measurement and billing services;

7 "Gas supplier" means a person that is duly licensed pursuant to the
8 provisions of this act to offer and assume the contractual and legal
9 obligation to provide gas supply service to retail customers, and
10 includes, but is not limited to, marketers and brokers. A non-public
11 utility affiliate of a public utility holding company may be a gas
12 supplier, but a gas public utility or any subsidiary of a gas utility is not
13 a gas supplier. In the event that a gas public utility is not part of a
14 holding company legal structure, a related competitive business
15 segment of that gas public utility may be a gas supplier, provided that
16 related competitive business segment is structurally separated from the
17 gas public utility, and provided that the interactions between the gas
18 public utility and the related competitive business segment are subject
19 to the affiliate relations standards adopted by the board pursuant to
20 subsection k. of section 10 of this act;

21 "Gas supply service" means the provision to customers of the retail
22 commodity of gas, but does not include any regulated distribution
23 service;

24 "Government aggregator" means any government entity subject to
25 the requirements of the "Local Public Contracts Law," P.L.1971,
26 c.198 (C.40A:11-1 et seq.), the "Public School Contracts Law,"
27 N.J.S.18A:18A-1 et seq., or the "County College Contracts Law,"
28 P.L.1982, c.189 (C.18A:64A-25.1 et seq.), that enters into a written
29 contract with a licensed electric power supplier or a licensed gas
30 supplier for: (1) the provision of electric generation service, electric
31 related service, gas supply service, or gas related service for its own
32 use or the use of other government aggregators; or (2) if a municipal
33 or county government, the provision of electric generation service or
34 gas supply service on behalf of business or residential customers within
35 its territorial jurisdiction;

36 "Government energy aggregation program" means a program and
37 procedure pursuant to which a government aggregator enters into a
38 written contract for the provision of electric generation service or gas
39 supply service on behalf of business or residential customers within its
40 territorial jurisdiction;

41 "Governmental entity" means any federal, state, municipal, local or
42 other governmental department, commission, board, agency, court,
43 authority or instrumentality having competent jurisdiction;

44 "Market transition charge" means a charge imposed pursuant to
45 section 13 of this act by an electric public utility, at a level determined
46 by the board, on the electric public utility customers for a limited

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1 duration transition period to recover stranded costs created as a result
2 of the introduction of electric power supply competition pursuant to
3 the provisions of this act;

4 "Marketer" means a duly licensed electric power supplier that takes
5 title to electric energy and capacity, transmission and other services
6 from electric power generators and other wholesale suppliers and then
7 assumes contractual and legal obligation to provide electric generation
8 service, and may include transmission and other services, to an end-use
9 retail customer or customers, or a duly licensed gas supplier that takes
10 title to gas and then assumes the contractual and legal obligation to
11 provide gas supply service to an end-use customer or customers;

12 "Net proceeds" means proceeds less transaction and other related
13 costs as determined by the board;

14 "Net revenues" means revenues less related expenses, including
15 applicable taxes, as determined by the board;

16 "On-site generation facility" means a generation facility, and
17 equipment and services appurtenant to electric sales by such facility to
18 the end use customer located on the property or on property
19 contiguous to the property on which the end user is located. An
20 on-site generation facility shall not be considered a public utility. The
21 property of the end use customer and the property on which the
22 on-site generation facility is located shall be considered contiguous if
23 they are geographically located next to each other, but may be
24 otherwise separated by an easement, public thoroughfare,
25 transportation or utility-owned right-of-way;

26 "Person" means an individual, partnership, corporation, association,
27 trust, limited liability company, governmental entity or other legal
28 entity;

29 "Private aggregator" means a non-government aggregator that is a
30 duly-organized business or non-profit organization authorized to do
31 business in this State that enters into a contract with a duly licensed
32 electric power supplier for the purchase of electric energy and
33 capacity, or with a duly licensed gas supplier for the purchase of gas
34 supply service, on behalf of multiple end-use customers by combining
35 the loads of those customers;

36 "Public utility holding company" means: (1) any company that,
37 directly or indirectly, owns, controls, or holds with power to vote, ten
38 percent or more of the outstanding voting securities of an electric
39 public utility or a gas public utility or of a company which is a public
40 utility holding company by virtue of this definition, unless the
41 Securities and Exchange Commission, or its successor, by order
42 declares such company not to be a public utility holding company
43 under the Public Utility Holding Company Act of 1935, 15 U.S.C. s.79
44 et seq., or its successor; or (2) any person that the Securities and
45 Exchange Commission, or its successor, determines, after notice and
46 opportunity for hearing, directly or indirectly, to exercise, either alone

1 or pursuant to an arrangement or understanding with one or more
2 other persons, such a controlling influence over the management or
3 policies of an electric public utility or a gas public utility or public
4 utility holding company as to make it necessary or appropriate in the
5 public interest or for the protection of investors or consumers that
6 such person be subject to the obligations, duties, and liabilities
7 imposed in the Public Utility Holding Company Act of 1935 or its
8 successor;

9 "Regulatory asset" means an asset recorded on the books of an
10 electric public utility or gas public utility pursuant to the Statement of
11 Financial Accounting Standards, No. 71, entitled "Accounting for the
12 Effects of Certain Types of Regulation," or any successor standard and
13 as deemed recoverable by the board;

14 "Related competitive business segment of an electric public utility
15 or gas public utility" means any business venture of an electric public
16 utility or gas public utility including, but not limited to, functionally
17 separate business units, joint ventures, and partnerships, that offers to
18 provide or provides competitive services;

19 "Related competitive business segment of a public utility holding
20 company" means any business venture of a public utility holding
21 company, including, but not limited to, functionally separate business
22 units, joint ventures, and partnerships and subsidiaries, that offers to
23 provide or provides competitive services, but does not include any
24 related competitive business segments of an electric public utility or
25 gas public utility;

26 "Resource recovery facility" means a solid waste facility
27 constructed and operated for the incineration of solid waste for energy
28 production and the recovery of metals and other materials for reuse;

29 "Restructuring related costs" means reasonably incurred costs
30 directly related to the restructuring of the electric power industry,
31 including the closure, sale, functional separation and divestiture of
32 generation and other competitive utility assets by a public utility, or
33 the provision of competitive services as such costs are determined by
34 the board, and which are not stranded costs as defined in this act but
35 may include, but not be limited to, investments in management
36 information systems, and which shall include expenses related to
37 employees affected by restructuring which result in efficiencies and
38 which result in benefits to ratepayers, such as training or retraining at
39 the level equivalent to one year's training at a vocational or technical
40 school or county community college, the provision of severance pay
41 of two weeks of base pay for each year of full-time employment, and
42 a maximum of 24 months' continued health care coverage. Except as
43 to expenses related to employees affected by restructuring,
44 "restructuring related costs" shall not include going forward costs;

45 "Retail choice" means the ability of retail customers to shop for
46 electric generation or gas supply service from electric power or gas

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1 suppliers, or opt to receive basic generation service or basic gas
2 service, and the ability of an electric power or gas supplier to offer
3 electric generation service or gas supply service to retail customers,
4 consistent with the provisions of this act;

5 "Shopping credit" means an amount deducted from the bill of an
6 electric public utility customer to reflect the fact that such customer
7 has switched to an electric power supplier and no longer takes basic
8 generation service from the electric public utility;

9 "Social program" means a program implemented with board
10 approval to provide assistance to a group of disadvantaged customers,
11 to provide protection to consumers, or to accomplish a particular
12 societal goal, and includes, but is not limited to, the winter moratorium
13 program, utility practices concerning "bad debt" customers, low
14 income assistance, deferred payment plans, weatherization programs,
15 and late payment and deposit policies, but does not include any
16 demand side management program or any environmental requirements
17 or controls;

18 "Societal benefits charge" means a charge imposed by an electric
19 public utility, at a level determined by the board, pursuant to, and in
20 accordance with, section 12 of this act;

21 "Stranded cost" means the amount by which the net cost of an
22 electric public utility's electric generating assets or electric power
23 purchase commitments, as determined by the board consistent with the
24 provisions of this act, exceeds the market value of those assets or
25 contractual commitments in a competitive supply marketplace and the
26 costs of buydowns or buyouts of power purchase contracts;

27 "Stranded costs recovery order" means each order issued by the
28 board in accordance with subsection c. of section 13 of this act which
29 sets forth the amount of stranded costs, if any, the board has
30 determined an electric public utility is eligible to recover and collect
31 in accordance with the standards set forth in section 13 and the
32 recovery mechanisms therefor;

33 "Transition bond charge" means a charge, expressed as an amount
34 per kilowatt hour, that is authorized by and imposed on electric public
35 utility ratepayers pursuant to a bondable stranded costs rate order, as
36 modified at any time pursuant to the provisions of this act;

37 "Transition bonds" means bonds, notes, certificates of participation
38 or beneficial interest or other evidences of indebtedness or ownership
39 issued pursuant to an indenture, contract or other agreement of an
40 electric public utility or a financing entity, the proceeds of which are
41 used, directly or indirectly, to recover, finance or refinance bondable
42 stranded costs and which are, directly or indirectly, secured by or
43 payable from bondable transition property. References in this act to
44 principal, interest, and acquisition or redemption premium with respect
45 to transition bonds which are issued in the form of certificates of
46 participation or beneficial interest or other evidences of ownership

1 shall refer to the comparable payments on such securities;

2 "Transmission and distribution system" means, with respect to an
3 electric public utility, any facility or equipment that is used for the
4 transmission, distribution or delivery of electricity to the customers of
5 the electric public utility including, but not limited to, the land,
6 structures, meters, lines, switches and all other appurtenances thereof
7 and thereto, owned or controlled by the electric public utility within
8 this State; and

9 "Universal service" means any service approved by the board with
10 the purpose of assisting low-income residential customers in obtaining
11 or retaining electric generation or delivery service.

12 (cf: P.L.1999, c.23, s.3)

13

14 2. Section 36 of P.L.1999, c.23 (C.48:3-85) is amended to read as
15 follows:

16 36. a. Notwithstanding any provisions of the "Administrative
17 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary,
18 the board, in consultation with the Division of Consumer Affairs in the
19 Department of Law and Public Safety, shall initiate a proceeding and
20 shall adopt, after notice, provision of the opportunity for comment,
21 and public hearing, interim consumer protection standards for electric
22 power suppliers or gas suppliers, within 90 days of [the effective date
23 of this act] February 9, 1999, including, but not limited to, standards
24 for collections, credit, contracts, authorized changes of an energy
25 consumer's electric power supplier or gas supplier, for the prohibition
26 of discriminatory marketing, for advertising and for disclosure. Such
27 standards shall be effective as regulations immediately upon filing with
28 the Office of Administrative Law and shall be effective for a period not
29 to exceed 18 months, and may, thereafter, be amended, adopted or
30 readopted by the board in accordance with the provisions of the
31 "Administrative Procedure Act."

32 (1) Contract standards shall include, but not be limited to,
33 requirements that electric power supply contracts or gas supply
34 contracts must conspicuously disclose the duration of the contract;
35 state the price per kilowatt hour or per therm or other pricing
36 determinant approved by the board; have the customer's written
37 signature; the customer's electronic signature; an audio recording of
38 a telephone call initiated by the customer; independent, third-party
39 verification, in accordance with section 37 of P.L.1999, c.23
40 (C.48:3-86), of a telephone call initiated by an electric power supplier,
41 gas supplier or private aggregator; or such alternative forms of
42 verification as the board, in consultation with the Division of
43 Consumer Affairs, may permit for switching electric power suppliers
44 or gas suppliers and for contract renewal; and include termination
45 procedures, notice of any fees, and toll-free or local telephone
46 numbers for the electric power supplier or gas supplier and for the

1 board.

2 (2) Standards for the prohibition of discriminatory marketing
3 standards shall provide at a minimum that a decision made by an
4 electric power supplier or a gas supplier to accept or reject a customer
5 shall not be based on race, color, national origin, age, gender, religion,
6 source of income, receipt of public benefits, family status, sexual
7 preference, or geographic location. The board shall adopt reporting
8 requirements to monitor compliance with such standards.

9 (3) Advertising standards for electric power suppliers or gas
10 suppliers shall provide, at a minimum, that optional charges to the
11 consumer will not be added to any advertised cost per kilowatt hour
12 or per therm, and that the only unit of measurement that may be used
13 in advertisements is cost per kilowatt hour or per therm, unless
14 otherwise approved by the board. If an electric power supplier or gas
15 supplier does not advertise using cost per kilowatt hour or per therm,
16 the electric power supplier or gas supplier shall provide, at the
17 consumer's request, an estimate of the cost per kilowatt hour or per
18 therm. Any optional charges to the consumer shall be identified
19 separately and denoted as optional.

20 (4) Credit standards shall include, at a minimum, that the credit
21 requirements used to make offer decisions must be the same for all
22 residential customers and that electric power suppliers, gas suppliers
23 and private aggregators not impose unreasonable income or credit
24 requirements.

25 (5) Billing standards shall include, at a minimum, provisions
26 prohibiting electric public utilities, gas public utilities, electric power
27 suppliers and gas suppliers from charging a fee to residential
28 customers for either the commencement or termination of electric
29 generation service or gas supply service.

30 b. (1) An electric power supplier, a gas supplier, an electric public
31 utility, and a gas public utility shall not disclose, sell or transfer
32 individual proprietary information, including, but not limited to, a
33 customer's name, address, telephone number, energy usage and electric
34 power payment history, to a third party without the written consent of
35 the customer. Whenever such individual proprietary information is
36 disclosed, sold or transferred, upon the written consent of the
37 customer, it may be used only for the provision of continued electric
38 generation service, electric related service, gas supply service or gas
39 related service to that customer. In the case of a transfer or sale of a
40 business, customer consent shall not be required for the transfer of
41 customer proprietary information to the subsequent owner of the
42 business for maintaining the continuation of such services.

43 (2) An electric power supplier, a gas supplier, a gas public utility
44 or an electric public utility may use individual proprietary information
45 that it has obtained by virtue of its provision of electric generation
46 service, electric related service, gas supply service or gas related

1 service to:

2 (a) Initiate, render, bill and collect for such services to the extent
3 otherwise authorized to provide billing and collection services;

4 (b) protect the rights or property of the electric power supplier, gas
5 supplier or public utility; and

6 (c) protect consumers of such services and other electric power
7 suppliers, gas suppliers or electric and gas public utilities from
8 fraudulent, abusive or unlawful use of, or subscription to, such
9 services.

10 c. The board shall establish and maintain a database for the purpose
11 of recording customer complaints concerning electric and gas public
12 utilities, electric power suppliers, gas suppliers, private aggregators,
13 and energy agents.

