

[First Reprint]

ASSEMBLY COMMITTEE SUBSTITUTE FOR  
**ASSEMBLY, No. 2507**

**STATE OF NEW JERSEY**  
**213th LEGISLATURE**

ADOPTED MAY 5, 2008

**Sponsored by:**

**Assemblyman UPENDRA J. CHIVUKULA**  
**District 17 (Middlesex and Somerset)**

**Co-Sponsored by:**

**Assemblyman Egan**

**SYNOPSIS**

Authorizes BPU to use Retail Margin Fund monies to provide grants for combined heat and power production, energy efficiency projects and programs promoting renewable energy and energy efficiency.

**CURRENT VERSION OF TEXT**

As reported by the Assembly Appropriations Committee on May 22, 2008, with amendments.



1 AN ACT concerning the use of revenue from the retail margin  
2 assessed on certain classes of basic generation service customers  
3 and amending P.L.1999, c.23.  
4

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

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

10 "Assignee" means a person to which an electric public utility or  
11 another assignee assigns, sells or transfers, other than as security,  
12 all or a portion of its right to or interest in bondable transition  
13 property. Except as specifically provided in **[this act]** P.L.1999,  
14 c.23 (C.48:3-49 et al.), an assignee shall not be subject to the public  
15 utility requirements of Title 48 or any rules or regulations adopted  
16 pursuant thereto;

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

24 "Basic generation service" means electric generation service that  
25 is provided, pursuant to section 9 of **[this act]** P.L.1999, c.23  
26 (C.48:3-57), to any customer that has not chosen an alternative  
27 electric power supplier, whether or not the customer has received  
28 offers as to competitive supply options, including, but not limited  
29 to, any customer that cannot obtain such service from an electric  
30 power supplier for any reason, including non-payment for services.  
31 Basic generation service is not a competitive service and shall be  
32 fully regulated by the board;

33 "Basic generation service transition costs" means the amount by  
34 which the payments by an electric public utility for the procurement  
35 of power for basic generation service and related ancillary and  
36 administrative costs exceeds the net revenues from the basic  
37 generation service charge established by the board pursuant to  
38 section 9 of P.L.1999, c.23 (C.48:3-57) during the transition period,  
39 together with interest on the balance at the board-approved rate, that  
40 is reflected in a deferred balance account approved by the board in  
41 an order addressing the electric public utility's unbundled rates,  
42 stranded costs, and restructuring filings pursuant to P.L.1999, c.23  
43 (C.48:3-49 et al.). Basic generation service transition costs shall

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup> Assembly AAP committee amendments adopted May 22, 2008.

1 nclude, but are not limited to, costs of purchases from the spot  
2 market, bilateral contracts, contracts with non-utility generators,  
3 parting contracts with the purchaser of the electric public utility's  
4 divested generation assets, short-term advance purchases, and  
5 financial instruments such as hedging, forward contracts, and  
6 options. Basic generation service transition costs shall also include  
7 the payments by an electric public utility pursuant to a competitive  
8 procurement process for basic generation service supply during the  
9 transition period, and costs of any such process used to procure the  
10 basic generation service supply;

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

13 "Bondable stranded costs" means any stranded costs or basic  
14 generation service transition costs of an electric public utility  
15 approved by the board for recovery pursuant to the provisions of  
16 **[this act]** P.L.1999, c.23 (C.48:3-49 et al.), together with, as  
17 approved by the board: (1) the cost of retiring existing debt or  
18 equity capital of the electric public utility, including accrued  
19 interest, premium and other fees, costs and charges relating thereto,  
20 with the proceeds of the financing of bondable transition property;  
21 (2) if requested by an electric public utility in its application for a  
22 bondable stranded costs rate order, federal, State and local tax  
23 liabilities associated with stranded costs recovery or basic  
24 generation service transition cost recovery or the transfer or  
25 financing of such property or both, including taxes, whose recovery  
26 period is modified by the effect of a stranded costs recovery order, a  
27 bondable stranded costs rate order or both; and (3) the costs  
28 incurred to issue, service or refinance transition bonds, including  
29 interest, acquisition or redemption premium, and other financing  
30 costs, whether paid upon issuance or over the life of the transition  
31 bonds, including, but not limited to, credit enhancements, service  
32 charges, overcollateralization, interest rate cap, swap or collar, yield  
33 maintenance, maturity guarantee or other hedging agreements,  
34 equity investments, operating costs and other related fees, costs and  
35 charges, or to assign, sell or otherwise transfer bondable transition  
36 property;

