APPENDIX
Testimony by Ralph LaRossa, President and COO of PSE&G before the New Jersey Senate Economic Growth and Environment Committees

December 11, 2008

Good morning. I'm Ralph LaRossa, President and COO of PSE&G, New Jersey's largest electric and gas utility.

I'd like to thank Senator Lesniak, Senator Smith and the other members of the Economic Growth and Environment Committees for holding this hearing today to talk about economic development and job creation in the energy industry.

Almost all economists agree that job-creating infrastructure investment must be a central part of any plan to get our economy moving again.

President-elect Obama, Governor Corzine, and many other national and state leaders agree that the energy industry must be at the center of this effort.

Because in the field of energy there are investments that society desperately needs us to make – improving efficiency, developing renewable generation, maintaining reliability, and modernizing our grid.

If we can put people back to work while strengthening critical infrastructure, fighting global warming and moving toward energy independence, it will truly be a win-win.

New Jersey has recognized that utilities must play a leading role in making this vision a reality. But we have some challenges to meet before we can make this happen.

The short-term challenge is accessing affordable capital to invest in these turbulent economic times.

The longer-term challenge is establishing a regulatory structure that works in a world with dynamic financial markets in which utilities are being asked to help fight global warming and make major infrastructure investments.

PSEG believes we need to modernize our regulatory system to meet these 21st century challenges.

We appreciate this opportunity to engage in a public discussion about the best way to achieve this goal. Having surveyed a range of options, we think the best approach is a system already in use at the federal level called "formula rates."

How Rates are Set Today

First, let me give a simplified overview of how we set utility rates today.
PSE&G earns a regulated rate of return on our capital investments – like gas mains, electric distribution lines, utility poles and transformers.

The BPU decides what our regulated rate of return should be. They then establish the price per kilowatt hour that they estimate will provide us the revenue necessary to earn that rate of return.

Of course, they never hit the number exactly. So, for example, if it’s a warm winter, people will use less energy, we’ll earn less revenue, and we may not actually earn our regulated rate of return for that year. But the BPU does its best to forecast all of these variables and set our rates appropriately.

These rates are established during very long and complex regulatory proceedings called “base rate cases.” Base rate cases typically take over a year to complete and occur roughly every 5 to 10 years.

While this system has served New Jersey well for generations, we do not believe it is the most effective way to set rates in the 21st century.

First, because rates are set so infrequently, the cost of utility service doesn’t always track the actual cost of doing business. So, for example, if utility revenues are higher than expected, customers won’t see a decrease in their rates because they aren’t adjusted between rate cases.

This also means our current system can discourage major expansions of capital investment because utilities have to wait years until the next rate case to start recovering on those investments.

So, under this system, in tough economic times utilities reduce investment, conserve cash and weather the storm.

Second, the infrequency of rate cases means rates tend to spike after a rate case, which can cause difficulty for family and business budgets. This is in contrast to most other products whose prices change gradually over time.

Third, under the current system utilities have a financial disincentive to invest in energy efficiency, because utility revenues will decrease and rates won’t be adjusted in the near term to make them whole.

PSE&G has been a leader on efficiency because of our commitment to fighting climate change, but we need a system that does not penalize utilities for making a green investment choice.

Finally, traditional rate making does not adjust to changing economic circumstances. This is incredibly relevant today.
PSE&G’s last electric base rate case was in 2003.

Today, in 2008, financial markets are volatile and unpredictable. Investors are skittish, and as a result debt has become very expensive.

Yet our rates still reflect the financial circumstances of 2003 not 2008.

Simply put, PSE&G cannot borrow money at a high cost, make an investment, and then wait years to be reimbursed at a rate that will have us losing money.

Therefore, unless circumstances change, our plan is to reduce capital spending next year. This would mean cutting back significantly on infrastructure investments, at a cost of over 1,000 jobs for our contractors.

**Formula Rates**

Formula rates offer a different approach that we believe is better for utilities, their customers, and the state of New Jersey.

Under formula rates, the BPU would still decide the fair rate of return for each utility’s capital investments.

But instead of the current methodology, the BPU would establish a formula for determining the rates necessary for each utility to earn their rate of return.

The formula could include a range of variables, such as the cost of debt or a utility’s capital expenditures.

Each year, we would simply plug updated variables into the formula and determine the rates for the next year.

This would address many of the problems I just described.

The formula would prevent utilities from earning too much or too little revenue. If a utility was earning too much revenue, then rates would adjust downward.

The formula would mean that utility rates change slowly over time, avoiding big rate spikes that harm customers.

Utilities would no longer have a disincentive to invest in energy efficiency because their rates would be adjusted if efficiency investments dramatically decreased their sales.

And most importantly, the formula would adapt to changing economic circumstances, and provide timely and predictable reimbursement for investments.
This would allow utilities to access affordable capital and create thousands of traditional and green jobs – ranging from engineers to design new infrastructure to skilled craftsman to install solar panels.

Formula rates are smart policy at any time, but they are particularly important right now.

Now, let me address some concerns we have heard about this proposal.

Formula rates are not a form of deregulation.

Regulators decide our rate of return. Regulators establish the formula. Regulators determine our rates.

Consumer advocates, environmentalists, large energy users and all the other important constituencies would have a seat at the table and could weigh in on every element of the formula.

And regulators would still review the prudence of all our investments.

Further, formula rates do not grant any additional authority for the utility to make new investments. The utility is limited to investments otherwise authorized by the BPU or the Legislature.

Finally, this proposal does not necessarily mean rates will go up or down. It simply means rates would more accurately track the costs of doing business.

The fact is that if New Jersey wants utilities to make major investments in energy efficiency, renewable energy, smart grid and other job-creating infrastructure, it will be reflected in rates under any system.

But under formula rates, those investments will be more affordable because a regulatory structure that gives us timely and predictable reimbursement we allow us to access less expensive capital.

Cheaper capital means we can make investments at a lower cost, a savings that would be passed on to ratepayers.

And with effective investments in areas like energy efficiency, demand response and grid modernization, we can reduce the total bill that our customers pay, even if their rates reflect increased investment.

**Conclusion**

I am here today because PSE&G is committed to investing in New Jersey, creating jobs and helping the State meet its Energy Master Plan goals.
It would be all too easy for us to stay conservative, scale back investments and weather this economic storm.

But we’re trying to do what is right for New Jersey.

We’ve heard the concerns about formula rates, and those concerns should be addressed.

We support legislative language that makes perfectly clear that the prudency of all our investments will still be scrutinized by regulators.

And we would support other customer protections, such as performance standards and a reasonable cap on rate increases.

And, of course, we’re open to alternative proposals for addressing these critical problems.

But facing a faltering economy and a desperate need to transition to a cleaner, greener and more efficient energy industry, we cannot afford to do nothing.

New Jersey needs to modernize its regulatory system.

We need a system that recognizes the central role utilities must play in fighting climate change by reducing energy usage and transitioning to renewable energy.

And we need a system that adjusts to fast-changing financial circumstances and allows utilities to create jobs and invest in infrastructure when New Jersey needs it most.

Thank you for your time and I’d be happy to answer any questions.
BARACK OBAMA AND JOE BIDEN: NEW ENERGY FOR AMERICA

America has always risen to great challenges, and our dependence on oil is one of the greatest we have ever faced. It’s a threat to our national security, our planet and our economy. For decades, Washington has failed to solve this problem because of partisanship, the undue influence of special interests, and politicians who would rather propose gimmicks to get them through an election instead of long-term solutions that will get America closer to energy independence.

Our country cannot afford politics as usual – not at a moment when the energy challenge we face is so great and the consequences of inaction are so dangerous. We must act quickly and we must act boldly to transform our entire economy – from our cars and our fuels to our factories and our buildings.

Achieving this goal will not be easy. Energy independence will require far more than the same Washington gimmicks and continued dependence on costly and finite resources. It will require a sustained and shared effort by our government, our businesses, and the American people. But America has overcome great challenges before. With clarity of direction and leadership, there is no question that we possess the insight, resources, courage and the determination to build a new economy that is powered by clean and secure energy.

Barack Obama and Joe Biden have a comprehensive energy plan that provides immediate relief to struggling families. It also summons the nation to face one of the great challenges of our time: confronting our dependence on foreign oil, addressing the moral, economic and environmental challenge of global climate change, and building a clean energy future that benefits all Americans.

The Obama-Biden comprehensive New Energy for America plan will:

- Provide short-term relief to American families facing pain at the pump
- Help create five million new jobs by strategically investing $150 billion over the next ten years to catalyze private efforts to build a clean energy future.
- Within 10 years save more oil than we currently import from the Middle East and Venezuela combined
- Put 1 million Plug-In Hybrid cars – cars that can get up to 150 miles per gallon – on the road by 2015, cars that we will work to make sure are built here in America
- Ensure 10 percent of our electricity comes from renewable sources by 2012, and 25 percent by 2025
- Implement an economy-wide cap-and-trade program to reduce greenhouse gas emissions 80 percent by 2050
SHORT-TERM SOLUTIONS: IMMEDIATE RELIEF FROM PAIN AT THE PUMP
Barack Obama and Joe Biden recognize that skyrocketing energy costs are taking a heavy toll on American families. To address the squeeze on Americans, they are calling for an: emergency energy rebate; an aggressive plan to crack down on speculators; and a swap of oil from the Strategic Petroleum Reserve to help provide immediate relief from soaring energy prices.

- **Immediately Provide Emergency Energy Rebate.** Barack Obama and Joe Biden will require oil companies to take a reasonable share of their record-breaking windfall profits and use it to provide direct relief worth $500 for an individual and $1,000 for a married couple. The relief would be delivered as quickly as possible to help families cope with the rising price of gasoline, food and other necessities. The rebates would be fully paid for with five years of a windfall profits tax on record oil company profits. This relief would be a down payment on the Obama-Biden long-term plan to provide middle-class families with at least $1,000 per year in permanent tax relief. The Obama-Biden energy rebates will: offset the entire increase in gas prices for a working family over the next four months; or pay for the entire increase in winter heating bills for a typical family in a cold-weather state. In addition, Barack Obama and Joe Biden have proposed setting aside a portion of a second round of fiscal stimulus to ensure sufficient funding for home heating and weatherization assistance as we move into the fall and winter months.

- **Crack Down on Excessive Energy Speculation.** Current loopholes in Commodity Futures Trading Commission regulations have contributed to the skyrocketing price of oil on world markets. Barack Obama and Joe Biden will enact simple legislation to close these loopholes and increase transparency on the market to help bring oil prices down and prevent traders from unfairly lining their pockets at the expense of the American people.

- **Swap Light and Heavy Crude, Release Oil from Strategic Petroleum Reserve to Cut Prices.** The United States' Strategic Petroleum Reserve (SPR) is there for a purpose: to help Americans in times of crisis. Barack Obama and Joe Biden believe the doubling of oil prices in the past year is a crisis for millions of Americans and the transfer of wealth to oil producing countries, many of them hostile to our interests, is a threat to our national security. With the goal of bringing down prices at the pump, they support releasing light oil from the SPR now and replacing it later with heavier crude more suited to our long-term needs.

MID-TO LONG-TERM SOLUTIONS: NEW ENERGY FOR AMERICA
Our nation is confronted by two major energy challenges—our dependence on foreign oil and global climate change—both of which stem from our current dependence on fossil fuels for energy. Barack Obama and Joe Biden believe we have a moral, environmental, economic, and security imperative to address our dependence on foreign oil and tackle climate change in a serious, sustainable manner.

**Tackle Climate Change**
As a result of climate change, the polar ice caps are shrinking causing sea levels to rise; extreme weather is wreaking havoc across the globe; droughts are becoming more severe, tropical diseases are migrating north and numerous species are being threatened with extinction.

