

[Third Reprint]

ASSEMBLY, No. 3520

STATE OF NEW JERSEY
213th LEGISLATURE

INTRODUCED DECEMBER 8, 2008

Sponsored by:

Assemblyman UPENDRA J. CHIVUKULA

District 17 (Middlesex and Somerset)

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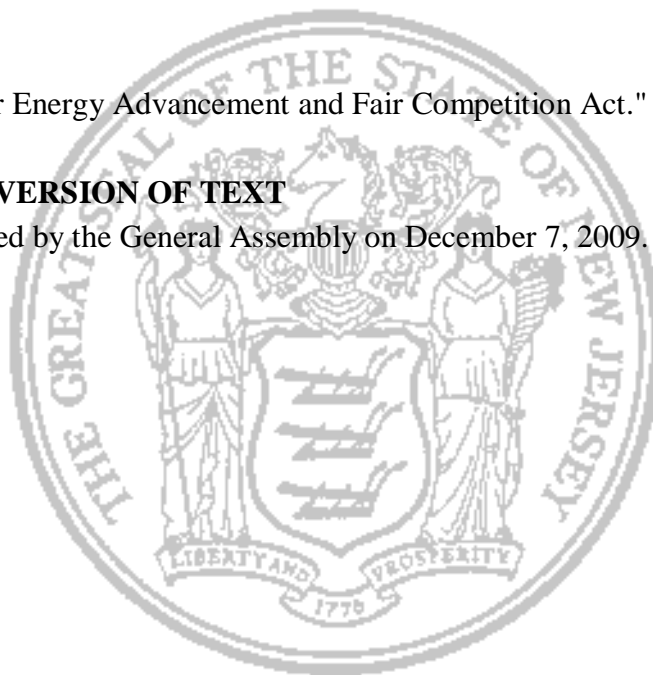
Senators B.Smith, Baroni and Bateman

SYNOPSIS

"The Solar Energy Advancement and Fair Competition Act."

CURRENT VERSION OF TEXT

As amended by the General Assembly on December 7, 2009.



(Sponsorship Updated As Of: 1/12/2010)

1 AN ACT concerning solar energy development and amending
2 P.L.1999, c.23.

3

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

6

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

9 3. As used in this act:

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

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

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

33 "Basic generation service provider" or "provider" means a
34 provider of basic generation service;

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,

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:

¹Assembly floor amendments adopted March 16, 2009.

²Assembly floor amendments adopted May 21, 2009.

³Assembly floor amendments adopted December 7, 2009.

1 stranded costs, and restructuring filings pursuant to P.L.1999, c.23
2 (C.48:3-49 et al.). Basic generation service transition costs shall
3 include, but are not limited to, costs of purchases from the spot
4 market, bilateral contracts, contracts with non-utility generators,
5 parting contracts with the purchaser of the electric public utility's
6 divested generation assets, short-term advance purchases, and
7 financial instruments such as hedging, forward contracts, and
8 options. Basic generation service transition costs shall also include
9 the payments by an electric public utility pursuant to a competitive
10 procurement process for basic generation service supply during the
11 transition period, and costs of any such process used to procure the
12 basic generation service supply;

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

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

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

47 "Competitive service" means any service offered by an electric
48 public utility or a gas public utility that the board determines to be

1 competitive pursuant to section 8 or section 10 of **[this act]**
2 P.L.1999, c.23 (C.48:3-56 or C.48:3-58) or that is not regulated by
3 the board;

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

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

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

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

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

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

38 "Electric power supplier" means a person or entity that is duly
39 licensed pursuant to the provisions of **[this act]** P.L.1999, c.23
40 (C.48:3-49 et al.) to offer and to assume the contractual and legal
41 responsibility to provide electric generation service to retail
42 customers, and includes load serving entities, marketers and brokers
43 that offer or provide electric generation service to retail customers.
44 The term excludes an electric public utility that provides electric
45 generation service only as a basic generation service pursuant to
46 section 9 of **[this act]** P.L.1999, c.23 (C.48:3-57) ¹or an electric
47 public utility that invests in Class I renewable energy resources or
48 offers Class I renewable energy programs pursuant to section 13 of

1 P.L.2007, c.340 (C.48:3-98.1)¹ . An electric power supplier shall
2 also include a person that generates electricity or buys electric
3 generation service, and sells it to the grid or others for use by retail
4 customers ¹but shall not include an electric public utility that
5 invests in Class I renewable energy resources or offers Class I
6 renewable energy programs pursuant to section 13 of P.L.2007,
7 c.340 (C.48:3-98.1)¹;

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

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

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

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

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

31 "Energy efficiency portfolio standard" means a requirement to
32 procure a specified amount of energy efficiency or demand side
33 management resources as a means of managing and reducing energy
34 usage and demand by customers;

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

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

44 "Gas related service" means a service that is directly related to
45 the consumption of gas by an end user, including, but not limited to,
46 the installation of demand side management measures at the end
47 user's premises, the maintenance, repair or replacement of