37 "Bondable stranded costs rate order" means one or more  
38 irrevocable written orders issued by the board pursuant to **[this act]**  
39 P.L.1999, c.23 (C.48:3-49 et al.) which determines the amount of  
40 bondable stranded costs and the initial amount of transition bond  
41 charges authorized to be imposed to recover such bondable stranded  
42 costs, including the costs to be financed from the proceeds of the  
43 transition bonds, as well as on-going costs associated with servicing  
44 and credit enhancing the transition bonds, and provides the electric  
45 public utility specific authority to issue or cause to be issued,  
46 directly or indirectly, transition bonds through a financing entity  
47 and related matters as provided in **[this act]** P.L.1999, c.23, which

1 order shall become effective immediately upon the written consent  
2 of the related electric public utility to such order as provided in  
3 **【this act】** P.L.1999, c.23;

4 "Bondable transition property" means the property consisting of  
5 the irrevocable right to charge, collect and receive, and be paid  
6 from collections of, transition bond charges in the amount necessary  
7 to provide for the full recovery of bondable stranded costs which  
8 are determined to be recoverable in a bondable stranded costs rate  
9 order, all rights of the related electric public utility under such  
10 bondable stranded costs rate order including, without limitation, all  
11 rights to obtain periodic adjustments of the related transition bond  
12 charges pursuant to subsection b. of section 15 of **【this act】**  
13 P.L.1999, c.23 (C.48:3-64), and all revenues, collections, payments,  
14 money and proceeds arising under, or with respect to, all of the  
15 foregoing;

16 "British thermal unit" or "Btu" means the amount of heat  
17 required to increase the temperature of one pound of water by one  
18 degree Fahrenheit;

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

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

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

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

42 "Class II renewable energy" means electric energy produced at a  
43 resource recovery facility or hydropower facility, provided that  
44 such facility is located where retail competition is permitted and  
45 provided further that the Commissioner of Environmental  
46 Protection has determined that such facility meets the highest

1 environmental standards and minimizes any impacts to the  
2 environment and local communities;

3 "Combined heat and power production" means steam produced  
4 from the same coal-fired boiler is partly used to generate electricity  
5 and partly used for heating or cooling in industrial processes or  
6 buildings;

7 "Competitive service" means any service offered by an electric  
8 public utility or a gas public utility that the board determines to be  
9 competitive pursuant to section 8 or section 10 of **[this act]**  
10 P.L.1999, c.23 (C.48:3-56 or C.48:3-58) or that is not regulated by  
11 the board;

12 "Commercial and industrial energy pricing class customer" or  
13 "CIEP class customer" means that group of non-residential  
14 customers with high levels of peak energy load usage, as  
15 determined by periodic board order, which would be eligible to  
16 receive funds from the Retail Margin Fund established pursuant to  
17 section 9 of P.L.1999, c.23 (C.48:3-57) and for which basic  
18 generation service is hourly-priced.<sup>1</sup>

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

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

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

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

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

42 "Electric power generator" means an entity that proposes to  
43 construct, own, lease or operate, or currently owns, leases or  
44 operates, an electric power production facility that will sell or does  
45 sell at least 90 percent of its output, either directly or through a  
46 marketer, to a customer or customers located at sites that are not on  
47 or contiguous to the site on which the facility will be located or is

1 located. The designation of an entity as an electric power generator  
2 for the purposes of **[this act]** P.L.1999, c.23 (C.48:3-49 et al.) shall  
3 not, in and of itself, affect the entity's status as an exempt wholesale  
4 generator under the Public Utility Holding Company Act of 1935,  
5 15 U.S.C.s.79 et seq.;

6 "Electric power supplier" means a person or entity that is duly  
7 licensed pursuant to the provisions of **[this act]** P.L.1999, c.23  
8 (C.48:3-49 et al.) to offer and to assume the contractual and legal  
9 responsibility to provide electric generation service to retail  
10 customers, and includes load serving entities, marketers and brokers  
11 that offer or provide electric generation service to retail customers.  
12 The term excludes an electric public utility that provides electric  
13 generation service only as a basic generation service pursuant to  
14 section 9 of **[this act]** P.L.1999, c.23 (C.48:3-57);

