

## CHAPTER 43

**AN ACT** changing the phase-out schedule of the transitional energy facility assessment (TEFA) unit rate surcharges on certain energy sales and amending P.L.1997, c.162.

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

1. Section 38 of P.L.1997, c.162 (C.54:30A-102) is amended to read as follows:

C.54:30A-102 Establishment of remitter's transition energy facility assessment.

38. Each remitter's transitional energy facility assessment shall be established pursuant to section 67 of P.L.1997, c.162 (C.48:2-21.34). Under no circumstances shall an assessment be made under this act for any year commencing after December 31, 2010.

2. Section 67 of P.L.1997, c.162 (C.48:2-21.34) is amended to read as follows:

C.48:2-21.34 Definitions relative to 1997 tax changes; filing required; formulas; adjustments to rates.

67. a. As used in this section:

"Base rates" means the rates, including minimum bills, charged for utility commodities or service subject to the board's jurisdiction, other than the rates charged under a utility's leveled energy adjustment clause, hereinafter "LEAC," or leveled gas adjustment clause, hereinafter "LGAC," or equivalent rate provision;

"Base year" means the calendar year 1996;

"Board" means the Board of Public Utilities;

"Sales and use tax" means the sales and use tax liability computed on sales and use of energy and utility service as defined in section 2 of P.L.1966, c.30 (C.54:32B-2);

"Utility" means a public utility subject to regulation by the board pursuant to Title 48 of the Revised Statutes; and

"Utility service" means the supply, transmission, distribution or transportation of electricity, natural gas or telecommunications services or any combination of such commodities, processes or services.

b. No later than 60 days after the date this act is enacted, each electric, gas and telecommunications utility subject to the provisions of this act shall file with the board, and shall simultaneously provide copies to the Director of the Division of the Ratepayer Advocate, revised tariffs and such other supporting schedules, narrative and documentation required by this act, as set forth in this section, to reflect in the utility's rates the changes in tax liability effected pursuant to this act. No later than 90 days after the date of the utility's filing, and after determining that the filing and the rate changes provided for therein are in compliance with the provisions of this act, the board shall approve the utility's filing and associated rates for billing to the utility's customers, effective for utility service rendered on and after January 1, 1998. If the board determines that the utility's filing and the associated rate changes provided for therein are not in compliance with the provisions of this act, the board shall require the utility to amend or otherwise modify its filing to render it in compliance. The board may also permit the rates provided for in the utility's filing to be implemented on an interim basis pending the board's final determination in the event the board, in its discretion, determines that due to the filing's complexity, or for other valid reasons, including but not limited to the enactment of this act after June 30, 1997, additional time is needed for the board to complete its review of the filing. If the rates approved by the board upon its final determination are less than the rates implemented on an interim basis, the difference shall be refunded to the utility's customers with interest computed in accordance with N.J.A.C.14:3-7.5(c). The rate adjustments implemented pursuant to this act shall not constitute a fixing of rates pursuant to R.S.48:2-21 and shall not be subject to the hearing requirements set forth in that section.

c. As of the effective date of the rate changes implemented pursuant to this act, and except for rates applicable to sales that were or are currently exempt from the unit-based energy taxes formerly imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) and rates applicable to sales to which section 59 of P.L.1997, c.162 (C.48:2-21.31) applies, the board shall remove from the base rates of each electric public utility and gas public utility the unit tax rates included therein for the recovery of those unit-based energy taxes, and include therein provision for the recovery

of corporation business tax imposed pursuant to P.L.1945, c.162 (C.54:10A-1 et seq.), and additionally shall authorize the collection of the sales and use tax imposed pursuant to P.L.1966, c.30 (C.54:32B-1 et seq.), as follows:

(1) The base rates of each gas and electric utility shall be reduced by the amount of the unit-based energy taxes per kilowatt-hour or per therm included therein.

(2) The provision for corporation business tax initially included in the base rates of each gas and electric utility shall be based on the utility's after-tax net income earned in the base year as booked, unless the board determines, in its discretion, that such income as booked is unusually high or low or otherwise unrepresentative of the utility's prospective net income, in which case the utility's base year net income shall be adjusted as determined by the board.

