

[Third Reprint]

ASSEMBLY COMMITTEE SUBSTITUTE FOR
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STATE OF NEW JERSEY
213th LEGISLATURE

ADOPTED MAY 5, 2008

Sponsored by:

Assemblyman UPENDRA J. CHIVUKULA

District 17 (Middlesex and Somerset)

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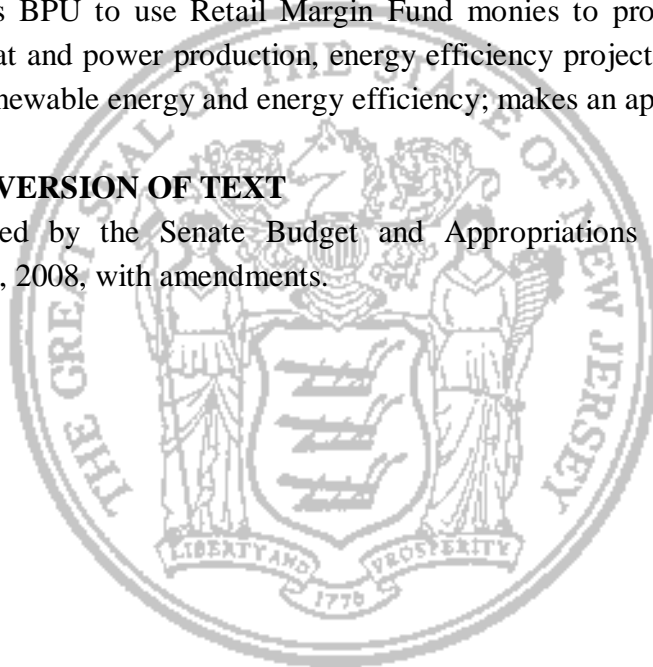
**Assemblymen Egan, Chiappone, DeAngelo, Senators Ruiz, Gordon,
Turner, Assemblywoman Stender, Assemblymen Vas and Gusciora**

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; makes an appropriation.

CURRENT VERSION OF TEXT

As reported by the Senate Budget and Appropriations Committee on December 11, 2008, with amendments.



(Sponsorship Updated As Of: 3/6/2009)

1 AN ACT concerning the use of revenue from the retail margin
2 assessed on certain classes of basic generation service customers
3 ³[and],³ amending P.L.1999, c.23 ³and making an
4 appropriation³.
5

6 **BE IT ENACTED** *by the Senate and General Assembly of the State*
7 *of New Jersey:*
8

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

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

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

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

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

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 AAP committee amendments adopted May 22, 2008.

² Assembly floor amendments adopted June 16, 2008.

³ Senate SBA committee amendments adopted December 11, 2008.

1 (C.48:3-49 et al.). Basic generation service transition costs shall
 2 include, but are not limited to, costs of purchases from the spot
 3 market, bilateral contracts, contracts with non-utility generators,
 4 parting contracts with the purchaser of the electric public utility's
 5 divested generation assets, short-term advance purchases, and
 6 financial instruments such as hedging, forward contracts, and
 7 options. Basic generation service transition costs shall also include
 8 the payments by an electric public utility pursuant to a competitive
 9 procurement process for basic generation service supply during the
 10 transition period, and costs of any such process used to procure the
 11 basic generation service supply;

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

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

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

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

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

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

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

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

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

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

43 "Class II renewable energy" means electric energy produced at a
44 resource recovery facility or hydropower facility, provided that
45 such facility is located where retail competition is permitted and
46 provided further that the Commissioner of Environmental
47 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 ³[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] facility" means a facility which produces electric energy,
7 steam or other forms of useful energy such as heat, which are used
8 for industrial, commercial, heating or cooling purposes³;

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

14 ¹"Commercial and industrial energy pricing class customer" or
15 "CIEP class customer" means that group of non-residential
16 customers with high ²[levels of]² peak ²[energy load usage]
17 demand² , as determined by periodic board order, ²which either is
18 eligible or² which would be eligible ², as determined by periodic
19 board order,² to receive funds from the Retail Margin Fund
20 established pursuant to section 9 of P.L.1999, c.23 (C.48:3-57) and
21 for which basic generation service is hourly-priced ³[.];³