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

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

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

29 "Energy agent" means a person that is duly registered pursuant to  
30 the provisions of **[this act]** P.L.1999, c.23 (C.48:3-49 et al.), that  
31 arranges the sale of retail electricity or electric related services or  
32 retail gas supply or gas related services between government  
33 aggregators or private aggregators and electric power suppliers or  
34 gas suppliers, but does not take title to the electric or gas sold;

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

38 "Financing entity" means an electric public utility, a special  
39 purpose entity, or any other assignee of bondable transition  
40 property, which issues transition bonds. Except as specifically  
41 provided in **[this act]** P.L.1999, c.23 (C.48:3-49 et al.), a financing  
42 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  
46 in 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  
2 the consumption of gas by an end user, including, but not limited to,  
3 the installation of demand side management measures at the end  
4 user's premises, the maintenance, repair or replacement of  
5 appliances or other energy-consuming devices at the end user's  
6 premises, and the provision of energy consumption measurement  
7 and billing services;

8 "Gas supplier" means a person that is duly licensed pursuant to  
9 the provisions of **[this act]** P.L.1999, c.23 (C.48:3-49 et al.) to offer  
10 and assume the contractual and legal obligation to provide gas  
11 supply service to retail customers, and includes, but is not limited  
12 to, marketers and brokers. A non-public utility affiliate of a public  
13 utility holding company may be a gas supplier, but a gas public  
14 utility or any subsidiary of a gas utility is not a gas supplier. In the  
15 event that a gas public utility is not part of a holding company legal  
16 structure, a related competitive business segment of that gas public  
17 utility may be a gas supplier, provided that related competitive  
18 business segment is structurally separated from the gas public  
19 utility, and provided that the interactions between the gas public  
20 utility and the related competitive business segment are subject to  
21 the affiliate relations standards adopted by the board pursuant to  
22 subsection k. of section 10 of **[this act]** P.L.1999, c.23 (C.48:3-58);

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

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

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

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

46 "Market transition charge" means a charge imposed pursuant to  
47 section 13 of **[this act]** P.L.1999, c.23 (C.48:3-61) by an electric

1 public utility, at a level determined by the board, on the electric  
2 public utility customers for a limited duration transition period to  
3 recover stranded costs created as a result of the introduction of  
4 electric power supply competition pursuant to the provisions of  
5 **[this act]** P.L.1999, c.23 (C.48:3-49 et al.);

6 "Marketer" means a duly licensed electric power supplier that  
7 takes title to electric energy and capacity, transmission and other  
8 services from electric power generators and other wholesale  
9 suppliers and then assumes contractual and legal obligation to  
10 provide electric generation service, and may include transmission  
11 and other services, to an end-use retail customer or customers, or a  
12 duly licensed gas supplier that takes title to gas and then assumes  
13 the contractual and legal obligation to provide gas supply service to  
14 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  
21 to the end use customer located on the property or on property  
22 contiguous to the property on which the end user is located. An on-  
23 site generation facility shall not be considered a public utility. The  
24 property of the end use customer and the property on which the on-  
25 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,  
30 association, trust, limited liability company, governmental entity or  
31 other legal entity;

32 "Private aggregator" means a non-government aggregator that is  
33 a duly-organized business or non-profit organization authorized to  
34 do business in this State that enters into a contract with a duly  
35 licensed electric power supplier for the purchase of electric energy  
36 and capacity, or with a duly licensed gas supplier for the purchase  
37 of gas supply service, on behalf of multiple end-use customers by  
38 combining 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,  
41 ten percent or more of the outstanding voting securities of an  
42 electric public utility or a gas public utility or of a company which  
43 is a public utility holding company by virtue of this definition,  
44 unless the Securities and Exchange Commission, or its successor,  
45 by order declares such company not to be a public utility holding  
46 company under the Public Utility Holding Company Act of 1935,  
47 15 U.S.C.s.79 et seq., or its successor; or (2) any person that the

