ASSEMBLY, No. 5387

STATE OF NEW JERSEY

222nd LEGISLATURE

INTRODUCED SEPTEMBER 10, 2026

Sponsored by:
Assemblywoman HEATHER SIMMONS
District 3 (Cumberland, Gloucester and Salem)

SYNOPSIS

Restructures electric and gas public utility industries.

CURRENT VERSION OF TEXT

As introduced.

AN ACT concerning the regulation of the State's electric and gas industries and supplementing Title 48 of the Revised Statutes.

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

1. Sections 1 through 17 of P.L. , c. (C. through C.) (pending before the Legislature as this bill) shall be known and may be cited as the "Public Utility Regulatory Reform Act."

2. As used in sections 3 and 4 of P.L. , c. (C. and C.) (pending before the Legislature as this bill):

"Board" means the New Jersey Board of Public Utilities.

"Customer" means the same as that term is defined in section 3 of P.L.1999, c.23 (C.48:3-51).

"Electric power supplier" means the same as that term is defined in section 3 of P.L.1999, c.23 (C.48:3-51).

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

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

"Gas supplier" means the same as that term is defined in section 3 of P.L.1999, c.23 (C.48:3-51).

"Retail choice" means the same as that term is defined in section 3 of P.L.1999, c.23 (C.48:3-51).

3. a. Notwithstanding the provisions of the "Electric Discount and Energy Competition Act," P.L.1999, c.23 (C.48:3-49 et al.), or any other law, rule, regulation, or order to the contrary, an electric public utility may own and operate electric generation facilities.

b. An electric public utility that does not own and operate electric generation facilities, and is only engaged in the business of electricity transmission and distribution, shall continue to be subject to the provisions of the "Electric Discount and Energy Competition Act," P.L.1999, c.23 (C.48:3-49 et al.).

c. An electric public utility that elects to own and operate electric generation facilities pursuant to subsection a. of this section shall file with the board an updated schedule of tariffs for approval, which schedule shall reflect any necessary changes to the electric public utility's rates as a result of the utility's decision to own and operate electric generation facilities, which changes shall include, but not be limited to, the bundling of the electric public utility's rates.

d. Upon the board's approval of the updated schedule of tariffs submitted by an electric public utility pursuant to subsection c. of this section, no customer of the electric public utility shall be

permitted to exercise retail choice through an electric power supplier.

4. a. Notwithstanding the provisions of the "Electric Discount and Energy Competition Act," P.L.1999, c.23 (C.48:3-49 et al.), or any other law, rule, regulation, or order to the contrary, a gas public utility may elect to discontinue retail choice for its residential customers.

b. A gas public utility that elects to maintain retail choice for its residential customers shall continue to be subject to the provisions of the "Electric Discount and Energy Competition Act," P.L.1999, c.23 (C.48:3-49 et al.).

c. A gas public utility that elects to discontinue retail choice for its residential customers pursuant to subsection a. of this section shall file with the board an updated schedule of tariffs for approval, which schedule shall reflect any necessary changes to the gas public utility's rates as a result of the utility's decision to discontinue retail choice for its residential customers, which changes shall include, but not be limited to, the bundling of the gas public utility's rates for residential customers.

d. Upon the board's approval of the updated schedule of tariffs submitted by a gas public utility pursuant to subsection c. of this section, no residential customer of the gas public utility shall be permitted to exercise retail choice through a gas supplier.

5. As used in sections 6 through 12 of P.L. , c. (C. through C.) (pending before the Legislature as this bill):

"Board" means the New Jersey Board of Public Utilities.

"Certificate" means a certificate of public convenience and necessity issued pursuant to section 6 of P.L. , c. (C.) (pending before the Legislature as this bill).

"Construction" means on-site work to install any permanent equipment or structure for any electric facility but does not include the installation of environmental monitoring equipment or any work related thereto.

"Electric facility" means: (1) any electric power generating unit or combination of units at a single site with a combined production of 100 megawatts or more and any facilities appurtenant thereto; or (2) any electric generating units added to an existing electric generating facility which will increase its installed capacity by 25 percent or by more than 100 megawatts, whichever is smaller.