1 appliances or other energy-consuming devices at the end user's
2 premises, and the provision of energy consumption measurement
3 and billing services;

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

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

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

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

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

42 "Greenhouse gas emissions portfolio standard" means a
43 requirement that addresses or limits the amount of carbon dioxide
44 emissions indirectly resulting from the use of electricity as applied
45 to any electric power suppliers and basic generation service
46 providers of electricity;

47 "Leakage" means an increase in greenhouse gas emissions
48 related to generation sources located outside of the State that are not

1 subject to a state, interstate or regional greenhouse gas emissions
2 cap or standard that applies to generation sources located within the
3 State;

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
48 is a public utility holding company by virtue of this definition,

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

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

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

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

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

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

1 weeks of base pay for each year of full-time employment, and a
2 maximum of 24 months' continued health care coverage. Except as
3 to expenses related to employees affected by restructuring,
4 "restructuring related costs" shall not include going forward costs;

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

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

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

25 "Societal benefits charge" means a charge imposed by an electric
26 public utility, at a level determined by the board, pursuant to, and in
27 accordance with, section 12 of **[this act]** P.L.1999, c.23 (C.48:3-
28 60);

29 "Solar alternative compliance payment" or "SACP" means a
30 payment of a certain dollar amount per megawatt hour (MWh)
31 which an electric power supplier or provider may submit to the
32 board in order to comply with the solar electric generation
33 requirements under section 38 of P.L.1999, c.23 (C.48:3-87);

34 "Solar renewable energy certificate" or "SREC" means 'a
35 certificate issued by the board or its designee, representing¹ one
36 megawatt hour (MWh) of '[photovoltaic electricity generated]
37 solar energy that is generated by a facility connected to the
38 distribution system¹ in this State 'and has value driven based on the
39 market¹;

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

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

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

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

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

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

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

37 (cf: P.L.2002, c.84, s.1)²

38
39 ²1. Section 3 of P.L.1999, c.23 (C.48:3-51) is amended to read
40 as follows:

41 3. As used in this act:

42 "Assignee" means a person to which an electric public utility or
43 another assignee assigns, sells or transfers, other than as security,
44 all or a portion of its right to or interest in bondable transition
45 property. Except as specifically provided in P.L.1999, c.23
46 (C.48:3-49 et al.), an assignee shall not be subject to the public

1 utility requirements of Title 48 or any rules or regulations adopted
2 pursuant thereto;

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

10 "Basic generation service" or "BGS" means electric generation
11 service that is provided, [pursuant to section 9 of P.L.1999, c.23
12 (C.48:3-57),] to any customer that has not chosen an alternative
13 electric power supplier, whether or not the customer has received
14 offers [as to] for competitive supply options, including, but not
15 limited to, any customer that cannot obtain such service from an
16 electric power supplier for any reason, including non-payment for
17 services. Basic generation service is not a competitive service and
18 shall be fully regulated by the board;

19 "Basic generation service provider" or "provider" means a
20 provider of basic generation service;

21 "Basic generation service transition costs" means the amount by
22 which the payments by an electric public utility for the procurement
23 of power for basic generation service and related ancillary and
24 administrative costs exceeds the net revenues from the basic
25 generation service charge established by the board pursuant to
26 section 9 of P.L.1999, c.23 (C.48:3-57) during the transition period,
27 together with interest on the balance at the board-approved rate, that
28 is reflected in a deferred balance account approved by the board in
29 an order addressing the electric public utility's unbundled rates,
30 stranded costs, and restructuring filings pursuant to P.L.1999, c.23
31 (C.48:3-49 et al.). Basic generation service transition costs shall
32 include, but are not limited to, costs of purchases from the spot
33 market, bilateral contracts, contracts with non-utility generators,
34 parting contracts with the purchaser of the electric public utility's
35 divested generation assets, short-term advance purchases, and
36 financial instruments such as hedging, forward contracts, and
37 options. Basic generation service transition costs shall also include
38 the payments by an electric public utility pursuant to a competitive
39 procurement process for basic generation service supply during the
40 transition period, and costs of any such process used to procure the
41 basic generation service supply;

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

44 "Bondable stranded costs" means any stranded costs or basic
45 generation service transition costs of an electric public utility
46 approved by the board for recovery pursuant to the provisions of
47 P.L.1999, c.23 (C.48:3-49 et al.), together with, as approved by the
48 board: (1) the cost of retiring existing debt or equity capital of the

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

19 "Bondable stranded costs rate order" means one or more
20 irrevocable written orders issued by the board pursuant to P.L.1999,
21 c.23 (C.48:3-49 et al.) which determines the amount of bondable
22 stranded costs and the initial amount of transition bond charges
23 authorized to be imposed to recover such bondable stranded costs,
24 including the costs to be financed from the proceeds of the
25 transition bonds, as well as on-going costs associated with servicing
26 and credit enhancing the transition bonds, and provides the electric
27 public utility specific authority to issue or cause to be issued,
28 directly or indirectly, transition bonds through a financing entity
29 and related matters as provided in P.L.1999, c.23, which order shall
30 become effective immediately upon the written consent of the
31 related electric public utility to such order as provided in P.L.1999,
32 c.23;