- **Implement Cap and Trade Program to Reduce Greenhouse Gas Emissions.** Barack Obama and Joe Biden support implementation of an economy-wide cap-and-trade system to reduce carbon emissions by the amount scientists say is necessary: 80 percent below 1990 levels by 2050. This market mechanism has worked before and will give all American consumers and businesses the incentives to use their ingenuity to develop economically effective solutions to climate change. The Obama-Biden cap-and-trade policy will require all pollution credits to be auctioned. A 100
percent auction ensures that all industries pay for every ton of emissions they release, rather than giving these valuable emission rights away to companies on the basis of their past pollution. A small portion of the receipts generated by auctioning allowances ($15 billion per year) will be used to support the development of clean energy, invest in energy efficiency improvements, and help develop the next generation of biofuels and clean energy vehicles – measures that will help the economy and help meet the emissions reduction targets. It will also be used to provide new funding to state and federal land and wildlife managers to restore habitat, create wildlife migration corridors, and assist fish and wildlife to adapt to the effects of a warming climate. All remaining receipts will be used for rebates and other transition relief to ensure that families and communities are not adversely impacted by the transition to a new energy, low carbon economy.

- **Make the U.S. a Leader on Climate Change.** Barack Obama and Joe Biden understand that the only real solution to climate change requires all major emitting nations to join in the solution. While it is time for America to lead, developing nations like China and Brazil must not be far behind in making their own binding commitments. To develop an effective and equitable global program, Barack Obama and Joe Biden will re-engage with the U.N. Framework Convention on Climate Change (UNFCCC) – the main international forum dedicated to addressing the climate problem. They will also invigorate the Major Economies (MEM) effort and bring all the major emitting nations together to develop effective emissions reduction efforts.

**Invest in Our Secure Energy Future and Create 5 Million New Jobs**

Barack Obama and Joe Biden will use a portion of the revenue generated from the cap-and-trade permit auction to make investments that will reduce our dependence on foreign oil and accelerate deployment of low-carbon technologies. The investments will focus on three critical areas: 1) Basic Research; 2) Technology Demonstration and 3) Aggressive Commercial Deployment and Clean Market Creation.

- **Invest In A Clean Energy Economy and Help Create 5 Million New Green Jobs.** Barack Obama and Joe Biden will strategically invest $150 billion over 10 years to accelerate the commercialization of plug-in hybrids, promote development of commercial scale renewable energy, encourage energy efficiency, invest in low emissions coal plants, advance the next generation of biofuels and fuel infrastructure, and begin transition to a new digital electricity grid. The plan will also invest in America’s highly-skilled manufacturing workforce and manufacturing centers to ensure that American workers have the skills and tools they need to pioneer the green technologies that will be in high demand throughout the world. All together these investments will help the private sector create 5 million new green jobs, good jobs that cannot be outsourced.

- **Create a “Green Vet Initiative”.** The renewable energy economy is exploding in the United States. In terms of venture capital alone, private investment in the sector topped $2.6 billion dollars in 2007. At the same time, more than 837,000 troops who served in Iraq or Afghanistan are now veterans. Barack Obama and Joe Biden will ensure that more of our veterans can enter the new energy economy. They will create a new “Green Vet Initiative” that will have two missions: first it will offer counseling and job placement to help veterans gain the skills to enter this rapidly growing field; second, it will work with industry partners to create career pathways and educational programs.

- **Convert our Manufacturing Centers into Clean Technology Leaders.** America boasts the highest-skilled manufacturing workforce in the world and advanced manufacturing facilities that have powered economic growth in America for decades. Barack Obama and Joe Biden believe that America companies and workers should build the high-demand technologies of the future, and he will help nurture America’s success in clean technology manufacturing by establishing a federal investment program to help manufacturing centers modernize and help Americans learn new
skills to produce green products. This federal grant program will allocate money to the states to identify and support local manufacturers with the most compelling plans for modernizing existing or closed manufacturing facilities to produce new advanced clean technologies. This investment will help provide the critical up-front capital needed by small and mid-size manufacturers to produce these innovative new technologies. Along with an increased federal investment in the research, development and deployment of advanced technologies, this $1 billion per year investment will help spur sustainable economic growth in communities across the country.

- **Create New Job Training Programs for Clean Technologies.** The Obama-Biden plan will increase funding for federal workforce training programs and direct these programs to incorporate green technologies training, such as advanced manufacturing and weatherization training, into their efforts to help Americans find and retain stable, high-paying jobs. Barack Obama and Joe Biden will also create an energy-focused youth jobs program to invest in disconnected and disadvantaged youth. This program will provide youth participants with energy efficiency and environmental service opportunities to improve the energy efficiency of homes and buildings in their communities, while also providing them with practical skills and experience in important career fields of expected high-growth employment. Participants will not only be able to use their training to find new jobs, but also build skills that will help them move up the career ladder over time.

**Make our Cars, Trucks and SUV’s Fuel Efficient**

Last year, oil provided more than 96 percent of the energy in our vehicles. It is an economic, national security and environmental imperative that this near-total dependence comes to an end. To achieve this goal, Barack Obama and Joe Biden will implement a strategy that will – within 10 years - allow us to reduce our consumption of oil by more than we currently import from the Middle East and Hugo Chavez’s Venezuela combined. In order to do that, he will:

- **Increase Fuel Economy Standards.** Barack Obama and Joe Biden will increase fuel economy standards 4 percent per each year while protecting the financial future of domestic automakers. The plan, which will save nearly a half trillion gallons of gasoline and 6 billion metric tons of greenhouse gases, will establish concrete targets for annual fuel efficiency increases while giving industry the flexibility to meet those targets.

- **Invest in Developing Advanced Vehicles and Put 1 Million Plug-in Electric Vehicles on the Road by 2015.** As a U.S. senator, Barack Obama has led efforts to jumpstart federal investment in advanced vehicles, including combined plug-in hybrid/flexible fuel vehicles, which can get over 150 miles per gallon of gas. As president, Obama will continue this leadership by investing in advanced vehicle technology with a specific focus on R&D in advanced battery technology. The increased federal funding will leverage private sector funds and support our domestic automakers to bring plug-in hybrids and other advanced vehicles to American consumers. Barack Obama and Joe Biden will also provide a $7,000 tax credit for the purchase of advanced technology vehicles as well as conversion tax credits. And to help create a market and show government leadership in purchasing highly efficient cars, Barack Obama and Joe Biden will commit to:
  - Within one year of becoming President, the entire White House fleet will be converted to plug-ins as security permits; and
  - Half of all cars purchased by the federal government will be plug-in hybrids or all-electric by 2012

- **Partner with Domestic Automakers.** Barack Obama and Joe Biden will also provide $4 billion retooling tax credits and loan guarantees for domestic auto plants and parts manufacturers, so that the new fuel-efficient cars can be built in the U.S. by American workers rather than overseas.
This measure will strengthen the U.S. manufacturing sector and help ensure that American workers will build the high-demand cars of the future.

- **Mandate All New Vehicles are Flexible Fuel Vehicles.** Sustainably-produced biofuels can create jobs, protect the environment and help end oil addiction - but only if Americans drive cars that will take such fuels. Barack Obama and Joe Biden will work with Congress and auto companies to ensure that all new vehicles have FFV capability – the capability by the end of his first term in office.

- **Develop the Next Generation of Sustainable Biofuels and Infrastructure.** Advances in biofuels, including cellulosic ethanol, biobutanol and other new technologies that produce synthetic petroleum from sustainable feedstocks offer tremendous potential to break our addiction to oil. Barack Obama and Joe Biden will work to ensure that these clean alternative fuels are developed and incorporated into our national supply as soon as possible. They will require at least 60 billion gallons of advanced biofuels by 2030. They will invest federal resources, including tax incentives and government contracts into developing the most promising technologies and building the infrastructure to support them.

- **Establish a National Low Carbon Fuel Standard.** Barack Obama and Joe Biden will establish a National Low Carbon Fuel Standard (LCFS) to speed the introduction of low-carbon non-petroleum fuels. The standard requires fuels suppliers in 2010 to begin to reduce the carbon of their fuel by 5 percent within 5 years and 10 percent within 10 years. The Obama-Biden plan will incentivize increased private sector investment in advanced low-carbon fuels and has a sustainability provision to ensure that increased biofuels production does not come at the expense of environmental conservation. The LCFS is an important mechanism in ensuring that our efforts to reduce our oil dependence also reduce carbon emissions.

**Promote the Supply of Domestic Energy**

With 3 percent of the world's oil reserves, the U.S. cannot drill its way to energy security. But U.S. oil and gas production plays an important role in our domestic economy and remains critical to prevent global energy prices from climbing even higher. There are several key opportunities to support increased U.S. production of oil and gas that do not require opening up currently protected areas.

- **A "Use it or Lose It" Approach to Existing Leases.** Oil companies have access to 68 million acres of land, over 40 million offshore, which are not drilling on. Drilling in open areas could significantly increase domestic oil and gas production. Barack Obama and Joe Biden will require oil companies to diligently develop these leases or turn them over so that another company can develop them.

- **Promote the Responsible Domestic Production of Oil and Natural Gas.** Barack Obama and Joe Biden will set up a process for early identification of any infrastructure obstacles/shortages or possible federal permitting process delays to drilling in:
  
  o Bakken Shale in Montana and North Dakota which could have as much as 4 billion recoverable barrels of oil according to the U.S. Geological Survey.

  o Unconventional natural gas supplies in the Barnett Shale formation in Texas and the Fayetteville Shale in Arkansas.
National Petroleum Reserve-Alaska (NPR-A) which comprises 23.5 million acres of federal land set aside by President Harding to secure the nation’s petroleum reserves for national security purposes.

- **Prioritize the Construction of the Alaska Natural Gas Pipeline.** Barack Obama and Joe Biden will work with stakeholders to facilitate construction of the pipeline. While this pipeline was proposed in 1976, and Congress authorized up to $18 billion in loan guarantees for this project in 2004, there has been no progress in building this critical energy infrastructure under the Bush Administration. The planned pipeline would have a daily capacity of 4 billion cubic feet of natural gas, or almost 7 percent of current U.S. consumption. Not only is this pipeline critical to our energy security, it will create thousands of new jobs.

- **Getting More from our Existing Oil Fields.** Nationally, experts believe that up to 85 billion barrels of technically recoverable oil remains stranded in existing fields. Enhanced oil recovery (EOR) using carbon dioxide offers an immediate- to medium-term opportunity to produce more oil from existing fields. And in the EOR process, large quantities of CO2 can be sequestered underground, reducing global warming pollution. Under an Obama Administration, we will pass a carbon cap-and-trade-bill, which will incentivize emitters to send their CO2 to old oil fields for EOR, thereby providing economic benefits while also stimulating additional domestic oil and gas production. To speed that process, we will map all stationary CO2 sources and develop a database to help industry calculate the most cost-effective oil field destination for each source’s CO2.

**Diversify Our Energy Sources**

There are no silver bullet solutions to our energy crises. Our economy, security and environment will be best served through a sustained effort to diversify our energy sources. Barack Obama and Joe Biden will:

- **Require 10 Percent of Electricity to Come from Renewable Sources by 2012.** Barack Obama and Joe Biden will establish a 10 percent federal Renewable Portfolio Standard (RPS) to require that 10 percent of electricity consumed in the U.S. is derived from clean, sustainable energy sources, like solar, wind and geothermal by 2012. Many states are already well on their way to achieving statewide goals and it’s time for the federal government to provide leadership for the entire country to support these new industries. This national requirement will spur significant private sector investment in renewable sources of energy and create thousands of new American jobs, especially in rural areas. And Barack Obama and Joe Biden will also extend the federal Production Tax Credit (PTC) for 5 years to encourage the production of renewable energy.

- **Develop and Deploy Clean Coal Technology.** Carbon capture and storage technologies hold enormous potential to reduce our greenhouse gas emissions as we power our economy with domestically produced and secure energy. As a U.S. Senator, Obama has worked tirelessly to ensure that clean coal technology becomes commercialized. An Obama administration will provide incentives to accelerate private sector investment in commercial scale zero-carbon coal facilities. In order to maximize the speed with which we advance this critical technology, Barack Obama and Joe Biden will instruct DOE to enter into public private partnerships to develop 5 “first-of-a-kind” commercial scale coal-fired plants with carbon capture and sequestration.