To permit the board to make this determination, in addition to including in its filing schedules showing its net income earned in the base year as booked, the utility shall include adjustments to such booked income to eliminate the effect of revenues, expenses and extraordinary or other charges that are non-recurring, atypical, or both, including, but not limited to an adjustment to eliminate the effect of unusually hot or cold weather, and that would otherwise make the utility's base year net income unusually high or low or otherwise unrepresentative of the utility's prospective net income. If the adjustment is being made to eliminate the effect of unusually hot or cold weather, associated revenue and expense adjustments shall also be made. Subject to the board's approval, such adjusted income shall be the basis for the calculation of the initial provision for corporation business tax to be included in the utility's base rates.

The utility shall also include a calculation of its rate of return on common equity achieved in the base year, both as booked and as adjusted in accordance with the foregoing. The calculation shall be made employing the methodology set forth in N.J.A.C.14:12-4.2(b)1, and shall separately show the effect of reflecting adjustments to the calculation, if any, that may have been employed historically in establishing the utility's rate of return on common equity allowed for ratemaking purposes. The utility's filing shall also include copies of its audited financial statements for the base year and associated quarterly and other reports filed with the Securities and Exchange Commission.

To reflect the provision for corporation business tax in base rates, the demand charges, or charges per kilowatt, decatherm or million cubic feet; the energy charges, or charges per kilowatt-hour or per therm; and the customer charges, or charges other than demand and energy charges, set forth in each base rate schedule, and the floor price employed in parity rate schedules, included in the utility's tariff filed with and approved by the board shall be increased by amounts determined by multiplying such charges by the adjustment factor, "A e, g" derived below:

$$\frac{A e, g = (I e, g) \times [Rs / (1 - Re)]}{(Br e, g)}$$

where:

"A e, g" means the adjustment factor applicable to electric base rates (e), gas base rates (g), or both, other than rates applicable to sales that were exempt from unit-based energy taxes formerly imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) or to which section 59 of P.L.1997, c.162 (C.48:2-21.31) applies;

"I e, g" means the utility's base year after-tax net income from electric or gas sales, or both, and transportation service subject to the board's jurisdiction and other operating revenue if such revenue is reflected in the utility's cost of service for ratemaking purposes, adjusted as approved by the board;

"Br e, g" means the utility's base year revenue from base rates applicable to electric or gas sales, or both, and transportation service subject to the board's jurisdiction, but excluding sales that were exempt from unit-based energy taxes formerly imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) or to which section 59 of P.L.1997, c.162 (C.48:2-21.31) applies;

"Rs" means the corporation business tax rate, expressed as a decimal;

"Rf" means the applicable federal corporation income tax rate expressed as a decimal; and "Re" equals  $R_s + R_f(1-R_s)$ .

The utility shall account for the changes in tax liability provided for by this act effective January 1, 1998. Such accounting shall include the recording on the utility's income statement and balance sheet of deferred corporation business tax defined, for book accounting purposes, as differences in corporation business tax expense arising from timing differences in the recognition of revenue and expenses for book and tax purposes.

(3) When billed to the utility's customers, the adjusted base rate charges determined pursuant to paragraphs (1), (2), and (4) of this subsection, and the charges determined pursuant to the utility's levelized energy adjustment clause, levelized gas adjustment clause, or both, as determined both upon the effective date of the rate changes authorized by this act and as revised prospectively in accordance with the utility's tariff filed with and approved by the board, and the transitional energy facility assessment unit rate surcharges, hereinafter, "TEFA unit rate surcharges," determined in accordance with subsection d. of this section, shall be increased by an amount determined by multiplying such charges by the sales and use tax rate imposed under P.L.1966, c.30 (C.54:32B-1 et seq.). In addition to the utility's rates for service included in its tariff, for informational purposes the tariff shall include such rates after application of the sales and use tax authorized by this section.

