

ASSEMBLY, No. 2148

STATE OF NEW JERSEY

INTRODUCED JUNE 17, 1996

By Assemblyman GUSCIORA

1 AN ACT concerning procedures for the review of public utility rate
2 increase petitions and amending R.S.48:2-21.

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

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7 1. R.S.48:2-21 is amended to read as follows:

8 48:2-21. Schedule of rates. (a) The board may require every
9 public utility to file with it complete schedules of every classification
10 employed and of every individual or joint rate, toll, fare or charge
11 made, charged or exacted by it for any product supplied or service
12 rendered within this State, as specified in the requirement.

13 Fix rates. (b) The board may after hearing, upon notice, by order
14 in writing:

15 1. Fix just and reasonable individual rates, joint rates, tolls, charges
16 or schedules thereof, as well as commutation, mileage and other
17 special rates which shall be imposed, observed and followed thereafter
18 by any public utility, whenever the board shall determine any existing
19 rate, toll, charge or schedule thereof, commutation, mileage or other
20 special rate to be unjust, unreasonable, insufficient or unjustly
21 discriminatory or preferential. In every such proceeding the board
22 shall complete and close the hearing within 6 months and enter its
23 final order within 8 months after the filing of the order of the board
24 initiating such proceeding, when such proceeding is on the board's
25 own motion; or after issue is joined through the filing of an answer
26 to a complaint, when such proceeding is initiated by complaint.

27 2. Fix just and reasonable joint rates, which shall be charged,
28 enforced, collected and observed by railroads and street railroads in
29 the carrying of freight. Whenever the railroads or street railroads
30 involved fail to agree upon the apportionment or division of a joint
31 rate so established, the board may issue a supplemental order declaring
32 the apportionment or division of the joint rate.

33 Demurrage rates. (c) The board may fix the rates or charges to be
34 made by any corporation subject to the provisions of this chapter for

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

Matter underlined thus is new matter.

1 the detention of a railroad car containing property transported by
2 railroad to any point in this State or for the use of railroad tracks
3 occupied by such car, commonly called demurrage or car service, or
4 for both such detention and use. Such rates and charges shall
5 conform as nearly as possible to the rates and charges for demurrage
6 or car service prescribed and fixed by the Interstate Commerce
7 Commission for similar service.

8 Increase in rates; hearings. (d) When any public utility shall
9 increase any existing individual rates, joint rates, tolls, charges or
10 schedules thereof, as well as commutation, mileage and other special
11 rates, or change or alter any existing classification, the board, either
12 upon written complaint or upon its own initiative, shall have power
13 after hearing, upon notice, by order in writing to determine whether
14 the increase, change or alteration is just and reasonable. The burden
15 of proof to show that the increase, change or alteration is just and
16 reasonable shall be upon the public utility making the same. The
17 board, pending such hearing and determination, may order the
18 suspension of the increase, change or alteration until the board shall
19 have approved the same, not exceeding 4 months. If the hearing and
20 determination shall not have been concluded within such 4 months the
21 board may during such hearing and determination order a further
22 suspension for an additional period not exceeding, 4 months. The
23 board shall approve the increase, change or alteration upon being
24 satisfied that the same is just and reasonable.

25 e. The burden of proof to show that an increase in base rates is just
26 and reasonable shall be upon the public utility, which shall be required
27 to demonstrate to the satisfaction of the board that any facility, project
28 or capital investment petitioned by the utility for inclusion in its rate
29 base is used and useful, and that the public utility, after considering all
30 reasonably available alternatives to the facility, project or capital
31 investment and other relevant factors, has chosen the least costly
32 means of providing safe, adequate and proper service as required
33 pursuant to R.S.48:2-23. For the purposes of this subsection, the term
34 "used and useful" means presently used to serve the consumers of a
35 public utility, and reasonably necessary for the provision of safe,
36 adequate, and proper service as required pursuant to R.S.48:2-23.

37 f. The board, in determining whether to include the reasonable
38 value of any facility, project or capital investment in the utility's rate
39 base, shall base its decision solely on the facts of record as determined
40 in a proceeding conducted as a "constested case," as defined pursuant
41 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1
42 et seq.). A stipulation of parties, whether in the pending petition or in
43 any other case or proceeding, including a petition for interim rate
44 relief, shall not preclude the board from making a determination of the
45 necessary components of the public utility's rate base or alter the

1 board's fact finding duties otherwise required by law.
2 (cf: P.L.1962, c.198, s.13)

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4 2. This act shall take effect immediately.

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STATEMENT

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9 This bill would require a public utility seeking an increase in rates
10 to demonstrate to the Board of Public Utilities (BPU) that any facility,
11 project or capital investment which the utility petitions for inclusion in
12 its rate base is "used and useful." Under the bill, the term "used and
13 useful" means that the facility, project or capital investment is
14 presently used to serve the utility's customers, and is reasonably
15 necessary for the provision of safe, adequate, and proper service, as
16 required by law. The public utility would also be required to
17 demonstrate that, after considering all reasonably available alternatives
18 to the facility, project or capital investment, it has chosen the least
19 costly means of providing safe, adequate and proper service.

20 The bill would also require the board, in determining whether to
21 include the reasonable value of any facility, project or capital
22 investment in the utility's rate base, to base its decision solely on facts
23 of record as determined in a proceeding conducted as a "contested
24 case," as defined pursuant to the "Administrative Procedure Act,"
25 P.L.1968, c.410 (C.52:14B-1 et seq.). The bill further requires the
26 BPU, when reviewing a public utility's petition to increase rates, to
27 render findings of fact based solely on the evidence of record as to
28 whether the public utility has met its burden of proof to demonstrate
29 the justness and reasonableness of the proposed rate increase. In
30 doing this, the bill codifies judicial precedent, and specifically provides
31 that a stipulation of parties, whether in the pending petition or in any
32 other case or proceeding, including a petition for interim rate relief,
33 could not preclude the board from making a determination of the
34 necessary components of the public utility's rate base or alter the
35 board's fact finding duties otherwise required by law.

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40 Requires public utility to demonstrate that inclusions in rate base are
41 used and useful when seeking rate increase.