

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 3339 and 3439

STATE OF NEW JERSEY
213th LEGISLATURE

ADOPTED DECEMBER 8, 2008

Sponsored by:

Assemblyman UPENDRA J. CHIVUKULA

District 17 (Middlesex and Somerset)

Assemblyman ALBERT COUTINHO

District 29 (Essex and Union)

Co-Sponsored by:

Assemblywoman Quijano, Assemblymen Conaway and Wisniewski

SYNOPSIS

Concerns on-site generation facilities.

CURRENT VERSION OF TEXT

Substitute as adopted by the Assembly Telecommunications and Utilities Committee.



(Sponsorship Updated As Of: 12/4/2009)

1 **AN ACT** concerning on-site generation facilities, providing a sales
 2 and use tax exemption for the purchase of natural gas and utility
 3 service used for co-generation, amending and supplementing
 4 P.L.1999, c.23, and amending P.L.1997, c.162.

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. As used in this act:

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

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

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

35 "Basic generation service transition costs" means the amount by
 36 which the payments by an electric public utility for the procurement
 37 of power for basic generation service and related ancillary and
 38 administrative costs exceeds the net revenues from the basic
 39 generation service charge established by the board pursuant to
 40 section 9 of P.L.1999, c.23 (C.48:3-57) during the transition period,
 41 together with interest on the balance at the board-approved rate, that
 42 is reflected in a deferred balance account approved by the board in
 43 an order addressing the electric public utility's unbundled rates,
 44 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.

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

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

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

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

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

1 "Co-generation" means the sequential production of electricity
2 and steam or other forms of useful energy used for industrial or
3 commercial heating and cooling purposes;

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

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

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

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

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

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

32 "Electric power generator" means an entity that proposes to
33 construct, own, lease or operate, or currently owns, leases or
34 operates, an electric power production facility that will sell or does
35 sell at least 90 percent of its output, either directly or through a
36 marketer, to a customer or customers located at sites that are not on
37 or contiguous to the site on which the facility will be located or is
38 located. The designation of an entity as an electric power generator
39 for the purposes of **[this act]** P.L.1999, c.23 (C.48:3-49 et al.) shall
40 not, in and of itself, affect the entity's status as an exempt wholesale
41 generator under the Public Utility Holding Company Act of 1935,
42 15 U.S.C. s.79 et seq.;

43 "Electric power supplier" means a person or entity that is duly
44 licensed pursuant to the provisions of **[this act]** P.L.1999, c.23
45 (C.48:3-49 et al.) to offer and to assume the contractual and legal
46 responsibility to provide electric generation service to retail
47 customers, and includes load serving entities, marketers and brokers

1 that offer or provide electric generation service to retail customers.
2 The term excludes an electric public utility that provides electric
3 generation service only as a basic generation service pursuant to
4 section 9 of **[this act]** P.L.1999, c.23 (C.48:3-57);

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

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

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

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

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

28 "Financing entity" means an electric public utility, a special
29 purpose entity, or any other assignee of bondable transition
30 property, which issues transition bonds. Except as specifically
31 provided in **[this act]** P.L.1999, c.23 (C.48:3-49 et al.), a financing
32 entity which is not itself an electric public utility shall not be
33 subject to the public utility requirements of Title 48 or any rules or
34 regulations adopted pursuant thereto;

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

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

44 "Gas supplier" means a person that is duly licensed pursuant to
45 the provisions of **[this act]** P.L.1999, c.23 (C.48:3-49 et al.) to offer
46 and assume the contractual and legal obligation to provide gas
47 supply service to retail customers, and includes, but is not limited

1 to, marketers and brokers. A non-public utility affiliate of a public
2 utility holding company may be a gas supplier, but a gas public
3 utility or any subsidiary of a gas utility is not a gas supplier. In the
4 event that a gas public utility is not part of a holding company legal
5 structure, a related competitive business segment of that gas public
6 utility may be a gas supplier, provided that related competitive
7 business segment is structurally separated from the gas public
8 utility, and provided that the interactions between the gas public
9 utility and the related competitive business segment are subject to
10 the affiliate relations standards adopted by the board pursuant to
11 subsection k. of section 10 of **[this act]** P.L.1999, c.23 (C.48:3-58);

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

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

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

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

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

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

1 duly licensed gas supplier that takes title to gas and then assumes
2 the contractual and legal obligation to provide gas supply service to
3 an end-use customer or customers;

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

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

8 "On-site generation facility" means a generation facility, and
9 equipment and services appurtenant to electric sales by such facility
10 to the end use customer located on the property or on property
11 contiguous to the property on which the end user is located. An on-
12 site generation facility shall not be considered a public utility. The
13 property of the end use customer and the property on which the on-
14 site generation facility is located shall be considered contiguous if
15 they are geographically located next to each other, but may be
16 otherwise separated by an easement, public thoroughfare,
17 transportation or utility-owned right-of-way~~].~~, or if the end use
18 customer is purchasing thermal energy services produced by the on-
19 site generation facility, for use for heating, air conditioning, or both,
20 regardless of any intervening property, public thoroughfare, or
21 transportation or utility-owned right-of-way;