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

6. Prior to constructing an electric facility, an electric public utility shall obtain a certificate from the board. No agency of the

State, or any county or municipal government, shall issue any license or permit required for the construction or substantial expansion of an electric facility prior to the issuance of a certificate by the board.

7. a. At least one year prior to the formal application for a certificate, pursuant to section 6 of P.L. , c. (C.) (pending before the Legislature as this bill), an electric public utility seeking to construct an electric facility shall submit a notice of intent to the board in a form and manner specified by the board. The early assessment stage of the certificate process shall begin once the board has received the electric public utility's notice of intent. During the early assessment stage, the board shall hold public hearings in the area served by the electric public utility to:

(1) solicit the views of concerned individuals and groups on the proposed electric facility;

(2) provide advice to the electric public utility on the proposed electric facility and on relevant alternative ways of meeting projected electricity demand, which ways shall minimize rate increases, reduce any adverse environmental impact of the proposed electric facility, and address other objections to the proposed electric facility; and

(3) develop a comprehensive view of how the proposed electric facility and any suggested alternatives to the electric facility will affect the long-range energy plans and economic development of the State and otherwise promote the public interest.

b. Notice of each public hearing, required pursuant to subsection a. of this section, shall be published in:

(1) a newspaper of general circulation in the region where the hearing is to be held; and

(2) any other newspapers of general circulation that the board deems appropriate to reach the greatest possible number of affected people.

c. During the early assessment stage, the board shall publish, in a manner designed to reach the maximum number of affected people, interim reports on the progress of its analysis of the proposed electric facility. No later than nine months after receiving a notice of intent, the board shall publish a comprehensive report presenting its preliminary assessment concerning the proposed electric facility. The report shall address the major concerns expressed during the early assessment stage and compare the proposed electric facility with feasible alternatives to the electric facility.

8. a. An electric public utility shall apply to the board for a certificate, pursuant to section 6 of P.L. , c. (C.) (pending before the Legislature as this bill), in a manner and form to be determined by the board. The application shall include any

information that the board deems necessary for its review of an application pursuant to section 10 of P.L. , c. (C.) (pending before the Legislature as this bill). The board may charge and collect a nonrefundable application fee of no more than $250,000 for the filing, processing, and review of an application for a certificate. This fee shall also cover the costs of the board's review of applications for a certificate renewal.

b. Upon receipt of a completed application, the board shall forward a copy of the application to other appropriate State departments, agencies, and instrumentalities for their review. These departments, agencies, and instrumentalities shall provide adequate mechanisms for full consideration of the application and for developing recommendations based on the application. A department, agency, or instrumentality shall forward its recommendations to the board and the electric public utility within 120 days of receiving a copy of the application. Recommendations concerning certificates shall be governed and based upon the principles and criteria set forth in section 9 of P.L. , c. (C.) (pending before the Legislature as this bill).

9. The board shall only issue a certificate if it determines that the proposed electric facility is necessary to meet the projected need for electricity in the area to be served and that no more efficient, economical, or environmentally-sound alternative is available. The board shall make these determinations only if it finds that:

a. denying a certificate would adversely affect the future adequacy, reliability, or efficiency of the electricity supply to the electric public utility's customers or to the people of New Jersey, taking into account:

(1) the accuracy of the electric public utility's demand forecast for the level of electricity that would be supplied by the proposed electric facility;

(2) the effect of existing or prospective State and federal conservation programs;

(3) the effect of promotional practices of the electric public utility, which may have given rise to the demand for the electric facility;

(4) the ability of current and planned electric facilities, which do not require a certificate and to which the electric public utility has access, to meet future demand; and

(5) the effect of the proposed electric facility in making efficient use of resources;

b. the consequences of issuing the certificate outweigh the consequences of denying the certificate, taking into account:

(1) the relationship of the proposed electric facility to overall State energy needs as determined by New Jersey's energy master plan, adopted pursuant to section 12 of P.L.1977, c.146 (C.52:27F-14);

(2) the role of the proposed electric facility in inducing future development; and

(3) the socially beneficial uses of the output of the proposed electric facility, including its uses to protect or enhance environmental quality;

c. there is not a more reasonable and prudent alternative to the proposed electric facility, taking into account:

(1) the appropriateness of the size, type, and timing of the proposed electric facility compared to those of reasonable alternatives;

(2) the cost of the proposed electric facility and the cost of electricity to be supplied by the proposed electric facility compared to the costs of reasonable alternatives and the cost of electricity that would be supplied by reasonable alternatives;

(3) the impact of the proposed electric facility upon the social, economic, and health environments compared to the impact on those environments of reasonable alternatives; and

(4) the expected reliability of the proposed electric facility compared to the expected reliability of reasonable alternatives; and

d. the design, construction, and operation of the proposed electric facility would comply with all relevant State and federal laws, rules, regulations, and policies.

