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act, or on April 10, 1977. If additional authority is requested, either as to use or as to expansion of territory, the same should be viewed and treated as an application for authority under N.J.S.A. 39:5E-7.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: ROBERT M. JAWORSKI
Deputy Attorney General

January 29, 1979

GEORGE H. BARBOUR, *Commissioner*
EDWARD H. HYNES, *Commissioner*
RICHARD B. McGLYNN, *Commissioner*
Board of Public Utilities
1100 Raymond Boulevard
Newark, New Jersey 07102

FORMAL OPINION NO. 1—1979

Gentlemen:

The State Board of Public Utilities has submitted to the Joint Legislative Committee on Transportation and Communications a report entitled "In the Matter of the Board's Investigation of Lifeline Electric and Gas Rates." You have asked for our opinion as to whether the lifeline rates mentioned in such report will become effective if the Legislature does not take action within 60 days of the submission of the rate and schedule to the legislative committee. You are advised that the rates set forth in the report of the Board of Public Utilities will not become effective if the Legislature fails to take any action with respect to those rates, since the report submitted by the Board of Public Utilities to the Legislature does not contain a "proposed lifeline rate" within the meaning of the Act.

In 1977 the Legislature enacted legislation to authorize the then Public Utilities Commission to adopt schedules of reduced electric and gas utility rates applicable to certain designated consumer income groups. Laws of 1977, c. 440, N.J.S.A. 48:2-29.6 *et seq.* This legislation, commonly referred to as the "Lifeline Law," authorizes the Board to establish a rate for the minimum amount of gas and electricity necessary to supply the minimum energy needs of the average residential user. The Board was also authorized to establish a rate for the minimum amount of gas and electricity to be designated by the Board. On November 28, 1978 the Board of Public Utilities, as a result of its investigation into lifeline rates and a schedule of eligible utility customers, submitted a report to the Joint Senate and Assembly Standing Committee on Transportation and Communications. There has been no official legislative resolution passed or any other action with respect to such report at this time.

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The question therefore posed is whether or not the rates and schedule mentioned in the report will become effective and binding on the Board of Public Utilities after the passage of 60 days from the submission of the report to the legislative committees. In order to respond to this issue, the provisions of N.J.S.A. 48:2-29.12(a) are relevant and provide as follows:

The commission shall submit the proposed lifeline rate and schedule of eligible users to the said joint committee constituted under section 6 for its review. The joint committee shall make such recommendations to the Legislature on the proposed rate and schedule as it may deem advisable.

If within 60 days of the submission of the rate and schedule to the committee, the Senate and General Assembly do not adopt a concurrent resolution approving or disapproving the rate and schedule, the rate and schedule shall be deemed approved.

It is clear from the language on the face of this statute that in order to invoke its terms the Board shall submit *its proposed* lifeline rate and schedule of eligible users to the Joint Committee for its review. In this case, based on our review of the report, it is evident that it does not contain the proposed lifeline rate and schedule of eligible users of the Board of Public Utilities.

It is necessary to briefly refer to certain significant portions of the report. In its introduction, the Board states that "while section 7 requires [it] to provide the legislative committees with certain information, because of the nature of the information obtained, the Board deems it necessary and appropriate to recommend to the Legislature certain amendments to the act." Thus, the Board in its report provides rating information and other pertinent information relating to the lifeline increment, the lifeline program and its administration, to illustrate the nature of its recommendations for legislative change. For example, the Board notes that after calculating a lifeline rate pursuant to the existing statutory standard, discounts to consumers vary significantly among the utilities and, furthermore, in some cases, there would be little or no discount at all. As a result the Board points out that the existing legislative standard of "lowest effective rate" results in divergent and minimal discounts for recipients and that the act should be amended to permit the Board to establish a lifeline rate based upon a fixed cents per therm and per kilowatt hour discount. It is thus apparent that the rating information compiled by the Board was used to illustrate the inadvisability of the use and implementation of such rates pursuant to the existing statutory standard. For this reason and in the context of the recommendation set forth in the Board's Conclusions to the Legislature, it cannot reasonably be said that the Board has proposed "a lifeline rate" intended to be implemented by it after the passage of 60 days. Rather, it has submitted to the Legislature its views with regard to the inadvisability of the existing legislation under the existing factual circumstances. We are therefore unable to characterize the report of the Board as containing the "proposed lifeline rate" envisioned by N.J.S.A. 48:2-29.12(a).

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Furthermore, we have no question that the Board has been conferred with discretionary authority to decide whether to propose and implement the legislation. This view is premised on the fact that the act is by its terms directory, rather than mandatory, in tone. Prior to enactment, the bill before the Legislature (A 1830) stated that "the Public Utility Commission shall designate a minimum volume of gas and a minimum quantity of electricity . . . necessary to supply the minimum energy needs of the average residential user. . . . The language of the bill was ultimately amended during its legislative consideration to finally read as follows:

The Public Utility Commission is hereby *authorized* to designate a minimum volume of gas and a minimum quantity of electricity

and

The Public Utility Commission is hereby *authorized* to establish a rate for the minimum amount of gas and electricity established. . . . [N.J.S.A. 48:2-29.7(a), (b).]

The Board therefore has been conferred with the discretion to implement a lifeline program. To set forth certain rating information pertaining to this program in a report generally designed to recommend legislative change is not in our judgment the exercise of that discretion contemplated by the Act.

In conclusion, you are advised that the rates and schedules mentioned in a report of the Board of Public Utilities submitted to the Legislative Committee on Transportation and Communications will not become effective and binding on the Board after the passage of 60 days from the date of its submission, since the report does not contain the "proposed lifeline rate" within the meaning of the Act.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: THEODORE A. WINARD
Assistant Attorney General