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

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

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

1 protection of investors or consumers that such person be subject to
2 the obligations, duties, and liabilities imposed in the Public Utility
3 Holding Company Act of 1935 or its successor;

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

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

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

21 "Resource recovery facility" means a solid waste facility
22 constructed and operated for the incineration of solid waste for
23 energy production and the recovery of metals and other materials
24 for reuse;

25 "Restructuring related costs" means reasonably incurred costs
26 directly related to the restructuring of the electric power industry,
27 including the closure, sale, functional separation and divestiture of
28 generation and other competitive utility assets by a public utility, or
29 the provision of competitive services as such costs are determined
30 by the board, and which are not stranded costs as defined in [this
31 act] P.L.1999, c.23 (C.48:3-49 et al.) but may include, but not be
32 limited to, investments in management information systems, and
33 which shall include expenses related to employees affected by
34 restructuring which result in efficiencies and which result in
35 benefits to ratepayers, such as training or retraining at the level
36 equivalent to one year's training at a vocational or technical school
37 or county community college, the provision of severance pay of two
38 weeks of base pay for each year of full-time employment, and a
39 maximum of 24 months' continued health care coverage. Except as
40 to expenses related to employees affected by restructuring,
41 "restructuring related costs" shall not include going forward costs;

42 "Retail choice" means the ability of retail customers to shop for
43 electric generation or gas supply service from electric power or gas
44 suppliers, or opt to receive basic generation service or basic gas
45 service, and the ability of an electric power or gas supplier to offer
46 electric generation service or gas supply service to retail customers,

1 consistent with the provisions of **[this act]** P.L.1999, c.23 (C.48:3-
2 49 et al.);

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

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

16 "Societal benefits charge" means a charge imposed by an electric
17 public utility, at a level determined by the board, pursuant to, and in
18 accordance with, section 12 of **[this act]** P.L.1999, c.23 (C.48:3-
19 60);

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

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

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

39 "Transition bonds" means bonds, notes, certificates of
40 participation or beneficial interest or other evidences of
41 indebtedness or ownership issued pursuant to an indenture, contract
42 or other agreement of an electric public utility or a financing entity,
43 the proceeds of which are used, directly or indirectly, to recover,
44 finance or refinance bondable stranded costs and which are, directly
45 or indirectly, secured by or payable from bondable transition
46 property. References in **[this act]** P.L.1999, c.23 (C.48:3-49 et al.)
47 to principal, interest, and acquisition or redemption premium with

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

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

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

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

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

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

20
21 2. (New section) a. Whenever an on-site generation facility
22 produces power that is not consumed by the on-site customer, and
23 that power is delivered to an off-site end use customer in this State,
24 all of the charges listed in paragraphs (1) through (3) of this
25 subsection shall be levied on the sale or delivery of such power to
26 the off-site customer:

27 (1) the societal benefits charge or its equivalent, imposed
28 pursuant to section 12 of P.L.1999, c.23 (C.48:3-60);

29 (2) the market transition charge or its equivalent, imposed
30 pursuant to section 13 of P.L.1999, c.23 (C.48:3-61); and

31 (3) the transition bond charge or its equivalent, imposed
32 pursuant to section 18 of P.L.1999, c.23 (C.48:3-67).

33 b. Except as provided in subsection c. of this section, upon a
34 determination by the board that the power generated by an on-site
35 generation facility that was installed subsequent to the starting date
36 of retail competition as provided in subsection a. of section 5 of
37 P.L.1999, c.23 (C.48:3-53) has, in the aggregate, displaced
38 customer purchases from an electric public utility by an amount
39 such that the kilowatt hours distributed by the electric public utility
40 have been reduced to an amount equal to 92.5 percent of the
41 kilowatt hours distributed by the electric public utility in calendar
42 year 1999, the board shall impose the charges listed in paragraphs
43 (1) through (3) of this subsection on the on-site customer of the on-
44 site generation facilities:

45 (1) the societal benefits charge or its equivalent, imposed
46 pursuant to section 12 of P.L.1999, c.23 (C.48:3-60);

1 (2) the market transition charge or its equivalent, imposed
2 pursuant to section 13 of P.L.1999, c.23 (C.48:3-61); and

3 (3) the transition bond charge or its equivalent, imposed
4 pursuant to section 18 of P.L.1999, c.23 (C.48:3-67).

5 None of the charges listed in paragraphs (1) through (3) of this
6 subsection shall be levied on the sale or delivery of power to the on-
7 site customer by an on-site generation facility that occurred prior to
8 the date of the board's determination with regard to the facility
9 serving that customer pursuant to this subsection.