(4) The utility's filing with the board to implement the rate changes provided for by this act shall include an analysis, description, and quantification of the effect of the changes in rates and tax payments implemented pursuant to this act on the utility's requirement for cash working capital, and if such requirement is less than the cash working capital allowed for the collection and payment of unit-based energy taxes formerly imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) in determining the utility's base rates in effect prior to the rate changes implemented pursuant to this act, and to the extent the working capital reduction is not offset by a reduction in net deferred taxes as provided for below, such base rates shall be reduced by the reduction in the utility's revenue requirement associated with the remaining reduction in the working capital requirement not so offset, if any. The reduction in working capital shall be determined by using the same methodology employed in establishing the working capital allowance related to unit-based energy taxes reflected in the utility's base rates in effect prior to the rate changes implemented pursuant to this act. The reduction in the utility's revenue requirement associated with the reduced working capital requirement shall be calculated using the utility's last overall rate of return allowed by the board, including provision for federal income taxes and the corporation business tax implemented pursuant to this act payable on the equity portion of the return, and shall be implemented on the effective date of the rate changes provided for, and in the manner set forth in paragraph (2) of this subsection.

If the utility's requirement for cash working capital is increased as a result of the changes in rates and tax payments implemented pursuant to this act, the utility may accrue carrying costs, calculated at its last overall rate of return allowed by the board and applied on a simple annual interest basis without compounding, on the increased working capital requirement and request recovery of such carrying costs in a rate proceeding before the board.

The working capital-related base rate changes and carrying cost accruals shall be subject to the board's approval, and shall not be included in the determination of the TEFA unit tax surcharges provided for in subsection d. of this section.

The utility's filing with the board to implement the rate changes provided for by this act shall also include an analysis, description and quantification of net deferred taxes. For the purposes of this section, "net deferred taxes" means deferred corporation business taxes, net of federal deferred income taxes, associated with the tax and rate changes implemented pursuant to this act, including deferred corporation business tax recorded in accordance with section 4 of P.L.1945, c.162 (C.54:10A-4), projected for the calendar year in which this act takes effect and for each year of the tax life of the asset giving rise to the deferred corporation business taxes pursuant to section 4 of P.L.1945, c.162 (C.54:10A-4).

If the change in such net deferred taxes projected for the calendar year in which the rate changes implemented pursuant to this act takes effect is negative and if the utility's requirement for working capital is reduced as a result of the changes in rates and tax payments implemented

pursuant to this act, the working capital-related rate reduction that otherwise would have been implemented pursuant to this subsection shall be treated as set forth in subparagraph (a) or (b) of this paragraph. For the purposes of this act, a change in net deferred taxes is considered negative when it reduces an existing deferred tax liability or creates a deferred tax asset on the utility's balance sheet. An appropriate rate adjustment for the working capital impacts of this act, reflecting all relevant facts and circumstances at the time of the adjustment, shall be made in the year when the earlier of the following events occur:

(a) The year in which the reduction in carrying costs assumed for the rate reduction for working capital that would have been made but for this paragraph is no longer required to offset, on a present value basis, the annual carrying costs calculated on the accumulated balance of negative net deferred taxes projected to be recorded by the utility, its successors and assigns, over the tax life of the single asset account giving rise to such net deferred taxes pursuant to section 4 of P.L.1945, c.162 (C.54:10A-4). For the purposes of this subparagraph (a):

(i) Carrying costs and present values are to be computed using the weighted average after-tax rate of return approved by the board in the utility's last base rate proceeding.

(ii) The accumulated balance of such negative net deferred taxes shall include net deferred taxes associated with all assets and liabilities originally placed in service by the utility and held by the utility or a company affiliated with the utility regardless of whether or not such assets continue to be subject to regulation by the New Jersey Board of Public Utilities.

(b) The year in which both an appropriate working capital adjustment and the accumulated balance of negative deferred taxes, as described in (ii) of subparagraph (a) of this paragraph (4), are reflected in the utility's rate base in a rate proceeding before the board. It is the intent of this section to fully compensate utilities on a present value basis, for the carrying costs associated with negative net deferred taxes arising as a result of this act, and to remit to ratepayers any credit due them as a result of any overcompensation as may have occurred due to the treatment of working capital and deferred taxes as set forth herein or in subparagraph (a) of this paragraph (4). At the time the above base rate adjustment is made, an analysis shall be made to determine if such carrying costs have been or will be fully recovered pursuant to the intent of this provision and any additional credit or charge to ratepayers to adjust for ratepayer overpayments or underpayments, if any shall be addressed.