33 "Bondable transition property" means the property consisting of
34 the irrevocable right to charge, collect and receive, and be paid
35 from collections of, transition bond charges in the amount necessary
36 to provide for the full recovery of bondable stranded costs which
37 are determined to be recoverable in a bondable stranded costs rate
38 order, all rights of the related electric public utility under such
39 bondable stranded costs rate order including, without limitation, all
40 rights to obtain periodic adjustments of the related transition bond
41 charges pursuant to subsection b. of section 15 of P.L.1999, c.23
42 (C.48:3-64), and all revenues, collections, payments, money and
43 proceeds arising under, or with respect to, all of the foregoing;

44 "British thermal unit" or "Btu" means the amount of heat
45 required to increase the temperature of one pound of water by one
46 degree Fahrenheit;

47 "Broker" means a duly licensed electric power supplier that
48 assumes the contractual and legal responsibility for the sale of

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

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

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

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

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

29 "Combined heat and power facility" means a facility which
30 produces electric energy, steam or other forms of useful energy
31 such as heat, which are used for industrial, commercial, heating or
32 cooling purposes;

33 "Competitive service" means any service offered by an electric
34 public utility or a gas public utility that the board determines to be
35 competitive pursuant to section 8 or section 10 of P.L.1999, c.23
36 (C.48:3-56 or C.48:3-58) or that is not regulated by the board;

37 "Commercial and industrial energy pricing class customer" or
38 "CIEP class customer" means that group of non-residential
39 customers with high peak demand, as determined by periodic board
40 order, which either is eligible or which would be eligible, as
41 determined by periodic board order, to receive funds from the Retail
42 Margin Fund established pursuant to section 9 of P.L.1999, c.23
43 (C.48:3-57) and for which basic generation service is hourly-priced;

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

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

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

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

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

19 "Electric power generator" means an entity that proposes to
20 construct, own, lease or operate, or currently owns, leases or
21 operates, an electric power production facility that will sell or does
22 sell at least 90 percent of its output, either directly or through a
23 marketer, to a customer or customers located at sites that are not on
24 or contiguous to the site on which the facility will be located or is
25 located. The designation of an entity as an electric power generator
26 for the purposes of P.L.1999, c.23 (C.48:3-49 et al.) shall not, in
27 and of itself, affect the entity's status as an exempt wholesale
28 generator under the Public Utility Holding Company Act of 1935,
29 15 U.S.C.s.79 et seq.;

30 "Electric power supplier" means a person or entity that is duly
31 licensed pursuant to the provisions of P.L.1999, c.23 (C.48:3-49 et
32 al.) to offer and to assume the contractual and legal responsibility to
33 provide electric generation service to retail customers, and includes
34 load serving entities, marketers and brokers that offer or provide
35 electric generation service to retail customers. The term excludes an
36 electric public utility that provides electric generation service only
37 as a basic generation service pursuant to section 9 of P.L.1999, c.23
38 (C.48:3-57);

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

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

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

5 "Energy agent" means a person that is duly registered pursuant to
6 the provisions of P.L.1999, c.23 (C.48:3-49 et al.), that arranges the
7 sale of retail electricity or electric related services or retail gas
8 supply or gas related services between government aggregators or
9 private aggregators and electric power suppliers or gas suppliers,
10 but does not take title to the electric or gas sold;

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

14 "Energy efficiency portfolio standard" means a requirement to
15 procure a specified amount of energy efficiency or demand side
16 management resources as a means of managing and reducing energy
17 usage and demand by customers;

18 ³"Energy year" or "EY" means the 12-month period from June 1st
19 through May 31st and shall be numbered according to the calendar
20 year in which it ends;³

21 "Financing entity" means an electric public utility, a special
22 purpose entity, or any other assignee of bondable transition
23 property, which issues transition bonds. Except as specifically
24 provided in P.L.1999, c.23 (C.48:3-49 et al.), a financing entity
25 which is not itself an electric public utility shall not be subject to
26 the public utility requirements of Title 48 or any rules or regulations
27 adopted pursuant thereto;

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

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

37 "Gas supplier" means a person that is duly licensed pursuant to
38 the provisions of P.L.1999, c.23 (C.48:3-49 et al.) to offer and
39 assume the contractual and legal obligation to provide gas supply
40 service to retail customers, and includes, but is not limited to,
41 marketers and brokers. A non-public utility affiliate of a public
42 utility holding company may be a gas supplier, but a gas public
43 utility or any subsidiary of a gas utility is not a gas supplier. In the
44 event that a gas public utility is not part of a holding company legal
45 structure, a related competitive business segment of that gas public
46 utility may be a gas supplier, provided that related competitive
47 business segment is structurally separated from the gas public
48 utility, and provided that the interactions between the gas public

1 utility and the related competitive business segment are subject to
2 the affiliate relations standards adopted by the board pursuant to
3 subsection k. of section 10 of P.L.1999, c.23 (C.48:3-58);