14 d. The board, in consultation with the Division of Consumer
15 Affairs in the Department of Law and Public Safety, shall establish, or
16 cause to be established, a multi-lingual electric and gas consumer
17 education program. The goal of the consumer education program shall
18 be to educate residential, small business, and special needs consumers
19 about the implications for consumers of the restructuring of the
20 electric power and gas industries. The consumer education program
21 shall include, but need not be limited to, the dissemination of
22 information to enable consumers to make informed choices among
23 available electricity and gas services and suppliers, notification of
24 residential electric and gas customers of the right to submit their
25 names to the board pursuant to paragraph (1) of subsection e. of this
26 section, and the communication to consumers of the consumer
27 protection provisions of this act.

28 The board shall ensure the neutrality of the content and message of
29 advertisements and materials.

30 The board shall promulgate standards for the recovery of consumer
31 education program costs from customers which include reasonable
32 measures and criteria to judge the success of the program in enhancing
33 customer understanding of retail choice.

34 e. (1) Residential electric or gas customers may submit their names
35 in writing to the board for inclusion on a list established by the board
36 of customers not wanting to receive telephone solicitations by electric
37 power suppliers, gas suppliers or private aggregators.

38 (2) As a condition of licensing, pursuant to standards adopted by
39 the board, an electric power supplier, gas supplier or private
40 aggregator shall not engage in telephone solicitation of any residential
41 electric or gas customer, as appropriate, whose name is on the list
42 established by the board, pursuant to paragraph (1) of this subsection.

43 (cf: P.L.1999, c.23, s.36)

44

45 3. Section 37 of P.L.1999, c.23 (C.48:3-86) is amended to read as
46 follows:

1 37. a. Notwithstanding any provisions of the "Administrative
2 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary,
3 the board, in consultation with the Division of Consumer Affairs in the
4 Department of Law and Public Safety, shall initiate a proceeding and
5 shall adopt, after notice, provision of the opportunity for comment,
6 and public hearing, interim standards for electric power suppliers or
7 gas suppliers, within 90 days of [the effective date of this act]
8 February 9, 1999, to prevent and establish penalties for unauthorized
9 changes of a consumer's electric power supplier or gas supplier, a
10 practice commonly known as "slamming." Such standards shall be
11 effective as regulations immediately upon filing with the Office of
12 Administrative Law and shall be effective for a period not to exceed
13 18 months, and may, thereafter, be amended, adopted or readopted by
14 the board in accordance with the provisions of the "Administrative
15 Procedure Act."

16 b. Standards for the prohibition of unauthorized changes in a
17 customer's electric power supplier or gas supplier shall include:

18 (1) An electric power supplier, an electric public utility, a gas
19 supplier or a gas public utility shall not cause an unauthorized change
20 in a customer's electric power supplier or gas supplier, a practice
21 known as "slamming." A change in a customer's electric power
22 supplier or gas supplier, except for a change, if otherwise lawfully
23 executed pursuant to the provisions of P.L.1999, c.23 (C.48:3-49 et
24 seq.), that results in the customer's taking service from a provider of
25 basic generation service or basic gas supply service, shall be deemed
26 to be unauthorized unless the customer has done so affirmatively and
27 voluntarily and the supplier has obtained the customer's approval
28 [either through a], which approval shall be evidenced by the
29 customer's written signature; the customer's electronic signature; an
30 audio recording of a telephone call initiated by the customer;
31 independent, third-party verification, in accordance with paragraph (2)
32 of this subsection, of a telephone call initiated by an electric power
33 supplier, electric public utility, gas supplier or gas public utility; or
34 such alternative forms of verification as the board, in consultation with
35 the Division of Consumer Affairs, may permit;

36 (2) (a) company performing independent, third-party verification
37 shall: (i) be independent from the entity that seeks to provide the new
38 service; (ii) not be directly or indirectly managed, controlled, directed
39 or owned, wholly or in part, by the entity that seeks to provide the
40 new service, or by any affiliate of that entity; (iii) operate from
41 facilities physically separate from those of the entity that seeks to
42 provide the new service; and (iv) not derive any commission or
43 compensation based upon the number of sales confirmed;

44 (b) A company performing independent, third-party verification
45 shall obtain a customer's oral confirmation regarding the change and
46 shall record that confirmation by obtaining appropriate verification

1 data. The record shall be available to the customer upon request.
2 Information obtained from a customer through confirmation shall not
3 be used for marketing purposes:

4 (3) An electric power supplier, an electric public utility, a gas
5 supplier or a gas public utility shall not fail to cause a change in a
6 customer's electric power supplier or gas supplier, within a period of
7 time determined to be appropriate by the board, when a supplier or
8 utility is in receipt of a change order provided that such change order
9 has been received in a manner that complies with federal and State
10 rules and regulations, including as provided in this subsection;

11 [(3)] (4) The acts of an agent of an electric power supplier, an
12 electric public utility, a gas supplier or a gas public utility shall be
13 considered the acts of the electric power supplier, electric public
14 utility, gas supplier or gas public utility.

15 c. A customer's new electric power supplier, electric public utility,
16 gas supplier or gas public utility shall notify the customer of the
17 change in the customer's electric or gas supplier within 30 days in a
18 manner to be determined by the board.

19 d. Bills to customers from an electric power supplier, electric
20 public utility, gas supplier or gas public utility shall contain the name
21 and telephone number of each supplier for whom billing is provided,
22 and any other information deemed applicable by the board.

23 e. In addition to any other penalties, fines or remedies authorized
24 by law, any electric power supplier, electric public utility, gas supplier
25 or gas public utility that violates this section and collects charges for
26 electric power supply or gas supply services from a customer or
27 through an entity providing customer account services shall be liable
28 to the electric power supplier, electric public utility, gas supplier or
29 gas public utility previously selected by the customer in an amount
30 equal to all charges paid by the customer after such violation in
31 accordance with such procedures as the board may prescribe. Any
32 electric power supplier, electric public utility, gas supplier or gas
33 public utility that violates this section shall also be liable for a civil
34 penalty pursuant to section 34 of [this act] P.L.1999, c.23
35 (C.48:3-83); and the board is hereby authorized to revoke the license
36 of any entity that violates this section.

37 (cf: P.L.1999, c.23, s.37)

38

39 4. Section 41 of P.L.1999, c.23 (C.48:3-90) is amended to read as
40 follows:

41 41. a. A private aggregator shall register with the board, which
42 shall include the filing of basic information pertaining to the supplier,
43 such as name, address, telephone number, and company background
44 and profile. A private aggregator shall provide annual updates of this
45 information to the board. The registration shall also include evidence
46 of financial integrity, as determined by the board, and evidence that the

1 private aggregator has knowledge of the energy industry.

2 b. Any residential customer that elects to purchase electric
3 generation service or gas supply service, after the implementation of
4 gas unbundling pursuant to section 10 of [this act] P.L.1999, c.23
5 (C.48:3-58), through a private aggregator must do so affirmatively and
6 voluntarily, either through a written signature; the customer's
7 electronic signature; an audio recording of a telephone call initiated by
8 the customer; independent, third-party verification, in accordance with
9 section 37 of P.L.1999, c.23 (C.48:3-86), of a telephone call initiated
10 by a private aggregator; or such alternative forms of verification as the
11 board, in consultation with the Division of Consumer Affairs in the
12 Department of Law and Public Safety, may permit.
13 (cf: P.L.1999, c.23, s.41)

14

15 5. This act shall take effect immediately.

16

17

18

STATEMENT

19

20 The purpose of this bill is to increase customer choice by providing
21 additional means of verification of agreement to change electricity or
22 natural gas suppliers. The verification options are consistent with the
23 medium of the transaction, i.e., an electronic signature for Internet
24 transactions, audio recording (which can include such technologies as
25 interactive voice response) of telephone calls initiated by the customer,
26 or independent, third-party verification of telephone calls initiated by
27 an energy supplier or aggregator, in addition to the "wet signature"
28 and such other methods as the Board of Public Utilities (BPU) may
29 approve. The term "electronic signature" is defined to have the same
30 meaning as that term is used in the recently enacted federal "Electronic
31 Signatures in Global and National Commerce Act," Pub.L.106-229. By
32 the use of this common definition, this legislation is consistent with the
33 BPU's recently initiated Internet sign-up program.

34 The bill allows residential electric or gas customers to submit their
35 names in writing to the BPU for inclusion on a list of customers not
36 wanting to receive telephone solicitations by electric power suppliers,
37 gas suppliers and private aggregators. Electric power suppliers, gas
38 suppliers or private aggregators would then be prohibited from
39 engaging in telephone solicitation of any residential electric or gas
40 customer whose name is on the list established by the BPU. Similar
41 restrictions have been implemented as part of the utility industry
42 restructuring programs in California, Connecticut, Delaware, Maine,
43 Ohio, Rhode Island and Texas.

44 The bill also requires that consumers be notified of their right to be
45 included in the list, as part of the currently mandated consumer
46 education program.

ASSEMBLY TELECOMMUNICATIONS AND UTILITIES
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3185

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 4, 2001

The Assembly Telecommunications and Utilities Committee reports favorably Assembly Bill No. 3185 with committee amendments.

As amended, the purpose of this bill is to increase customer choice by providing additional means of verification of agreement to change electricity or natural gas suppliers. The verification options are consistent with the medium of the transaction, i.e., an electronic signature for Internet transactions, audio recording (which can include such technologies as interactive voice response) of telephone calls initiated by the customer, or independent, third-party verification of telephone calls initiated by an energy supplier or aggregator, in addition to the "wet signature" and such other methods as the Board of Public Utilities (BPU) may approve. The term "electronic signature" is defined to have the same meaning as that term is used in the recently enacted federal "Electronic Signatures in Global and National Commerce Act," Pub.L.106-229. By the use of this common definition, this legislation is consistent with the BPU's recently initiated Internet sign-up program.

The bill allows residential electric or gas customers to submit their names in writing to the BPU for inclusion on a list of customers not wanting to receive telephone solicitations by electric power suppliers, gas suppliers and private aggregators. Electric power suppliers, gas suppliers or private aggregators would then be prohibited from engaging in telephone solicitation of any residential electric or gas customer whose name is on the list established by the BPU.

The bill also requires that consumers be notified of their right to be included in the list, as part of the currently mandated consumer education program.

Under the provisions of section 3 of the bill as introduced, unauthorized changes in a customer's electric power or gas supplier are prohibited unless the change results in a customer's taking service from a provider of basic (electric) generation service or basic gas supply service. The committee amended this section of the bill to eliminate that exemption.

The committee amendment makes this bill identical to Senate Bill No. 1908 (1R).

[First Reprint]

ASSEMBLY, No. 3185

STATE OF NEW JERSEY
209th LEGISLATURE

INTRODUCED JANUARY 29, 2001

Sponsored by:

Assemblyman RICHARD H. BAGGER

District 22 (Middlesex, Morris, Somerset and Union)

Co-Sponsored by:

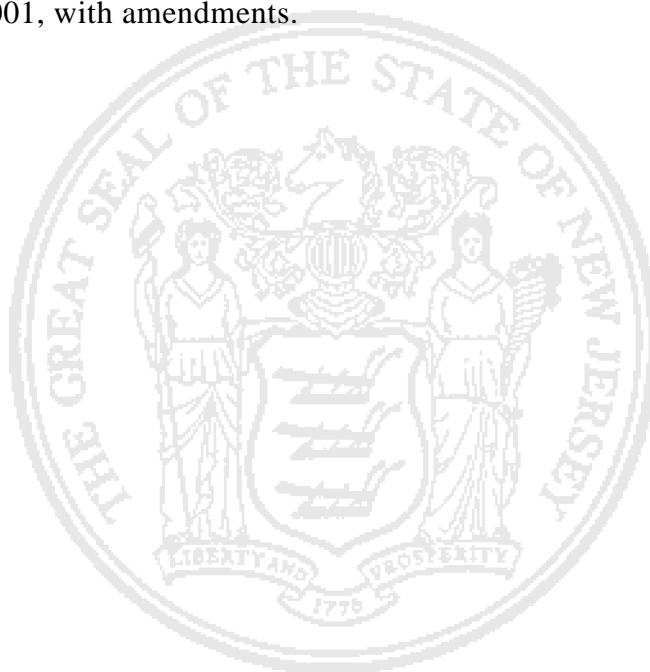
Assemblywoman Heck

SYNOPSIS

Provides additional means of verification of agreement to change electricity or natural gas suppliers.

CURRENT VERSION OF TEXT

As reported by the Assembly Telecommunications and Utilities Committee on June 4, 2001, with amendments.



(Sponsorship Updated As Of: 6/29/2001)

A3185 [1R] BAGGER

2

1 AN ACT concerning electric power and gas suppliers and amending
2 P.L.1999, c.23.

3

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

6

7 1. Section 3 of P.L.1999, c.23 (C.48:3-51) is amended to read as
8 follows:

9 3. As used in this act:

10 "Assignee" means a person to which an electric public utility or
11 another assignee assigns, sells or transfers, other than as security, all
12 or a portion of its right to or interest in bondable transition property.
13 Except as specifically provided in this act, an assignee shall not be
14 subject to the public utility requirements of Title 48 or any rules or
15 regulations adopted pursuant thereto;

16 "Basic gas supply service" means gas supply service that is provided
17 to any customer that has not chosen an alternative gas supplier,
18 whether or not the customer has received offers as to competitive
19 supply options, including, but not limited to, any customer that cannot
20 obtain such service for any reason, including non-payment for services.
21 Basic gas supply service is not a competitive service and shall be fully
22 regulated by the board;

23 "Basic generation service" means electric generation service that is
24 provided, pursuant to section 9 of this act, to any customer that has
25 not chosen an alternative electric power supplier, whether or not the
26 customer has received offers as to competitive supply options,
27 including, but not limited to, any customer that cannot obtain such
28 service from an electric power supplier for any reason, including
29 non-payment for services. Basic generation service is not a
30 competitive service and shall be fully regulated by the board;

31 "Board" means the New Jersey Board of Public Utilities or any
32 successor agency;

33 "Bondable stranded costs" means any stranded costs of an electric
34 public utility approved by the board for recovery pursuant to the
35 provisions of this act, together with, as approved by the board: (1) the
36 cost of retiring existing debt or equity capital of the electric public
37 utility, including accrued interest, premium and other fees, costs and
38 charges relating thereto, with the proceeds of the financing of
39 bondable transition property; (2) if requested by an electric public
40 utility in its application for a bondable stranded costs rate order,
41 federal, State and local tax liabilities associated with stranded costs
42 recovery or the transfer or financing of such property or both,

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly ATU committee amendments adopted June 4, 2001.

