

SENATE, No. 594

STATE OF NEW JERSEY

INTRODUCED JANUARY 29, 1996

By Senator McGREEVEY

1 AN ACT concerning alternative regulation of gas and electric rates and
2 amending P.L.1995, c.180.

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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. Section 5 of P.L.1995, c.180 (C.48:2-21.28) is amended to read
8 as follows:

9 5. a. An electric or gas public utility may petition the Board of
10 Public Utilities to be regulated under an alternative form of regulation,
11 for the setting of prices for all or a portion of its retail customer base,
12 for the recovery in rates of a particular asset or expenditure, or for the
13 purpose of creating incentives consistent with the provisions of this
14 act. The public utility shall submit its plan for an alternative form of
15 regulation with its petition. The public utility shall also file its petition
16 and plan concurrently with the Director of the Division of the
17 Ratepayer Advocate, or its successor. The public utility shall provide,
18 within 15 days of the filing of its petition and plan, notice of the
19 specific filing to the clerk of each municipality, to the clerk of each
20 Board of Chosen Freeholders, and to each county executive, in the
21 service territory of the public utility. The public utility shall also
22 provide, within 15 days of the filing, public notice to its customers of
23 the filing, either by notice in a newspaper that has a general circulation
24 in its service territory or by bill inserts as directed by the board. The
25 board shall review the plan and may approve the plan, or approve it
26 with modifications, if the board finds, after notice and hearing, that the
27 plan will provide benefits to customers of the public utility relative to
28 the pre-existing regulatory standards embodied in Title 48 of the
29 Revised Statutes based upon a finding that the plan:

30 (1) Is designed to achieve the State's objective of producing lower
31 rates for New Jersey consumers;

32 (2) Will provide incentives for the utility to lower its costs and
33 rates;

34 (3) Will provide incentives to improve utility efficiency and

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

Matter underlined thus is new matter.

1 productivity;

2 (4) Will foster the long-term production and delivery of electricity
3 or natural gas in a manner that will improve the quality and choices of
4 service;

5 (5) Includes a mechanism for the board to monitor and review the
6 plan on a periodic basis over its term and to take appropriate actions
7 if it is found that the plan is not achieving its intended results;

8 (6) Will maintain or improve pre-existing service quality standards,
9 except that an individual customer may agree to accept lower quality
10 service. A public utility shall continue to provide safe, adequate and
11 proper service pursuant to R.S.48:2-23;

12 (7) Will not result in cross-subsidization among or between groups
13 of utility customers, or between the portion of the utility's business or
14 operations subject to the alternative form of regulation and the portion
15 of the utility's business or operations that is not subject to the
16 alternative form of regulation;

17 (8) Will reduce regulatory delay and cost;

18 (9) Is in the public interest and will produce just and reasonable
19 rates; and

20 (10) Will enhance economic development in the State.

21 The standards established by the board pursuant to paragraphs (1)
22 through (10) of this subsection shall be adopted as rules or regulations
23 pursuant to the provisions of the "Administrative Procedure Act,"
24 P.L.1968, c.410 (C.52:14B-1 et seq.).

25 b. Consistent with the provisions of this act, and provided that the
26 plan meets the standards established in subsection a. of this section,
27 the board may approve a plan submitted by a gas or electric public
28 utility for an alternative form of regulation that permits a gas or
29 electric public utility to establish a rate for a group of retail customers
30 without a finding of rate base and reasonable rate of return pursuant
31 to the pre-existing provisions of Title 48 of the Revised Statutes, if the
32 board determines that the rate being charged by the utility to a retail
33 customer is no lower than a minimum price that is determined by the
34 board to prevent anti-competitive pricing and that:

35 (1) The group of customers has access to a competitive market for
36 supply of power to its site and that market pricing for that group of
37 customers is thereby appropriate; or

38 (2) The group of customers has otherwise voluntarily agreed in
39 writing to accept a price that has not been established based upon rate
40 base and reasonable rate of return standards pursuant to Title 48 of the
41 Revised Statutes; or

42 (3) At the time of the plan's approval, the level of retail prices of
43 the utility for the group of customers is determined to be reasonably
44 reflective of the level necessary to produce a fair and reasonable rate
45 of return pursuant to a current evaluation under pre-existing standards
46 of Title 48 of the Revised Statutes, and that the plan provides

1 mechanisms for prospective adjustments to rates that will track trends
2 in utility rates.