- **Safe and Secure Nuclear Energy.** Nuclear power represents more than 70 percent of our non-carbon generated electricity. It is unlikely that we can meet our aggressive climate goals if we eliminate nuclear power as an option. However, before an expansion of nuclear power is considered, key issues must be addressed including: security of nuclear fuel and waste, waste storage, and proliferation. Barack Obama introduced legislation in the U.S. Senate to establish
guidelines for tracking, controlling and accounting for spent fuel at nuclear power plants. To prevent international nuclear material from falling into terrorist hands abroad, Obama worked closely with Sen. Dick Lugar (R-IN) to strengthen international efforts to identify and stop the smuggling of weapons of mass destruction. As president, Obama will make safeguarding nuclear material both abroad and in the U.S. a top anti-terrorism priority. In terms of waste storage, Barack Obama and Joe Biden do not believe that Yucca Mountain is a suitable site. They will lead federal efforts to look for safe, long-term disposal solutions based on objective, scientific analysis. In the meantime, they will develop requirements to ensure that the waste stored at current reactor sites is contained using the most advanced dry-cask storage technology available.

**Commitment to Efficiency to Reduce Energy Use and Lower Costs**

According to the United Nations, America is only the 22nd most energy efficient country among the major economies in the world, which means we spend more on energy than we need to because our lifestyle and our built environment are wasting too much excess energy. Since 1973, the average amount of electricity each of us uses has tripled. We can do better. An Obama administration will strive to make America the most energy efficient country in the world.

- **Deploy the Cheapest, Cleanest, Fastest Energy Source--Energy Efficiency.** The Department of Energy (DOE) projects that demand for electricity will increase by 1.1 percent per year over the next few decades. Cutting this demand growth through efficiency is both possible and economically sound. Barack Obama will set an aggressive energy efficiency goal—to reduce electricity demand 15 percent from DOE's projected levels by 2020. Implementing this program will save consumers a total of $130 billion, reduce carbon dioxide emissions by more than 5 billion tons through 2030, and create jobs. A portion of this goal would be met by setting annual demand reduction targets that utilities would need to meet. The rest would come from more stringent building and appliance standards.

- **Set National Building Efficiency Goals.** Barack Obama and Joe Biden will establish a goal of making all new buildings carbon neutral, or produce zero emissions, by 2030. They will also establish a national goal of improving new building efficiency by 50 percent and existing building efficiency by 25 percent over the next decade to help us meet the 2030 goal.

- **Overhaul Federal Efficiency Standards.** The current Department of Energy has missed 34 deadlines for setting updated appliance efficiency standards, which has cost American consumers millions of dollars in unrealized energy savings. Barack Obama and Joe Biden will overhaul this process for appliances and provide more resources to his Department of Energy so it implements regular updates for efficiency standards. They will also work with Congress to ensure that it continues to play a key role in improving our national efficiency codes.

- **Reduce Federal Energy Consumption.** Currently, the federal government is the world's largest single consumer of energy in the world, spending approximately $14.5 billion on energy consumption in FY 2008. Barack Obama and Joe Biden believe in the importance of leading by example. They will make the federal government a leader in the green building market, achieving a 40 percent increase in efficiency in all new federal buildings within five years and ensuring that all new federal buildings are zero-emanissions by 2025. They will invest in cost-effective retrofits to achieve a 25 percent increase in efficiency of existing federal buildings within 5 years. The Obama-Biden plan will put forward the resources necessary to achieve a 15 percent reduction in federal energy consumption by 2015.

- **Flip Incentives to Energy Utilities.** An Obama administration will "flip" incentives to utility companies by: requiring states to conduct proceedings to implement incentive changes; and
offering them targeted technical assistance. These measures will benefit utilities for improving energy efficiency, rather than just from supporting higher energy consumption. This “regulatory equity” starts with the decoupling of profits from increased energy usage, which will incentivize utilities to partner with consumers and the federal and state governments to reduce monthly energy bills for families and businesses. The federal government under an Obama administration will play an important and positive role in flipping the profit model for the utility sector so that shareholder profit is based on reliability and performance as opposed to total production.

- **Invest in a Smart Grid.** Achieving these aggressive energy efficiency goals will require significant innovation in the way we transmit electricity and monitor its use. Barack Obama and Joe Biden will pursue a major investment in our national utility grid using smart metering, distributed storage and other advanced technologies to accommodate 21st century energy requirements: greatly improved electric grid reliability and security, a tremendous increase in renewable generation and greater customer choice and energy affordability. They will establish a Grid Modernization Commission to facilitate adoption of Smart Grid practices across the nation’s electricity grid to the point of general adoption and ongoing market support in the U.S. electric sector. They will instruct the Secretary of Energy to: (1) establish a Smart Grid Investment Matching Grant Program to provide reimbursement of one-fourth of qualifying Smart Grid investments; (2) conduct programs to deploy advanced techniques for managing peak load reductions and energy efficiency savings on customer premises from smart metering, demand response, distributed generation and electricity storage systems; and (3) establish demonstration projects specifically focused on advanced technologies for power grid sensing, communications, analysis, and power flow control, including the integration of demand-side resources into grid management.

- **Weatherize One Million Homes Annually.** In the struggle with higher energy prices low income families are suffering the most and receiving the least attention. Across the nation, poor families this winter will increasingly face the choice between heating and eating as prices for natural gas, heating oil, propane and electricity skyrocket. To address the immediate challenge this winter, we must fully fund LIHEAP and ensure that everyone who needs it has access to heating assistance. Over the longer-term, a significant part of the answer for low income families is home weatherization. By upgrading a home’s furnace, sealing leaky ducts, fixing windows, and adding insulation we can cut energy bills by 20 - 40 percent and the substantial savings accrue with summer air conditioning as well as winter heating. And by adding energy efficient appliances and lighting the savings are even greater. While the nation has weatherized about 5.5 million low-income homes since 1976, more than 28 million remain eligible. Barack Obama and Joe Biden will make a national commitment to weatherize at least one million low-income homes each year for the next decade, which can reduce energy usage across the economy and help moderate energy prices for all.

- **Build More Livable and Sustainable Communities.** Over the long term, we know that the amount of fuel we will use is directly related to our land use decisions and development patterns. For the last 100 years, our communities have been organized around the principle of cheap gasoline. Barack Obama and Joe Biden believe that we must devote substantial resources to repairing our roads and bridges. They also believe that we must devote significantly more attention to investments that will make it easier for us to walk, bicycle and access other transportation alternatives. They are committed to reforming the federal transportation funding and leveling employer incentives for driving and public transit.
Good afternoon Chairman Lesniak and honorable members of the Senate Economic Growth Committee. For the record my name is Nicholas Asselta, and I am a Commissioner with the New Jersey Board of Public Utilities. Thank you for the opportunity to testify in regards to S2428: which authorizes electric or gas public utilities to implement formula based rates.

Our state and our nation are facing a difficult and challenging economic environment – an environment made worse by high energy prices that continued through the past summer. We can respond constructively to our economic circumstances by investing in our energy infrastructure. Such an investment will pay dividends in two ways: it will create good jobs quickly; and it will improve our ability to compete for business against other states and other countries when energy prices inevitably rise again.

We are here to propose an alternative to S2428 which will allow New Jersey utilities to attract capital, invest in our energy infrastructure, create jobs, and keep our state competitive. Our proposal uses existing statutory authority to accomplish these goals in recognition of the increased market risk and cost of capital in the current financial climate.

Specifically, the BPU already has the authority to ensure that utilities can make additional capital investments with certainty, while simultaneously allowing utilities to regain the cost of these investments. The utilities can recover those costs and earn a return proportionate with the current increased cost of capital. The BPU has historically done this in cases in which the affected utilities did not have sufficient cash
flow to meet the cost of constructing major facilities. In doing so, it has relied on its authority under N.J.S.A. 48:2-23 (attachment) to require utilities to provide safe, adequate, and proper service, and its authority under N.J.S.A. 48:2-27 to require extensions of existing utility facilities when the financial condition of the utility so warrants.

The BPU believes that this approach can be used to allow appropriate cost recovery and returns not only for single large projects, but also for groups of smaller projects such as the ones that utilities would be expected to undertake in furtherance of an infrastructure-based economic stimulus program.

The BPU continues to approve mechanisms to provide companies the opportunity to stabilize earnings while continuing to protect ratepayers. In 2006, the BPU approved the Conservation Incentive Program ("CIP") for NJ Natural Gas and South Jersey Gas, so that they would continue to recover the costs of improving, operating and maintaining their distribution infrastructure even if the volume of the companies' natural gas sales were to fall as a result of their conservation and energy efficiency initiatives. The CIP was the first of its kind and continues to be a national model. About a year ago, this legislature approved the "RGGI" law, allowing electric and gas companies to invest in energy efficiency and renewable energy, to obtain cost recovery on an expedited basis, and to be eligible for incentives. Under this law, the Board has approved a $100 million solar loan program and a $46 million carbon abatement program for PSE&G.

The existing regulatory approach by the Board of Public Utilities (BPU) to developing electric and gas rates has protected consumers while providing sufficient revenues for utilities to attract the capital they need to maintain and improve the reliability of their infrastructure. New Jersey utilities have rarely begun a rate case with the BPU when their revenues are sufficient. Over the last ten years, each of the seven electric and gas utilities have filed only one or at most two times to increase their base delivery rates to customers. Also, there is a provision within every rate case that prescribes relief for utilities if their current rates threaten their ability to continue to maintain safe and reliable service to New Jersey ratepayers as they are required to do by law. In short, the
current regulatory system works and can deal with the challenges facing New Jersey utilities and ratepayers.

With respect to A2428, the Board feels that a formula-based rate system would be a dramatic departure from our regulatory process that has worked well for more than 100 years. The use of a formula rate eliminates one of the most important elements of traditional regulation, the incentive to improve productivity and minimize costs between rate cases. These incentives are beneficial to both the utility and to your constituents. They provide the impetus for the utility to maintain or lower its cost structure, allowing for the potential to earn at or even exceed its allowed rate of return. The ratepayer benefits from the long-term lower cost structure that result from the productivity improvements undertaken by the utility. The absence of this incentive will result in annual rate increases to New Jersey's citizens. Our current ratemaking system is a semi-judicial stakeholder process that relies on testimony and the Board's ability to hold accountable utilities for the documents they submit. With this formula system, the due process for taxpayers will be lost entirely.

Our agency supports the overarching goal of needed construction of utility infrastructure and creation of jobs for New Jersey's citizens. Our alternative proposal which provides for cooperation between the Board and our public utilities will ensure that the objectives of this bill are realized.

Chairman Lesniak and honorable members, thank you for the opportunity to testify today.

-END-
Board of Public Utilities Testimony Attachment

N.J.S.A 48.2-23 (Safe, adequate service)

The board may, after public hearing, upon notice, by order in writing, require any public utility to furnish safe, adequate and proper service, including furnishing and performance of service in a manner that tends to conserve and preserve the quality of the environment and prevent the pollution of the waters, land and air of this State, and including furnishing and performance of service in a manner which preserves and protects the water quality of a public water supply, and to maintain its property and equipment in such condition as to enable it to do so.

The board may, pending any such proceeding, require any public utility to continue to furnish service and to maintain its property and equipment in such condition as to enable it to do so.

The board, in requiring any public water utility to furnish safe, adequate and proper service, may require the public water utility to retain in its rate base any property which the board determines is necessary to protect the water quality of a public water supply.

Amended 1962,c.198,s.15; 1970,c.273; 1979,c.86,s.20; 1988,c.163,s.5.

N.J.S.A. 48.2-27 (Extension of facilities)

The board may, after hearing, upon notice, by order in writing, require any public utility to establish, construct, maintain and operate any reasonable extension of its existing facilities where, in the judgment of the board, the extension is reasonable and practicable and will furnish sufficient business to justify the construction and maintenance of the same and when the financial condition of the public utility reasonably warrants the original expenditure required in making and operating the extension.
Remarks of Stefanie A. Brand  
Director of the N.J. Division of Rate Counsel  
Regarding Senate Bill S2428  
Presented at the Senate Economic Growth Committee and Senate Environment Committee Public Hearing  
December 11, 2008

Good afternoon. My name is Stefanie Brand. I am the Director of the Division of Rate Counsel in the Department of the Public Advocate. I would like to thank the Chairman and the members of the Committee for the opportunity to testify today regarding S2428, which authorizes electric and gas public utilities to implement “formula based rates.”