10. a. Upon receipt of a completed application for a certificate, the board shall transmit the application and all supporting documents, including the board's early assessment report, to the Office of Administrative Law, which shall conduct a hearing on the application pursuant to the provisions of P.L.1978, c.67 (C.52:14F-1 et seq.). This hearing shall be an adjudicatory proceeding and shall be conducted as a contested case pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). Intervention in this hearing by any other person shall be as provided in the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

b. Notwithstanding the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to the contrary, within six months of receiving the decision of the presiding administrative law judge, the board shall approve, conditionally approve, or deny the application. The board shall base its decision on the criteria set forth in section 9 of P.L. , c. (C.) (pending before the Legislature as this bill) and shall support its decision with a written report. The report shall address the issues raised and arguments advanced in:

(1) the materials and information compiled during the early assessment stage pursuant to subsection a. of section 7 of P.L. , c. (C.) (pending before the Legislature as this bill);

(2) the board's preliminary assessment report pursuant to subsection c. of section 7 of P.L. , c. (C.) (pending before the Legislature as this bill);

(3) the recommendations developed by State departments, agencies, and instrumentalities pursuant to subsection b. of section 8 of P.L. , c. (C.) (pending before the Legislature as this bill);

(4) the analyses of outside consultants retained by the board;

(5) the record of the adjudicatory proceeding conducted by the administrative law judge pursuant to subsection a. of this section; and

(6) the written decision of the presiding administrative law judge.

c. In the case of a conditional approval of an application, the board shall provide the electric public utility with a clear statement of the conditions to be met for approval, including any modifications to the proposed electric facility.

d. Notwithstanding any law, rule, or regulation to the contrary, the board's action on an application shall be considered the final agency action thereon for the purposes of the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.), and shall be subject only to judicial review as provided in the Rules of Court.

11. A certificate shall be valid for three years and shall be eligible for renewal subject to approval by the board. If an application for certificate renewal is denied, the electric public utility holding the certificate may:

a. continue the project; or

b. terminate or alter the project under terms and conditions established by the board that equitably balance the interests of the stockholders, the ratepayers, and the electric public utility.

12. Within 90 days of the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), the board shall adopt rules and regulations, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), as necessary to implement the provisions of sections 6 through 12 of P.L. , c. (C.) (pending before the Legislature as this bill).

13. As used in sections 14 through 17 of P.L. , c. (C. through C.) (pending before the Legislature as this bill):

"Board" means the New Jersey Board of Public Utilities.

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

14. Upon any request by an electric public utility for a rate increase to recover costs in excess of $10 million attributable to an accident, including any accident occurring prior to the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), at an electric generating or transmission facility in which the electric public utility has a full or partial interest, the board shall conduct a separate hearing, or series of hearings, to investigate all circumstances related to the accident and to make a finding of fault, if any, related to the accident. The hearing shall not act to bar an application by an electric public utility for a rate increase to recover any increase in costs that is determined by the board to be totally unrelated to the accident. For the purposes of this determination, fault shall be assigned to any party whose negligent actions or omissions either contributed substantially to causing the accident or failed to mitigate its severity.