3 c. Consistent with the provisions of this act, and provided that the
4 plan meets the standards established in subsection a. of this section,
5 the board may approve a plan submitted by a gas or electric public
6 utility for an alternative form of regulation for a newly-constructed or
7 acquired energy and capacity supply of a gas or electric public utility,
8 including any transmission facilities directly associated with a
9 generating unit, which regulation provides for a revenue requirement
10 calculation that differs from the rate base, rate of return formula
11 required by pre-existing standards of Title 48 of the Revised Statutes,
12 if the board finds that:

13 (1) An asset, commodity or service comparable to that being
14 provided by the utility could have been obtained from any one of many
15 purveyors or suppliers in a competitive marketplace, and an
16 opportunity was afforded those purveyors or suppliers to offer such an
17 alternative source of energy and capacity supply; and

18 (2) The cost being charged to consumers by the utility under the
19 alternative plan reflects the market price for that asset, commodity or
20 service.

21 d. An alternative regulation plan as provided for in this section
22 shall not include any mechanism for:

23 (1) Recovery of revenue erosion from other ratepayers; or

24 (2) A reduction in the gross receipts and franchise tax.

25 e. The board may require an independent audit or such accounting
26 and reporting systems from electric and gas utilities as are necessary
27 to allow a proper allocation of investments, costs or expenses for all
28 services provided under the provisions of this act that are subject to
29 the jurisdiction of the board.

30 f. Any plan for alternative regulation proposed by the board that
31 does not conform to the standards of a rate base and reasonable rate
32 of return pursuant to the provisions of Title 48 of the Revised Statutes
33 shall be transmitted to the Senate Natural Resources and Economic
34 Development Committee, or its successor, and to the Assembly
35 Environment, Science and Technology Committee, or its successor,
36 for review. Such a plan shall not be adopted prior to 120 days after
37 the transmittal of the plan to the Legislature pursuant to this
38 subsection.

39 g. Any plan for alternative regulation approved by the board
40 pursuant to this section shall be transmitted directly to the Senate
41 Natural Resources and Economic Development Committee, or its
42 successor, and to the Assembly Environment, Science and Technology
43 Committee, or its successor, for review. Such a plan shall not take
44 effect prior to 120 after the transmittal of the plan to the Legislature
45 pursuant to this subsection.

46 (cf: P.L.1995, c.180, s.5)

1 2. This act shall take effect immediately.

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STATEMENT

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6 This bill would require the Board of Public Utilities to transmit any
7 plan it proposes for alternative regulation that does not conform to the
8 standards of a rate base and reasonable rate of return pursuant to the
9 provisions of Title 48 of the Revised Statutes to the Senate Natural
10 Resources and Economic Development Committee and to the
11 Assembly Environment, Science and Technology Committee for
12 review. The board could not adopt such a plan prior to 120 days after
13 its transmittal to the Legislature.

14 The bill also requires the board to transmit any plan for alternative
15 regulation approved by the board pursuant to section 5 of P.L.1995,
16 c.180 (C.48:2-21.28), directly to the Senate Natural Resources and
17 Economic Development Committee and to the Assembly Environment,
18 Science and Technology Committee for review. Any such plan could
19 not take effect prior to 120 after its transmittal to the Legislature.

20 The bill also requires that any standards established by the board to
21 implement the alternative regulation plan provisions of P.L.1995,
22 c.180, be adopted as rules or regulations pursuant to the provisions of
23 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
24 seq.).

25 This bill is intended to provide the Legislature with the opportunity
26 to review any plan for alternative regulation proposed either by the
27 board or a public utility. Such oversight is imperative given the
28 magnitude of potential changes in the electric utility industry and the
29 impacts such changes could have on New Jersey residents.

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34 Requires BPU to submit alternative regulation plans to Legislature for
35 review.