The Division of Rate Counsel represents and protects the interest of all utility consumers—residential customers, small business customers, small and large industrial customers, schools, libraries and other institutions in our communities. Rate Counsel is a party in cases where New Jersey utilities seek changes in their rates or services. Rate Counsel also gives consumers a voice in
setting energy, water and telecommunications policy that will affect the rendering of utility services well into the future.

This bill makes fundamental changes in the way this state determines and monitors what people pay for gas and electricity, removing important protections for residential and business customers. At a time when consumers and businesses are barely making ends meet, we can not afford to remove the basic protections that keep them from paying even higher rates. In addition, while we all share a desire to find productive solutions during these difficult economic times, as I will explain in this testimony, this bill will not help solve our economic problems and may in fact exacerbate them. I strongly urge you to reject this legislation.

By way of background, since utilities are monopolies, their activities are not constrained by the forces of competition and the marketplace. Thus, the traditional role of regulation is to replicate the environment that would exist if the utility operated subject to such competition. Utility rates are regulated and are based on their costs plus the opportunity to earn a reasonable return on investment for shareholders. Regulation replaces the market, and while shareholders assume the risk of the initial investment, they receive reasonable returns as long as their investments are reasonable and prudent.

This bill removes those safeguards and creates an essentially risk-free business environment for utilities. Shareholders are held harmless by the ratepayers from all economic risks, and yet they retain the benefit of the regulatory compact through an assured return on their investment. The
regulatory replication of the market would be removed and utilities would become unique among business entities, in that, as monopolies, they would reap unregulated private sector profits without any offsetting private sector risks. Their return would be based on the money they spend, not on the service they provide. There is no justification for granting a private business enterprise such a protected status.

This is particularly true because the purported goals of the legislation, encouraging efficiency, modernization of the grid, continued investment by utilities and jobs creation, will not be accomplished through this bill. If anything, this bill encourages inefficiency, and may, in the end, cost more jobs than it creates. If our goal is to spur the economy and create jobs in a way that provides true benefits to consumers and businesses in this state, there are better, and fairer ways to achieve that goal. I'll offer a few suggestions along the way.

1. **The Regulatory Changes Set Forth in the Bill are not Needed to Ensure Investment in Energy Efficiency, Renewable Energy or Infrastructure.**

   The language of the bill suggests that these changes are needed in order for the utilities to continue to invest in energy efficiency (EE), renewable energy (RE) and infrastructure improvements. However, the recently-enacted provisions of P.L 2007, c.340, commonly referred to as the Regional Greenhouse Gas Initiative or “RGGI,” which amended Title 48 to allow utilities to invest in energy efficiency and renewable energy, also permit the recovery of costs for those programs without the need for a full rate case. The mechanism that the Board
has approved to date in EE and RE cases allows the utilities to recover their costs (including an appropriate return on investment) through separate charges on ratepayer bills. No utility has been asked to wait to recover until the next rate case. Under RGGI, cost recovery mechanisms for EE and RE programs are approved up front, at the same time the program itself is reviewed and approved. Thus, this bill has nothing to do with increasing investments in energy efficiency or renewable energy. Rather it extends a similar mechanism – although one with even less protection for ratepayers – to traditional utility investments such as pipes and wire.

However, these regulatory changes are not necessary to ensure that the utilities continue to invest in traditional utility infrastructure. The existing regulatory framework has historically supported necessary and prudent infrastructure development and expansion for all regulated utilities. While recovery of investments in “pipes and wires” has traditionally awaited a rate case, they are almost always recovered as long as they are prudently incurred. Recent upheaval in the capital markets has not changed this, and does not justify the abandonment of rate regulation as encompassed in this bill. At times like this, utilities often are viewed as safe havens, far less risky than other investments, and thus they continue to be able to access the capital markets. Indeed, PSE&G was able to borrow $250 million a couple of weeks ago and Atlantic Electric borrowed $275 million earlier in November. Even if they were unable to borrow capital, or were required to pay higher rates, the current system provides mechanisms through which utilities may petition the BPU for relief in order to
make sure they can make the investments necessary to maintain their systems. If a greater investment was needed the Board could consider alternatives between rate cases to provide the necessary regulatory certainty. Dispensing with rate regulation is therefore not necessary to allow the utilities to access the capital markets.

2. The Bill Removes any Requirement or Incentive for the Utility to Spend Ratepayer Money Wisely

What this bill will do, however, is allow a return on imprudent or unnecessary investments. Unlike the provision in RGGI for EE and RE programs, this bill eliminates any review by the Board of the reasonableness of utility spending. Under the RGGI provisions, the program itself must be approved by the Board, which includes an analysis of the costs and benefits of the proposed program, and an analysis to ensure that the costs of the program are prudent. This bill eliminates any such review for traditional utility investment. Instead, the utility will propose the types of investments that would be paid for through formula rates, and may submit a forecasted budget for the upcoming year, but specific expenses will not be reviewed to ensure that they are reasonable. Thus, if the utility decides to build a new or duplicate substation, it may do so in the most expensive way possible, and the Board will be powerless to rein in their spending.

While Section 3(d) references the concept of just and reasonable rates, the procedure set forth in that section for reviewing the initial petition will not
provide a meaningful review because specific projects and costs will not be specified, and the statute provides insufficient time for discovery or evidentiary hearings as part of that process. The annual true-up will not provide that opportunity either, as that review only looks at over and under-recovery of the utility’s actual expenditures. Thus, the utilities will be able to spend whatever they choose without any scrutiny, and will have no incentive to control costs.

The legislative findings discussing smart grid provide a good illustration of this problem. The fact is that “smart grid” means many things. Some aspects of “smart grid” will result in operational savings that exceed the costs. Under the current system, there is an incentive for the utilities to undertake those projects, as they will reap the benefits of those savings. Other spending that could be characterized as being for “smart grid,” relates to projects that cost more than the benefits they provide. This bill will encourage spending for those projects even though they are not cost-effective. This is because the ratepayers will be paying the costs while the utility retains the savings. I submit that even – or particularly - in these economic times, we do not want to encourage spending that is not cost effective.

Not only will the utility’s spending be unchecked, but their profit will be tied not to their level of service, or whether they operate an efficient system, but to how much they spend. Thus, this bill actually provides an incentive for the utilities to overspend. If they do buy gold-plated infrastructure, their profits will be calculated off of the higher investment cost. The bill therefore creates a disincentive for the utilities to operate efficiently.
3. **The Regulatory Changes in the Bill will not Create Jobs, and May Result in Job Losses**

It is likely that this bill may cost more jobs than it will create. Many of the state’s large and small commercial and industrial energy users cannot afford significant additional rate increases. You will hear today about businesses that may be forced to close their New Jersey facilities in part due to the high cost of electricity in this State. In short, by passing this bill, the Legislature will be choosing to maximize the return for one industry at the expense of other businesses throughout the state. While it is difficult to quantify the job gains or losses that will result from this bill, the job losses that may result if businesses cannot afford the subsequent unregulated increases in electricity and gas prices may outnumber any increased short term hiring by the utilities.

In addition, if the utility investments are used for “smart grid,” some projects that are often characterized as “smart grid,” such as Advanced Meter Infrastructure, or AMI, provide operational savings because they require fewer employees to, for example, read meters. While some utilities have stated their intention to redepoly workers whose jobs are eliminated in this way, not all have, and some net loss in jobs may occur. This factor also needs to be taken into consideration when assessing the job-creating potential of this bill. Overall, if we are going to spend the limited amount of ratepayer or public money that we can afford to create jobs in the utility sector, we are much better off spending that money on energy efficiency programs. These programs will actually create jobs.
and save businesses and consumers money overall. Over time, energy efficiency will hopefully create downward pressure on energy prices by lowering overall demand. This is the goal of the recent Energy Efficiency initiative announced by the Governor which is aimed at creating jobs and meeting the Energy Master Plan goals, and is a far better focus for our scarce ratepayer and public dollars.

4. The Regulatory Changes in this Bill Far Exceed FERC Transmission Formula Rates and are Unprecedented on the State Level

The Legislative findings suggest that the provisions of this bill are modeled on the formula-based rates “used by utilities in the region served by PJM Interconnection, LLC.” It is important to note that no other states in the PJM area have adopted formula rates on a state level such as that proposed in this bill. The only states that have adopted formula rates on the state level are Alabama, Louisiana, Mississippi, and South Carolina. Even in those states, consumers receive greater protections from, for example, setting a baseline through a full base rate case conducted prior to utilizing formula rates (South Carolina), establishing performance benchmarks (Mississippi), and caps on the amount of increases permitted in consecutive years (Alabama).

Proponents of the bill have also cited the formula-based rates for transmission costs permitted by the Federal Energy Regulatory Commission (FERC) as a model for the regulatory changes proposed in this bill. But again, this bill goes far beyond what is allowed on the federal level. For costs
associated with the construction of transmission lines, an application for formula rates is not even made to the FERC unless the construction of those lines has already been reviewed and deemed necessary by PJM. Thus, the necessity of building the lines in the first place is not determined by the utility that will profit from it, but by an independent system operator that is charged with managing the regional grid. Once PJM determines that a line is needed to ensure reliability, the utility may then apply to the FERC for formula-based or incentive rates. In that proceeding, objectors have the ability to challenge the project costs and the utility’s rate request. This is far different than the process proposed in the bill, where there is no such opportunity.

5. The Regulatory Changes in the Bill Will Lead to More Frequent Rate Increases and Price Volatility

Under this bill, distribution rates are likely to go up every year. Previously, utilities were granted relief from volatile commodity prices by allowing those costs to fluctuate each year without a rate case, but commodity costs, unlike distribution costs, are not determined by the utility but by the markets. This bill will add volatility to the distribution portion of ratepayers’ bills. It will also lead to less frequent or no rate cases, as the factors that would lead a utility to file a rate case, i.e., a need for more revenue, or a loss of earnings, will be addressed by the utilities’ unilateral decision to spend, and the consequent application of formula-based rate increases. There is also no mechanism to credit to ratepayers any overall cost savings a utility may have as a result of these
investments, or other cost-saving factors, between rate cases. Thus, ratepayers will see steady and frequent rate increases and will have less frequent opportunities to conduct a comprehensive review to determine if utility rates are just and reasonable.

6. The Bill Conflicts with Several Other Statutes and Unconstitutionally Infringes on Due Process Protections

There are many legal issues raised by this bill. The bill explicitly exempts utilities seeking formula based rates from the provisions of N.J.S.A. 48:2-21, which authorizes the Board to set just and reasonable rates and requires hearings and public notice of rate increases. While the Legislature may alter a statute in a subsequent statute, the requirement that rates be "just and reasonable," are constitutionally based, and cannot, and should not, be eliminated. Nor may the Legislature dispense with the requirement of a hearing. Under the Constitution and the Administrative Procedure Act, the public has a right to a hearing before rates are increased and a right to an evidentiary hearing when those rates are contested. Yet the bill specifically waives the hearing requirement in N.J.S.A. 48:2-21, and requires final orders in shortened review periods (four months for the initial petition and 90 days for the "true-up") that preclude any meaningful due process. Meaningful review is also hampered by basing the initial review of these rates on the utility's forecasted budget or audited books, using accounts that may be six years old. Finally, the bill precludes the Board from denying a utility's application for formula rates, even if

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the Board views those rates as unjust or unreasonable. Although the Board has limited authority under the bill to modify the "amount" a utility seeks, it cannot deny the request for formula rates or limit the items that may be incorporated into a utility's rates through application of the formula.

The bill is also inconsistent with RGGI. As noted above, under Section 13 of RGGI, the Board must approve utility Energy Efficiency and Renewable Energy programs as well as the proposed cost recovery mechanism. This bill, however, would allow spending for the "promotion of energy efficiency and renewable energy goals" without a prior review by the Board of whether the program is prudent.