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

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

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

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

27 "Greenhouse gas emissions portfolio standard" means a
28 requirement that addresses or limits the amount of carbon dioxide
29 emissions indirectly resulting from the use of electricity as applied
30 to any electric power suppliers and basic generation service
31 providers of electricity;

32 "Leakage" means an increase in greenhouse gas emissions
33 related to generation sources located outside of the State that are not
34 subject to a state, interstate or regional greenhouse gas emissions
35 cap or standard that applies to generation sources located within the
36 State;

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

44 "Marketer" means a duly licensed electric power supplier that
45 takes title to electric energy and capacity, transmission and other
46 services from electric power generators and other wholesale
47 suppliers and then assumes the contractual and legal obligation to
48 provide electric generation service, and may include transmission

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

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

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

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

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

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

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

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

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

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

18 ³"Renewable energy certificate" or "REC" means a certificate
19 representing the environmental benefits or attributes of one
20 megawatt-hour of generation from a generating facility that
21 produces Class I or Class II renewable energy, but shall not include
22 a solar renewable energy certificate.³

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

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

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

1 electric generation service or gas supply service to retail customers,
2 consistent with the provisions of P.L.1999, c.23 (C.48:3-49 et al.);

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

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

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

27 "Societal benefits charge" means a charge imposed by an electric
28 public utility, at a level determined by the board, pursuant to, and in
29 accordance with, section 12 of P.L.1999, c.23 (C.48:3-60);

30 "Solar alternative compliance payment" or "SACP" means a
31 payment of a certain dollar amount per megawatt hour (MWh)
32 which an electric power supplier or provider may submit to the
33 board in order to comply with the solar electric generation
34 requirements under section 38 of P.L.1999, c.23 (C.48:3-87);

35 "Solar renewable energy certificate" or "SREC" means a
36 certificate issued by the board or its designee, representing one
37 megawatt hour (MWh) of solar energy that is generated by a facility
38 connected to the distribution system in this State and has value
39 based upon, and driven by, the energy market;

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

47 "Stranded costs recovery order" means each order issued by the
48 board in accordance with subsection c. of section 13 of P.L.1999,

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

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

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

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

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

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

36 "Universal service" means any service approved by the board
37 with the purpose of assisting low-income residential customers in
38 obtaining or retaining electric generation or delivery service.²

39 (cf: P.L.2009, c.34, s.1)

40

41 2. Section 38 of P.L.1999, c.23 (C.48:3-87) is amended to read
42 as follows:

43 38. a. The board shall require an electric power supplier or
44 basic generation service provider to disclose on a customer's bill or
45 on customer contracts or marketing materials, a uniform, common
46 set of information about the environmental characteristics of the
47 energy purchased by the customer, including, but not limited to:

1 (1) Its fuel mix, including categories for oil, gas, nuclear, coal,
2 solar, hydroelectric, wind and biomass, or a regional average
3 determined by the board;

4 (2) Its emissions, in pounds per megawatt hour, of sulfur
5 dioxide, carbon dioxide, oxides of nitrogen, and any other pollutant
6 that the board may determine to pose an environmental or health
7 hazard, or an emissions default to be determined by the board; and

8 (3) Any discrete emission reduction retired pursuant to rules and
9 regulations adopted pursuant to P.L.1995, c.188.

10 b. Notwithstanding any provisions of the "Administrative
11 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the
12 contrary, the board shall initiate a proceeding and shall adopt, in
13 consultation with the Department of Environmental Protection, after
14 notice and opportunity for public comment and public hearing,
15 interim standards to implement this disclosure requirement,
16 including, but not limited to:

17 (1) A methodology for disclosure of emissions based on output
18 pounds per megawatt hour;

19 (2) Benchmarks for all suppliers and basic generation service
20 providers to use in disclosing emissions that will enable consumers
21 to perform a meaningful comparison with a supplier's or basic
22 generation service provider's emission levels; and

23 (3) A uniform emissions disclosure format that is graphic in
24 nature and easily understandable by consumers. The board shall
25 periodically review the disclosure requirements to determine if
26 revisions to the environmental disclosure system as implemented
27 are necessary.

28 Such standards shall be effective as regulations immediately
29 upon filing with the Office of Administrative Law and shall be
30 effective for a period not to exceed 18 months, and may, thereafter,
31 be amended, adopted or readopted by the board in accordance with
32 the provisions of the "Administrative Procedure Act."

33 c. (1) The board may adopt, in consultation with the
34 Department of Environmental Protection, after notice and
35 opportunity for public comment, an emissions portfolio standard
36 applicable to all electric power suppliers and basic generation
37 service providers, upon a finding that:

38 (a) The standard is necessary as part of a plan to enable the State
39 to meet federal Clean Air Act or State ambient air quality standards;
40 and

41 (b) Actions at the regional or federal level cannot reasonably be
42 expected to achieve the compliance with the federal standards.