1 including taxes, whose recovery period is modified by the effect of a
2 stranded costs recovery order, a bondable stranded costs rate order or
3 both; and (3) the costs incurred to issue, service or refinance transition
4 bonds, including interest, acquisition or redemption premium, and
5 other financing costs, whether paid upon issuance or over the life of
6 the transition bonds, including, but not limited to, credit
7 enhancements, service charges, overcollateralization, interest rate cap,
8 swap or collar, yield maintenance, maturity guarantee or other hedging
9 agreements, equity investments, operating costs and other related fees,
10 costs and charges, or to assign, sell or otherwise transfer bondable
11 transition property;

12 "Bondable stranded costs rate order" means one or more
13 irrevocable written orders issued by the board pursuant to this act
14 which determines the amount of bondable stranded costs and the initial
15 amount of transition bond charges authorized to be imposed to recover
16 such bondable stranded costs, including the costs to be financed from
17 the proceeds of the transition bonds, as well as on-going costs
18 associated with servicing and credit enhancing the transition bonds,
19 and provides the electric public utility specific authority to issue or
20 cause to be issued, directly or indirectly, transition bonds through a
21 financing entity and related matters as provided in this act, which order
22 shall become effective immediately upon the written consent of the
23 related electric public utility to such order as provided in this act;

24 "Bondable transition property" means the property consisting of the
25 irrevocable right to charge, collect and receive, and be paid from
26 collections of, transition bond charges in the amount necessary to
27 provide for the full recovery of bondable stranded costs which are
28 determined to be recoverable in a bondable stranded costs rate order,
29 all rights of the related electric public utility under such bondable
30 stranded costs rate order including, without limitation, all rights to
31 obtain periodic adjustments of the related transition bond charges
32 pursuant to subsection b. of section 15 of this act, and all revenues,
33 collections, payments, money and proceeds arising under, or with
34 respect to, all of the foregoing;

35 "Broker" means a duly licensed electric power supplier that assumes
36 the contractual and legal responsibility for the sale of electric
37 generation service, transmission or other services to end-use retail
38 customers, but does not take title to any of the power sold, or a duly
39 licensed gas supplier that assumes the contractual and legal obligation
40 to provide gas supply service to end-use retail customers, but does not
41 take title to the gas;

42 "Buydown" means an arrangement or arrangements involving the
43 buyer and seller in a given power purchase contract and, in some cases
44 third parties, for consideration to be given by the buyer in order to
45 effectuate a reduction in the pricing, or the restructuring of other
46 terms to reduce the overall cost of the power contract, for the

1 remaining succeeding period of the purchased power arrangement or
2 arrangements;

3 "Buyout" means an arrangement or arrangements involving the
4 buyer and seller in a given power purchase contract and, in some cases
5 third parties, for consideration to be given by the buyer in order to
6 effectuate a termination of such power purchase contract;

7 "Class I renewable energy" means electric energy produced from
8 solar technologies, photovoltaic technologies, wind energy, fuel cells,
9 geothermal technologies, wave or tidal action, and methane gas from
10 landfills or a biomass facility, provided that the biomass is cultivated
11 and harvested in a sustainable manner;

12 "Class II renewable energy" means electric energy produced at a
13 resource recovery facility or hydropower facility, provided that such
14 facility is located where retail competition is permitted and provided
15 further that the Commissioner of Environmental Protection has
16 determined that such facility meets the highest environmental
17 standards and minimizes any impacts to the environment and local
18 communities;

19 "Competitive service" means any service offered by an electric
20 public utility or a gas public utility that the board determines to be
21 competitive pursuant to section 8 or section 10 of this act or that is
22 not regulated by the board;

23 "Comprehensive resource analysis" means an analysis including, but
24 not limited to, an assessment of existing market barriers to the
25 implementation of energy efficiency and renewable technologies that
26 are not or cannot be delivered to customers through a competitive
27 marketplace;

28 "Customer" means any person that is an end user and is connected
29 to any part of the transmission and distribution system within an
30 electric public utility's service territory or a gas public utility's service
31 territory within this State;

32 "Customer account service" means metering, billing, or such other
33 administrative activity associated with maintaining a customer account;

34 "Demand side management" means the management of customer
35 demand for energy service through the implementation of
36 cost-effective energy efficiency technologies, including, but not limited
37 to, installed conservation, load management and energy efficiency
38 measures on and in the residential, commercial, industrial, institutional
39 and governmental premises and facilities in this State;

40 "Electric generation service" means the provision of retail electric
41 energy and capacity which is generated off-site from the location at
42 which the consumption of such electric energy and capacity is metered
43 for retail billing purposes, including agreements and arrangements
44 related thereto;

45 "Electric power generator" means an entity that proposes to
46 construct, own, lease or operate, or currently owns, leases or operates,

1 an electric power production facility that will sell or does sell at least
2 90 percent of its output, either directly or through a marketer, to a
3 customer or customers located at sites that are not on or contiguous
4 to the site on which the facility will be located or is located. The
5 designation of an entity as an electric power generator for the
6 purposes of this act shall not, in and of itself, affect the entity's status
7 as an exempt wholesale generator under the Public Utility Holding
8 Company Act of 1935, 15 U.S.C. s.79 et seq.;

9 "Electric power supplier" means a person or entity that is duly
10 licensed pursuant to the provisions of this act to offer and to assume
11 the contractual and legal responsibility to provide electric generation
12 service to retail customers, and includes load serving entities,
13 marketers and brokers that offer or provide electric generation service
14 to retail customers. The term excludes an electric public utility that
15 provides electric generation service only as a basic generation service
16 pursuant to section 9 of this act;

17 "Electric public utility" means a public utility, as that term is defined
18 in R.S.48:2-13, that transmits and distributes electricity to end users
19 within this State;

20 "Electric related service" means a service that is directly related to
21 the consumption of electricity by an end user, including, but not
22 limited to, the installation of demand side management measures at the
23 end user's premises, the maintenance, repair or replacement of
24 appliances, lighting, motors or other energy-consuming devices at the
25 end user's premises, and the provision of energy consumption
26 measurement and billing services;

27 "Electronic signature" means an electronic sound, symbol or
28 process, attached to, or logically associated with, a contract or other
29 record, and executed or adopted by a person with the intent to sign the
30 record;

31 "Energy agent" means a person that is duly registered pursuant to
32 the provisions of this act, that arranges the sale of retail electricity or
33 electric related services or retail gas supply or gas related services
34 between government aggregators or private aggregators and electric
35 power suppliers or gas suppliers, but does not take title to the electric
36 or gas sold;

37 "Energy consumer" means a business or residential consumer of
38 electric generation service or gas supply service located within the
39 territorial jurisdiction of a government aggregator;

40 "Financing entity" means an electric public utility, a special purpose
41 entity, or any other assignee of bondable transition property, which
42 issues transition bonds. Except as specifically provided in this act, a
43 financing entity which is not itself an electric public utility shall not be
44 subject to the public utility requirements of Title 48 or any rules or
45 regulations adopted pursuant thereto;

46 "Gas public utility" means a public utility, as that term is defined in

1 R.S.48:2-13, that distributes gas to end users within this State;

2 "Gas related service" means a service that is directly related to the
3 consumption of gas by an end user, including, but not limited to, the
4 installation of demand side management measures at the end user's
5 premises, the maintenance, repair or replacement of appliances or
6 other energy-consuming devices at the end user's premises, and the
7 provision of energy consumption measurement and billing services;

8 "Gas supplier" means a person that is duly licensed pursuant to the
9 provisions of this act to offer and assume the contractual and legal
10 obligation to provide gas supply service to retail customers, and
11 includes, but is not limited to, marketers and brokers. A non-public
12 utility affiliate of a public utility holding company may be a gas
13 supplier, but a gas public utility or any subsidiary of a gas utility is not
14 a gas supplier. In the event that a gas public utility is not part of a
15 holding company legal structure, a related competitive business
16 segment of that gas public utility may be a gas supplier, provided that
17 related competitive business segment is structurally separated from the
18 gas public utility, and provided that the interactions between the gas
19 public utility and the related competitive business segment are subject
20 to the affiliate relations standards adopted by the board pursuant to
21 subsection k. of section 10 of this act;

22 "Gas supply service" means the provision to customers of the retail
23 commodity of gas, but does not include any regulated distribution
24 service;

25 "Government aggregator" means any government entity subject to
26 the requirements of the "Local Public Contracts Law," P.L.1971,
27 c.198 (C.40A:11-1 et seq.), the "Public School Contracts Law,"
28 N.J.S.18A:18A-1 et seq., or the "County College Contracts Law,"
29 P.L.1982, c.189 (C.18A:64A-25.1 et seq.), that enters into a written
30 contract with a licensed electric power supplier or a licensed gas
31 supplier for: (1) the provision of electric generation service, electric
32 related service, gas supply service, or gas related service for its own
33 use or the use of other government aggregators; or (2) if a municipal
34 or county government, the provision of electric generation service or
35 gas supply service on behalf of business or residential customers within
36 its territorial jurisdiction;

37 "Government energy aggregation program" means a program and
38 procedure pursuant to which a government aggregator enters into a
39 written contract for the provision of electric generation service or gas
40 supply service on behalf of business or residential customers within its
41 territorial jurisdiction;

42 "Governmental entity" means any federal, state, municipal, local or
43 other governmental department, commission, board, agency, court,
44 authority or instrumentality having competent jurisdiction;

45 "Market transition charge" means a charge imposed pursuant to
46 section 13 of this act by an electric public utility, at a level determined

1 by the board, on the electric public utility customers for a limited
2 duration transition period to recover stranded costs created as a result
3 of the introduction of electric power supply competition pursuant to
4 the provisions of this act;

5 "Marketer" means a duly licensed electric power supplier that takes
6 title to electric energy and capacity, transmission and other services
7 from electric power generators and other wholesale suppliers and then
8 assumes contractual and legal obligation to provide electric generation
9 service, and may include transmission and other services, to an end-use
10 retail customer or customers, or a duly licensed gas supplier that takes
11 title to gas and then assumes the contractual and legal obligation to
12 provide gas supply service to an end-use customer or customers;

13 "Net proceeds" means proceeds less transaction and other related
14 costs as determined by the board;

15 "Net revenues" means revenues less related expenses, including
16 applicable taxes, as determined by the board;

17 "On-site generation facility" means a generation facility, and
18 equipment and services appurtenant to electric sales by such facility to
19 the end use customer located on the property or on property
20 contiguous to the property on which the end user is located. An
21 on-site generation facility shall not be considered a public utility. The
22 property of the end use customer and the property on which the
23 on-site generation facility is located shall be considered contiguous if
24 they are geographically located next to each other, but may be
25 otherwise separated by an easement, public thoroughfare,
26 transportation or utility-owned right-of-way;

27 "Person" means an individual, partnership, corporation, association,
28 trust, limited liability company, governmental entity or other legal
29 entity;

30 "Private aggregator" means a non-government aggregator that is a
31 duly-organized business or non-profit organization authorized to do
32 business in this State that enters into a contract with a duly licensed
33 electric power supplier for the purchase of electric energy and
34 capacity, or with a duly licensed gas supplier for the purchase of gas
35 supply service, on behalf of multiple end-use customers by combining
36 the loads of those customers;

37 "Public utility holding company" means: (1) any company that,
38 directly or indirectly, owns, controls, or holds with power to vote, ten
39 percent or more of the outstanding voting securities of an electric
40 public utility or a gas public utility or of a company which is a public
41 utility holding company by virtue of this definition, unless the
42 Securities and Exchange Commission, or its successor, by order
43 declares such company not to be a public utility holding company
44 under the Public Utility Holding Company Act of 1935, 15 U.S.C. s.79
45 et seq., or its successor; or (2) any person that the Securities and
46 Exchange Commission, or its successor, determines, after notice and

1 opportunity for hearing, directly or indirectly, to exercise, either alone
2 or pursuant to an arrangement or understanding with one or more
3 other persons, such a controlling influence over the management or
4 policies of an electric public utility or a gas public utility or public
5 utility holding company as to make it necessary or appropriate in the
6 public interest or for the protection of investors or consumers that
7 such person be subject to the obligations, duties, and liabilities
8 imposed in the Public Utility Holding Company Act of 1935 or its
9 successor;

10 "Regulatory asset" means an asset recorded on the books of an
11 electric public utility or gas public utility pursuant to the Statement of
12 Financial Accounting Standards, No. 71, entitled "Accounting for the
13 Effects of Certain Types of Regulation," or any successor standard and
14 as deemed recoverable by the board;

15 "Related competitive business segment of an electric public utility
16 or gas public utility" means any business venture of an electric public
17 utility or gas public utility including, but not limited to, functionally
18 separate business units, joint ventures, and partnerships, that offers to
19 provide or provides competitive services;

20 "Related competitive business segment of a public utility holding
21 company" means any business venture of a public utility holding
22 company, including, but not limited to, functionally separate business
23 units, joint ventures, and partnerships and subsidiaries, that offers to
24 provide or provides competitive services, but does not include any
25 related competitive business segments of an electric public utility or
26 gas public utility;

27 "Resource recovery facility" means a solid waste facility
28 constructed and operated for the incineration of solid waste for energy
29 production and the recovery of metals and other materials for reuse;

30 "Restructuring related costs" means reasonably incurred costs
31 directly related to the restructuring of the electric power industry,
32 including the closure, sale, functional separation and divestiture of
33 generation and other competitive utility assets by a public utility, or
34 the provision of competitive services as such costs are determined by
35 the board, and which are not stranded costs as defined in this act but
36 may include, but not be limited to, investments in management
37 information systems, and which shall include expenses related to
38 employees affected by restructuring which result in efficiencies and
39 which result in benefits to ratepayers, such as training or retraining at
40 the level equivalent to one year's training at a vocational or technical
41 school or county community college, the provision of severance pay
42 of two weeks of base pay for each year of full-time employment, and
43 a maximum of 24 months' continued health care coverage. Except as
44 to expenses related to employees affected by restructuring,
45 "restructuring related costs" shall not include going forward costs;

46 "Retail choice" means the ability of retail customers to shop for

1 electric generation or gas supply service from electric power or gas
2 suppliers, or opt to receive basic generation service or basic gas
3 service, and the ability of an electric power or gas supplier to offer
4 electric generation service or gas supply service to retail customers,
5 consistent with the provisions of this act;

6 "Shopping credit" means an amount deducted from the bill of an
7 electric public utility customer to reflect the fact that such customer
8 has switched to an electric power supplier and no longer takes basic
9 generation service from the electric public utility;