7. Changes of this Magnitude should not be Done Without a Careful and Thorough Review Particularly in the Midst of Economic Upheaval.

There is no denying that the current financial climate is extremely uncertain. However, given this uncertainty, legislators and regulators should be even more cautious about adopting a new form of regulation. They should not overreact to current financial conditions but should go slowly and understand all the impacts before jumping into something new. Ratepayers are also facing uncertain times. It is not the best time to force a new regulatory scheme on them, especially one that will result in more frequent rate increases and therefore greater volatility of rates. In this regard, the bill calls for a study by the Board of the experience with formula-based rates and recommendations concerning
whether the provision of the bill should be extended or repealed. A study of this kind should precede consideration of this bill, not follow it.

In addition, if what we seek to do is find a way to encourage utility investment to spur economic growth and create jobs, the better way is to focus on the recent Energy Efficiency initiative proposed by the Governor and currently under discussion at the Board. Investment in Energy Efficiency will create jobs for plumbers, electricians, building contractors and utilities. It has the benefit of lowering costs, so that the customers participating in the programs can pay at least a portion of the costs out of the savings. Energy Efficiency may help reduce the need for new generation and ultimately lower costs by lowering demand. These are also worthwhile programs that might not be funded if not encouraged by the government or backed by ratepayers.

Utilities are already obligated to maintain their systems and they will invest in cost-effective infrastructure as those investments improve their system and ultimately are incorporated into their rate base and are included in the calculation of a reasonable return. This bill is not needed to encourage cost-effective investment in utility infrastructure; it merely protects the utility shareholders from investments that are not cost-effective. That is not something the businesses and consumers in this state – who are already struggling to pay their bills – can afford right now. I therefore urge this committee not to pass S.2428.

Thank you for the opportunity to testify. I am happy to answer any questions you may have.
NEW JERSEY STATE CHAMBER OF COMMERCE
Testimony Before the Senate Economic Growth Committee
And the
Senate Environment Committee
December 11, 2008

Concerning Formula Based Rates for Utilities
S-2428 (Lesniak)

Presented by: Jim Leonard, Senior Vice President Government Relations

Thank you Chairman Lesniak, Chairman Smith, and members of both the Senate Economic Growth Committee and the Senate Environment Committee. My name is Jim Leonard and I appreciate the opportunity to comment on Senate Bill 2428.

Both New Jersey and the entire nation are in an economic crisis not experienced by most of us here today. November saw a 26 year high in the number of individuals filing for unemployment nationally – more than 570,000 people. In New Jersey we have read reports of the Labor Commissioner having to add additional staff members to process the large number of unemployment claims. Clearly we are in a crisis, a crisis you and your colleagues have taken seriously enough to craft legislative initiatives designed to help address the problem. The expedited infrastructure projects initiated by Governor Corzine will also serve to help create jobs and lessen the impact of the recession. In fact, the Governor discussed the importance of infrastructure spending this morning before the Congressional Appropriations Committee.

And while government spending as a means of easing our fiscal troubles is important, we all know the size and scope of this problem is too large for a single solution. As stated by the Federal Reserve Bank, “Solutions for the nation’s major economic problems...rely heavily on hopes for a high and rising rate of business investment in new plant and equipment.”

Many have portrayed S-2428 as a bill that will dramatically increase the cost of energy, an item of concern to us and a charge we believe needs to be thoroughly investigated. But the State Chamber also sees this bill as one designed by the sponsor to bring predictability to the rate setting process, to stabilize rates, and to assist in accessing capital. From the State Chamber’s perspective, capital spending from the private sector is the best way to lessen the pain we currently are experiencing, and the best way to assure New Jersey is positioned to be a regional leader in job growth when our economy improves. The current credit crisis has served to stifle capital expenditures at a time when that spending is needed most. The State Chamber views this hearing as an opportunity to continue
the discussion regarding ways to help solve our economic problems, and we see S-2428 as a possible way to help infuse our economy with funding needed to create jobs.

We just completed our third survey of CEOs throughout the state that shows a significant decline in capital expenditures. 31% of these CEOs said last year they expect to see a decrease in capital spending. In October, 43% of the same CEOs said that they will drop capital spending. And I would imagine the number would be even higher if we asked that same question today.

Let me be clear Senator Lesniak. The State Chamber does not support legislation that increases energy costs for the employer community. We are here today to provide encouragement to you and your colleagues to explore any and all opportunities to ease the credit crisis and increase private sector capital spending. If your legislation allowing for utilities to elect a formula-based rating methodology does that without a significant increase in energy rates then we applaud your efforts. If there are different ways – through other legislative initiatives or through the regulatory process – that might provide a better way to break the capital spending logjam, we will appear before you again in support those initiatives. But the bottom line of this discussion today is, in fact, the bottom line. What can we, or what must we do to increase expenditures for capital projects that add jobs and improve our situation?

The State Chamber applauds you Chairman Lesniak for introducing this legislation that could make dramatic strides toward increasing the availability of capital and increasing the number of jobs created during this economic funk.

Thank you for your time, and I would be happy to take any questions from members of either Committee.
Testimony at legislative hearing before the Senate Economic Growth Committee and the Senate Environment Committee.

RATE RECOVERY LEGISLATION
December 11, 2008

Thank you very much for this opportunity to address the members of the New Jersey Senate Environment Committee and the Senate Economic Growth Committee about the Rate Recovery legislation. I am Pam Hersh, vice president for Government and Community Affairs at Princeton HealthCare System (PHCS), speaking on behalf of CEO and President Barry Rabner.

The acute care hospital of the Princeton HealthCare System, known as, University Medical Center at Princeton (UMCP), in 2011 will be relocating 2.5 miles away from its current site in downtown Princeton to Route One in Plainsboro. UMCP for the past 89 years has served the central New Jersey region by continually anticipating and responding to the changes in
demographics and healthcare treatments with the latest in technology and procedures. Approximately 20 years ago, UMCP leadership became aware that the aging facility and the limited space allocated for that facility within the town of Princeton would lead to increased difficulty in UMCP’s ability to meet the challenges of delivering healthcare in the 21st century. Thus, hospital leadership determined that the only responsible way to serve the residents of its service area was to relocate and develop a brand new facility consisting of not only new glass and steel, but more importantly the latest innovations in technology, techniques and sustainability that would make an enormous difference in the quality of lives of the hundreds of thousands of people served by UMCP each year.

From the very beginning of the planning process more than six years ago, a priority for both vacating our current site and building on a new site has been sustainability – green, by the way, happens to be the color the healthcare system’s logo. Healthcare excellence and sustainability initiatives are a perfect match, both fulfilling the goals of one another.

The development of a new healthcare campus in Plainsboro creates an incredible opportunity for the hospital to serve as a beacon of sustainability in New Jersey, particularly because of its highly visible location – Route One Corridor, dubbed “Einstein’s Alley” between Princeton and New Brunswick, nestled among the world headquarters of
several high tech, pharmaceutical, financial corporations, including the Princeton Plasma Physics Laboratory. Selecting this location was the first step towards fulfilling a vision of sustainability; the site is closer to 70 percent of our patients and our employees, is within walking distance to the new Plainsboro Town Center, and is well served by mass transit now and in the future (NJ Transit is planning bus rapid transit directly through the site). We have pledged to spend several million dollars to create a 32-acre park along the Millstone River – hailed by the Stony Brook- Millstone Watershed Association as the most significant green development in the history of the Millstone River. In addition, the east-west building orientation that maximizes natural light and reduces the use of artificial light, is another million dollar aspect of the project to which we already have committed. We are looking to partner with for-profit corporations to enable the hospital to build a cogeneration facility and a photovoltaic system of producing energy.

However, achieving the very important next level of our green vision – including environmental control systems, energy-saving mechanical systems, water saving devices, solar shades, light pollution reduction features, light colored roof – would cost us another $10 million. The implementation of such features may be impossible without some fiscal help.
I know it is no surprise to anyone sitting on these committees that hospitals in New Jersey are in an extremely financially fragile state. Before the recent world-wide economic meltdown, New Jersey’s hospital statistics were bleak. Fifty percent of the Hospitals in New Jersey are operating at a loss; 24 hospitals have closed since 1992; five more have filed for bankruptcy in the past 24 months. Furthermore, the hospitals in New Jersey are operating with infrastructure that is on average the oldest in the nation. Layered onto these statistics has been the recent recession, further eroding the hospitals’ bottom line. Our hospital still has a small positive operating margin, but embarking upon a $450 million construction project - which always was a challenge – has become a daunting challenge.

The real bottom line, however, is that we must move forward. We are integral to the health and well being of Central Jersey residents, including a substantial population of uninsured and underinsured. We can not stay in our current facility and be able to provide the level of health care needed and expected by the residents of the region. Even though we would like to build our hospital to the highest standards of sustainability/green guidelines that will make the facility more energy efficient and create a better healing environment for patients, we can not do it without help.
Our choices to spend money in one area inevitably mean deciding we are unable to spend the money someplace else. Doing millions of dollars in sustainability initiatives would mean the elimination of an operating room or a piece of life-saving equipment, such as the next generation of the cyber-knife. And that is unacceptable.

The PSE&G carbon abatement grant program would be the mechanism that enables us to achieve our sustainability goals without compromising our health care mission. The sustainability initiatives would benefit not only our patients and residents in our market share area, but also all citizens of the state, the nation and the world by contributing to global sustainability goals. The PSE&G program is so unique because it is a grant program rather than the more common tax-credit programs that are not applicable to charitable, non-profit institutions. It is extremely encouraging that PSE&G is willing to work with healthcare providers to carry out the all-important mission of preserving and restoring the health of New Jersey’s citizens. In addition, healthcare providers have noticed that PSE&G’s efforts will control healthcare costs by enabling the facilities to use less of the product that PSE&G sells. The PSE&G carbon abatement program is an excellent example of how utilities can help their customers and the State work through this economic crisis. Efforts of this type can create jobs and help build infrastructure - in our case - the healthcare infrastructure, which as I said, has a great need to be rebuilt in New Jersey. We
would urge the State to allow the Utilities to play a central role as an economic engine at a reasonable cost as determined by the regulators.

The proposed program benefits everyone in New Jersey by helping hospitals achieve the highest standards of sustainability, cost control and excellence in health care.

Pam Hersh
Vice President for Government and Community Affairs
Princeton HealthCare System
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Statement of Phyllis Salowe-Kaye, Executive Director and Marilyn Carpinteyro, Legislative Political Director

In Opposition to S2428 – Formula Rates

Public Hearing before the NJ Senate Economic Growth and Environment Committees

December 11, 2008, 1:00 pm – Statehouse, Trenton, New Jersey

Good afternoon Chairman Lesniak and Smith and members of the committees. My name is Phyllis Salowe-Kaye and I am the Executive Director for New Jersey Citizen Action. With me today is Marilyn Carpinteyro, Citizen Action’s Legislative Political Director. Thank you very much for giving us this opportunity to testify on S2428.

Citizen Action is the State’s largest citizen watchdog organization, representing more than 100 labor, tenant, religious, community, women’s, environmental, civil rights and senior organizations and 60,000 family members who live throughout New Jersey. For our entire organizational history we have worked to improve the quality of life for NJ’s working families and seniors including fighting for fair and affordable utility rates and a clean environment.

We commend Senator Lesniak’s intent to encourage and support the modernization of our energy infrastructure, develop energy efficiency programs and create jobs. However, we oppose S2438, not because we oppose a green recovery, but because it does not provide an equitable or transparent vehicle to achieve these goals and sacrifices the interests of consumers, (of every income level), and small, commercial and industrial employers for those of utility companies and their shareholders. While the consequences may be unintended, if enacted, this bill will hurt our communities, destroy good jobs and place an even greater burden on our state’s already stressed families and businesses. This is a deregulation bill that will put rate payers at the mercy of unregulated monopolies.