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

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

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

34 "Demand side management" means the management of customer
35 demand for energy service through the implementation of cost-
36 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,
39 institutional and governmental premises and facilities in this State;

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

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

1 operates, an electric power production facility that will sell or does
2 sell at least 90 percent of its output, either directly or through a
3 marketer, to a customer or customers located at sites that are not on
4 or contiguous to the site on which the facility will be located or is
5 located. The designation of an entity as an electric power generator
6 for the purposes of **[this act]** P.L.1999, c.23 (C.48:3-49 et al.) shall
7 not, in and of itself, affect the entity's status as an exempt wholesale
8 generator under the Public Utility Holding Company Act of 1935,
9 15 U.S.C.s.79 et seq.;

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

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

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

33 "Energy agent" means a person that is duly registered pursuant to
34 the provisions of **[this act]** P.L.1999, c.23 (C.48:3-49 et al.), that
35 arranges the sale of retail electricity or electric related services or
36 retail gas supply or gas related services between government
37 aggregators or private aggregators and electric power suppliers or
38 gas suppliers, but does not take title to the electric 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
43 purpose entity, or any other assignee of bondable transition
44 property, which issues transition bonds. Except as specifically
45 provided in **[this act]** P.L.1999, c.23 (C.48:3-49 et al.), a financing
46 entity which is not itself an electric public utility shall not be

1 subject to the public utility requirements of Title 48 or any rules or
2 regulations adopted pursuant thereto;

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

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

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

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

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

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

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

4 "Market transition charge" means a charge imposed pursuant to
5 section 13 of **[this act]** P.L.1999, c.23 (C.48:3-61) by an electric
6 public utility, at a level determined by the board, on the electric
7 public utility customers for a limited duration transition period to
8 recover stranded costs created as a result of the introduction of
9 electric power supply competition pursuant to the provisions of
10 **[this act]** P.L.1999, c.23 (C.48:3-49 et al.);

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

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

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

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

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

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

44 "Public utility holding company" means: (1) any company that,
45 directly or indirectly, owns, controls, or holds with power to vote,
46 ten percent or more of the outstanding voting securities of an
47 electric public utility or a gas public utility or of a company which

1 is a public utility holding company by virtue of this definition,
 2 unless the Securities and Exchange Commission, or its successor,
 3 by order declares such company not to be a public utility holding
 4 company under the Public Utility Holding Company Act of 1935,
 5 15 U.S.C.s.79 et seq., or its successor; or (2) any person that the
 6 Securities and Exchange Commission, or its successor, determines,
 7 after notice and opportunity for hearing, directly or indirectly, to
 8 exercise, either alone or pursuant to an arrangement or
 9 understanding with one or more other persons, such a controlling
 10 influence over the management or policies of an electric public
 11 utility or a gas public utility or public utility holding company as to
 12 make it necessary or appropriate in the public interest or for the
 13 protection of investors or consumers that such person be subject to
 14 the obligations, duties, and liabilities imposed in the Public Utility
 15 Holding Company Act of 1935 or its successor;

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

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

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

33 "Resource recovery facility" means a solid waste facility
 34 constructed and operated for the incineration of solid waste for
 35 energy production and the recovery of metals and other materials
 36 for reuse;

37 "Restructuring related costs" means reasonably incurred costs
 38 directly related to the restructuring of the electric power industry,
 39 including the closure, sale, functional separation and divestiture of
 40 generation and other competitive utility assets by a public utility, or
 41 the provision of competitive services as such costs are determined
 42 by the board, and which are not stranded costs as defined in [this
 43 act] P.L.1999, c.23 (C.48:3-49 et al.) but may include, but not be
 44 limited to, investments in management information systems, and
 45 which shall include expenses related to employees affected by
 46 restructuring which result in efficiencies and which result in
 47 benefits to ratepayers, such as training or retraining at the level