10 c. A societal benefits charge, market transition charge, and
11 transition bond charge, or their equivalent, shall not be imposed on
12 the sale or delivery of power to an on-site customer that is derived
13 from the on-site generation facility serving that customer if:

14 (1) the on-site customer or its agent installed the on-site
15 generation facility, or expanded such a facility, prior to the effective
16 date of P.L.1999, c.23 (C.48:3-49 et al.), for the continued on-site
17 power consumption by the same on-site customer and such power
18 consumption by that on-site customer occurs after the effective date
19 of P.L.1999, c.23 (C.48:3-49 et al.); or

20 (2) the on-site customer or its agent has made, on or before the
21 effective date of P.L.1999, c.23 (C.48:3-49 et al.), substantial
22 financial and contractual commitments in planning and
23 development, including any expansion of such a facility and having
24 applied for any appropriate air permit from the Department of
25 Environmental Protection, for the continued provision of on-site
26 power consumption by the same on-site customer that occurs after
27 the effective date of P.L.1999, c.23 (C.48:3-49 et al.).
28

29 3. Section 26 of P.L.1997, c.162 (C.54:32B-8.46) is amended
30 to read as follows:

31 26. a. Receipts from the sale, exchange, delivery or use of
32 electricity are exempt from the tax imposed under the **【Sales and**
33 **Use Tax Act】** "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1
34 et seq.) if the electricity:

35 (1) (a) Is sold by a municipal electric corporation in existence as
36 of December 31, 1995 and used within its municipal boundaries
37 except if the customer is located within a franchise area served by
38 an electric public utility other than the municipal electric
39 corporation. If a municipal electric corporation makes sales of
40 electricity used outside of its municipal boundaries or within a
41 franchise area served by an electric public utility other than the
42 municipal electric corporation, then receipts from those sales of
43 electricity by the municipal electric corporation shall be subject to
44 tax under P.L.1966, c.30; or

45 (b) Is sold by a municipal electric utility in existence as of
46 December 31, 1995, and used within its municipal boundaries.
47 However, a municipal electric utility's receipts from the sale,

1 exchange, delivery or use of electricity used by customers outside
2 of its municipal boundaries and within its franchise area existing as
3 of December 31, 1995 shall be subject to tax. If a municipal
4 electric utility makes sales of electricity used outside of its
5 franchise area existing as of December 31, 1995, then receipts from
6 those sales of electricity by the municipal electric utility shall be
7 subject to tax under P.L.1966, c.30;

8 (2) Was generated by a facility located on the user's property or
9 property purchased or leased from the user by the person owning
10 the generation facility and such property is contiguous to the user's
11 property, and the electricity was consumed by the one on-site end
12 user on the user's property, and was not transported to the user over
13 wires that cross a property line or public thoroughfare unless the
14 property line or public thoroughfare merely bifurcated the user's or
15 generation facility owner's otherwise contiguous property or the
16 electricity was consumed by an affiliated user on the same site, or
17 by a non-affiliated user on the same site with an electric distribution
18 system which is integrated and interconnected with the user on or
19 before March 10, 1997; the director may promulgate rules and
20 regulations and issue guidance with respect to all issues related to
21 affiliated users; or

22 (3) Is sold for resale.

23 For the purpose of electric sales by an on-site generation facility
24 pursuant to this subsection, an end use customer's property shall be
25 considered contiguous to the property on which the on-site
26 generation facility serving that customer is located if the customer
27 is purchasing thermal energy services produced by the facility, for
28 use for heating, air conditioning, or both, regardless of any
29 intervening property, public thoroughfare, transportation, or utility-
30 owned right-of-way. The State Treasurer shall monitor monies
31 deposited into the Energy Tax Receipts Property Tax Relief Fund
32 on an annual basis and may report the results of the State
33 Treasurer's analysis on the fund to the Governor and the
34 Legislature, along with any recommendations on the exemptions in
35 this subsection.

36 b. Receipts from the purchase or use of the following are
37 exempt from the tax imposed under the **[Sales and Use Tax Act]**
38 "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.):

39 (1) Natural gas or utility service that is used to generate
40 electricity that is sold for resale or to an end user other than the end
41 user upon whose property is located a co-generation facility or self-
42 generation unit that generated the electricity or upon the property
43 purchased or leased from the end user by the person owning the co-
44 generation facility or self-generation unit if such property is
45 contiguous to the user's property and is the property upon which is
46 located a co-generation facility or self-generation unit that
47 generated the electricity; and

1 (2) Natural gas and utility service that is used for co-generation
2 at any site **【**at which a co-generation facility was in operation on or
3 before March 10, 1997, or for which an application for an operating
4 permit or a construction permit and a certificate of operation in
5 order to comply with air quality standards under P.L.1954, c.212
6 (C.26:2C-1 et seq.) has been filed with the Department of
7 Environmental Protection on or before March 10, 1997, to produce
8 electricity for use on that site**】**.

9 (cf: P.L.1999, c.23, s.62)

10

11 4. This act shall take effect immediately.