15. a. In fixing just and reasonable rates pursuant to Title 48 of the Revised Statutes, the board shall not authorize an electric public utility determined to be at fault, pursuant to section 14 of P.L. , c. (C.) (pending before the Legislature as this bill), to recover from its ratepayers any fault-related repair, cleanup, additional incremental costs for purchased power, or damage costs resulting from an accident at an electric generating or transmission facility, except as provided in subsection b. of this section.

b. (1) Once fault has been determined and the costs related to that fault, which the electric public utility may not recover from its ratepayers, have been established, the board shall consider whether and, if so, to what extent to permit the electric public utility to mitigate denied fault costs through the following:

(a) the undertaking of a program under electric public utility sponsorship to assist consumers in realizing the maximum feasible benefits of energy conservation, which shall include at a minimum:

(i) direct electric public utility investment in renewable energy, energy conservation, and energy efficiency improvement programs;

(ii) the lending of funds without interest for at least five years to customers for their investment in renewable energy, energy conservation, and energy efficiency improvement measures;

(iii) assistance to consumers whose homes are heated by electric resistance heating systems to convert to alternate systems; or

(iv) any combination of the above; or

(b) other mitigating measures as approved by the board.

(2) In determining the appropriate mitigation measures which, taken together, shall constitute the appropriate remedy, the board shall not authorize an electric public utility to mitigate costs, in whole or in part, by sponsoring any energy conservation program that has not been approved by the State agency or department that the Governor, within 60 days of the effective date of

P.L. , c. (C.) (pending before the Legislature as this bill), designates as appropriate.

c. The board shall not approve any mitigating measures that would jeopardize the electric public utility's ability to provide safe, adequate, and proper service. The board may authorize the electric public utility to recover, as an operating expense, that portion of the cost of the mitigating measures that the board determines to be necessary to the electric public utility's ability to provide safe, adequate, and proper service. The board shall support its determination with a written report containing findings of fact and conclusions of law and a concise and explicit statement of the underlying facts supporting the determination.

d. Nothing in this section shall impair the board's power to authorize interim relief necessary to enable the electric public utility to continue to provide safe, adequate, and proper service. Interim relief authorized during the pendency of the hearing may be recognized as an offset to the final determination made by the board of the conclusion of the hearing.

16. a. The board shall not authorize an electric public utility to include as an operating expense, pursuant to subsection a. of section 15 of P.L. , c. (C.) (pending before the Legislature as this bill), any greater percentage of the repair, cleanup, or damage costs resulting from an accident at an electric generating or transmission facility than its percentage of ownership in the facility.

b. The board shall authorize as an operating expense, without regard to fault, such costs as the board certifies are appropriate to contribute to any national cost-sharing formula enacted by federal law or any voluntary cost-sharing plan approved by the board, to the extent that the board certifies that these costs are reasonable and fairly apportioned and that other affected states and electric public utilities are committed to meeting their fair shares; except that the authorization of costs as certified by the board shall not absolve the electric public utility from any assessment of fault and its obligation under the remedy imposed by the board.

17. In determining fault as provided in section 14 of P.L. , c. (C.) (pending before the Legislature as this bill), the board shall consider any credible, fair, and public assessments rendered by any special presidential commissions or other federal agencies charged with the responsibility of regulating the subject activity. These assessments shall be accepted by the board into evidence under the doctrine of official notice, pursuant to the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.), as long as they are relevant. Parties shall not be precluded from presenting additional evidence relevant to the fault determination.

18. This act shall take effect immediately.

STATEMENT

This bill establishes a framework for the restructuring of the electric and gas public utility industries in New Jersey.

Restructuring the Electric Public Utility Industry

This bill permits electric public utilities to own and operate electric generation facilities but requires any electric public utility that does not elect to own and operate electric generation facilities to comply with the provisions of the "Electric Discount and Energy Competition Act" (EDECA). Under the bill, an electric public utility that elects to own and operate electric generation facilities is to file an updated schedule of tariffs with the Board of Public Utilities (board) for approval, which schedule is to reflect any necessary changes to the electric public utility's rates as a result of the electric public utility's decision to own and operate electric generation facilities. Once the board has approved the updated schedule of tariffs, the bill prohibits any customer of that electric public utility from exercising retail choice through an electric power supplier.

Restructuring the Gas Public Utility Industry

This bill permits gas public utilities to discontinue retail choice for its residential customers. However, the bill provides that any gas public utility that does not elect to discontinue retail choice for its residential customers is to comply with the provisions of EDECA. Under the bill, a gas public utility that elects to discontinue retail choice for its residential customers is to file an updated schedule of tariffs with the board for approval, which schedule is to reflect any necessary changes to the gas public utility's rates as a result of the gas public utility's decision to discontinue retail choice for its residential customers. Once the board has approved the updated schedule of tariffs, the bill prohibits any customer of that gas public utility from exercising retail choice through a gas supplier.