1 equivalent to one year's training at a vocational or technical school
2 or county community college, the provision of severance pay of two
3 weeks of base pay for each year of full-time employment, and a
4 maximum of 24 months' continued health care coverage. Except as
5 to expenses related to employees affected by restructuring,
6 "restructuring related costs" shall not include going forward costs;

7 "Retail choice" means the ability of retail customers to shop for
8 electric generation or gas supply service from electric power or gas
9 suppliers, or opt to receive basic generation service or basic gas
10 service, and the ability of an electric power or gas supplier to offer
11 electric generation service or gas supply service to retail customers,
12 consistent with the provisions of [this act] P.L.1999, c.23 (C.48:3-
13 49 et al.);

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

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

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

38 "Societal benefits charge" means a charge imposed by an electric
39 public utility, at a level determined by the board, pursuant to, and in
40 accordance with, section 12 of [this act] P.L.1999, c.23 (C.48:3-
41 60);

42 "Stranded cost" means the amount by which the net cost of an
43 electric public utility's electric generating assets or electric power
44 purchase commitments, as determined by the board consistent with
45 the provisions of [this act] P.L.1999, c.23 (C.48:3-49 et al.),
46 exceeds the market value of those assets or contractual

1 commitments in a competitive supply marketplace and the costs of
2 buydowns or buyouts of power purchase contracts;

3 "Stranded costs recovery order" means each order issued by the
4 board in accordance with subsection c. of section 13 of **[this act]**
5 P.L.1999, c.23 (C.48:3-61) which sets forth the amount of stranded
6 costs, if any, the board has determined an electric public utility is
7 eligible to recover and collect in accordance with the standards set
8 forth in section 13 of P.L.1999, c.23 (C.48:3-61) and the recovery
9 mechanisms therefor;

10 "Thermal efficiency" means the useful electric energy output of
11 a facility, plus the useful thermal energy output of the facility,
12 expressed as a percentage of the total energy input to the facility;

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

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

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

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

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

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

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

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

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

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

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

38 (a) The board, in consultation with the BPU Business
39 Ombudsman created under section 4 of P.L. 2005, c.215 (C.48:2-
40 95), shall issue a solicitation to advertise the availability of grants
41 for projects to install or expand combined heat and power
42 production at new or existing facilities of '[commercial,
43 institutional, and industrial electricity] CIEP class' customers in
44 this State;

45 (b) The solicitation shall '[provide for] indicate that' grants
46 'are' to be awarded on a first-come, first-served basis for projects

1 that satisfy all of the following eligibility criteria: the project shall
2 serve a ¹['commercial, institutional, or industrial electricity'] CIEP
3 class¹ customer in this State with such level of ²high peak² demand
4 as ²['subjects'] either requires or would require, as determined by
5 periodic board order,² the ²CIEP class² customer to ²['payment of]
6 pay² a retail margin in accordance with paragraph (1) of this
7 subsection; the project shall establish by contract or other
8 arrangement that ¹['all'] the¹ electric output ¹['from the project will
9 be used within this State'] generated at a combined heat and power
10 production project shall, to the maximum extent feasible, be
11 consumed at the project site by a facility located at the site and that
12 any surplus power that is produced that is not needed by that facility
13 may be sold into the interstate PJM grid¹; the project shall have an
14 electric generating capacity of greater than one megawatt; and the
15 project shall be designed to achieve thermal efficiency ¹['of'] levels
16 of at least 65 percent for facilities with up to 20 megawatts of
17 electric generating capacity, and¹ at least 70 percent ¹for facilities
18 with electric generating capacity greater than 20 megawatts¹. ¹An
19 existing facility that does not currently achieve the applicable
20 thermal efficiency level shall be eligible to receive grants pursuant
21 to this paragraph if new or expanded projects developed at the
22 facility will achieve thermal efficiency levels of at least 65 percent
23 for facilities with up to 20 megawatts of electric generating
24 capacity, and at least 70 percent for facilities with electric
25 generating capacity greater than 20 megawatts.¹