43 (2) By July 1, 2009, the board shall adopt, pursuant to the
44 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
45 seq.), a greenhouse gas emissions portfolio standard to mitigate
46 leakage or another regulatory mechanism to mitigate leakage
47 applicable to all electric power suppliers and basic generation
48 service providers that provide electricity to customers within the

1 State. The greenhouse gas emissions portfolio standard or any other
2 regulatory mechanism to mitigate leakage shall:

3 (a) Allow a transition period, either before or after the effective
4 date of the regulation to mitigate leakage, for a basic generation
5 service provider or electric power supplier to either meet the
6 emissions portfolio standard or other regulatory mechanism to
7 mitigate leakage, or to transfer any customer to a basic generation
8 service provider or electric power supplier that meets the emissions
9 portfolio standard or other regulatory mechanism to mitigate
10 leakage. If the transition period allowed pursuant to this
11 subparagraph occurs after the implementation of an emissions
12 portfolio standard or other regulatory mechanism to mitigate
13 leakage, the transition period shall be no longer than three years;
14 and

15 (b) Exempt the provision of basic generation service pursuant to
16 a basic generation service purchase and sale agreement effective
17 prior to the date of the regulation.

18 Unless the Attorney General or the Attorney General's designee
19 determines that a greenhouse gas emissions portfolio standard
20 would unconstitutionally burden interstate commerce or would be
21 preempted by federal law, the adoption by the board of an electric
22 energy efficiency portfolio standard pursuant to subsection g. of this
23 section, a gas energy efficiency portfolio standard pursuant to
24 subsection h. of this section, or any other enhanced energy
25 efficiency policies to mitigate leakage shall not be considered
26 sufficient to fulfill the requirement of this subsection for the
27 adoption of a greenhouse gas emissions portfolio standard or any
28 other regulatory mechanism to mitigate leakage.

29 d. Notwithstanding any provisions of the "Administrative
30 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the
31 contrary, the board shall initiate a proceeding and shall adopt, after
32 notice, provision of the opportunity for comment, and public
33 hearing, **[interim]** renewable energy portfolio standards that shall
34 require:

35 (1) that two and one-half percent of the kilowatt hours sold in
36 this State by each electric power supplier and each basic generation
37 service provider be from Class I or Class II renewable energy
38 sources; and

39 (2) beginning on January 1, 2001, that one-half of one percent of
40 the kilowatt hours sold in this State by each electric power supplier
41 and each basic generation service provider be from Class I
42 renewable energy sources. The board shall increase the required
43 percentage for Class I renewable energy sources so that by January
44 1, 2006, one percent of the kilowatt hours sold in this State by each
45 electric power supplier and each basic generation service provider
46 shall be from Class I renewable energy sources and shall
47 additionally increase the required percentage for Class I renewable
48 energy sources by one-half of one percent each year until January 1,

1 2012, when four percent of the kilowatt hours sold in this State by
 2 each electric power supplier and each basic generation service
 3 provider shall be from Class I renewable energy sources.

4 [An electric power supplier or basic generation service provider
 5 may satisfy the requirements of this subsection by participating in a
 6 renewable energy trading program approved by the board in
 7 consultation with the Department of Environmental Protection.]

8 ¹An electric power supplier or basic generation service provider
 9 may satisfy the requirements of this subsection by participating in a
 10 renewable energy trading program approved by the board in
 11 consultation with the Department of Environmental Protection.¹

12 (3) that the board establish a multi-year schedule, applicable to
 13 each electric power supplier or basic generation service provider in
 14 this State, beginning with the one-year period commencing on
 15 ³[June 1, 2009] June 1, 2010³, and continuing for each subsequent
 16 one-year period up to and including, the one-year period
 17 commencing on ³[June 1, 2026] June 1, 2025³, that requires that
 18 suppliers or providers to purchase at least the following number of
 19 kilowatt-hours from solar electric power generators in this State:

20 ³[EY 2010 195 Gigawatthours (Gwhrs)]³
 21 EY 2011 ³[273 Gwhrs] 306 Gigawatthours (Gwhrs)³
 22 EY 2012 ³[396] 442³ Gwhrs
 23 EY 2013 ³[554] 596³ Gwhrs
 24 EY 2014 ³[748] 772³ Gwhrs
 25 EY 2015 ³[973] 965³ Gwhrs
 26 EY 2016 ³[1,216] 1,150³ Gwhrs
 27 EY 2017 ³[1,459] 1,357³ Gwhrs
 28 EY 2018 ³[1,751] 1,591³ Gwhrs
 29 EY 2019 ³[2,101] 1,858³ Gwhrs
 30 EY 2020 ³[2,521] 2,164³ Gwhrs
 31 EY 2021 ³[3,025] 2,518³ Gwhrs
 32 EY 2022 ³[3,479] 2,928³ Gwhrs
 33 EY 2023 ³[4,001] 3,433³ Gwhrs
 34 EY 2024 ³[4,601] 3,989³ Gwhrs
 35 EY 2025 ³[5,291] 4,610³ Gwhrs
 36 EY 2026 ³[6,085] 5,316³ Gwhrs