We support using our existing basic regulatory framework to achieve the goals described in S2438. While no one could accuse Citizen Action of being the NJ Boarc of Public Utilities #1 fan, we do not believe throwing the proverbial baby out with the bathwater is the answer to encouraging utility investment in energy efficiency programs and infrastructure. NJ’s current

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rate making mechanisms have produced stable rates and sufficient revenues that have consistently allowed utilities to raise capital to maintain and improve the reliability of their distribution systems – and earn a handsome profit. For example, PSE&G was, once again selected as America’s most reliable utility. According to PSE&G’s October 23, 2008 press release announcing the award, “This is the third time that the utility, the largest in New Jersey, has received this recognition, and the seventh straight year that it has garnered the ReliabilityOne Award for the Mid-Atlantic region.” We also know that their balance sheets, while perhaps not as stellar as a couple of months ago, are the envy of other industries, and they do have access to capital.. For example, less than three weeks ago on November 24, 2008 PSE&G sold $275 million in 5-year bonds. On October 31st of this year, PSE&G’s parent company, the Public Service Enterprise Group, reporting to financial analysts on its 3rd quarter earnings, stated that it has a strong balance sheet and has $3.5 billion dollars of available liquidity and that its capital needs are funded from internal cash. It was also announced last week that PJM approved $1.6 billion dollars of power transmission upgrade projects, the biggest one being for Public Service Electric and Gas Co, to build a 500-kilovolt line from the Branchburg substation in Somerset County to the Roseland substation in Essex County and then continuing to the Hudson substation in Hudson County.

NJ’s current regulatory structure is flexible enough to address new challenges and problems, (if they exist), with mechanisms that provides transparency and accountability, tests the cost effectiveness of planned expenditures and one that is required to balance the interests of ratepayers and shareholders. Passage of S2428 would eliminate all of these protections. Rather than expand deregulation of the energy industry, we believe the legislature and the Governor should addressed capacity problems at the BPU. The BPU, like much of state government, is a shell of its former self and through hiring freezes, cuts and layoffs does not have adequate staffing levels to conduct speedier, yet thorough review of these issues. The Board operation is funded through a ratepayer assessment, one that has not for years been used to its fullest extent. Given the existing process related complaints and the desire to be able to respond more quickly, increasing the staff at the BPU is a better and what is likely much less costly approach than eliminating regulations that are designed to protect ratepayers. It will also create good jobs.
S2428 eliminates review by the NJ Board of Public Utilities of how utilities spend ratepayer money and whether the spending is prudent. S2428 explicitly exempts utilities that choose to use formula rates from the current statutory provisions that authorize the NJ Board of Public Utilities (BPU) set just and reasonable rates and that require public participation through a public hearing process, the opportunity for effected parties to intervene and that public notice of rate increases are issued. S2428 removes the legal requirement that utilities spend ratepayer money wisely and prudently. Under this bill a utility could build a new or duplicate substation, in the most expensive way possible and simply flip those costs into its formula rates. These costs would have to be paid by us, ratepayers/taxpayers, and the Board of Public Utilities would be powerless to rein in their spending.

Oversight and prudency reviews are needed to determine monopoly utilities are making the right kind of investments with our money. While S2428 does not reference a dollar amount of investment that ratepayers/taxpayers would be required to make, we imagine the types of programs contemplated represent millions if not hundreds of millions of dollars. However, there is nothing in the legislation that would require these moneys be expended on the most cost beneficial projects.

For example, S2428 draws a number of conclusions, including the benefits of “smart grid”. We believe such conclusions are premature. Some might consider Advance Meter Infrastructure (AMI) to be part of a smart grid system. Others would argue that utility investments in AMI are not the least coast approach to reducing energy consumption of residential customers and will eliminate jobs in the utility sector. Some would argue that monies are better spent supporting energy efficiency projects, including building retrofits, rather than some smart grid improvements, if our goal is to jump start the economy quickly. We raise these examples to illustrate how these matters are complex and require the deliberative process of regulatory and expert review. It appears to us that S2428 would leave all of these decisions on how to spend our money with utility executives, again eliminating important protections for consumers and our economy as a whole. Before the costs of these programs are put into our rates the Board needs to
determine, through careful analysis, if the benefits of these investments outweigh the costs, over what period of time and that there are tangible benefits for ratepayers.

S2428, guarantees utility profits, (a guarantee that is not provided to any other industry), does not actually require that utilities modernize their infrastructure or make investments that will benefit consumers, including investing in cost-beneficial energy efficiency projects. The bill does not require that the establishment of this new and untested price setting theory have no adverse impact on consumers, establish performance criteria and standards for the utility corporations, produce actual energy savings or that rates be reduced. The bill does not require that one new job be created or even that current job levels in the industry be maintained.

We are also opposed to the bill’s provision that would require that cost savings be allocated between ratepayers and shareholders. Such a provision requires that shareholders receive excess profits over and above their guaranteed rate of return. S2428 could eliminate all shareholder risks and shift it all to ratepayers.

**NJ does not need Formula Rates to spur the creation of green jobs and meet the goals of the Energy Master Plan.** The recently enacted Regional Greenhouse Gas Initiative (RGGI) allows utilities to invest in energy efficiency and renewable energy and recover those costs that are reviewed and approved, without the need for a full rate case. Thus RGGI already supports the Governor’s initiative to create “green jobs” to spur the economy and meet the goals of NJ’s Energy Master Plan.

**NJ Citizen Action supports the creation of green jobs.** We believe these must be good jobs and that they not only be green, but pink, yellow, white, black and brown. A clean energy economy must include a vision of not only a stronger environment but a stronger middle class as well. We believe these taxpayer funded job creation programs must be linked to job quality or we risk affirming day laborers installing solar panels without job security or proper training, minimum wage workers working in a clean tech manufacturing facility without healthcare or the right to organize or youth pushing brooms in green buildings without training or the opportunity for advancement. Good Green Jobs must offer benefits, including health care and pensions, paid

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sick leave, the right to organize, safe working conditions and job security. Green jobs that are in fact good jobs provide a real pathway out of poverty and any job creation program, whether through RGGI, a federal public works program or ratepayer funded initiative must include these provisions and so specified in an Order approving such projects.

Besides direct utility investments, there are other ways to support the creation of green jobs. Many of these proposals are detailed in the report *Green Recovery* released by the Center for American Progress and the University of Massachusetts Political Economy Research Institute in September. On Sunday, the *New York Times* reported that President-Elect Obama is promising to create the “largest public works construction program since the inception of the interstate highway system a half century ago.” His plan would funnel billions of federal dollars into a number of projects including jobs that reduce energy use and global warming emissions, to expand broadband internet access, to make government buildings more energy efficient and work on our electrical grid. We support direct government spending on these initiatives. We should wait the few short weeks for the start of the Obama administration to see how much funding will come to New Jersey and how that might offset the need for ratepayer investments. We also believe we should support that these monies be directed to a broad spectrum of organizations, not just the utility industry, which can utilize these funds to create green recovery jobs as well.

We could expand existing and create new tax credits to assist private businesses and homeowners to finance both commercial and residential building retrofits, as well as investments in renewable energy systems.

We could support funding for loan guarantee programs that would underwrite private credit that is extended to finance building retrofits and investments in renewable energy.

At the federal level we could expand the Smart Grid Investment Matching Grant Program established in the 2007 Energy Independence and Security Act.
As we are all too painfully experiencing, deregulation is not always a good thing. The market place, as we have witnessed in the savings and loan, energy, and most recently in the financial and mortgage industries, does not always know best. Most Americans believe that big corporations have gained too much power over too many aspects of American life and want policy makers, rather than tearing down regulatory structures, to protect our interests as consumers, protect our economy, vigorously enforce public oversight functions and establish more transparency not less.

While we believe S2428 is flawed, we encourage the continuation of today’s conversation. We believe a deliberative process, including a review of best practices in other jurisdictions and one where every one is at the table, joined with the creativity and political will present in our home state can accomplish the goals of this bill -- creating green jobs and healing our distressed economy while at the same time protecting the interests of ratepayers and taxpayers. We look forward to being part of that process.

Thank you very much.
December 11, 2008

TO: Members of the Senate Economic Growth and Senate Environment Committees

FR: Sara Bluhm, Assistant Vice President Energy & Federal Affairs
Melanie Willoughby, Senior Vice President

RE: S-2428 (Lesniak) Allows for formula-based rate recovery on electric and gas bills

On behalf of the 23,000 business members of the New Jersey Business & Industry Association (NJBJA), we would like to express our opposition to this legislation. While the Association counts among its members many of our State’s utility companies, which support this bill, we cannot ignore the devastating effect it would have on the State’s Commercial and Industrial ratepayers.

This bill is a far reaching change in the 100-year-old process of how we set electric rates. It removes the one safeguard electric and gas consumers rely on to keep rates reasonable. Under this bill, the just and prudent review of utility spending—the standard that has guided the Board of Public Utilities (BPU) rate-setting efforts—is eliminated. In other words, the utility becomes an unregulated monopoly.

This would leave ratepayers at the mercy of utilities that could spend what they want, for whatever they want, with ratepayers picking up the tab. As cumbersome as it may be, the BPU is the one thing that stands between energy consumers and unimaginable increases in energy rates.

Nor does this bill replace BPU oversight with any meaningful limits on what utilities can do. There are no caps on spending, there are no requirements that utilities meet any prudence standards. An energy company would not even have to conduct a cost-benefit analysis to justify rate increases before starting a project. Utilities could undertake any capital project without having to justify the need for it, its viability, its cost or what it is intended to accomplish. In essence, this bill would eliminate what little financial risk utilities face now, and open the door for expensive spending that rate-payers would, by law, be responsible for.

Legislators are being asked to approve, sight unseen, expensive utility projects that will be paid for by their constituents. As the major ratepayer in this State, business cannot have our government sanction spending without knowing what we are going to get for our money.
Meanwhile, our members are already paying some of the highest electricity rates in the country. According to the federal Energy Information Agency, our Commercial customers have the sixth highest electricity rates in the nation, and our Industrial users pay the ninth highest rates in the nation. Because New Jersey's Commercial and Industrial ratepayers account for 64 percent of the State's total electricity consumption, major rate increases would have a devastating impact on our private-sector economy.

NJBIA appreciates that utilities are being asked to expand their renewable energy sources and conservation efforts during a recession. But we would point out that the recession impacts everyone. Families, small businesses, manufacturers and everyone else is being asked to meet their responsibilities under the same financial difficulties as utilities. Our NJBIA 2009 Business Outlook Survey, released at the end of November, reported our members have experienced sharp drops in sales, profits and employment over the past year and expect that trend to continue. And among their top concerns in this bleak economy is rising energy costs. To add substantially higher energy rates to their burden in unconscionable.

NJBIA also appreciates that if we are going to have a greener system for meeting our energy needs, everyone is going to have to pay for it. We would point out that our members already are!

The Governor's Energy Master Plan, the Regional Greenhouse Gas Initiative (RGGI), the delay in the Transitional Energy Facilities Assessment tax, the increase in the Societal Benefits Surcharge (SBC), the continuation of the Retail Adder tax, and the Global Warming Solutions act all add costs to our electric and gas bills all in the name of more environmentally friendly energy.

Between now and 2012, ratepayers will contribute $1.2 billion to Clean Energy through the Societal Benefits Charge. RGGI is estimated to hit industrial ratepayers with as much as a 5.4% increase in electric costs by 2015; and the continuation of TEFA is a 4 percent tax on electric bills.

The legislation states that its purpose is to fund future electric and gas utility investment at a reasonable cost. But the State already funds green conservation and renewable projects. The Federal Energy Regulatory Commission (FERC) currently has formulas for building and improving transmission lines. And the utilities have mechanisms to adjust rates to meet their increased investments. But all of these mechanisms contain safeguards to ensure that the projects are justified and cost-effective. This bill would effectively remove those safeguards.

Similarly, the newly passed RGGI law, contains a cost recovery mechanism for the utilities to use for energy efficiency and renewables programs. The utilities' costs and profits can then be recovered almost immediately, and are then reviewed and "trued-up" on an annual basis.

Second, for several decades now, utilities have had the ability to petition the Board of Public Utilities for "construction works in progress" (CWIP) to be counted in rate base as the costs are incurred. In fact this process dates back to 1973 when Public Service commenced Docket No. 726-562, decided March 14, 1974, and Docket No. 743-184, decided April 7, 1975. The CWIP
allows the Board to fast track necessary construction projects, the utility to gain access to the capital, and the ratepayer to have protections in place.