26 (c) The solicitation shall further provide that the amount of each
27 grant shall be a function of the kilowatt-hours of electricity and the
28 Btus of thermal energy that the combined heat and power
29 production facility generates, over a period of four years beginning
30 with the facility's commencement of operation. The amount of the
31 grant per kilowatt-hour and per Btu shall be calculated so that, if a
32 facility receiving a grant were to have an electric capacity factor of
33 75 percent and a thermal capacity factor of 75 percent, then the
34 present value of the grant over the four-year period would equal
35 \$350 per kilowatt of installed electric generation capacity.

36 (d) The board shall make a total of ¹['up to'] \$60 million
37 available for these grants; provided however, that ¹if, at the end of
38 three years after the solicitation shall have been issued,¹ any portion
39 of the \$60 million amount ¹['that']¹ has not been allocated to
40 specific grants ¹['within three years after the solicitation has been
41 issued'], and is not subject to such an allocation upon approval of an
42 application for a specific grant that is pending before the board, and
43 that is supported by an adequate feasibility study, that portion¹ shall
44 be available for use pursuant to paragraph (4) of this subsection.
45 The board shall establish the types of measures to receive such
46 grants, the eligibility criteria for such grants, the procedures and

1 criteria for awarding such grants, and the conditions of such grants,
 2 by order or orders issued after notice and an opportunity for public
 3 comment, notwithstanding any provisions of the "Administrative
 4 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the
 5 contrary.

6 (4)]³ The board may use monies paid in connection with the
 7 retail margin, from any portion of the ³[\$60 million] amount
 8 appropriated pursuant to section 3 of P.L. , c. (C.) (pending
 9 before the Legislature as this bill)³ that has not been allocated
 10 pursuant to ³[subparagraph (d) of paragraph (3) of this subsection]
 11 subsection d. of section 3 of P.L. , c. (C.) (pending before the
 12 Legislature as this bill)³, and any other monies in the Retail Margin
 13 Fund in excess of the ³[\$60 million]³ amount ³appropriated³, for
 14 the purpose of funding grants by the board ¹[for a program to
 15 address the energy audits and implementation of recommended
 16 measures to establish a support system to assist with the application
 17 of technical review of combined heat and power production
 18 development as provided for in the energy master plan adopted
 19 pursuant to section 12 of P.L.1977, c.146 (C.52:27F-14), to provide
 20 financial assistance for electricity customers to increase energy
 21 efficiency at the customers' facilities, or to facilitate measurable
 22 and verifiable reductions of such facilities' demand for electricity at
 23 times of peak electricity demand or to provide financial assistance
 24 for programs that promote renewable energy and energy efficiency]
 25 only to CIEP class customers to implement alternative programs
 26 and measures that are consistent with, and will further the goals of
 27 the energy master plan adopted pursuant to section 12 of P.L.1977,
 28 c.146 (C.52:27F-14), to maximize energy conservation and energy
 29 efficiency, reduce peak energy demand, and increase renewable
 30 energy sources. The grants may also fund supportive measures,
 31 such as energy audits, education and outreach programs, and
 32 technical assistance, that are deemed necessary to the proper
 33 implementation of the alternative programs and measures¹. The
 34 board shall establish the types of measures to receive such financial
 35 assistance, the eligibility criteria for such financial assistance, the
 36 procedures and criteria for awarding such financial assistance, and
 37 the conditions of such financial assistance, by order or orders issued
 38 after notice and an opportunity for public comment,
 39 notwithstanding any provisions of the "Administrative Procedure
 40 Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary. The
 41 board may change programs and program designs as technologies,
 42 markets and customer needs change.