10 "Social program" means a program implemented with board
11 approval to provide assistance to a group of disadvantaged customers,
12 to provide protection to consumers, or to accomplish a particular
13 societal goal, and includes, but is not limited to, the winter moratorium
14 program, utility practices concerning "bad debt" customers, low
15 income assistance, deferred payment plans, weatherization programs,
16 and late payment and deposit policies, but does not include any
17 demand side management program or any environmental requirements
18 or controls;

19 "Societal benefits charge" means a charge imposed by an electric
20 public utility, at a level determined by the board, pursuant to, and in
21 accordance with, section 12 of this act;

22 "Stranded cost" means the amount by which the net cost of an
23 electric public utility's electric generating assets or electric power
24 purchase commitments, as determined by the board consistent with the
25 provisions of this act, exceeds the market value of those assets or
26 contractual commitments in a competitive supply marketplace and the
27 costs of buydowns or buyouts of power purchase contracts;

28 "Stranded costs recovery order" means each order issued by the
29 board in accordance with subsection c. of section 13 of this act which
30 sets forth the amount of stranded costs, if any, the board has
31 determined an electric public utility is eligible to recover and collect
32 in accordance with the standards set forth in section 13 and the
33 recovery mechanisms therefor;

34 "Transition bond charge" means a charge, expressed as an amount
35 per kilowatt hour, that is authorized by and imposed on electric public
36 utility ratepayers pursuant to a bondable stranded costs rate order, as
37 modified at any time pursuant to the provisions of this act;

38 "Transition bonds" means bonds, notes, certificates of participation
39 or beneficial interest or other evidences of indebtedness or ownership
40 issued pursuant to an indenture, contract or other agreement of an
41 electric public utility or a financing entity, the proceeds of which are
42 used, directly or indirectly, to recover, finance or refinance bondable
43 stranded costs and which are, directly or indirectly, secured by or
44 payable from bondable transition property. References in this act to
45 principal, interest, and acquisition or redemption premium with respect
46 to transition bonds which are issued in the form of certificates of

1 participation or beneficial interest or other evidences of ownership
2 shall refer to the comparable payments on such securities;

3 "Transmission and distribution system" means, with respect to an
4 electric public utility, any facility or equipment that is used for the
5 transmission, distribution or delivery of electricity to the customers of
6 the electric public utility including, but not limited to, the land,
7 structures, meters, lines, switches and all other appurtenances thereof
8 and thereto, owned or controlled by the electric public utility within
9 this State; and

10 "Universal service" means any service approved by the board with
11 the purpose of assisting low-income residential customers in obtaining
12 or retaining electric generation or delivery service.

13 (cf: P.L.1999, c.23, s.3)

14

15 2. Section 36 of P.L.1999, c.23 (C.48:3-85) is amended to read as
16 follows:

17 36. a. Notwithstanding any provisions of the "Administrative
18 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary,
19 the board, in consultation with the Division of Consumer Affairs in the
20 Department of Law and Public Safety, shall initiate a proceeding and
21 shall adopt, after notice, provision of the opportunity for comment,
22 and public hearing, interim consumer protection standards for electric
23 power suppliers or gas suppliers, within 90 days of [the effective date
24 of this act] February 9, 1999, including, but not limited to, standards
25 for collections, credit, contracts, authorized changes of an energy
26 consumer's electric power supplier or gas supplier, for the prohibition
27 of discriminatory marketing, for advertising and for disclosure. Such
28 standards shall be effective as regulations immediately upon filing with
29 the Office of Administrative Law and shall be effective for a period not
30 to exceed 18 months, and may, thereafter, be amended, adopted or
31 readopted by the board in accordance with the provisions of the
32 "Administrative Procedure Act."

33 (1) Contract standards shall include, but not be limited to,
34 requirements that electric power supply contracts or gas supply
35 contracts must conspicuously disclose the duration of the contract;
36 state the price per kilowatt hour or per therm or other pricing
37 determinant approved by the board; have the customer's written
38 signature; the customer's electronic signature; an audio recording of
39 a telephone call initiated by the customer; independent, third-party
40 verification, in accordance with section 37 of P.L.1999, c.23
41 (C.48:3-86), of a telephone call initiated by an electric power supplier,
42 gas supplier or private aggregator; or such alternative forms of
43 verification as the board, in consultation with the Division of
44 Consumer Affairs, may permit for switching electric power suppliers
45 or gas suppliers and for contract renewal; and include termination
46 procedures, notice of any fees, and toll-free or local telephone

1 numbers for the electric power supplier or gas supplier and for the
2 board.

3 (2) Standards for the prohibition of discriminatory marketing
4 standards shall provide at a minimum that a decision made by an
5 electric power supplier or a gas supplier to accept or reject a customer
6 shall not be based on race, color, national origin, age, gender, religion,
7 source of income, receipt of public benefits, family status, sexual
8 preference, or geographic location. The board shall adopt reporting
9 requirements to monitor compliance with such standards.

10 (3) Advertising standards for electric power suppliers or gas
11 suppliers shall provide, at a minimum, that optional charges to the
12 consumer will not be added to any advertised cost per kilowatt hour
13 or per therm, and that the only unit of measurement that may be used
14 in advertisements is cost per kilowatt hour or per therm, unless
15 otherwise approved by the board. If an electric power supplier or gas
16 supplier does not advertise using cost per kilowatt hour or per therm,
17 the electric power supplier or gas supplier shall provide, at the
18 consumer's request, an estimate of the cost per kilowatt hour or per
19 therm. Any optional charges to the consumer shall be identified
20 separately and denoted as optional.

21 (4) Credit standards shall include, at a minimum, that the credit
22 requirements used to make offer decisions must be the same for all
23 residential customers and that electric power suppliers, gas suppliers
24 and private aggregators not impose unreasonable income or credit
25 requirements.

26 (5) Billing standards shall include, at a minimum, provisions
27 prohibiting electric public utilities, gas public utilities, electric power
28 suppliers and gas suppliers from charging a fee to residential
29 customers for either the commencement or termination of electric
30 generation service or gas supply service.

31 b. (1) An electric power supplier, a gas supplier, an electric public
32 utility, and a gas public utility shall not disclose, sell or transfer
33 individual proprietary information, including, but not limited to, a
34 customer's name, address, telephone number, energy usage and electric
35 power payment history, to a third party without the written consent of
36 the customer. Whenever such individual proprietary information is
37 disclosed, sold or transferred, upon the written consent of the
38 customer, it may be used only for the provision of continued electric
39 generation service, electric related service, gas supply service or gas
40 related service to that customer. In the case of a transfer or sale of a
41 business, customer consent shall not be required for the transfer of
42 customer proprietary information to the subsequent owner of the
43 business for maintaining the continuation of such services.

44 (2) An electric power supplier, a gas supplier, a gas public utility
45 or an electric public utility may use individual proprietary information
46 that it has obtained by virtue of its provision of electric generation

1 service, electric related service, gas supply service or gas related
2 service to:

3 (a) Initiate, render, bill and collect for such services to the extent
4 otherwise authorized to provide billing and collection services;

5 (b) protect the rights or property of the electric power supplier, gas
6 supplier or public utility; and

7 (c) protect consumers of such services and other electric power
8 suppliers, gas suppliers or electric and gas public utilities from
9 fraudulent, abusive or unlawful use of, or subscription to, such
10 services.

11 c. The board shall establish and maintain a database for the purpose
12 of recording customer complaints concerning electric and gas public
13 utilities, electric power suppliers, gas suppliers, private aggregators,
14 and energy agents.

15 d. The board, in consultation with the Division of Consumer
16 Affairs in the Department of Law and Public Safety, shall establish, or
17 cause to be established, a multi-lingual electric and gas consumer
18 education program. The goal of the consumer education program shall
19 be to educate residential, small business, and special needs consumers
20 about the implications for consumers of the restructuring of the
21 electric power and gas industries. The consumer education program
22 shall include, but need not be limited to, the dissemination of
23 information to enable consumers to make informed choices among
24 available electricity and gas services and suppliers, notification of
25 residential electric and gas customers of the right to submit their
26 names to the board pursuant to paragraph (1) of subsection e. of this
27 section, and the communication to consumers of the consumer
28 protection provisions of this act.

29 The board shall ensure the neutrality of the content and message of
30 advertisements and materials.

31 The board shall promulgate standards for the recovery of consumer
32 education program costs from customers which include reasonable
33 measures and criteria to judge the success of the program in enhancing
34 customer understanding of retail choice.

35 e. (1) Residential electric or gas customers may submit their names
36 in writing to the board for inclusion on a list established by the board
37 of customers not wanting to receive telephone solicitations by electric
38 power suppliers, gas suppliers or private aggregators.

39 (2) As a condition of licensing, pursuant to standards adopted by
40 the board, an electric power supplier, gas supplier or private
41 aggregator shall not engage in telephone solicitation of any residential
42 electric or gas customer, as appropriate, whose name is on the list
43 established by the board, pursuant to paragraph (1) of this subsection.

44 (cf: P.L.1999, c.23, s.36)

45

46 3. Section 37 of P.L.1999, c.23 (C.48:3-86) is amended to read as

1 follows:

2 37. a. Notwithstanding any provisions of the "Administrative
3 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary,
4 the board, in consultation with the Division of Consumer Affairs in the
5 Department of Law and Public Safety, shall initiate a proceeding and
6 shall adopt, after notice, provision of the opportunity for comment,
7 and public hearing, interim standards for electric power suppliers or
8 gas suppliers, within 90 days of [the effective date of this act]
9 February 9, 1999, to prevent and establish penalties for unauthorized
10 changes of a consumer's electric power supplier or gas supplier, a
11 practice commonly known as "slamming." Such standards shall be
12 effective as regulations immediately upon filing with the Office of
13 Administrative Law and shall be effective for a period not to exceed
14 18 months, and may, thereafter, be amended, adopted or readopted by
15 the board in accordance with the provisions of the "Administrative
16 Procedure Act."

17 b. Standards for the prohibition of unauthorized changes in a
18 customer's electric power supplier or gas supplier shall include:

19 (1) An electric power supplier, an electric public utility, a gas
20 supplier or a gas public utility shall not cause an unauthorized change
21 in a customer's electric power supplier or gas supplier, a practice
22 known as "slamming." A change in a customer's electric power
23 supplier or gas supplier ¹[, except for a change, if otherwise lawfully
24 executed pursuant to the provisions of P.L.1999, c.23 (C.48:3-49 et
25 seq.), that results in the customer's taking service from a provider of
26 basic generation service or basic gas supply service,]¹ shall be deemed
27 to be unauthorized unless the customer has done so affirmatively and
28 voluntarily and the supplier has obtained the customer's approval
29 [either through a], which approval shall be evidenced by the
30 customer's written signature; the customer's electronic signature; an
31 audio recording of a telephone call initiated by the customer;
32 independent, third-party verification, in accordance with paragraph (2)
33 of this subsection, of a telephone call initiated by an electric power
34 supplier, electric public utility, gas supplier or gas public utility; or
35 or such alternative forms of verification as the board, in consultation with
36 the Division of Consumer Affairs, may permit;

37 (2) (a) company performing independent, third-party verification
38 shall: (i) be independent from the entity that seeks to provide the new
39 service; (ii) not be directly or indirectly managed, controlled, directed
40 or owned, wholly or in part, by the entity that seeks to provide the
41 new service, or by any affiliate of that entity; (iii) operate from
42 facilities physically separate from those of the entity that seeks to
43 provide the new service; and (iv) not derive any commission or
44 compensation based upon the number of sales confirmed;

45 (b) A company performing independent, third-party verification
46 shall obtain a customer's oral confirmation regarding the change and

1 shall record that confirmation by obtaining appropriate verification
2 data. The record shall be available to the customer upon request.
3 Information obtained from a customer through confirmation shall not
4 be used for marketing purposes:

5 (3) An electric power supplier, an electric public utility, a gas
6 supplier or a gas public utility shall not fail to cause a change in a
7 customer's electric power supplier or gas supplier, within a period of
8 time determined to be appropriate by the board, when a supplier or
9 utility is in receipt of a change order provided that such change order
10 has been received in a manner that complies with federal and State
11 rules and regulations, including as provided in this subsection;

12 [(3)] (4) The acts of an agent of an electric power supplier, an
13 electric public utility, a gas supplier or a gas public utility shall be
14 considered the acts of the electric power supplier, electric public
15 utility, gas supplier or gas public utility.

16 c. A customer's new electric power supplier, electric public utility,
17 gas supplier or gas public utility shall notify the customer of the
18 change in the customer's electric or gas supplier within 30 days in a
19 manner to be determined by the board.

20 d. Bills to customers from an electric power supplier, electric
21 public utility, gas supplier or gas public utility shall contain the name
22 and telephone number of each supplier for whom billing is provided,
23 and any other information deemed applicable by the board.

24 e. In addition to any other penalties, fines or remedies authorized
25 by law, any electric power supplier, electric public utility, gas supplier
26 or gas public utility that violates this section and collects charges for
27 electric power supply or gas supply services from a customer or
28 through an entity providing customer account services shall be liable
29 to the electric power supplier, electric public utility, gas supplier or
30 gas public utility previously selected by the customer in an amount
31 equal to all charges paid by the customer after such violation in
32 accordance with such procedures as the board may prescribe. Any
33 electric power supplier, electric public utility, gas supplier or gas
34 public utility that violates this section shall also be liable for a civil
35 penalty pursuant to section 34 of [this act] P.L.1999, c.23
36 (C.48:3-83); and the board is hereby authorized to revoke the license
37 of any entity that violates this section.

38 (cf: P.L.1999, c.23, s.37)

39
40 4. Section 41 of P.L.1999, c.23 (C.48:3-90) is amended to read as
41 follows:

42 41. a. A private aggregator shall register with the board, which
43 shall include the filing of basic information pertaining to the supplier,
44 such as name, address, telephone number, and company background
45 and profile. A private aggregator shall provide annual updates of this
46 information to the board. The registration shall also include evidence

1 of financial integrity, as determined by the board, and evidence that the
2 private aggregator has knowledge of the energy industry.

3 b. Any residential customer that elects to purchase electric
4 generation service or gas supply service, after the implementation of
5 gas unbundling pursuant to section 10 of [this act] P.L.1999, c.23
6 (C.48:3-58), through a private aggregator must do so affirmatively and
7 voluntarily, either through a written signature; the customer's
8 electronic signature; an audio recording of a telephone call initiated by
9 the customer; independent, third-party verification, in accordance with
10 section 37 of P.L.1999, c.23 (C.48:3-86), of a telephone call initiated
11 by a private aggregator; or such alternative forms of verification as the
12 board, in consultation with the Division of Consumer Affairs in the
13 Department of Law and Public Safety, may permit.