37 ³EY 2027, and for every energy year thereafter, at least 5,316
 38 Gwhrs per energy year³ to reflect an increasing number of kilowatt-
 39 hours to be purchased by suppliers or providers from solar electric
 40 power generators in this State, and to establish a framework within
 41 which suppliers and providers shall purchase at least ³[3,025]
 42 2,518³ Gwhrs in the ³energy³ year 2021 and ³[6,085] 5,316³ Gwhrs
 43 in the ³energy³ year 2026 from solar electric power generators in
 44 this State, provided, however, that the number of solar kilowatt-
 45 hours required to be purchased by each supplier or provider, when

1 expressed as a percentage of the total number of solar kilowatt-
2 hours purchased in this State, shall be equivalent to each supplier's
3 or provider's proportionate share of the total number of kilowatt-
4 hours sold in this State by all suppliers and providers.

5 ³The solar renewable portfolio standards requirements in
6 paragraph (3) of this subsection shall automatically increase by 20%
7 for the remainder of the schedule in the event that the following two
8 conditions are met: (a) the number of SRECs generated meets or
9 exceeds the requirement for three consecutive reporting years,
10 starting with energy year 2013; and (b) the average SREC price for
11 all SRECs purchased by entities with renewable energy portfolio
12 standards obligations has decreased in the same three consecutive
13 reporting years. The board shall exempt providers' existing supply
14 contracts that are: (a) effective prior to the date of P.L. , c. (C.
15)(pending before the Legislature as this bill); or (b) effective prior
16 to any future increase in the solar renewable portfolio standard
17 beyond the multi-year schedule established in paragraph (3) of this
18 subsection. This exemption shall apply to the number of SRECs
19 that exceeds the number mandated by the solar renewable portfolio
20 standards requirements that were in effect on the date that the
21 providers executed their existing supply contracts. This limited
22 exemption for providers' existing supply contracts shall not be
23 construed to lower the Statewide solar purchase requirements set
24 forth in paragraph (3) of this subsection. Such incremental new
25 requirements shall be distributed over the electric power suppliers
26 and providers not subject to the existing supply contract exemption
27 until such time as existing supply contracts expire and all suppliers
28 are subject to the new requirement.³

29 An electric power supplier or basic generation service provider
30 may satisfy the requirements of this subsection by participating in a
31 renewable energy trading program approved by the board in
32 consultation with the Department of Environmental Protection, or
33 compliance with the requirements of this subsection may be
34 demonstrated to the board by suppliers or providers through the
35 purchase of SRECs.

36 **[Such]** The renewable energy ³portfolio³ standards adopted by
37 the board pursuant to paragraphs (1) and (2) of this subsection shall
38 be effective as regulations immediately upon filing with the Office
39 of Administrative Law and shall be effective for a period not to
40 exceed 18 months, and may, thereafter, be amended, adopted or
41 readopted by the board in accordance with the provisions of the
42 "Administrative Procedure Act."

43 The renewable energy ³portfolio³ standards adopted by the board
44 pursuant to paragraph (3) of this subsection shall be effective as
45 regulations immediately upon filing with the Office of
46 Administrative Law and shall be effective for a period not to exceed
47 30 months after such filing, and shall, thereafter, be amended,

1 adopted or readopted by the board in accordance with the
2 "Administrative Procedure Act."

3 e. Notwithstanding any provisions of the "Administrative
4 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the
5 contrary, the board shall initiate a proceeding and shall adopt, after
6 notice, provision of the opportunity for comment, and public
7 hearing:

8 (1) net metering standards for electric power suppliers and basic
9 generation service providers. The standards shall require electric
10 power suppliers and basic generation service providers to offer net
11 metering at non-discriminatory rates to industrial, large
12 commercial, residential and small commercial customers, as those
13 customers are classified or defined by the board, that generate
14 electricity, on the customer's side of the meter, using a Class I
15 renewable energy source, for the net amount of electricity supplied
16 by the electric power supplier or basic generation service provider
17 over an annualized period. ³Systems of any sized capacity, as
18 measured in watts, are eligible for net metering³], up to a
19 maximum limit established by the board, however such limits may
20 not depend on customer specific factors, including, but not limited
21 to, historical usage³].¹ If the amount of electricity generated by the
22 customer-generator plus any kilowatt hour credits held over from
23 the previous billing periods, exceeds the electricity supplied by the
24 electric power supplier or basic generation service provider, then
25 the electric power supplier or basic generation service provider, as
26 the case may be, shall credit the customer-generator for the excess
27 kilowatt hours until the end of the annualized period at which point
28 the customer-generator will be compensated for any remaining
29 credits or, if the customer-generator chooses, credit the customer-
30 generator on a real-time basis, at the electric power supplier's or
31 basic generation service provider's avoided cost of wholesale power
32 or the PJM power pool's real-time locational marginal pricing rate,
33 adjusted for losses, for the respective zone in the PJM electric
34 power pool. Alternatively, the customer-generator may execute a
35 bilateral agreement with an electric power supplier or basic
36 generation service provider for the sale and purchase of the
37 customer-generator's excess generation. The customer-generator
38 may be credited on a real-time basis, so long as the customer-
39 generator follows applicable rules prescribed by the PJM electric
40 power pool for its capacity requirements for the net amount of
41 electricity supplied by the electric power supplier or basic
42 generation service provider. The board may authorize an electric
43 power supplier or basic generation service provider to cease
44 offering net metering whenever the total rated generating capacity
45 owned and operated by net metering customer-generators Statewide
46 equals 2.5 percent of the State's peak electricity demand;

1 (2) safety and power quality interconnection standards for Class
2 I renewable energy source systems used by a customer-generator
3 that shall be eligible for net metering.