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

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

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

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

28 "Resource recovery facility" means a solid waste facility  
29 constructed and operated for the incineration of solid waste for  
30 energy production and the recovery of metals and other materials  
31 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  
37 by the board, and which are not stranded costs as defined in [this  
38 act] P.L.1999, c.23 (C.48:3-49 et al.) but may include, but not be  
39 limited to, investments in management information systems, and  
40 which shall include expenses related to employees affected by  
41 restructuring which result in efficiencies and which result in  
42 benefits to ratepayers, such as training or retraining at the level  
43 equivalent to one year's training at a vocational or technical school  
44 or county community college, the provision of severance pay of two  
45 weeks of base pay for each year of full-time employment, and a  
46 maximum of 24 months' continued health care coverage. Except as

1 to expenses related to employees affected by restructuring,  
2 "restructuring related costs" shall not include going forward costs;

3 "Retail choice" means the ability of retail customers to shop for  
4 electric generation or gas supply service from electric power or gas  
5 suppliers, or opt to receive basic generation service or basic gas  
6 service, and the ability of an electric power or gas supplier to offer  
7 electric generation service or gas supply service to retail customers,  
8 consistent with the provisions of **[this act]** P.L.1999, c.23 (C.48:3-  
9 49 et al.);

10 "Retail margin" means an amount, reflecting differences in  
11 prices that electric power suppliers and electric public utilities may  
12 charge in providing electric generation service and basic generation  
13 service, respectively, to retail customers, excluding residential  
14 customers, which the board may authorize to be charged to  
15 categories of basic generation service customers of electric public  
16 utilities in this State, other than residential customers, under the  
17 board's continuing regulation of basic generation service pursuant to  
18 sections 3 and 9 of P.L.1999, c.23 (C.48:3-51 and 48:3-57), for the  
19 purpose of promoting a competitive retail market for the supply of  
20 electricity;

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

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

34 "Societal benefits charge" means a charge imposed by an electric  
35 public utility, at a level determined by the board, pursuant to, and in  
36 accordance with, section 12 of **[this act]** P.L.1999, c.23 (C.48:3-  
37 60);

38 "Stranded cost" means the amount by which the net cost of an  
39 electric public utility's electric generating assets or electric power  
40 purchase commitments, as determined by the board consistent with  
41 the provisions of **[this act]** P.L.1999, c.23 (C.48:3-49 et al.),  
42 exceeds the market value of those assets or contractual  
43 commitments in a competitive supply marketplace and the costs of  
44 buydowns or buyouts of power purchase contracts;

45 "Stranded costs recovery order" means each order issued by the  
46 board in accordance with subsection c. of section 13 of **[this act]**  
47 P.L.1999, c.23 (C.48:3-61) which sets forth the amount of stranded

1 costs, if any, the board has determined an electric public utility is  
2 eligible to recover and collect in accordance with the standards set  
3 forth in section 13 of P.L.1999, c.23 (C.48:3-61) and the recovery  
4 mechanisms therefor;

5 "Thermal efficiency" means the useful electric energy output of  
6 a facility, plus the useful thermal energy output of the facility,  
7 expressed as a percentage of the total energy input to the facility;

8 "Transition bond charge" means a charge, expressed as an  
9 amount per kilowatt hour, that is authorized by and imposed on  
10 electric public utility ratepayers pursuant to a bondable stranded  
11 costs rate order, as modified at any time pursuant to the provisions  
12 of **[this act]** P.L.1999, c.23 (C.48:3-49 et al.);

13 "Transition bonds" means bonds, notes, certificates of  
14 participation or beneficial interest or other evidences of  
15 indebtedness or ownership issued pursuant to an indenture, contract  
16 or other agreement of an electric public utility or a financing entity,  
17 the proceeds of which are used, directly or indirectly, to recover,  
18 finance or refinance bondable stranded costs and which are, directly  
19 or indirectly, secured by or payable from bondable transition  
20 property. References in **[this act]** P.L.1999, c.23 (C.48:3-49 et al.)  
21 to principal, interest, and acquisition or redemption premium with  
22 respect to transition bonds which are issued in the form of  
23 certificates of participation or beneficial interest or other evidences  
24 of ownership shall refer to the comparable payments on such  
25 securities;

26 "Transition period" means the period from August 1, 1999  
27 through July 31, 2003;

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

35 **["Transition period" means the period from August 1, 1999**  
36 **through July 31, 2003; and]**