14 (cf: P.L.1999, c.23, s.41)

15

16 5. This act shall take effect immediately.

P.L. 2001, CHAPTER 242, *approved September 6, 2001*
Senate, No. 1908 (*First Reprint*)

1 **AN ACT** concerning electric power and gas suppliers and amending
2 P.L.1999, c.23.

3

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

6

7 1. Section 3 of P.L.1999, c.23 (C.48:3-51) is amended to read as
8 follows:

9 3. As used in this act:

10 "Assignee" means a person to which an electric public utility or
11 another assignee assigns, sells or transfers, other than as security, all
12 or a portion of its right to or interest in bondable transition property.
13 Except as specifically provided in this act, an assignee shall not be
14 subject to the public utility requirements of Title 48 or any rules or
15 regulations adopted pursuant thereto;

16 "Basic gas supply service" means gas supply service that is provided
17 to any customer that has not chosen an alternative gas supplier,
18 whether or not the customer has received offers as to competitive
19 supply options, including, but not limited to, any customer that cannot
20 obtain such service for any reason, including non-payment for services.
21 Basic gas supply service is not a competitive service and shall be fully
22 regulated by the board;

23 "Basic generation service" means electric generation service that is
24 provided, pursuant to section 9 of this act, to any customer that has
25 not chosen an alternative electric power supplier, whether or not the
26 customer has received offers as to competitive supply options,
27 including, but not limited to, any customer that cannot obtain such
28 service from an electric power supplier for any reason, including
29 non-payment for services. Basic generation service is not a
30 competitive service and shall be fully regulated by the board;

31 "Board" means the New Jersey Board of Public Utilities or any
32 successor agency;

33 "Bondable stranded costs" means any stranded costs of an electric
34 public utility approved by the board for recovery pursuant to the
35 provisions of this act, together with, as approved by the board: (1) the
36 cost of retiring existing debt or equity capital of the electric public
37 utility, including accrued interest, premium and other fees, costs and
38 charges relating thereto, with the proceeds of the financing of
39 bondable transition property; (2) if requested by an electric public
40 utility in its application for a bondable stranded costs rate order,

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SEG committee amendments adopted May 24, 2001.

1 federal, State and local tax liabilities associated with stranded costs
2 recovery or the transfer or financing of such property or both,
3 including taxes, whose recovery period is modified by the effect of a
4 stranded costs recovery order, a bondable stranded costs rate order or
5 both; and (3) the costs incurred to issue, service or refinance transition
6 bonds, including interest, acquisition or redemption premium, and
7 other financing costs, whether paid upon issuance or over the life of
8 the transition bonds, including, but not limited to, credit
9 enhancements, service charges, overcollateralization, interest rate cap,
10 swap or collar, yield maintenance, maturity guarantee or other hedging
11 agreements, equity investments, operating costs and other related fees,
12 costs and charges, or to assign, sell or otherwise transfer bondable
13 transition property;

14 "Bondable stranded costs rate order" means one or more
15 irrevocable written orders issued by the board pursuant to this act
16 which determines the amount of bondable stranded costs and the initial
17 amount of transition bond charges authorized to be imposed to recover
18 such bondable stranded costs, including the costs to be financed from
19 the proceeds of the transition bonds, as well as on-going costs
20 associated with servicing and credit enhancing the transition bonds,
21 and provides the electric public utility specific authority to issue or
22 cause to be issued, directly or indirectly, transition bonds through a
23 financing entity and related matters as provided in this act, which order
24 shall become effective immediately upon the written consent of the
25 related electric public utility to such order as provided in this act;

26 "Bondable transition property" means the property consisting of the
27 irrevocable right to charge, collect and receive, and be paid from
28 collections of, transition bond charges in the amount necessary to
29 provide for the full recovery of bondable stranded costs which are
30 determined to be recoverable in a bondable stranded costs rate order,
31 all rights of the related electric public utility under such bondable
32 stranded costs rate order including, without limitation, all rights to
33 obtain periodic adjustments of the related transition bond charges
34 pursuant to subsection b. of section 15 of this act, and all revenues,
35 collections, payments, money and proceeds arising under, or with
36 respect to, all of the foregoing;

37 "Broker" means a duly licensed electric power supplier that assumes
38 the contractual and legal responsibility for the sale of electric
39 generation service, transmission or other services to end-use retail
40 customers, but does not take title to any of the power sold, or a duly
41 licensed gas supplier that assumes the contractual and legal obligation
42 to provide gas supply service to end-use retail customers, but does not
43 take title to the gas;

44 "Buydown" means an arrangement or arrangements involving the
45 buyer and seller in a given power purchase contract and, in some cases
46 third parties, for consideration to be given by the buyer in order to

1 effectuate a reduction in the pricing, or the restructuring of other
2 terms to reduce the overall cost of the power contract, for the
3 remaining succeeding period of the purchased power arrangement or
4 arrangements;

5 "Buyout" means an arrangement or arrangements involving the
6 buyer and seller in a given power purchase contract and, in some cases
7 third parties, for consideration to be given by the buyer in order to
8 effectuate a termination of such power purchase contract;

9 "Class I renewable energy" means electric energy produced from
10 solar technologies, photovoltaic technologies, wind energy, fuel cells,
11 geothermal technologies, wave or tidal action, and methane gas from
12 landfills or a biomass facility, provided that the biomass is cultivated
13 and harvested in a sustainable manner;

14 "Class II renewable energy" means electric energy produced at a
15 resource recovery facility or hydropower facility, provided that such
16 facility is located where retail competition is permitted and provided
17 further that the Commissioner of Environmental Protection has
18 determined that such facility meets the highest environmental
19 standards and minimizes any impacts to the environment and local
20 communities;

21 "Competitive service" means any service offered by an electric
22 public utility or a gas public utility that the board determines to be
23 competitive pursuant to section 8 or section 10 of this act or that is
24 not regulated by the board;

25 "Comprehensive resource analysis" means an analysis including, but
26 not limited to, an assessment of existing market barriers to the
27 implementation of energy efficiency and renewable technologies that
28 are not or cannot be delivered to customers through a competitive
29 marketplace;

30 "Customer" means any person that is an end user and is connected
31 to any part of the transmission and distribution system within an
32 electric public utility's service territory or a gas public utility's service
33 territory within this State;

34 "Customer account service" means metering, billing, or such other
35 administrative activity associated with maintaining a customer account;

36 "Demand side management" means the management of customer
37 demand for energy service through the implementation of
38 cost-effective energy efficiency technologies, including, but not limited
39 to, installed conservation, load management and energy efficiency
40 measures on and in the residential, commercial, industrial, institutional
41 and governmental premises and facilities in this State;

42 "Electric generation service" means the provision of retail electric
43 energy and capacity which is generated off-site from the location at
44 which the consumption of such electric energy and capacity is metered
45 for retail billing purposes, including agreements and arrangements
46 related thereto;

1 "Electric power generator" means an entity that proposes to
2 construct, own, lease or operate, or currently owns, leases or operates,
3 an electric power production facility that will sell or does sell at least
4 90 percent of its output, either directly or through a marketer, to a
5 customer or customers located at sites that are not on or contiguous
6 to the site on which the facility will be located or is located. The
7 designation of an entity as an electric power generator for the
8 purposes of this act shall not, in and of itself, affect the entity's status
9 as an exempt wholesale generator under the Public Utility Holding
10 Company Act of 1935, 15 U.S.C. s.79 et seq.;

11 "Electric power supplier" means a person or entity that is duly
12 licensed pursuant to the provisions of this act to offer and to assume
13 the contractual and legal responsibility to provide electric generation
14 service to retail customers, and includes load serving entities,
15 marketers and brokers that offer or provide electric generation service
16 to retail customers. The term excludes an electric public utility that
17 provides electric generation service only as a basic generation service
18 pursuant to section 9 of this act;

19 "Electric public utility" means a public utility, as that term is defined
20 in R.S.48:2-13, that transmits and distributes electricity to end users
21 within this State;

22 "Electric related service" means a service that is directly related to
23 the consumption of electricity by an end user, including, but not
24 limited to, the installation of demand side management measures at the
25 end user's premises, the maintenance, repair or replacement of
26 appliances, lighting, motors or other energy-consuming devices at the
27 end user's premises, and the provision of energy consumption
28 measurement and billing services;

29 "Electronic signature" means an electronic sound, symbol or
30 process, attached to, or logically associated with, a contract or other
31 record, and executed or adopted by a person with the intent to sign the
32 record;

33 "Energy agent" means a person that is duly registered pursuant to
34 the provisions of this act, that arranges the sale of retail electricity or
35 electric related services or retail gas supply or gas related services
36 between government aggregators or private aggregators and electric
37 power suppliers or gas suppliers, but does not take title to the electric
38 or gas sold;

39 "Energy consumer" means a business or residential consumer of
40 electric generation service or gas supply service located within the
41 territorial jurisdiction of a government aggregator;

42 "Financing entity" means an electric public utility, a special purpose
43 entity, or any other assignee of bondable transition property, which
44 issues transition bonds. Except as specifically provided in this act, a
45 financing entity which is not itself an electric public utility shall not be
46 subject to the public utility requirements of Title 48 or any rules or

1 regulations adopted pursuant thereto;

2 "Gas public utility" means a public utility, as that term is defined in
3 R.S.48:2-13, that distributes gas to end users within this State;

4 "Gas related service" means a service that is directly related to the
5 consumption of gas by an end user, including, but not limited to, the
6 installation of demand side management measures at the end user's
7 premises, the maintenance, repair or replacement of appliances or
8 other energy-consuming devices at the end user's premises, and the
9 provision of energy consumption measurement and billing services;

10 "Gas supplier" means a person that is duly licensed pursuant to the
11 provisions of this act to offer and assume the contractual and legal
12 obligation to provide gas supply service to retail customers, and
13 includes, but is not limited to, marketers and brokers. A non-public
14 utility affiliate of a public utility holding company may be a gas
15 supplier, but a gas public utility or any subsidiary of a gas utility is not
16 a gas supplier. In the event that a gas public utility is not part of a
17 holding company legal structure, a related competitive business
18 segment of that gas public utility may be a gas supplier, provided that
19 related competitive business segment is structurally separated from the
20 gas public utility, and provided that the interactions between the gas
21 public utility and the related competitive business segment are subject
22 to the affiliate relations standards adopted by the board pursuant to
23 subsection k. of section 10 of this act;

24 "Gas supply service" means the provision to customers of the retail
25 commodity of gas, but does not include any regulated distribution
26 service;

27 "Government aggregator" means any government entity subject to
28 the requirements of the "Local Public Contracts Law," P.L.1971,
29 c.198 (C.40A:11-1 et seq.), the "Public School Contracts Law,"
30 N.J.S.18A:18A-1 et seq., or the "County College Contracts Law,"
31 P.L.1982, c.189 (C.18A:64A-25.1 et seq.), that enters into a written
32 contract with a licensed electric power supplier or a licensed gas
33 supplier for: (1) the provision of electric generation service, electric
34 related service, gas supply service, or gas related service for its own
35 use or the use of other government aggregators; or (2) if a municipal
36 or county government, the provision of electric generation service or
37 gas supply service on behalf of business or residential customers within
38 its territorial jurisdiction;

39 "Government energy aggregation program" means a program and
40 procedure pursuant to which a government aggregator enters into a
41 written contract for the provision of electric generation service or gas
42 supply service on behalf of business or residential customers within its
43 territorial jurisdiction;

44 "Governmental entity" means any federal, state, municipal, local or
45 other governmental department, commission, board, agency, court,
46 authority or instrumentality having competent jurisdiction;

1 "Market transition charge" means a charge imposed pursuant to
2 section 13 of this act by an electric public utility, at a level determined
3 by the board, on the electric public utility customers for a limited
4 duration transition period to recover stranded costs created as a result
5 of the introduction of electric power supply competition pursuant to
6 the provisions of this act;

7 "Marketer" means a duly licensed electric power supplier that takes
8 title to electric energy and capacity, transmission and other services
9 from electric power generators and other wholesale suppliers and then
10 assumes contractual and legal obligation to provide electric generation
11 service, and may include transmission and other services, to an end-use
12 retail customer or customers, or a duly licensed gas supplier that takes
13 title to gas and then assumes the contractual and legal obligation to
14 provide gas supply service to an end-use customer or customers;

15 "Net proceeds" means proceeds less transaction and other related
16 costs as determined by the board;

17 "Net revenues" means revenues less related expenses, including
18 applicable taxes, as determined by the board;

19 "On-site generation facility" means a generation facility, and
20 equipment and services appurtenant to electric sales by such facility to
21 the end use customer located on the property or on property
22 contiguous to the property on which the end user is located. An
23 on-site generation facility shall not be considered a public utility. The
24 property of the end use customer and the property on which the
25 on-site generation facility is located shall be considered contiguous if
26 they are geographically located next to each other, but may be
27 otherwise separated by an easement, public thoroughfare,
28 transportation or utility-owned right-of-way;

29 "Person" means an individual, partnership, corporation, association,
30 trust, limited liability company, governmental entity or other legal
31 entity;

32 "Private aggregator" means a non-government aggregator that is a
33 duly-organized business or non-profit organization authorized to do
34 business in this State that enters into a contract with a duly licensed
35 electric power supplier for the purchase of electric energy and
36 capacity, or with a duly licensed gas supplier for the purchase of gas
37 supply service, on behalf of multiple end-use customers by combining
38 the loads of those customers;

39 "Public utility holding company" means: (1) any company that,
40 directly or indirectly, owns, controls, or holds with power to vote, ten
41 percent or more of the outstanding voting securities of an electric
42 public utility or a gas public utility or of a company which is a public
43 utility holding company by virtue of this definition, unless the
44 Securities and Exchange Commission, or its successor, by order
45 declares such company not to be a public utility holding company
46 under the Public Utility Holding Company Act of 1935, 15 U.S.C. s.79

1 et seq., or its successor; or (2) any person that the Securities and
2 Exchange Commission, or its successor, determines, after notice and
3 opportunity for hearing, directly or indirectly, to exercise, either alone
4 or pursuant to an arrangement or understanding with one or more
5 other persons, such a controlling influence over the management or
6 policies of an electric public utility or a gas public utility or public
7 utility holding company as to make it necessary or appropriate in the
8 public interest or for the protection of investors or consumers that
9 such person be subject to the obligations, duties, and liabilities
10 imposed in the Public Utility Holding Company Act of 1935 or its
11 successor;