Several utilities were able to recently access the bond market and sell over $500 million in bonds. Just as a business would not expect the same mortgage rate from previous years, investors cannot expect the same bond rate. Yet we would hope this is a temporary economic problem, not one that warrants changing our rate system so drastically. Why put in a permanent drastic solution to a temporary problem?

NJBIA is supportive of finding solutions for utilities to work more expeditiously with the Board for green jobs, energy conservation, and helping business ratepayers manage costs. However, we do not think that this bill is the vehicle to achieve the goal. We believe that the goal can be achieved in many other ways. We recognize that times have changed and with deregulation of the electric markets, perhaps there needs to be changes to the system. However, NJBIA is not willing to eliminate the just and reasonable rate review.

The Governor’s EMP tries to achieve certain goals over the next twelve years. Initial reports from NEEP, who was commissioned to formulate the plan on energy efficiency, have the total investment needed at over $14 billion dollars. Currently the State collects from ratepayers over $500 million annually for energy efficiency and renewables projects through the Societal Benefits Charge. This money is going to be transferred over to the electric and gas utilities by 2010. Additionally there is over $100 million in Retail Adder Funds which could be used to help commercial and industrial ratepayers. In 2009 the State will begin to spend the proceeds of the RGGI auction on energy efficiency. NJBIA believes the State needs to spend the first three pots of money before we create another one. How many times are we going to make ratepayers pay for the same thing?

There needs to be a plan before we dramatically change the system, raise rates and leave ratepayers in the cold.
News from the New Jersey Business & Industry Association

November 25, 2008
Contact: Christopher Biddle
609-393-7707, ext. 227

2009 Business Outlook Survey
The NJ Business Outlook Plunges to Recession Levels
With Employers' Hiring Plans at Lowest Level in 18 Years

The economic outlook among New Jersey employers has fallen to recession levels, and their plans for hiring more workers have fallen to the lowest level in 18 years, the New Jersey Business & Industry Association said today in releasing the findings of its 2009 Business Outlook Survey.

Whether evaluating actual conditions in 2008 or anticipating what 2009 will bring, the survey's 1,450 respondents presented a mostly gloomy assessment of current and future economic conditions.

“Our survey indicates that New Jersey has been in the grip of a recession for much of 2008,” said NJBIA President Philip Kirschner. “Many businesses are struggling to survive, and they expect things to get worse in 2009.”

Employers reported a sharp drop in sales, profits and employment over the past year, and 69 percent of companies said their industries were already in a recession or heading into one when this survey was conducted in September.

Only 17 percent of companies said they expect to expand employment in 2009, with another nearly 20 percent saying they expect to shrink their payrolls. The net percentage expecting to hire more workers, at -3 percent, is at the second lowest level of the past 28 years. Only the 1991 survey produced a more negative employment outlook.

Survey participants reserved their bleakest outlook for the New Jersey economy, with nearly six in ten saying business conditions here will get worse before they get better, a more negative view than was seen in the 2001 recession. This follows three consecutive years of declining business confidence and business conditions as measured by this survey.
New Jersey Business & Industry Association, 2009 Business Outlook Survey

What follows is a summary of some of the survey’s main findings:

Twelve percent of survey participants said New Jersey is a “good” place for expansion of their business facilities, the lowest level in 25 years. They also said the overall cost of doing business in this state, along with the cost of health insurance, is their most troublesome problem.

When this survey was conducted in September 2008, 54 percent of survey participants reported that their industries were in a recession, with another 15 percent saying their industries were heading into a recession. This marks a ten-year high for the survey’s recession indicator.

A majority of respondents in every industry sector except healthcare said their industries were in a recession or heading into one. The retail and housing construction sectors have been hardest hit, with 87 percent and 85 percent of respondents in these sectors reporting, respectively, that their industries were in a recession or heading into one.

The short-term outlook for individual industries has fallen to the lowest level since the 1992 survey. Forty percent expect conditions in their industry to deteriorate in the first six months of 2009, while only 22 percent expect conditions to improve, with the rest expecting things to stay about the same. (See Table on this page for industry details.)

Businesses are no more ready to spend than they are to hire. The outlook for business spending in 2009 is essentially flat, with 32 percent expecting to spend less on purchases in 2009, and 33 percent of businesses expecting to spend more. The rest expect to spend about the same amount. This is the weakest outlook for business spending in 18 years.

The outlook for sales and profits at individual companies has fallen dramatically from last year’s levels, retreating to lows seen in earlier recessions. Forty-one percent of companies said they expect their sales to increase over the next 12 months, down from 57 percent of companies having this expectation last year. And 29 percent expect their sales to decline over the next 12 months, compared with 21 percent who had this expectation last year.

The 2009 survey was conducted in September 2008. The findings are based on the first 1,450 responses. Of this group, 83 percent were small companies with 1-49 employees. Responses came from New Jersey businesses in all 21 counties and every major industry.
### Business Outlook Trend, 2002-2009

**EXPECTATIONS FOR:**

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**NJ ECONOMY**

| Better      | 22%  | 28%  | 34%  | 31%  | 18%  | 12%  | 13%  | 15%  |
| Same        | 36%  | 40%  | 41%  | 45%  | 42%  | 37%  | 36%  | 29%  |
| Worse       | 42%  | 31%  | 26%  | 24%  | 39%  | 51%  | 49%  | 57%  |
| Net better  | 21%  | 11%  | 8%   | 7%   | 21%  | 36%  | 36%  | 42%  |

**YOUR INDUSTRY**

| Better      | 28%  | 36%  | 40%  | 41%  | 27%  | 24%  | 25%  | 22%  |
| Same        | 39%  | 41%  | 41%  | 41%  | 42%  | 42%  | 42%  | 37%  |
| Worse       | 33%  | 23%  | 19%  | 19%  | 32%  | 34%  | 33%  | 40%  |
| Net better  | 16%  | 13%  | 7%   | 7%   | 22%  | 5%   | 16%  | 18%  |

**SALES**

| More        | 42%  | 50%  | 50%  | 56%  | 49%  | 43%  | 57%  | 41%  |
| Same        | 27%  | 25%  | 27%  | 26%  | 26%  | 26%  | 22%  | 30%  |
| Less        | 31%  | 26%  | 23%  | 18%  | 25%  | 29%  | 21%  | 29%  |
| Net more    | 12%  | 24%  | 26%  | 38%  | 23%  | 15%  | 36%  | 12%  |

**PROFITS**

| More        | 37%  | 42%  | 44%  | 49%  | 43%  | 37%  | 51%  | 39%  |
| Same        | 27%  | 25%  | 28%  | 26%  | 25%  | 28%  | 25%  | 26%  |
| Less        | 36%  | 33%  | 28%  | 26%  | 32%  | 36%  | 24%  | 33%  |
| Net more    | 0%   | 10%  | 16%  | 23%  | 10%  | 2%   | 26%  | 5%   |

**PURCHASES**

| More        | 35%  | 39%  | 40%  | 46%  | 42%  | 36%  | 42%  | 33%  |
| Same        | 39%  | 37%  | 37%  | 36%  | 35%  | 37%  | 34%  | 35%  |
| Less        | 26%  | 24%  | 24%  | 18%  | 23%  | 27%  | 23%  | 32%  |
| Net more    | 8%   | 16%  | 16%  | 28%  | 19%  | 8%   | 19%  | 1%   |

**EMPLOYMENT**

| Increase    | 21%  | 24%  | 23%  | 27%  | 24%  | 21%  | 25%  | 17%  |
| Same        | 66%  | 66%  | 66%  | 66%  | 66%  | 67%  | 61%  | 64%  |
| Decrease    | 13%  | 10%  | 11%  | 7%   | 10%  | 12%  | 14%  | 19%  |
| Net increase| 8%   | 14%  | 17%  | 20%  | 14%  | 10%  | 12%  | 3%   |

**Net better** (or "net increase" or "net more") represents the net percentage of respondents ("more" minus "less") anticipating improved conditions.

Note: Changes calculated before rounding. Totals may not equal 100 percent.
Statement of Support of S2428  
by Dennis Dooley  
Vice President, Planning & Development  
Capital Health System  
December 11, 2008

Good Afternoon, Chairmen Lesniak and Smith, Vice Chairs Cunningham and Van Drew, honorable committee members, and ladies and gentleman of the public. Thank you for the opportunity to testify at this afternoon’s joint meeting of the Senate Environment and the Senate Economic Growth Committees. My name is Dennis Dooley, Vice President, Planning & Development at Capital Health System.

I am here today, because we at Capital Health System are excited about working with PSE&G on climate change and efficiency initiatives relative to the construction of the System’s new facility in Hopewell and the retrofit of our Fuld facility here in Trenton. The financial crisis facing New Jersey hospitals is no secret, so the support we have received from PSE&G is most welcome. They have worked with us and included in their regulatory filings, specific programs for the healthcare sector for retrofits as well as new construction programs.

It is encouraging that this energy company is willing to work with healthcare providers to help us carry out our mission of preserving and restoring the health of New Jersey’s citizens. It has not gone unnoticed by the healthcare industry that these efforts will actually help us control costs by using less of the product they sell. That tells us that they understand that a healthy New Jersey benefits all of us.

In short, we support passage of Senate bill 2428 as it will assist one of the State’s best corporate citizens and allow them to continue to assist entities like Capital Health System. Thank you for allowing me to present this statement in support of Senate bill 2428.

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Mercer Campus • 446 Bellevue Avenue • Trenton, NJ 08618 • (609) 394-4000
Testimony of Steven S. Goldenberg on behalf of the New Jersey Large Energy Users Coalition

Senate Economic Growth and Environmental Committees

December 11, 2008

Good afternoon members of the Committees. My name is Steven Goldenberg. I am an attorney with Fox Rothschild and I represent the New Jersey Large Energy Users Coalition. NJLEUC is comprised of some of the State’s largest businesses, including Alcan Packaging, Anheuser-Busch, Ball Corporation, DSM Nutritional Products, Durand Glass Manufacturing, Firmenich, Gerdau Ameristeel, Griffin Pipe Products, Hoffmann-LaRoche, Johnson Matthey, Novartis Pharmaceuticals, Praxair, Princeton University, Schering-Plough, Sunoco, United States Gypsum, Valero Refining, and Wal-Mart.

NJLEUC is opposed to the proposed 21st Century Infrastructure Investment Act pending before the Committee. We and the others who appear in opposition to the bill today believe that the bill is ill-advised because it would limit the ratepayer protections contained in the existing utility law, compromise the BPU’s regulatory authority over the State’s utilities, and cause higher utility rates to the citizens and businesses of this State.

The stated purpose of the bill is to foster utility investment in energy efficiency and create jobs. Let us be clear—we are strong supporters and accomplished practitioners of energy efficiency and currently employ state of the art technologies and renewable resources that have helped us to reduce our energy usage and carbon footprint. The Governor’s Energy Master Plan readily acknowledges that the State’s largest and most cost-effective energy efficiency gains have been achieved in the large commercial and industrial sector. Several of our members have been recognized by the Board of Public Utilities and other agencies for their achievements. We need no reminder that if we are to survive in the competitive markets, particularly in this challenging economy, it is necessary to operate at world-class efficiency levels.

However, although we strongly support energy efficiency initiatives, we oppose this bill because it represents a significant departure from the existing regulatory framework that has well-served the citizens of this State for a century. The existing laws have required the Board of Public Utilities—and armed it with the requisite tools— to assure that utility rates are just and reasonable and that utility investments are prudent. The laws properly emphasize the protection of ratepayers and their due process rights to be heard regarding the setting of utility rates—rights that are of constitutional dimension and that must be preserved.