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

40 (cf: P.L.2002, c.84, s.1)

41

42 2. Section 9 of P.L.1999, c.23 (C.48:3-57) is amended to read as  
43 follows:

44 9. a. (1) Simultaneously with the starting date for the  
45 implementation of retail choice as determined by the board pursuant  
46 to subsection a. of section 5 of **[this act]** P.L.1999, c.23 (C.48:3-  
47 53), **[and for at least three years subsequent and thereafter]** until

1 the board specifically finds it to be no longer necessary and in the  
2 public interest, each electric public utility shall provide basic  
3 generation service. Power procured for basic generation service by  
4 an electric public utility shall be purchased, at prices consistent with  
5 market conditions. The charges assessed to customers for basic  
6 generation service shall be regulated by the board and shall be  
7 based on the reasonable and prudent cost to the utility of providing  
8 such service, including the cost of power purchased at prices  
9 consistent with market conditions by the electric public utility in the  
10 competitive wholesale marketplace and related ancillary and  
11 administrative costs, as determined by the board. The charges  
12 assessed to customers for basic generation service pursuant to this  
13 subsection may include a retail margin, as determined by the board.  
14 The board shall approve unbundled rates to assure that aggregate  
15 rate reductions established pursuant to section 4 of **[this act]**  
16 P.L.1999, c.23 (C.48:3-52) are sustained notwithstanding changes  
17 in basic generation charges approved pursuant to this section.

18 (2) Each electric public utility shall remit to the State Treasurer  
19 all monies collected by the utility as a retail margin authorized  
20 pursuant to paragraph (1) of this subsection. A Retail Margin Fund  
21 shall be established as a non-lapsing, revolving fund in the General  
22 Fund for the deposit of all retail margin monies received from the  
23 electric public utilities and remitted to the State Treasurer.

24 (3) Except for monies appropriated for the purposes set forth in  
25 section 4 of P.L.2005, c.215 (C.48:2-95), all monies in the Retail  
26 Margin Fund as of the effective date of P.L. , c. (C. ) (pending  
27 before the Legislature as this bill), and all monies that are deposited  
28 in the Retail Margin Fund through June 30, 2008, up to **'[60]** \$60<sup>1</sup>  
29 million **'[dollars]**', are hereby appropriated for the purpose of  
30 funding grants by the board to support development of combined  
31 heat and power production as follows:

32 (a) The board, in consultation with the BPU Business  
33 Ombudsman created under section 4 of P.L. 2005, c.215 (C.48:2-  
34 95), shall issue a solicitation to advertise the availability of grants  
35 for projects to install or expand combined heat and power  
36 production at new or existing facilities of **'[commercial,**  
37 institutional, and industrial electricity] CIEP class<sup>1</sup> customers in  
38 this State;

39 (b) The solicitation shall **'[provide for]** indicate that<sup>1</sup> grants  
40 'are<sup>1</sup> to be awarded on a first-come, first-served basis for projects  
41 that satisfy all of the following eligibility criteria: the project shall  
42 serve a **'[commercial, institutional, or industrial electricity]** CIEP  
43 class<sup>1</sup> customer in this State with such level of demand as subjects  
44 the customer to payment of a retail margin in accordance with  
45 paragraph (1) of this subsection; the project shall establish by  
46 contract or other arrangement that **'[all]** the<sup>1</sup> electric output

1 '[from the project will be used within this State] generated at a  
2 combined heat and power production project shall, to the maximum  
3 extent feasible, be consumed at the project site by a facility located  
4 at the site and that any surplus power that is produced that is not  
5 needed by that facility may be sold into the interstate PJM grid<sup>1</sup>; the  
6 project shall have an electric generating capacity of greater than one  
7 megawatt; and the project shall be designed to achieve thermal  
8 efficiency '[of] levels of at least 65 percent for facilities with up to  
9 20 megawatts of electric generating capacity, and<sup>1</sup> at least 70  
10 percent<sup>1</sup> for facilities with electric generating capacity greater than  
11 20 megawatts<sup>1</sup>.<sup>1</sup> An existing facility that does not currently achieve  
12 the applicable thermal efficiency level shall be eligible to receive  
13 grants pursuant to this paragraph if new or expanded projects  
14 developed at the facility will achieve thermal efficiency levels of at  
15 least 65 percent for facilities with up to 20 megawatts of electric  
16 generating capacity, and at least 70 percent for facilities with  
17 electric generating capacity greater than 20 megawatts.<sup>1</sup>