12 "Regulatory asset" means an asset recorded on the books of an
13 electric public utility or gas public utility pursuant to the Statement of
14 Financial Accounting Standards, No. 71, entitled "Accounting for the
15 Effects of Certain Types of Regulation," or any successor standard and
16 as deemed recoverable by the board;

17 "Related competitive business segment of an electric public utility
18 or gas public utility" means any business venture of an electric public
19 utility or gas public utility including, but not limited to, functionally
20 separate business units, joint ventures, and partnerships, that offers to
21 provide or provides competitive services;

22 "Related competitive business segment of a public utility holding
23 company" means any business venture of a public utility holding
24 company, including, but not limited to, functionally separate business
25 units, joint ventures, and partnerships and subsidiaries, that offers to
26 provide or provides competitive services, but does not include any
27 related competitive business segments of an electric public utility or
28 gas public utility;

29 "Resource recovery facility" means a solid waste facility
30 constructed and operated for the incineration of solid waste for energy
31 production and the recovery of metals and other materials for reuse;

32 "Restructuring related costs" means reasonably incurred costs
33 directly related to the restructuring of the electric power industry,
34 including the closure, sale, functional separation and divestiture of
35 generation and other competitive utility assets by a public utility, or
36 the provision of competitive services as such costs are determined by
37 the board, and which are not stranded costs as defined in this act but
38 may include, but not be limited to, investments in management
39 information systems, and which shall include expenses related to
40 employees affected by restructuring which result in efficiencies and
41 which result in benefits to ratepayers, such as training or retraining at
42 the level equivalent to one year's training at a vocational or technical
43 school or county community college, the provision of severance pay
44 of two weeks of base pay for each year of full-time employment, and
45 a maximum of 24 months' continued health care coverage. Except as
46 to expenses related to employees affected by restructuring,

1 "restructuring related costs" shall not include going forward costs;

2 "Retail choice" means the ability of retail customers to shop for
3 electric generation or gas supply service from electric power or gas
4 suppliers, or opt to receive basic generation service or basic gas
5 service, and the ability of an electric power or gas supplier to offer
6 electric generation service or gas supply service to retail customers,
7 consistent with the provisions of this act;

8 "Shopping credit" means an amount deducted from the bill of an
9 electric public utility customer to reflect the fact that such customer
10 has switched to an electric power supplier and no longer takes basic
11 generation service from the electric public utility;

12 "Social program" means a program implemented with board
13 approval to provide assistance to a group of disadvantaged customers,
14 to provide protection to consumers, or to accomplish a particular
15 societal goal, and includes, but is not limited to, the winter moratorium
16 program, utility practices concerning "bad debt" customers, low
17 income assistance, deferred payment plans, weatherization programs,
18 and late payment and deposit policies, but does not include any
19 demand side management program or any environmental requirements
20 or controls;

21 "Societal benefits charge" means a charge imposed by an electric
22 public utility, at a level determined by the board, pursuant to, and in
23 accordance with, section 12 of this act;

24 "Stranded cost" means the amount by which the net cost of an
25 electric public utility's electric generating assets or electric power
26 purchase commitments, as determined by the board consistent with the
27 provisions of this act, exceeds the market value of those assets or
28 contractual commitments in a competitive supply marketplace and the
29 costs of buydowns or buyouts of power purchase contracts;

30 "Stranded costs recovery order" means each order issued by the
31 board in accordance with subsection c. of section 13 of this act which
32 sets forth the amount of stranded costs, if any, the board has
33 determined an electric public utility is eligible to recover and collect
34 in accordance with the standards set forth in section 13 and the
35 recovery mechanisms therefor;

36 "Transition bond charge" means a charge, expressed as an amount
37 per kilowatt hour, that is authorized by and imposed on electric public
38 utility ratepayers pursuant to a bondable stranded costs rate order, as
39 modified at any time pursuant to the provisions of this act;

40 "Transition bonds" means bonds, notes, certificates of participation
41 or beneficial interest or other evidences of indebtedness or ownership
42 issued pursuant to an indenture, contract or other agreement of an
43 electric public utility or a financing entity, the proceeds of which are
44 used, directly or indirectly, to recover, finance or refinance bondable
45 stranded costs and which are, directly or indirectly, secured by or
46 payable from bondable transition property. References in this act to

1 principal, interest, and acquisition or redemption premium with respect
2 to transition bonds which are issued in the form of certificates of
3 participation or beneficial interest or other evidences of ownership
4 shall refer to the comparable payments on such securities;

5 "Transmission and distribution system" means, with respect to an
6 electric public utility, any facility or equipment that is used for the
7 transmission, distribution or delivery of electricity to the customers of
8 the electric public utility including, but not limited to, the land,
9 structures, meters, lines, switches and all other appurtenances thereof
10 and thereto, owned or controlled by the electric public utility within
11 this State; and

12 "Universal service" means any service approved by the board with
13 the purpose of assisting low-income residential customers in obtaining
14 or retaining electric generation or delivery service.

15 (cf: P.L.1999, c.23, s.3)

16

17 2. Section 36 of P.L.1999, c.23 (C.48:3-85) is amended to read as
18 follows:

19 36. a. Notwithstanding any provisions of the "Administrative
20 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary,
21 the board, in consultation with the Division of Consumer Affairs in the
22 Department of Law and Public Safety, shall initiate a proceeding and
23 shall adopt, after notice, provision of the opportunity for comment,
24 and public hearing, interim consumer protection standards for electric
25 power suppliers or gas suppliers, within 90 days of [the effective date
26 of this act] February 9, 1999, including, but not limited to, standards
27 for collections, credit, contracts, authorized changes of an energy
28 consumer's electric power supplier or gas supplier, for the prohibition
29 of discriminatory marketing, for advertising and for disclosure. Such
30 standards shall be effective as regulations immediately upon filing with
31 the Office of Administrative Law and shall be effective for a period not
32 to exceed 18 months, and may, thereafter, be amended, adopted or
33 readopted by the board in accordance with the provisions of the
34 "Administrative Procedure Act."

35 (1) Contract standards shall include, but not be limited to,
36 requirements that electric power supply contracts or gas supply
37 contracts must conspicuously disclose the duration of the contract;
38 state the price per kilowatt hour or per therm or other pricing
39 determinant approved by the board; have the customer's written
40 signature; the customer's electronic signature; an audio recording of
41 a telephone call initiated by the customer; independent, third-party
42 verification, in accordance with section 37 of P.L.1999, c.23
43 (C.48:3-86), of a telephone call initiated by an electric power supplier,
44 gas supplier or private aggregator; or such alternative forms of
45 verification as the board, in consultation with the Division of
46 Consumer Affairs, may permit for switching electric power suppliers

1 or gas suppliers and for contract renewal; and include termination
2 procedures, notice of any fees, and toll-free or local telephone
3 numbers for the electric power supplier or gas supplier and for the
4 board.

5 (2) Standards for the prohibition of discriminatory marketing
6 standards shall provide at a minimum that a decision made by an
7 electric power supplier or a gas supplier to accept or reject a customer
8 shall not be based on race, color, national origin, age, gender, religion,
9 source of income, receipt of public benefits, family status, sexual
10 preference, or geographic location. The board shall adopt reporting
11 requirements to monitor compliance with such standards.

12 (3) Advertising standards for electric power suppliers or gas
13 suppliers shall provide, at a minimum, that optional charges to the
14 consumer will not be added to any advertised cost per kilowatt hour
15 or per therm, and that the only unit of measurement that may be used
16 in advertisements is cost per kilowatt hour or per therm, unless
17 otherwise approved by the board. If an electric power supplier or gas
18 supplier does not advertise using cost per kilowatt hour or per therm,
19 the electric power supplier or gas supplier shall provide, at the
20 consumer's request, an estimate of the cost per kilowatt hour or per
21 therm. Any optional charges to the consumer shall be identified
22 separately and denoted as optional.

23 (4) Credit standards shall include, at a minimum, that the credit
24 requirements used to make offer decisions must be the same for all
25 residential customers and that electric power suppliers, gas suppliers
26 and private aggregators not impose unreasonable income or credit
27 requirements.

28 (5) Billing standards shall include, at a minimum, provisions
29 prohibiting electric public utilities, gas public utilities, electric power
30 suppliers and gas suppliers from charging a fee to residential
31 customers for either the commencement or termination of electric
32 generation service or gas supply service.

33 b. (1) An electric power supplier, a gas supplier, an electric
34 public utility, and a gas public utility shall not disclose, sell or transfer
35 individual proprietary information, including, but not limited to, a
36 customer's name, address, telephone number, energy usage and electric
37 power payment history, to a third party without the written consent of
38 the customer. Whenever such individual proprietary information is
39 disclosed, sold or transferred, upon the written consent of the
40 customer, it may be used only for the provision of continued electric
41 generation service, electric related service, gas supply service or gas
42 related service to that customer. In the case of a transfer or sale of a
43 business, customer consent shall not be required for the transfer of
44 customer proprietary information to the subsequent owner of the
45 business for maintaining the continuation of such services.

46 (2) An electric power supplier, a gas supplier, a gas public utility

1 or an electric public utility may use individual proprietary information
2 that it has obtained by virtue of its provision of electric generation
3 service, electric related service, gas supply service or gas related
4 service to:

5 (a) Initiate, render, bill and collect for such services to the extent
6 otherwise authorized to provide billing and collection services;

7 (b) Protect the rights or property of the electric power supplier,
8 gas supplier or public utility; and

9 (c) Protect consumers of such services and other electric power
10 suppliers, gas suppliers or electric and gas public utilities from
11 fraudulent, abusive or unlawful use of, or subscription to, such
12 services.

13 c. The board shall establish and maintain a database for the
14 purpose of recording customer complaints concerning electric and gas
15 public utilities, electric power suppliers, gas suppliers, private
16 aggregators, and energy agents.

17 d. The board, in consultation with the Division of Consumer
18 Affairs in the Department of Law and Public Safety, shall establish, or
19 cause to be established, a multi-lingual electric and gas consumer
20 education program. The goal of the consumer education program shall
21 be to educate residential, small business, and special needs consumers
22 about the implications for consumers of the restructuring of the
23 electric power and gas industries. The consumer education program
24 shall include, but need not be limited to, the dissemination of
25 information to enable consumers to make informed choices among
26 available electricity and gas services and suppliers, notification of
27 residential electric and gas customers of the right to submit their
28 names to the board pursuant to paragraph (1) of subsection e. of this
29 section, and the communication to consumers of the consumer
30 protection provisions of this act.

31 The board shall ensure the neutrality of the content and message of
32 advertisements and materials.

33 The board shall promulgate standards for the recovery of consumer
34 education program costs from customers which include reasonable
35 measures and criteria to judge the success of the program in enhancing
36 customer understanding of retail choice.

37 e. (1) Residential electric or gas customers may submit their
38 names in writing to the board for inclusion on a list established by the
39 board of customers not wanting to receive telephone solicitations by
40 electric power suppliers, gas suppliers or private aggregators.

41 (2) As a condition of licensing, pursuant to standards adopted by
42 the board, an electric power supplier, gas supplier or private
43 aggregator shall not engage in telephone solicitation of any residential
44 electric or gas customer, as appropriate, whose name is on the list
45 established by the board, pursuant to paragraph (1) of this subsection.

46 (cf: P.L.1999, c.23, s.36)

1 3. Section 37 of P.L.1999, c.23 (C.48:3-86) is amended to read as
2 follows:

3 37. a. Notwithstanding any provisions of the "Administrative
4 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary,
5 the board, in consultation with the Division of Consumer Affairs in the
6 Department of Law and Public Safety, shall initiate a proceeding and
7 shall adopt, after notice, provision of the opportunity for comment,
8 and public hearing, interim standards for electric power suppliers or
9 gas suppliers, within 90 days of [the effective date of this act]
10 February 9, 1999, to prevent and establish penalties for unauthorized
11 changes of a consumer's electric power supplier or gas supplier, a
12 practice commonly known as "slamming." Such standards shall be
13 effective as regulations immediately upon filing with the Office of
14 Administrative Law and shall be effective for a period not to exceed
15 18 months, and may, thereafter, be amended, adopted or readopted by
16 the board in accordance with the provisions of the "Administrative
17 Procedure Act."

18 b. Standards for the prohibition of unauthorized changes in a
19 customer's electric power supplier or gas supplier shall include:

20 (1) An electric power supplier, an electric public utility, a gas
21 supplier or a gas public utility shall not cause an unauthorized change
22 in a customer's electric power supplier or gas supplier, a practice
23 known as "slamming." A change in a customer's electric power
24 supplier or gas supplier ¹[, except for a change, if otherwise lawfully
25 executed pursuant to the provisions of P.L.1999, c.23 (C.48:3-49 et
26 seq.), that results in the customer's taking service from a provider of
27 basic generation service or basic gas supply service,]¹ shall be deemed
28 to be unauthorized unless the customer has done so affirmatively and
29 voluntarily and the supplier has obtained the customer's approval
30 [either through a], which approval shall be evidenced by the
31 customer's written signature; the customer's electronic signature; an
32 audio recording of a telephone call initiated by the customer;
33 independent, third-party verification, in accordance with paragraph (2)
34 of this subsection, of a telephone call initiated by an electric power
35 supplier, electric public utility, gas supplier or gas public utility;
36 or such alternative forms of verification as the board, in consultation with
37 the Division of Consumer Affairs, may permit;

38 (2) (a) A company performing independent, third-party verification
39 shall: (i) be independent from the entity that seeks to provide the new
40 service; (ii) not be directly or indirectly managed, controlled, directed
41 or owned, wholly or in part, by the entity that seeks to provide the
42 new service, or by any affiliate of that entity; (iii) operate from
43 facilities physically separate from those of the entity that seeks to
44 provide the new service; and (iv) not derive any commission or
45 compensation based upon the number of sales confirmed;

46 (b) A company performing independent, third-party verification

1 shall obtain a customer's oral confirmation regarding the change and
2 shall record that confirmation by obtaining appropriate verification
3 data. The record shall be available to the customer upon request.
4 Information obtained from a customer through confirmation shall not
5 be used for marketing purposes;

6 (3) An electric power supplier, an electric public utility, a gas
7 supplier or a gas public utility shall not fail to cause a change in a
8 customer's electric power supplier or gas supplier, within a period of
9 time determined to be appropriate by the board, when a supplier or
10 utility is in receipt of a change order provided that such change order
11 has been received in a manner that complies with federal and State
12 rules and regulations, including as provided in this subsection;

13 [(3)] (4) The acts of an agent of an electric power supplier, an
14 electric public utility, a gas supplier or a gas public utility shall be
15 considered the acts of the electric power supplier, electric public
16 utility, gas supplier or gas public utility.