We understand the need to respond to the economic and environmental challenges of today’s world and support the State’s efforts to create jobs and encourage investment in energy efficiency, conservation and renewables. However, we urge significant caution in the consideration of this bill, because it reflects a fundamental and seismic shift in the method of utility regulation. There is much at stake here. We find ourselves in the midst of an economic crisis. This is hardly the time to rush through new, complicated, and largely untested ratemaking devices which, if flawed, could result in potentially
significant rate increases at a time when we can least afford them. We need to assure that any regulatory model that is used going forward continue to assure utility accountability, including financial transparency, prudence of investments, performance standards and related penalties for non-performance, adequate protections and safeguards to ratepayers including rate increase caps, and a continuing and active role for the BPU as regulator. The bill as drafted raises concerns in all of these areas.

A related concern is that the potential “free spending” approach this bill will foster could lead to the loss of more jobs than it will create. During this past week, one of our members, the Griffin Pipe Company, announced that it was suspending indefinitely the operation of its manufacturing facility in Florence. The suspension, which was substantially due to the plant’s high manufacturing costs, including electricity, will cause the loss of about four hundred jobs. This corporate action was limited in scope to New Jersey--Griffin’s facilities in other, less costly states, will continue to operate.

The situation is by no means unique. Gerdau Ameristeel, which was once PSE&G’s largest customer, recently shut down the arc furnace operation at its Perth Amboy facility, causing the loss of a hundred jobs, again due in large measure to high energy costs. These actions are by no means isolated occurrences. Other NJLEUC members have scaled back or eliminated their New Jersey operations because it is cheaper for the companies to operate elsewhere where costs are lower.

In light of these concerns, we question whether this bill is necessary at all. Utilities have always been able to recover investments in infrastructure under existing laws. To the extent that the speed of revenue recovery is an issue, Section 13 of the RGGI law, which was passed earlier this year, authorizes utilities to recover the costs of energy efficiency, conservation and renewables investments, together with a return and financial incentives, on an expedited basis, without the need for a full rate case, but with prudence review and an opportunity for stakeholder input. Under Section 13, utility costs and program incentives are approved when a program is authorized, and can be recovered quickly and adjusted each year. Therefore, RGGI already provides for the expedited rate review and cost recovery that is sought by this bill.

Unfortunately, the pending bill would extend a watered down version of the Section 13-type abbreviated cost recovery procedure to the utility’s distribution assets, and actually proposes to bypass a century of time-tested ratemaking principles and ratepayer protections that apply to these assets. I will not burden you with a discussion of these principles and protections, but I would suggest that they continue to be necessary because they assure a proper apportionment of risk and rewards between utility shareholders and ratepayers, a complete review of the utility’s financial picture to prevent over-earning, and the preservation of ratepayers’ due process rights to fully participate in a fair and open ratemaking process. The so-called formula-based rates, with their “hurry up” rules, would dispense with many of these protections, greatly limit the scope of regulatory review, and prevent ratepayers from having meaningful input in the ratemaking process.

I note that PSE&G’s application to the Federal Energy Regulatory Commission for formula transmission rates contained nearly 300 pages of very detailed calculations and protocols. Its distribution rates filing to the BPU would be no less complicated. I
would therefore urge that this type of regulatory change should not be mandated by the Legislature. These are extraordinarily complicated issues that should be thoroughly vetted in an open and comprehensive regulatory proceeding to determine whether formula rates should be adopted and, if so, how they should be implemented. The Legislature should not permit an end-run around the BPU and the stakeholders who appear before you today.

Further, the bill’s proposed “New Deal”-type approach to job creation would be quite unlike Roosevelt’s New Deal many years ago. Unlike FDR’s New Deal, the utility “jobs” and infrastructure development programs created under this bill would not be funded by the State government but largely, if not exclusively, by ratepayers, depending on whether Federal funding is forthcoming. The infrastructure programs contemplated, like the Energy Master Plan-related programs currently being sponsored or planned by the BPU, will be extraordinarily costly, involving the potential expenditure of many billions of dollars.

It is unclear precisely how the formula-based rates would operate, but they will include a rate of return for the utility. It is uncertain how much of a premium ratepayers would pay on utility funds borrowed from the capital markets (PSE&G’s current authorized rate of return is in excess of 11 percent), but given the underlying costs of the programs sought to be developed, the dollars could be considerable. This could pose a huge burden to the citizens of this State that could significantly outweigh the benefits of these programs, at least in the near term. Maybe this is not what lies in store-- but maybe it is—and until we know for sure, the uncertainty regarding how formula rates will be set underscores the need for great caution.

This bill is a significant “game changer” in utility regulation and from our perspective, the changes are unnecessary and potentially dangerous. Unless you are completely satisfied that you understand the nature and cost implications of formula rates and that their adoption would benefit your constituents, I urge you to vote against this bill. Please listen to the broad-based coalition of groups that appears before you, because we are the voices of those who will pay the price if this significant regulatory experiment fails to deliver as promised.

One final note. It has been suggested by PSE&G that the bill does not properly reflect what the company intended by its introduction. If this is so, it provides all the more reason to call a “time out” and devote the time and resources that are necessary to determine whether there is merit to a properly presented formula-based rate approach and, if so, how to implement the approach in a manner that assures a proper resolution of all pertinent issues.

I thank you for your time and consideration.
THE CHEMISTRY COUNCIL OF NEW JERSEY OPPOSES S-2428

➢ This bill will guarantee profits for the electric utilities. No other industry is guaranteed profits from their customers. S-2428 will also allow corporate shareholders to keep surplus profits gained from formula based rates rather than return these monies to their ratepayers.

➢ The United States economy is currently in a recession. Many consumers will be conserving energy based on their economic situation. Formula based rates will eliminate any consumer savings based on limited use.

➢ Despite the legislature’s promise that deregulation of electricity markets would produce lower prices for consumers, residential rates have doubled in the last four years, businesses are closing and laying off workers because of the current high costs of operating their business in New Jersey, and our industrial electricity rates are the highest in the mid-atlantic region and 5th highest in the nation. According to Electric Power Annual, New Jersey’s electric rates are 70% above the national average for cost.

➢ S-2428 does not provide any incentives for the utility companies to become more productive or efficient. The only incentive the bill establishes is for the electric utilities to spend more capital in certain sectors of its operation in order to get relief on an automatic basis under an undefined and unlimited formula.

➢ The bill eliminates public oversight, regulatory review and protection against unreasonable rates. The bill removes current ratemaking incentives for utilities to improve productivity, negotiate for lower prices from suppliers or modernize their infrastructure.

➢ There is no job retention or creation requirement in the legislation.

➢ While guaranteeing profits for shareholders, the bill does not require that utilities modernize their infrastructure or make investments that will benefit consumers, including in cost-beneficial energy efficiency projects.
December 11, 2008

TO: Members of the Senate Economic Growth and Senate Environment Committees

Our organization, which represents owners, employees and vendors of independent and union plumbing and HVAC contracting companies across the state, urges you to reject S-2428.

In our view, this legislation would severely diminish—if not eliminate—the ability of consumers and small businesses to challenge excessive rates and unfair business practices of public utilities.

Utility companies are corporate giants that already enjoy the advantages of regional monopolies in providing essential services like gas and electricity.

By virtue of their rate-supported size and reach, they also have distinct marketing and operational advantages when they compete with small businesses like plumbers, HVAC contractors and electricians in offering such non-regulated services as the sale, installation and repair of lighting, heating and cooling equipment.

We believe that several utility companies are engaging in unfair and unlawful competitive practices in this area.

In attempting to get the Board of Public Utilities to address these violations, we are severely outmatched by the overwhelming financial, legal and political power of the utilities, as would be any group of small businesses, and certainly individual ratepayers.

There is only one, limited opportunity for the consumer and small business to get the attention of the BPU and the utilities—and that’s when the utilities are seeking public approval for a rate increase.

This bill will close out that opportunity. Don’t allow that to happen.

Kevin Dolan
President
PHCC-NJ
December 11, 2008

TO: Senate Economic Growth Committee
    Senate Environment Committee
FROM: Kat Madaras, Associate Director
RE: S-2428

The Fuel Merchants Association of New Jersey (FMA) represents small businessmen and women who distribute heating oil, gasoline and diesel fuel in the state. Our members distribute heating oil to residential, commercial and industrial customers and distribute branded and unbranded gasoline and diesel fuel to service stations they own, and to service stations they supply, as well as to state and local governments and commercial fleets. FMA's members also install and service central heating and air conditioning equipment.

FMA opposes S-2428.

This legislation is a continuation of previous policies enacted by the state that confer unfair advantages to public utilities against other businesses who sell competing fossil fuels and provide installation and servicing of heating and air conditioning services.

- The Legislature has allowed public utilities to get in the business of providing heating and air conditioning installation and services utilizing ratepayer assets which allow them to unfairly subsidize products and offer terms that are in direct competition against independent business owners (Electric Discount and Energy Competition Act P.L. 1999 c. 23)

- The Legislature has exempted public utilities from having to demonstrate competence in providing the above heating and air conditioning services. (HVACR Licensing Law P.L. 2007 C. 211)

- The Legislature has allowed public utilities to get paid by ratepayers for not selling fossil fuel. (RGGI P.L. 2007 C.340).

Now the Legislature is proposing to allow utilities the ability to charge whatever they want without effectively no oversight by the BPU whatsoever.

- What is deficient with the existing rate making structure?
- Why do utilities need one more advantage that businesses that must compete to earn a profit don’t get?

No on S-2428.
December 11, 2008

Dear Senate Committee members:

On behalf of the members representing the grocery industry in New Jersey, we express our opposition to Senate Bill 2428 and respectfully ask you to vote “no” on this harmful legislation.

Senate Bill 2428, the “21st Century Infrastructure Investment Act,” authorizes electric or gas public utilities to elect to have its base rates established through implementation of formula-based rates as an alternative to establishing rates through traditional rate base, rate of return methodologies.

The New Jersey Food Council (NJFC) is extremely concerned that allowing utility companies to enact so-called “formula-based” electricity and gas prices for commercial ratepayers will substantially increase energy costs at a time when supermarkets can least afford it.

While the retail food distribution industry has invested substantial resources in an attempt to lower its energy costs, this legislation will render these efforts meaningless. NJFC members have recently conducted, through a grant from Rutgers University, a supermarket energy audit which outlines areas where energy efficiencies and energy cost savings can be realized. This legislation runs contrary to the State’s Energy Master Plan which requires less energy usage where feasible and encourages energy efficiencies to promote this requirement.

NJFC members have also engaged in a $100 million energy aggregation agreement which combines each member’s energy load in order to realize an overall energy cost savings. Formula based pricing will not give ratepayers any incentive to lower their energy demands. Why would ratepayers invest in energy efficient technologies or change their usage behavior only to be told that while their demand is lower, they will still be paying the same as before?

Furthermore, while it is virtually impossible for supermarkets to lower their energy demand due to the use of refrigeration and the fact that many stores are open for business twenty-four hours per day, members continue to invest substantial resources for energy efficient products to lower their energy costs. Changing the way utilities calculate its base rates from usage based to formula based will not allow NJFC members to realize any cost savings from these efforts.

NJFC members are equally concerned that this legislation will eliminate public oversight and regulatory review of utility investments which serves as a consumer protection mechanism against unreasonable rate increases.

At a time when food prices are high, adding another cost to the food distribution industry will further burden an already overburdened consumer.

For these reasons, we urge you to please vote “no” on S-2428.

Thank you for considering the views of the New Jersey Food Council.

Sincerely,

Linda Doherty
President
Dear Senator:

Please accept this letter in support of Bill S 2428. Heavy Construction Laborers Local 472 represents roughly 7000 members in the 12 Northern Counties of New Jersey. We build the States transportation and utility infrastructure, with utility infrastructure work representing our largest market share. Given the uncertainty of future transportation funding we can ill afford to absorb a decline in utility investment.

Local 472 is committed to assist the utility companies in complying with Governor Corzine’s energy master plan and fully realize the necessity of utility investment in order to reach these goals.

Legislation S 2428 will merely adjust the rate system to allow utilities to receive a partial return on their investment sooner resulting in a minimal rate increase to the ratepayer. The passing of this Legislation will result in greater utility investment, jobs for our members and provide economic growth to the State during very uncertain economic times.

I respectfully ask your support of this important Legislation.

Sincerely yours,

Roger Ellis
Business Representative