18 (c) The solicitation shall further provide that the amount of each  
19 grant shall be a function of the kilowatt-hours of electricity and the  
20 Btus of thermal energy that the combined heat and power  
21 production facility generates, over a period of four years beginning  
22 with the facility's commencement of operation. The amount of the  
23 grant per kilowatt-hour and per Btu shall be calculated so that, if a  
24 facility receiving a grant were to have an electric capacity factor of  
25 75 percent and a thermal capacity factor of 75 percent, then the  
26 present value of the grant over the four-year period would equal  
27 \$350 per kilowatt of installed electric generation capacity.

28 (d) The board shall make a total of '[up to]' \$60 million  
29 available for these grants; provided however, that 'if, at the end of  
30 three years after the solicitation shall have been issued,<sup>1</sup> any portion  
31 of the \$60 million amount '[that]' has not been allocated to  
32 specific grants '[within three years after the solicitation has been  
33 issued], and is not subject to such an allocation upon approval of an  
34 application for a specific grant that is pending before the board, and  
35 that is supported by an adequate feasibility study, that portion<sup>1</sup> shall  
36 be available for use pursuant to paragraph (4) of this subsection.  
37 The board shall establish the types of measures to receive such  
38 grants, the eligibility criteria for such grants, the procedures and  
39 criteria for awarding such grants, and the conditions of such grants,  
40 by order or orders issued after notice and an opportunity for public  
41 comment, notwithstanding any provisions of the "Administrative  
42 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the  
43 contrary.

44 (4) The board may use monies paid in connection with the retail  
45 margin, from any portion of the \$60 million that has not been  
46 allocated pursuant to subparagraph (d) of paragraph (3) of this

1 subsection, and any other monies in the Retail Margin Fund in  
2 excess of the \$60 million amount, for the purpose of funding grants  
3 by the board <sup>1</sup>for a program to address the energy audits and  
4 implementation of recommended measures to establish a support  
5 system to assist with the application of technical review of  
6 combined heat and power production development as provided for  
7 in the energy master plan adopted pursuant to section 12 of  
8 P.L.1977, c.146 (C.52:27F-14), to provide financial assistance for  
9 electricity customers to increase energy efficiency at the customers'  
10 facilities, or to facilitate measurable and verifiable reductions of  
11 such facilities' demand for electricity at times of peak electricity  
12 demand or to provide financial assistance for programs that promote  
13 renewable energy and energy efficiency <sup>1</sup>only to CIEP class  
14 customers to implement alternative programs and measures that are  
15 consistent with, and will further the goals of the energy master plan  
16 adopted pursuant to section 12 of P.L.1977, c.146 (C.52:27F-14), to  
17 maximize energy conservation and energy efficiency, reduce peak  
18 energy demand, and increase renewable energy sources. The grants  
19 may also fund supportive measures, such as energy audits,  
20 education and outreach programs, and technical assistance, that are  
21 deemed necessary to the proper implementation of the alternative  
22 programs and measures<sup>1</sup>. The board shall establish the types of  
23 measures to receive such financial assistance, the eligibility criteria  
24 for such financial assistance, the procedures and criteria for  
25 awarding such financial assistance, and the conditions of such  
26 financial assistance, by order or orders issued after notice and an  
27 opportunity for public comment, notwithstanding any provisions of  
28 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
29 seq.) to the contrary. The board may change programs and program  
30 designs as technologies, markets and customer needs change.

31 (5) Except as provided <sup>1</sup>in <sup>1</sup>paragraph (3) of this subsection,  
32 nothing in this section shall <sup>1</sup>preclude <sup>1</sup>be construed to authorize  
33 the board <sup>1</sup>from using <sup>1</sup>to use <sup>1</sup>the retail margin <sup>1</sup>for any use that  
34 does not provide a direct benefit to CIEP class customers, except  
35 as the board may determine <sup>1</sup>is necessary <sup>1</sup>pursuant to section 13 of  
36 P.L.2007, c.340 (C.48:3-98.1) and section 4 of P.L.2005, c.215  
37 (C.48:2-95).