17 c. A customer's new electric power supplier, electric public utility,
18 gas supplier or gas public utility shall notify the customer of the
19 change in the customer's electric or gas supplier within 30 days in a
20 manner to be determined by the board.

21 d. Bills to customers from an electric power supplier, electric
22 public utility, gas supplier or gas public utility shall contain the name
23 and telephone number of each supplier for whom billing is provided,
24 and any other information deemed applicable by the board.

25 e. In addition to any other penalties, fines or remedies authorized
26 by law, any electric power supplier, electric public utility, gas supplier
27 or gas public utility that violates this section and collects charges for
28 electric power supply or gas supply services from a customer or
29 through an entity providing customer account services shall be liable
30 to the electric power supplier, electric public utility, gas supplier or
31 gas public utility previously selected by the customer in an amount
32 equal to all charges paid by the customer after such violation in
33 accordance with such procedures as the board may prescribe. Any
34 electric power supplier, electric public utility, gas supplier or gas
35 public utility that violates this section shall also be liable for a civil
36 penalty pursuant to section 34 of [this act] P.L.1999, c.23
37 (C.48:3-83); and the board is hereby authorized to revoke the license
38 of any entity that violates this section.

39 (cf: P.L.1999, c.23, s.37)

40

41 4. Section 41 of P.L.1999, c.23 (C.48:3-90) is amended to read
42 as follows:

43 41. a. A private aggregator shall register with the board, which shall
44 include the filing of basic information pertaining to the supplier, such
45 as name, address, telephone number, and company background and
46 profile. A private aggregator shall provide annual updates of this

1 information to the board. The registration shall also include evidence
2 of financial integrity, as determined by the board, and evidence that the
3 private aggregator has knowledge of the energy industry.

4 b. Any residential customer that elects to purchase electric
5 generation service or gas supply service, after the implementation of
6 gas unbundling pursuant to section 10 of ~~["this act"] P.L.1999, c.23~~
7 ~~(C.48:3-58)~~, through a private aggregator must do so affirmatively and
8 voluntarily, either through a written signature; the customer's
9 electronic signature; an audio recording of a telephone call initiated by
10 the customer; independent, third-party verification, in accordance with
11 section 37 of P.L.1999, c.23 (C.48:3-86), of a telephone call initiated
12 by a private aggregator; or such alternative forms of verification as the
13 board, in consultation with the Division of Consumer Affairs in the
14 Department of Law and Public Safety, may permit.

15 (cf: P.L.1999, c.23, s.41)

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17 5. This act shall take effect immediately.

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22 Provides additional means of verification of agreement to change
23 electricity or natural gas suppliers.

CHAPTER 242

AN ACT concerning electric power and gas suppliers and amending P.L.1999, c.23.

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

1. Section 3 of P.L.1999, c.23 (C.48:3-51) is amended to read as follows:

C.48:3-51 Definitions relative to competition in the electric power and gas industries.

3. As used in this act:

"Assignee" means a person to which an electric public utility or another assignee assigns, sells or transfers, other than as security, all or a portion of its right to or interest in bondable transition property. Except as specifically provided in this act, an assignee shall not be subject to the public utility requirements of Title 48 or any rules or regulations adopted pursuant thereto;

"Basic gas supply service" means gas supply service that is provided to any customer that has not chosen an alternative gas supplier, whether or not the customer has received offers as to competitive supply options, including, but not limited to, any customer that cannot obtain such service for any reason, including non-payment for services. Basic gas supply service is not a competitive service and shall be fully regulated by the board;

"Basic generation service" means electric generation service that is provided, pursuant to section 9 of this act, to any customer that has not chosen an alternative electric power supplier, whether or not the customer has received offers as to competitive supply options, including, but not limited to, any customer that cannot obtain such service from an electric power supplier for any reason, including non-payment for services. Basic generation service is not a competitive service and shall be fully regulated by the board;

"Board" means the New Jersey Board of Public Utilities or any successor agency;

"Bondable stranded costs" means any stranded costs of an electric public utility approved by the board for recovery pursuant to the provisions of this act, together with, as approved by the board: (1) the cost of retiring existing debt or equity capital of the electric public utility, including accrued interest, premium and other fees, costs and charges relating thereto, with the proceeds of the financing of bondable transition property; (2) if requested by an electric public utility in its application for a bondable stranded costs rate order, federal, State and local tax liabilities associated with stranded costs recovery or the transfer or financing of such property or both, including taxes, whose recovery period is modified by the effect of a stranded costs recovery order, a bondable stranded costs rate order or both; and (3) the costs incurred to issue, service or refinance transition bonds, including interest, acquisition or redemption premium, and other financing costs, whether paid upon issuance or over the life of the transition bonds, including, but not limited to, credit enhancements, service charges, overcollateralization, interest rate cap, swap or collar, yield maintenance, maturity guarantee or other hedging agreements, equity investments, operating costs and other related fees, costs and charges, or to assign, sell or otherwise transfer bondable transition property;

"Bondable stranded costs rate order" means one or more irrevocable written orders issued by the board pursuant to this act which determines the amount of bondable stranded costs and the initial amount of transition bond charges authorized to be imposed to recover such bondable stranded costs, including the costs to be financed from the proceeds of the transition bonds, as well as on-going costs associated with servicing and credit enhancing the transition bonds, and provides the electric public utility specific authority to issue or cause to be issued, directly or indirectly, transition bonds through a financing entity and related matters as provided in this act, which order shall become effective immediately upon the written consent of the related electric public utility to such order as provided in this act;

"Bondable transition property" means the property consisting of the irrevocable right to charge, collect and receive, and be paid from collections of, transition bond charges in the amount necessary to provide for the full recovery of bondable stranded costs which are determined to be recoverable in a bondable stranded costs rate order, all rights of the related electric public utility under such bondable stranded costs rate order including, without limitation, all rights to obtain periodic adjustments of the related transition bond charges pursuant to subsection b. of section 15 of this act, and all revenues, collections, payments, money and proceeds arising under, or with respect to, all of the foregoing;

"Broker" means a duly licensed electric power supplier that assumes the contractual and legal

responsibility for the sale of electric generation service, transmission or other services to end-use retail customers, but does not take title to any of the power sold, or a duly licensed gas supplier that assumes the contractual and legal obligation to provide gas supply service to end-use retail customers, but does not take title to the gas;

"Buydown" means an arrangement or arrangements involving the buyer and seller in a given power purchase contract and, in some cases third parties, for consideration to be given by the buyer in order to effectuate a reduction in the pricing, or the restructuring of other terms to reduce the overall cost of the power contract, for the remaining succeeding period of the purchased power arrangement or arrangements;

"Buyout" means an arrangement or arrangements involving the buyer and seller in a given power purchase contract and, in some cases third parties, for consideration to be given by the buyer in order to effectuate a termination of such power purchase contract;

"Class I renewable energy" means electric energy produced from solar technologies, photovoltaic technologies, wind energy, fuel cells, geothermal technologies, wave or tidal action, and methane gas from landfills or a biomass facility, provided that the biomass is cultivated and harvested in a sustainable manner;

"Class II renewable energy" means electric energy produced at a resource recovery facility or hydropower facility, provided that such facility is located where retail competition is permitted and provided further that the Commissioner of Environmental Protection has determined that such facility meets the highest environmental standards and minimizes any impacts to the environment and local communities;

"Competitive service" means any service offered by an electric public utility or a gas public utility that the board determines to be competitive pursuant to section 8 or section 10 of this act or that is not regulated by the board;

"Comprehensive resource analysis" means an analysis including, but not limited to, an assessment of existing market barriers to the implementation of energy efficiency and renewable technologies that are not or cannot be delivered to customers through a competitive marketplace;

"Customer" means any person that is an end user and is connected to any part of the transmission and distribution system within an electric public utility's service territory or a gas public utility's service territory within this State;

"Customer account service" means metering, billing, or such other administrative activity associated with maintaining a customer account;

"Demand side management" means the management of customer demand for energy service through the implementation of cost-effective energy efficiency technologies, including, but not limited to, installed conservation, load management and energy efficiency measures on and in the residential, commercial, industrial, institutional and governmental premises and facilities in this State;

"Electric generation service" means the provision of retail electric energy and capacity which is generated off-site from the location at which the consumption of such electric energy and capacity is metered for retail billing purposes, including agreements and arrangements related thereto;

"Electric power generator" means an entity that proposes to construct, own, lease or operate, or currently owns, leases or operates, an electric power production facility that will sell or does sell at least 90 percent of its output, either directly or through a marketer, to a customer or customers located at sites that are not on or contiguous to the site on which the facility will be located or is located. The designation of an entity as an electric power generator for the purposes of this act shall not, in and of itself, affect the entity's status as an exempt wholesale generator under the Public Utility Holding Company Act of 1935, 15 U.S.C. s.79 et seq.;

"Electric power supplier" means a person or entity that is duly licensed pursuant to the provisions of this act to offer and to assume the contractual and legal responsibility to provide electric generation service to retail customers, and includes load serving entities, marketers and brokers that offer or provide electric generation service to retail customers. The term excludes an electric public utility that provides electric generation service only as a basic generation service pursuant to section 9 of this act;

"Electric public utility" means a public utility, as that term is defined in R.S.48:2-13, that

transmits and distributes electricity to end users within this State;

"Electric related service" means a service that is directly related to the consumption of electricity by an end user, including, but not limited to, the installation of demand side management measures at the end user's premises, the maintenance, repair or replacement of appliances, lighting, motors or other energy-consuming devices at the end user's premises, and the provision of energy consumption measurement and billing services;

"Electronic signature" means an electronic sound, symbol or process, attached to, or logically associated with, a contract or other record, and executed or adopted by a person with the intent to sign the record;

"Energy agent" means a person that is duly registered pursuant to the provisions of this act, that arranges the sale of retail electricity or electric related services or retail gas supply or gas related services between government aggregators or private aggregators and electric power suppliers or gas suppliers, but does not take title to the electric or gas sold;

"Energy consumer" means a business or residential consumer of electric generation service or gas supply service located within the territorial jurisdiction of a government aggregator;

"Financing entity" means an electric public utility, a special purpose entity, or any other assignee of bondable transition property, which issues transition bonds. Except as specifically provided in this act, a financing entity which is not itself an electric public utility shall not be subject to the public utility requirements of Title 48 or any rules or regulations adopted pursuant thereto;

"Gas public utility" means a public utility, as that term is defined in R.S.48:2-13, that distributes gas to end users within this State;

"Gas related service" means a service that is directly related to the consumption of gas by an end user, including, but not limited to, the installation of demand side management measures at the end user's premises, the maintenance, repair or replacement of appliances or other energy-consuming devices at the end user's premises, and the provision of energy consumption measurement and billing services;

"Gas supplier" means a person that is duly licensed pursuant to the provisions of this act to offer and assume the contractual and legal obligation to provide gas supply service to retail customers, and includes, but is not limited to, marketers and brokers. A non-public utility affiliate of a public utility holding company may be a gas supplier, but a gas public utility or any subsidiary of a gas utility is not a gas supplier. In the event that a gas public utility is not part of a holding company legal structure, a related competitive business segment of that gas public utility may be a gas supplier, provided that related competitive business segment is structurally separated from the gas public utility, and provided that the interactions between the gas public utility and the related competitive business segment are subject to the affiliate relations standards adopted by the board pursuant to subsection k. of section 10 of this act;

"Gas supply service" means the provision to customers of the retail commodity of gas, but does not include any regulated distribution service;

"Government aggregator" means any government entity subject to the requirements of the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.), the "Public School Contracts Law," N.J.S.18A:18A-1 et seq., or the "County College Contracts Law," P.L.1982, c.189 (C.18A:64A-25.1 et seq.), that enters into a written contract with a licensed electric power supplier or a licensed gas supplier for: (1) the provision of electric generation service, electric related service, gas supply service, or gas related service for its own use or the use of other government aggregators; or (2) if a municipal or county government, the provision of electric generation service or gas supply service on behalf of business or residential customers within its territorial jurisdiction;

"Government energy aggregation program" means a program and procedure pursuant to which a government aggregator enters into a written contract for the provision of electric generation service or gas supply service on behalf of business or residential customers within its territorial jurisdiction;

"Governmental entity" means any federal, state, municipal, local or other governmental department, commission, board, agency, court, authority or instrumentality having competent jurisdiction;

"Market transition charge" means a charge imposed pursuant to section 13 of this act by an electric public utility, at a level determined by the board, on the electric public utility customers for a limited duration transition period to recover stranded costs created as a result of the introduction of electric power supply competition pursuant to the provisions of this act;

"Marketer" means a duly licensed electric power supplier that takes title to electric energy and capacity, transmission and other services from electric power generators and other wholesale suppliers and then assumes contractual and legal obligation to provide electric generation service, and may include transmission and other services, to an end-use retail customer or customers, or a duly licensed gas supplier that takes title to gas and then assumes the contractual and legal obligation to provide gas supply service to an end-use customer or customers;

"Net proceeds" means proceeds less transaction and other related costs as determined by the board;

"Net revenues" means revenues less related expenses, including applicable taxes, as determined by the board;

"On-site generation facility" means a generation facility, and equipment and services appurtenant to electric sales by such facility to the end use customer located on the property or on property contiguous to the property on which the end user is located. An on-site generation facility shall not be considered a public utility. The property of the end use customer and the property on which the on-site generation facility is located shall be considered contiguous if they are geographically located next to each other, but may be otherwise separated by an easement, public thoroughfare, transportation or utility-owned right-of-way;

"Person" means an individual, partnership, corporation, association, trust, limited liability company, governmental entity or other legal entity;

"Private aggregator" means a non-government aggregator that is a duly-organized business or non-profit organization authorized to do business in this State that enters into a contract with a duly licensed electric power supplier for the purchase of electric energy and capacity, or with a duly licensed gas supplier for the purchase of gas supply service, on behalf of multiple end-use customers by combining the loads of those customers;

"Public utility holding company" means: (1) any company that, directly or indirectly, owns, controls, or holds with power to vote, ten percent or more of the outstanding voting securities of an electric public utility or a gas public utility or of a company which is a public utility holding company by virtue of this definition, unless the Securities and Exchange Commission, or its successor, by order declares such company not to be a public utility holding company under the Public Utility Holding Company Act of 1935, 15 U.S.C. s.79 et seq., or its successor; or (2) any person that the Securities and Exchange Commission, or its successor, determines, after notice and opportunity for hearing, directly or indirectly, to exercise, either alone or pursuant to an arrangement or understanding with one or more other persons, such a controlling influence over the management or policies of an electric public utility or a gas public utility or public utility holding company as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that such person be subject to the obligations, duties, and liabilities imposed in the Public Utility Holding Company Act of 1935 or its successor;