Electric Facility Needs Assessment

This bill requires an electric public utility to obtain a certificate of public convenience and necessity (certificate) from the board prior to constructing an electric facility. Specifically, under the bill, one year prior to submitting a formal application for a certificate, an electric public utility is to submit a notice of intent to the board, which notice, once received, is to mark the beginning of the early assessment stage of the certificate process. After receiving the notice, the board is to hold public hearings in the area served by the

electric public utility to accomplish certain objectives outlined in the bill. In the early assessment stage, the board is to publish interim reports on the progress of its analysis of the proposed electric facility. Moreover, no later than nine months after receiving the notice of intent, the board is to publish a comprehensive report addressing any major concerns regarding the proposed electric facility that were raised during the early assessment stage and comparing the proposed electric facility with feasible alternatives.

Under the bill, a certificate application is to include any information that the board deems necessary. The bill requires the board, while reviewing the application based on certain criteria outlined in the bill, to determine whether a proposed electric facility is necessary to meet the projected need for electricity in the area served by the electric public utility and that no more efficient, economical, or environmentally-sound alternative exists. In addition, the bill authorizes the board to charge and collect a nonrefundable application fee of no more than $250,000 for the filing, processing, and review of a certificate application and for the board's review of certificate renewal applications.

Once the board receives a completed application, the board is to forward a copy of the application to other appropriate State departments, agencies, and instrumentalities (State entities) for additional review. These State entities are to develop and forward recommendations on the application to the board and the electric public utility within 120 days of receiving a copy of the application. The State entities are to base their recommendations on the same criteria used by the board in the board's review of the application.

Upon receiving a completed application, the board is to also transmit the application and all supporting documents, including the board's comprehensive report from the early assessment stage, to the Office of Administrative Law, which is to conduct a hearing on the application pursuant to the provisions of current law. Within six months of receiving a decision from the presiding administrative law judge, the board shall approve, conditionally approve, or deny the application and support its determination with a written report that is to address certain matters regarding the proposed electric facility. If the board conditionally approves the application, the bill requires the board to provide the electric public utility with a clear statement of conditions to be met for approval.

Under the bill, a certificate is to be valid for three years and eligible for renewal subject to the board's review. If a certificate renewal application is denied, the electric public utility holding the certificate may either continue the project or terminate or alter the project under terms and conditions established by the board.

Electric Public Utility Accident Fault Determination

Under the bill, if an electric public utility files for a rate increase to recover costs in excess of $10 million attributable to an accident at an electric generating or transmission facility in which the electric public utility has a full or partial interest, the board is to conduct a hearing or series of hearings to investigate all circumstances related to the accident and to determine fault, if any, related to the accident. The bill provides that fault is to be assigned to any party whose negligent actions or omissions either contributed substantially to causing the accident or failed to mitigate its severity. Under the bill, in determining fault, the board is to consider any credible, fair, and public assessments rendered by certain, appropriate federal entities.

The bill prohibits the board from authorizing an electric public utility that is determined by the board to be at fault to recover certain costs resulting from an accident at an electric generating or transmission facility. However, the bill does require the board to consider whether and, if so, to what extent an electric public utility is permitted to mitigate denied fault costs through certain measures outlined in the bill. The bill establishes various restrictions for these cost mitigation measures but clarifies that nothing in the bill is to prevent the board from granting interim relief necessary to enable the electric public utility to provide safe, adequate, and proper service.

In addition, the bill prohibits the board from authorizing an electric public utility to include, as an operating expense, any percentage of the repair, cleanup, or damage costs resulting from an accident at an electric generating or transmission facility greater than the electric public utility's percentage of ownership in the generating or transmission facility. The board is to authorize as an operating expense, regardless of fault, any cost that the board certifies as appropriate to contribute to national cost-sharing formulas under federal law or voluntary cost-sharing plans under certain circumstances outlined in the bill. However, the bill provides that the authorization to recover these costs does not absolve the electric public utility from any assessment of fault or its obligation under the remedy imposed by the board.