38 b. The board may allow an electric public utility to purchase  
39 power for basic generation service through a bilateral contract from  
40 a related competitive business segment of its public utility holding  
41 company only if:

42 (1) The related competitive business segment is not a related  
43 competitive business segment of the electric public utility; and

44 (2) The board determines that the procurement of power from  
45 the related competitive business segment of the public utility  
46 holding company is necessary in order to ensure the reliability of  
47 service to basic generation service customers or to address other

1 extraordinary circumstances, and that the purchase price does not  
2 exceed the market price for such power or the power was procured  
3 through a competitive bid process subject to board review and  
4 approval. The board shall require that all net revenues derived from  
5 such sales, when the source of power is assets or contracts which  
6 costs are included in stranded costs recovery charges assessed  
7 pursuant to sections 13 and 14 of **[this act]** P.L.1999, c.23 (C.48:3-  
8 61 and C.48:3-62), shall be applied:

9 (a) To offset any market transition charge or equivalent rate  
10 mechanism assessed to customers pursuant to section 13 of **[this**  
11 **act]** P.L.1999, c.23 (C.48:3-61); or

12 (b) If the electric public utility is not assessing a market  
13 transition charge, to offset the rates charged to customers for  
14 distribution service, except that such offset shall cease to be  
15 required after the term of the transition bond charge has expired as  
16 provided in paragraph (1) of subsection d. of section 14 of **[this**  
17 **act]** P.L.1999, c.23 (C.48:3-62).

18 (3) The board may devise an alternative accounting or cost  
19 recovery process that permits an electric public utility to purchase  
20 power from a related competitive business segment of its public  
21 utility holding company, or otherwise, to provide basic generation  
22 service to its customers during the period that the electric public  
23 utility is providing for sustainable rate reductions pursuant to  
24 subsection j. of section 4 of **[this act]** P.L.1999, c.23 (C.48:3-52)  
25 and subsection a. of this section, if the board determines that such  
26 process is necessary to mitigate the impacts of market price  
27 fluctuations and to sustain such rate reductions.

28 c. **[No later than three years after]** After the starting date of  
29 retail competition as provided in subsection a. of section 5 of **[this**  
30 **act]** P.L.1999, c.23 (C.48:3-53), the board shall issue a decision as  
31 to whether to make available on a competitive basis the opportunity  
32 to provide basic generation service to any electric power supplier,  
33 any electric public utility, or both.

34 d. Power procured for basic generation service by an electric  
35 power supplier shall be purchased at prices consistent with market  
36 conditions. The charges assessed to customers for basic generation  
37 service shall be regulated by the board and shall be based on the  
38 reasonable and prudent cost to the supplier of providing such  
39 service, including the cost of power purchased at prices consistent  
40 with market conditions, by the supplier in the competitive  
41 wholesale marketplace and related ancillary and administrative  
42 costs, as determined by the board or shall be based upon the result  
43 of a competitive bid.

44 e. Each electric public utility or electric power supplier that  
45 provides basic generation service pursuant to subsection a., c. or d.  
46 of this section shall be permitted to recover in its basic generation  
47 charges on a full and timely basis all reasonable and prudently

1 incurred costs incurred in the provision of basic generation services  
2 consistent with the provisions of this section, except to the extent  
3 that certain costs related to the provision of basic generation service  
4 are already being recovered in other elements of an electric public  
5 utility's charges. The board may approve ratemaking and other  
6 pricing mechanisms that provide incentives, including financial  
7 risks and rewards, for the utility or electric power supplier to  
8 procure a portfolio of electric power supply that provides maximum  
9 benefit to basic generation service customers.

10 f. Each electric public utility shall submit a quarterly report to  
11 the board of '[all electricity]' generation contracts between the  
12 public utility and any related competitive business segment. A  
13 utility that submits a report pursuant to this subsection may petition  
14 the board for confidential treatment as trade secrets of any or all of  
15 the information provided.

16 g. Nothing in this section shall apply to any existing board  
17 approved bilateral power purchase contract by an electric public  
18 utility as of the effective date of [this act] P.L.1999, c.23 (C.48:3-  
19 49 et al.).

20 (cf: P.L.1999, c.23, s.9)

21

22 3. This act shall take effect immediately.