"Regulatory asset" means an asset recorded on the books of an electric public utility or gas public utility pursuant to the Statement of Financial Accounting Standards, No. 71, entitled "Accounting for the Effects of Certain Types of Regulation," or any successor standard and as deemed recoverable by the board;

"Related competitive business segment of an electric public utility or gas public utility" means any business venture of an electric public utility or gas public utility including, but not limited to, functionally separate business units, joint ventures, and partnerships, that offers to provide or provides competitive services;

"Related competitive business segment of a public utility holding company" means any business venture of a public utility holding company, including, but not limited to, functionally separate business units, joint ventures, and partnerships and subsidiaries, that offers to provide or provides competitive services, but does not include any related competitive business segments of an electric public utility or gas public utility;

"Resource recovery facility" means a solid waste facility constructed and operated for the

incineration of solid waste for energy production and the recovery of metals and other materials for reuse;

"Restructuring related costs" means reasonably incurred costs directly related to the restructuring of the electric power industry, including the closure, sale, functional separation and divestiture of generation and other competitive utility assets by a public utility, or the provision of competitive services as such costs are determined by the board, and which are not stranded costs as defined in this act but may include, but not be limited to, investments in management information systems, and which shall include expenses related to employees affected by restructuring which result in efficiencies and which result in benefits to ratepayers, such as training or retraining at the level equivalent to one year's training at a vocational or technical school or county community college, the provision of severance pay of two weeks of base pay for each year of full-time employment, and a maximum of 24 months' continued health care coverage. Except as to expenses related to employees affected by restructuring, "restructuring related costs" shall not include going forward costs;

"Retail choice" means the ability of retail customers to shop for electric generation or gas supply service from electric power or gas suppliers, or opt to receive basic generation service or basic gas service, and the ability of an electric power or gas supplier to offer electric generation service or gas supply service to retail customers, consistent with the provisions of this act;

"Shopping credit" means an amount deducted from the bill of an electric public utility customer to reflect the fact that such customer has switched to an electric power supplier and no longer takes basic generation service from the electric public utility;

"Social program" means a program implemented with board approval to provide assistance to a group of disadvantaged customers, to provide protection to consumers, or to accomplish a particular societal goal, and includes, but is not limited to, the winter moratorium program, utility practices concerning "bad debt" customers, low income assistance, deferred payment plans, weatherization programs, and late payment and deposit policies, but does not include any demand side management program or any environmental requirements or controls;

"Societal benefits charge" means a charge imposed by an electric public utility, at a level determined by the board, pursuant to, and in accordance with, section 12 of this act;

"Stranded cost" means the amount by which the net cost of an electric public utility's electric generating assets or electric power purchase commitments, as determined by the board consistent with the provisions of this act, exceeds the market value of those assets or contractual commitments in a competitive supply marketplace and the costs of buydowns or buyouts of power purchase contracts;

"Stranded costs recovery order" means each order issued by the board in accordance with subsection c. of section 13 of this act which sets forth the amount of stranded costs, if any, the board has determined an electric public utility is eligible to recover and collect in accordance with the standards set forth in section 13 and the recovery mechanisms therefor;

"Transition bond charge" means a charge, expressed as an amount per kilowatt hour, that is authorized by and imposed on electric public utility ratepayers pursuant to a bondable stranded costs rate order, as modified at any time pursuant to the provisions of this act;

"Transition bonds" means bonds, notes, certificates of participation or beneficial interest or other evidences of indebtedness or ownership issued pursuant to an indenture, contract or other agreement of an electric public utility or a financing entity, the proceeds of which are used, directly or indirectly, to recover, finance or refinance bondable stranded costs and which are, directly or indirectly, secured by or payable from bondable transition property. References in this act to principal, interest, and acquisition or redemption premium with respect to transition bonds which are issued in the form of certificates of participation or beneficial interest or other evidences of ownership shall refer to the comparable payments on such securities;

"Transmission and distribution system" means, with respect to an electric public utility, any facility or equipment that is used for the transmission, distribution or delivery of electricity to the customers of the electric public utility including, but not limited to, the land, structures, meters, lines, switches and all other appurtenances thereof and thereto, owned or controlled by the electric public utility within this State; and

"Universal service" means any service approved by the board with the purpose of assisting low-income residential customers in obtaining or retaining electric generation or delivery service.

2. Section 36 of P.L.1999, c.23 (C.48:3-85) is amended to read as follows:

C.48:3-85 Consumer protection standards.

36. a. Notwithstanding any provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the board, in consultation with the Division of Consumer Affairs in the Department of Law and Public Safety, shall initiate a proceeding and shall adopt, after notice, provision of the opportunity for comment, and public hearing, interim consumer protection standards for electric power suppliers or gas suppliers, within 90 days of February 9, 1999, including, but not limited to, standards for collections, credit, contracts, authorized changes of an energy consumer's electric power supplier or gas supplier, for the prohibition of discriminatory marketing, for advertising and for disclosure. Such standards shall be effective as regulations immediately upon filing with the Office of Administrative Law and shall be effective for a period not to exceed 18 months, and may, thereafter, be amended, adopted or readopted by the board in accordance with the provisions of the "Administrative Procedure Act."

(1) Contract standards shall include, but not be limited to, requirements that electric power supply contracts or gas supply contracts must conspicuously disclose the duration of the contract; state the price per kilowatt hour or per therm or other pricing determinant approved by the board; have the customer's written signature; the customer's electronic signature; an audio recording of a telephone call initiated by the customer; independent, third-party verification, in accordance with section 37 of P.L.1999, c.23 (C.48:3-86), of a telephone call initiated by an electric power supplier, gas supplier or private aggregator; or such alternative forms of verification as the board, in consultation with the Division of Consumer Affairs, may permit for switching electric power suppliers or gas suppliers and for contract renewal; and include termination procedures, notice of any fees, and toll-free or local telephone numbers for the electric power supplier or gas supplier and for the board.

(2) Standards for the prohibition of discriminatory marketing standards shall provide at a minimum that a decision made by an electric power supplier or a gas supplier to accept or reject a customer shall not be based on race, color, national origin, age, gender, religion, source of income, receipt of public benefits, family status, sexual preference, or geographic location. The board shall adopt reporting requirements to monitor compliance with such standards.

(3) Advertising standards for electric power suppliers or gas suppliers shall provide, at a minimum, that optional charges to the consumer will not be added to any advertised cost per kilowatt hour or per therm, and that the only unit of measurement that may be used in advertisements is cost per kilowatt hour or per therm, unless otherwise approved by the board. If an electric power supplier or gas supplier does not advertise using cost per kilowatt hour or per therm, the electric power supplier or gas supplier shall provide, at the consumer's request, an estimate of the cost per kilowatt hour or per therm. Any optional charges to the consumer shall be identified separately and denoted as optional.

(4) Credit standards shall include, at a minimum, that the credit requirements used to make offer decisions must be the same for all residential customers and that electric power suppliers, gas suppliers and private aggregators not impose unreasonable income or credit requirements.

(5) Billing standards shall include, at a minimum, provisions prohibiting electric public utilities, gas public utilities, electric power suppliers and gas suppliers from charging a fee to residential customers for either the commencement or termination of electric generation service or gas supply service.

b. (1) An electric power supplier, a gas supplier, an electric public utility, and a gas public utility shall not disclose, sell or transfer individual proprietary information, including, but not limited to, a customer's name, address, telephone number, energy usage and electric power payment history, to a third party without the written consent of the customer. Whenever such individual proprietary information is disclosed, sold or transferred, upon the written consent of the customer, it may be used only for the provision of continued electric generation service, electric related service, gas supply service or gas related service to that customer. In the case

of a transfer or sale of a business, customer consent shall not be required for the transfer of customer proprietary information to the subsequent owner of the business for maintaining the continuation of such services.

(2) An electric power supplier, a gas supplier, a gas public utility or an electric public utility may use individual proprietary information that it has obtained by virtue of its provision of electric generation service, electric related service, gas supply service or gas related service to:

(a) Initiate, render, bill and collect for such services to the extent otherwise authorized to provide billing and collection services;

(b) Protect the rights or property of the electric power supplier, gas supplier or public utility; and

(c) Protect consumers of such services and other electric power suppliers, gas suppliers or electric and gas public utilities from fraudulent, abusive or unlawful use of, or subscription to, such services.

c. The board shall establish and maintain a database for the purpose of recording customer complaints concerning electric and gas public utilities, electric power suppliers, gas suppliers, private aggregators, and energy agents.

d. The board, in consultation with the Division of Consumer Affairs in the Department of Law and Public Safety, shall establish, or cause to be established, a multi-lingual electric and gas consumer education program. The goal of the consumer education program shall be to educate residential, small business, and special needs consumers about the implications for consumers of the restructuring of the electric power and gas industries. The consumer education program shall include, but need not be limited to, the dissemination of information to enable consumers to make informed choices among available electricity and gas services and suppliers, notification of residential electric and gas customers of the right to submit their names to the board pursuant to paragraph (1) of subsection e. of this section, and the communication to consumers of the consumer protection provisions of this act.

The board shall ensure the neutrality of the content and message of advertisements and materials.

The board shall promulgate standards for the recovery of consumer education program costs from customers which include reasonable measures and criteria to judge the success of the program in enhancing customer understanding of retail choice.

e. (1) Residential electric or gas customers may submit their names in writing to the board for inclusion on a list established by the board of customers not wanting to receive telephone solicitations by electric power suppliers, gas suppliers or private aggregators.

(2) As a condition of licensing, pursuant to standards adopted by the board, an electric power supplier, gas supplier or private aggregator shall not engage in telephone solicitation of any residential electric or gas customer, as appropriate, whose name is on the list established by the board, pursuant to paragraph (1) of this subsection.

3. Section 37 of P.L.1999, c.23 (C.48:3-86) is amended to read as follows:

C.48:3-86 "Slamming" prevention; penalties.

37. a. Notwithstanding any provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the board, in consultation with the Division of Consumer Affairs in the Department of Law and Public Safety, shall initiate a proceeding and shall adopt, after notice, provision of the opportunity for comment, and public hearing, interim standards for electric power suppliers or gas suppliers, within 90 days of February 9, 1999, to prevent and establish penalties for unauthorized changes of a consumer's electric power supplier or gas supplier, a practice commonly known as "slamming." Such standards shall be effective as regulations immediately upon filing with the Office of Administrative Law and shall be effective for a period not to exceed 18 months, and may, thereafter, be amended, adopted or readopted by the board in accordance with the provisions of the "Administrative Procedure Act."

b. Standards for the prohibition of unauthorized changes in a customer's electric power supplier or gas supplier shall include:

(1) An electric power supplier, an electric public utility, a gas supplier or a gas public utility

shall not cause an unauthorized change in a customer's electric power supplier or gas supplier, a practice known as "slamming." A change in a customer's electric power supplier or gas supplier shall be deemed to be unauthorized unless the customer has done so affirmatively and voluntarily and the supplier has obtained the customer's approval, which approval shall be evidenced by the customer's written signature; the customer's electronic signature; an audio recording of a telephone call initiated by the customer; independent, third-party verification, in accordance with paragraph (2) of this subsection, of a telephone call initiated by an electric power supplier, electric public utility, gas supplier or gas public utility; or such alternative forms of verification as the board, in consultation with the Division of Consumer Affairs, may permit;

(2) (a) A company performing independent, third-party verification shall: (i) be independent from the entity that seeks to provide the new service; (ii) not be directly or indirectly managed, controlled, directed or owned, wholly or in part, by the entity that seeks to provide the new service, or by any affiliate of that entity; (iii) operate from facilities physically separate from those of the entity that seeks to provide the new service; and (iv) not derive any commission or compensation based upon the number of sales confirmed;

(b) A company performing independent, third-party verification shall obtain a customer's oral confirmation regarding the change and shall record that confirmation by obtaining appropriate verification data. The record shall be available to the customer upon request. Information obtained from a customer through confirmation shall not be used for marketing purposes;

(3) An electric power supplier, an electric public utility, a gas supplier or a gas public utility shall not fail to cause a change in a customer's electric power supplier or gas supplier, within a period of time determined to be appropriate by the board, when a supplier or utility is in receipt of a change order provided that such change order has been received in a manner that complies with federal and State rules and regulations, including as provided in this subsection;

(4) The acts of an agent of an electric power supplier, an electric public utility, a gas supplier or a gas public utility shall be considered the acts of the electric power supplier, electric public utility, gas supplier or gas public utility.

c. A customer's new electric power supplier, electric public utility, gas supplier or gas public utility shall notify the customer of the change in the customer's electric or gas supplier within 30 days in a manner to be determined by the board.

d. Bills to customers from an electric power supplier, electric public utility, gas supplier or gas public utility shall contain the name and telephone number of each supplier for whom billing is provided, and any other information deemed applicable by the board.

e. In addition to any other penalties, fines or remedies authorized by law, any electric power supplier, electric public utility, gas supplier or gas public utility that violates this section and collects charges for electric power supply or gas supply services from a customer or through an entity providing customer account services shall be liable to the electric power supplier, electric public utility, gas supplier or gas public utility previously selected by the customer in an amount equal to all charges paid by the customer after such violation in accordance with such procedures as the board may prescribe. Any electric power supplier, electric public utility, gas supplier or gas public utility that violates this section shall also be liable for a civil penalty pursuant to section 34 of P.L.1999, c.23 (C.48:3-83); and the board is hereby authorized to revoke the license of any entity that violates this section.

4. Section 41 of P.L.1999, c.23 (C.48:3-90) is amended to read as follows:

C.48:3-90 Registration of private aggregator.

41. a. A private aggregator shall register with the board, which shall include the filing of basic information pertaining to the supplier, such as name, address, telephone number, and company background and profile. A private aggregator shall provide annual updates of this information to the board. The registration shall also include evidence of financial integrity, as determined by the board, and evidence that the private aggregator has knowledge of the energy industry.

b. Any residential customer that elects to purchase electric generation service or gas supply service, after the implementation of gas unbundling pursuant to section 10 of P.L.1999, c.23 (C.48:3-58), through a private aggregator must do so affirmatively and voluntarily, either

through a written signature; the customer's electronic signature; an audio recording of a telephone call initiated by the customer; independent, third-party verification, in accordance with section 37 of P.L.1999, c.23 (C.48:3-86), of a telephone call initiated by a private aggregator; or such alternative forms of verification as the board, in consultation with the Division of Consumer Affairs in the Department of Law and Public Safety, may permit.

5. This act shall take effect immediately.

Approved September 6, 2001.