4 Such standards or rules shall take into consideration the goals of
5 the New Jersey Energy Master Plan, applicable industry standards
6 and the standards of other states and the Institute of Electrical and
7 Electronic Engineers. The board shall allow electric public utilities
8 to recover the costs of any new net meters, upgraded net meters,
9 system reinforcements or upgrades, and interconnection costs
10 through either their regulated rates or from the net metering
11 customer-generator; and

12 (3) credit or other incentive rules for generators using Class I
13 renewable energy generation systems that connect to New Jersey's
14 electric public utilities' distribution system but who do not net
15 meter.

16 Such rules shall require the board or its designee to issue a credit
17 or other incentive to those generators that do not use a net meter but
18 otherwise generate electricity derived from a Class I renewable
19 energy source and to issue an enhanced credit or other incentive,
20 including, but not limited to, a solar renewable energy credit, to
21 those generators that generate electricity derived from solar
22 technologies.

23 Such standards or rules shall be effective as regulations
24 immediately upon filing with the Office of Administrative Law and
25 shall be effective for a period not to exceed 18 months, and may,
26 thereafter, be amended, adopted or readopted by the board in
27 accordance with the provisions of the "Administrative Procedure
28 Act."

29 f. The board may assess, by written order and after notice and
30 opportunity for comment, a separate fee to cover the cost of
31 implementing and overseeing an emission disclosure system or
32 emission portfolio standard, which fee shall be assessed based on an
33 electric power supplier's or basic generation service provider's share
34 of the retail electricity supply market. The board shall not impose a
35 fee for the cost of implementing and overseeing a greenhouse gas
36 emissions portfolio standard adopted pursuant to paragraph (2) of
37 subsection c. of this section, the electric energy efficiency portfolio
38 standard adopted pursuant to subsection g. of this section, or the gas
39 energy efficiency portfolio standard adopted pursuant to subsection
40 h. of this section.

41 g. The board may adopt, pursuant to the "Administrative
42 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), an electric
43 energy efficiency portfolio standard that may require each electric
44 public utility to implement energy efficiency measures that reduce
45 electricity usage in the State by 2020 to a level that is 20 percent
46 below the usage projected by the board in the absence of such a
47 standard. Nothing in this section shall be construed to prevent an
48 electric public utility from meeting the requirements of this section

1 by contracting with another entity for the performance of the
2 requirements.

3 h. The board may adopt, pursuant to the "Administrative
4 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), a gas energy
5 efficiency portfolio standard that may require each gas public utility
6 to implement energy efficiency measures that reduce natural gas
7 usage for heating in the State by 2020 to a level that is 20 percent
8 below the usage projected by the board in the absence of such a
9 standard. Nothing in this section shall be construed to prevent a gas
10 public utility from meeting the requirements of this section by
11 contracting with another entity for the performance of the
12 requirements.

13 [i. As used in this section:

14 "Energy efficiency portfolio standard" means a requirement to
15 procure a specified amount of energy efficiency or demand side
16 management resources as a means of managing and reducing energy
17 usage and demand by customers.

18 "Greenhouse gas emissions portfolio standard" means a
19 requirement that addresses or limits the amount of carbon dioxide
20 emissions indirectly resulting from the use of electricity as applied
21 to any electric power suppliers and basic generation service
22 providers of electricity.

23 "Leakage" means an increase in greenhouse gas emissions
24 related to generation sources located outside of the State that are not
25 subject to a state, interstate or regional greenhouse gas emissions
26 cap or standard that applies to generation sources located within the
27 State.]

28 i. After the board establishes a schedule of solar kilowatt-hour
29 sale or purchase requirements pursuant to paragraph (3) of
30 subsection d. of this section, the board may initiate subsequent
31 proceedings and adopt, after appropriate notice and opportunity for
32 public comment and public hearing, increased minimum solar
33 kilowatt-hour sale or purchase requirements, provided that the
34 board shall not reduce previously established minimum solar
35 kilowatt-hour sale or purchase requirements³, or otherwise impose
36 constraints that reduce the requirements by any means³.