43 ³[(5) Except as provided ¹in¹ paragraph (3) of this subsection,
 44 nothing] (4) Nothing³ in this section shall ¹[preclude] be
 45 construed to authorize¹ the board ¹[from using] to use¹ the retail
 46 margin ¹for any use that does not provide a direct benefit to CIEP

1 class customers, except¹ as the board may determine 'is necessary'
 2 pursuant to section 13 of P.L.2007, c.340 (C.48:3-98.1) and section
 3 4 of P.L.2005, c.215 (C.48:2-95).

4 ³(5) The board shall, not later than December 1 of each year,
 5 transmit to the Joint Budget Oversight Committee, or its successor,
 6 a report detailing the amount of monies deposited in and allocated
 7 from the Retail Margin Fund during the preceding State fiscal year.
 8 The report shall include, but not be limited to, the number and
 9 description of each combined heat and power facility project funded
 10 from the Retail Margin Fund and the amount allocated to each
 11 project, and the number and description of any grants allocated for
 12 the alternative programs and measures provided for in paragraph (3)
 13 of this subsection. In addition to the report, the board shall also
 14 provide to the joint committee a copy of all board orders concerning
 15 the establishment or use of, or change in the amount of, the retail
 16 margin.³

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

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

23 (2) The board determines that the procurement of power from
 24 the related competitive business segment of the public utility
 25 holding company is necessary in order to ensure the reliability of
 26 service to basic generation service customers or to address other
 27 extraordinary circumstances, and that the purchase price does not
 28 exceed the market price for such power or the power was procured
 29 through a competitive bid process subject to board review and
 30 approval. The board shall require that all net revenues derived from
 31 such sales, when the source of power is assets or contracts which
 32 costs are included in stranded costs recovery charges assessed
 33 pursuant to sections 13 and 14 of **[this act]** P.L.1999, c.23 (C.48:3-
 34 61 and C.48:3-62), shall be applied:

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

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

44 (3) The board may devise an alternative accounting or cost
 45 recovery process that permits an electric public utility to purchase
 46 power from a related competitive business segment of its public
 47 utility holding company, or otherwise, to provide basic generation

1 service to its customers during the period that the electric public
2 utility is providing for sustainable rate reductions pursuant to
3 subsection j. of section 4 of **[this act]** P.L.1999, c.23 (C.48:3-52)
4 and subsection a. of this section, if the board determines that such
5 process is necessary to mitigate the impacts of market price
6 fluctuations and to sustain such rate reductions.

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

13 d. Power procured for basic generation service by an electric
14 power supplier shall be purchased at prices consistent with market
15 conditions. The charges assessed to customers for basic generation
16 service shall be regulated by the board and shall be based on the
17 reasonable and prudent cost to the supplier of providing such
18 service, including the cost of power purchased at prices consistent
19 with market conditions, by the supplier in the competitive
20 wholesale marketplace and related ancillary and administrative
21 costs, as determined by the board or shall be based upon the result
22 of a competitive bid.

23 e. Each electric public utility or electric power supplier that
24 provides basic generation service pursuant to subsection a., c. or d.
25 of this section shall be permitted to recover in its basic generation
26 charges on a full and timely basis all reasonable and prudently
27 incurred costs incurred in the provision of basic generation services
28 consistent with the provisions of this section, except to the extent
29 that certain costs related to the provision of basic generation service
30 are already being recovered in other elements of an electric public
31 utility's charges. The board may approve ratemaking and other
32 pricing mechanisms that provide incentives, including financial
33 risks and rewards, for the utility or electric power supplier to
34 procure a portfolio of electric power supply that provides maximum
35 benefit to basic generation service customers.

36 f. Each electric public utility shall submit a quarterly report to
37 the board of **'[all electricity]'** generation contracts between the
38 public utility and any related competitive business segment. A
39 utility that submits a report pursuant to this subsection may petition
40 the board for confidential treatment as trade secrets of any or all of
41 the information provided.

42 g. Nothing in this section shall apply to any existing board
43 approved bilateral power purchase contract by an electric public
44 utility as of the effective date of **[this act]** P.L.1999, c.23 (C.48:3-
45 49 et al.).

