

SENATE, No. 2207

STATE OF NEW JERSEY

INTRODUCED JUNE 16, 1997

By Senator SINAGRA

1 AN ACT establishing an assessment on qualifying facilities, and  
2 supplementing Title 54 of the Revised Statutes.

3

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

6

7 1. This act shall be known and may be cited as the "Public Interest  
8 Initiatives Protection Act."

9

10 2. The Legislature finds and declares: that it is the policy of the  
11 State to ensure that New Jersey's transition to a more competitive  
12 electricity market will allow its citizens and businesses to achieve the  
13 economic benefits of electric industry restructuring without  
14 diminishing environmental quality, energy efficiency and energy  
15 security; that it is the policy of the State to foster a more diverse,  
16 efficient and competitive electricity market by encouraging the  
17 construction of electric generation facilities consistent with federal  
18 law, which encourages the construction of "qualifying facilities" under  
19 the "Public Utility Regulatory Policy Act of 1978," Pub.L.95-617; and  
20 that the transition to a competitive electricity market will result in a  
21 more market-oriented, less regulatory form of oversight, which could  
22 jeopardize the funding of public interest initiatives provided for under  
23 the current regulatory framework.

24 The Legislature therefore determines that owners and operators of  
25 "qualifying facilities" who have significantly benefited from State  
26 policies fostering a more efficient and competitive electricity market  
27 have an obligation to contribute toward the funding of public interest  
28 initiatives during the transition to a more competitive electricity  
29 market.

30

31 3. As used in this act:

32 "Base Profit margin" means the typical profit margin that would be  
33 earned by a public utility engaged in the generation and delivery of  
34 electricity under the regulatory framework in place up to the effective  
35 date of this act;

36 "Board" means the Board of Public Utilities;

37 "Contributor" means the owner or operator of a qualifying facility;

1 "Director" means the Director of the Division of Taxation in the  
2 Department of the Treasury;

3 "Initial Transition Period" means the period established pursuant to  
4 subsection a. of section 7 of this act, and subject to extension  
5 pursuant to subsection b. of that section, to allow for the successful  
6 transition from the current regulatory framework to a more  
7 competitive electricity market;

8 "Profit Margin" means the ratio of net income to net sales of a  
9 qualifying facility resulting from the sale of electricity during the  
10 calendar year, including any capacity payments received by the  
11 qualifying facility during the calendar year. For the purposes of this  
12 act, the amount of the contributor's net income shall be the same as  
13 taxable income, before net operating loss deductions and special  
14 deductions, which the contributor is required to report to the United  
15 States Treasury Department for the purposes of computing its federal  
16 income tax; and

17 "Qualifying facility" means a person or business entity that owns or  
18 operates a cogeneration facility in the State, which facility is a plant  
19 installation or other structure whose primary purpose is the sequential  
20 production of electricity and steam or other forms of useful energy  
21 used for industrial or commercial heating or cooling purposes, and  
22 which is designated by the Federal Energy Regulatory Commission, or  
23 its successor, as a "qualifying facility" pursuant to the provisions of the  
24 "Public Utility Regulatory Policies Act of 1978," Pub.L.95-617.

25

26 4. An annual assessment is imposed on contributors under the  
27 provisions of this act, beginning in 1998 and each year thereafter for  
28 the duration of the initial or extended transition period, as follows:

29 a. That portion of net income that causes profit margin to exceed  
30 the base profit margin by up to 50%, multiplied by 33%; and

31 b. That portion of net income that causes the profit margin to  
32 exceed the base profit margin by over 50%, multiplied by 66%.

33

34 5. a. The base profit margin shall be established by the board, and  
35 shall be equivalent to typical profit margins earned by utilities engaged  
36 in the generation and delivery of electricity, subject to the current  
37 regulatory framework.

38 b. For implementation purposes, the initial base profit margin shall  
39 be established as 15%, subject to review and modification by the  
40 board.

41

42 6. a. Commencing in 1998 and each year of the initial or extended  
43 transition period thereafter, as appropriate, a contributor shall make  
44 a payment of the estimated assessment imposed pursuant to section 4  
45 of this act, on or before April 1 of each year.

46 b. From the second year of the initial transition period forward:

1 (1) the payment required pursuant to subsection a. of this section  
2 shall not be less than the assessment paid by the contributor in the  
3 preceding year; and

4 (2) the contributor shall, on or before April 1 of each year of the  
5 initial or extended transition period, as appropriate, file a report form  
6 as shall be prescribed by the director sufficient to demonstrate the  
7 contributor's liability, if any, for the assessment imposed pursuant to  
8 section 4 of this act, and shall pay the amount of any remaining  
9 assessment liability.

10 c. The contributor shall be entitled to a credit against assessment  
11 due and payable in the next year, or a refund, of any amount of the  
12 estimated assessment payment which is in excess of the total amount  
13 payable pursuant to this act.

14

15 7. a. An initial transition period shall be established from April 1,  
16 1998 to April 1, 2002.

17 b. Beginning one year prior to the end of the initial transition  
18 period, the board shall annually conduct a review to assess the  
19 progress of the transition to a competitive electricity market. In  
20 assessing the progress, the board shall consider, but not be limited to,  
21 the following indications of a fully competitive electricity market:

22 (1) the establishment of mechanism for the recovery of above  
23 market utility investments;

24 (2) the establishment of a long term funding mechanism for public  
25 interest initiatives;

26 (3) the elimination of technical barriers to wholesale competition;

27 (4) the resolution of jurisdictional issues associated with State and  
28 federal regulatory agencies;

29 (5) the implementation of one or more power exchanges; and

30 (6) the choice of alternative electricity supply is available to at least  
31 80% of all residential customers.

32 c. Based upon its findings, the board may extend the transition  
33 period an additional year, at which time it will be subject to another  
34 review, or the board may make a recommendation to the director to  
35 suspend the transition period as of April 1 of the following year.

36

37 8. Notwithstanding the provisions of any law, rule or regulation to  
38 the contrary, the director, upon his written order, shall be provided  
39 access to and may inspect and examine books, accounts, papers,  
40 records, and memoranda, wherever located, of a qualifying facility to  
41 the extent necessary to carry out the provisions of this act.

42

43 9. The revenue annually derived from the assessment imposed  
44 pursuant to this act shall be appropriated only for the following  
45 purposes:

46 a. universal service and low income assistance;