37 j. The board shall determine an appropriate level of solar
38 alternative compliance payment, and establish³ [at least]³ a³ [ten-
39 year] 15-year³ solar alternative compliance payment schedule, that
40 permits each supplier or provider to submit an SACP to comply
41 with the solar electric generation requirements of paragraph (3) of
42 subsection d. of this section. The board may initiate subsequent
43 proceedings and adopt, after appropriate notice and opportunity for
44 public comment and public hearing, an increase in solar alternative
45 compliance payments, provided that the board shall not reduce
46 previously established levels of solar alternative compliance
47 payments¹, nor shall the board provide relief from the obligation of

1 payment of the SACP^{1 3} by the electric power suppliers or basic
2 generation service providers in any form. Any SACP payments
3 collected shall be refunded directly to the ratepayers by the electric
4 public utilities³.

5 k. The board may allow electric public utilities to offer long-
6 term contracts and other means of financing, including but not
7 limited to loans, for the purchase of SRECs and the resale of SRECs
8 to suppliers or providers or others, provided that after such
9 contracts have been approved by the board, the board's approvals
10 shall not be modified by subsequent board orders.

11 l. The board shall implement its responsibilities under the
12 provisions of this section in such a manner as to:

13 (1) place greater reliance on competitive markets¹, with the
14 explicit goal of encouraging and ensuring the emergence of new
15 entrants that can foster innovations and price competition¹;

16 (2) maintain adequate regulatory authority over non-competitive
17 public utility services;

18 (3) consider alternative forms of regulation in order to address
19 changes in the technology and structure of electric public utilities;

20 (4) promote energy efficiency and Class I renewable energy
21 market development, taking into consideration environmental
22 benefits and market barriers;

23 (5) make energy services more affordable for low and moderate
24 income customers:³[and]³

25 (6) attempt to transform the renewable energy market into one
26 that can move forward without subsidies from the State or public
27 utilities³[.] :

28 (7) achieve the goals put forth under the renewable energy
29 portfolio standards;

30 (8) promote the lowest cost to ratepayers; and

31 (9) allow all market segments to participate.³

32 m. ³[Long-term contracts, loans, SRECs, or other financial
33 support under the board's jurisdiction shall be offered to customers
34 within, but not limited to, defined market segments consisting of the
35 residential segment, the commercial and industrial segment, the
36 multi-family and affordable housing segment, and the municipal
37 and not-for-profit segment, in order to promote participation by
38 residential, low-income, and other customers in solar electric
39 generation projects, to promote the creation of solar energy jobs
40 within this State, and to promote the growth of businesses that are
41 based within this State] The board shall ensure the availability of
42 financial incentives under its jurisdiction, including, but not limited
43 to, long-term contracts, loans, SRECs, or other financial support, to
44 ensure market diversity, competition, and appropriate coverage
45 across all ratepayer segments, including, but not limited to,
46 residential, commercial, industrial, non-profit, farms, schools, and
47 public entity customers³.

1 n. ¹['The board shall establish financial limits in order to ensure
2 that no single company, together with its affiliates, receives more
3 than 25 percent of the total solar electric generation projects in any
4 one market segment capacity annually, that are funded in whole, or
5 in part, through long-term contracts, loans, SRECs, or other
6 financial support under the board's jurisdiction.】 ²['Projects which
7 are owned by or directly invested in by electric distribution
8 companies or load serving entities that have renewable energy
9 portfolio standard obligations are not eligible to earn SRECs.】 ¹ For
10 projects which are owned, or directly invested in, by a public utility
11 pursuant to section 13 of P.L.2007, c.340 (C.48:3-98.1), the board
12 shall determine the number of SRECs with which such projects
13 shall be credited; and in determining such number the board shall
14 ensure that the market for SRECs does not detrimentally affect the
15 development of non-utility solar projects and shall consider how its
16 determination may impact the ratepayers. ²

17 o. The board, in consultation with the Department of
18 Environmental Protection, electric public utilities, the Division of
19 Rate Counsel in the Department of the Public Advocate, affected
20 members of the solar energy industry, and relevant stakeholders,
21 shall periodically consider increasing the renewable energy
22 portfolio standards beyond the minimum amounts set forth in
23 subsection d. of this section, taking into account the ¹cost impacts
24 and¹ public benefits of such increases including, but not limited to:

25 (1) reductions in air pollution, water pollution, land disturbance,
26 and greenhouse gas emissions;

27 (2) reductions in peak demand for electricity and natural gas,
28 and the overall impact on the costs to customers of electricity and
29 natural gas;

30 (3) increases in renewable energy development, manufacturing,
31 investment, and job creation opportunities in this State; and

32 (4) reductions in State and national dependence on the use of
33 fossil fuels.

34 ³p. Class I RECs shall be eligible for use in renewable energy
35 portfolio standards compliance in the energy year in which they are
36 generated, and for the following two energy years. SRECs shall be
37 eligible for use in renewable energy portfolio standards compliance
38 in the energy year in which they are generated, and for the
39 following two energy years. ³

40 (cf: P.L.2007, c.340, s.12)

41

42 3. This act shall take effect on the first day of the sixth month
43 following enactment, except that the board may take such action in
44 advance of the effective date as shall be necessary to implement the
45 provisions of this act.