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

1 ³3. (New section) Subject to any appropriation for the purposes
2 set forth in section 4 of P.L.2005, c.215 (C.48:2-95), and
3 notwithstanding any provision to the contrary of paragraph (4) of
4 subsection a. of section 9 of P.L.1999, c.23 (C.48:3-57), there is
5 appropriated from the Retail Margin Fund, from the collections
6 credited to the fund as of the effective date of P.L. , c. (C.)
7 (pending before the Legislature as this bill), \$60,000,000, and any
8 additional amounts available from such collections as the Director
9 of the Division of Budget and Accounting shall determine, for the
10 purpose of funding grants by the board to support development of
11 combined heat and power facilities as follows:

12 a. The board, in consultation with the BPU Business
13 Ombudsman created under section 4 of P.L. 2005, c.215 (C.48:2-
14 95), shall issue a solicitation to advertise the availability of grants
15 for projects to install or expand combined heat and power facilities
16 at new or existing facilities of CIEP class customers in this State;

17 b. The solicitation shall indicate that grants are to be awarded
18 on a first-come, first-served basis for projects that satisfy all of the
19 following eligibility criteria: the project shall serve a commercial,
20 institutional, or industrial electricity customer in this State with
21 electric demand of at least 750 kilowatts or such level of demand as
22 subjects the customer to payment of a retail margin in accordance
23 with paragraph (1) of subsection a. of section 9 of P.L.1999, c.23
24 (C.48:3-57); the project shall establish by contract or other
25 arrangement that the electric output generated at a combined heat
26 and power facility shall, to the maximum extent feasible, be
27 consumed at the project site by a facility located at the site and that
28 any surplus power that is produced that is not needed by that facility
29 may be sold into the interstate PJM grid; the facility shall have an
30 electric generating capacity of greater than one megawatt; and the
31 project shall be designed to achieve thermal efficiency levels of at
32 least 65 percent for facilities with up to 20 megawatts of electric
33 generating capacity, and at least 70 percent for facilities with
34 electric generating capacity greater than 20 megawatts. An existing
35 facility that does not currently achieve the applicable thermal
36 efficiency level shall be eligible to receive grants pursuant to this
37 paragraph if new or expanded projects developed at the facility will
38 achieve thermal efficiency levels of at least 65 percent for facilities
39 with up to 20 megawatts of electric generating capacity, and at least
40 70 percent for facilities with electric generating capacity greater
41 than 20 megawatts.

42 c. The solicitation shall further provide that the amount of each
43 grant shall be a function of the kilowatt-hours of electricity and the
44 Btus of thermal energy that the combined heat and power facility
45 generates, over a period of four years beginning with the facility's
46 commencement of operation. The amount of the grant per kilowatt-
47 hour and per Btu shall be calculated so that, if a facility receiving a

1 grant were to have an electric capacity factor of 75 percent and a
2 thermal capacity factor of 75 percent, then the present value of the
3 grant over the four-year period would equal no less than \$450 per
4 kilowatt of installed electric generation capacity.

5 d. The board shall make a total of no less than \$60 million
6 available for grants for combined heat and power facilities;
7 provided however, that if, at the end of three years after the
8 solicitation shall have been issued, any portion of the amount that
9 the board appropriated for combined heat and power facilities has
10 not been allocated to specific grants, and is not subject to such an
11 allocation upon approval of an application for a specific grant that
12 is pending before the board, and that is supported by an adequate
13 feasibility study, that portion shall be available for use pursuant to
14 paragraph (3) of subsection a. of section 9 of P.L.1999, c.23
15 (C.48:3-57). The board shall establish the types of measures to
16 receive such grants, the eligibility criteria for such grants, the
17 procedures and criteria for awarding such grants, and the conditions
18 of such grants, by order or orders issued after notice and an
19 opportunity for public comment, notwithstanding any provisions of
20 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
21 seq.) to the contrary.³

22

23 ³[3.] 4.³ This act shall take effect immediately.