If the change in net deferred taxes is positive, the increase shall be added to, or increase, the reduction in the utility's requirement for working capital if the requirement is reduced as a result of the rate and tax payment changes implemented pursuant to this act, or subtracted from the working capital requirement if it is increased, and the resultant net working capital requirement shall be reflected in rates or accrue carrying costs in the same manner as prescribed for changes in the utility's requirement for working capital above.

The deferred tax-related rate changes or carrying cost accruals shall be subject to the board's approval and shall not be included in the determination of the TEFA unit rate surcharges provided for in subsection d. of this section.

d. (1) Electric and gas utilities shall file, for the board's review and approval, initial TEFA unit rate surcharges determined by deducting from each unit-based energy tax unit tax rate effective January 1, 1997 the following: (a) An amount per kilowatthour or per therm determined by multiplying the total revenue received in the base year from sales to which that unit tax rate would have been applicable by the factor  $R_u/(1 + R_u)$ , where  $R_u$  is the sales and use tax rate imposed under P.L.1966, c.30 (C.54:32B-1 et seq.) expressed as a decimal, and dividing the result by the kilowatthours or therms billed in that unit tax rate class in the base year; and (b) An amount per kilowatthour or per therm determined by dividing the revenue that would have been received in the base year from the inclusion, in the manner prescribed in paragraph (2) of subsection c. of this section, of the corporation business tax in the rates applicable to sales billed in that unit tax rate class by the kilowatthours or therms billed in that rate class. In each case, the determination shall reflect the effect of adjustments that affect the level of sales and revenue, if any, as provided in subsection c. of this section. Of the resultant rate per kilowatthour or per therm, the portion for recovery of the utility's transitional energy facilities assessment liability shall be determined by multiplying such rate by the factor  $(1 - R_s)$ , where  $R_s$  is the corporation business tax rate expressed as a decimal. The TEFA unit rate

surcharges shall constitute non-bypassable wires and/or mains charges of the utility, and shall be applied to all sales within the customer classes to which they apply, regardless of whether such customers are purchasing bundled or unbundled services from the utility, but shall not be applied to sales that were or are currently exempt from unit-based energy taxes formerly imposed pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.) or to which section 59 of P.L.1997, c.162 (C.48:2-21.31) applies.

If, following the effective date of this act, a customer taking bundled service from the utility shall elect to obtain its requirements from another supplier and take transportation or wheeling service from the utility, the TEFA unit rate surcharge applicable to the bundled service shall continue to apply to the transportation or wheeling service. The TEFA components of the unit rate surcharges determined pursuant to this subsection (the components of the surcharges remaining after deducting the provision for corporation business tax included therein) shall be used to determine the transitional energy facility assessment liability pursuant to sections 36 through 49 of P.L.1997, c.162 (C.54:30A-100 through C.54:30A-113).

(2) Unless reduced pursuant to paragraphs (3) and (4) of this subsection, the initial TEFA unit rate surcharges are to be reduced annually on January 1, 1999 through January 1, 2001 by the following percentages:

January 1, 1999,	20%
January 1, 2000,	40%
January 1, 2001,	60%

(3) For each year beginning with calendar year 1998 and ending with calendar year 2001, the TEFA surcharge adjustment shall be determined as the difference between:

(a) The sum of the estimated, or actual when known, (i) TEFA liabilities, as defined in section 43 of P.L.1997, c.162 (C.54:30A-107), and sales and use taxes collected and corporation business taxes booked for the year 1998 by the gas and electric utilities and other entities subject to the TEFA provisions of this act (the year 1998 liability), and (ii) the TEFA liabilities of those utilities and entities in all years following the year 1998 through the year in which a determination is being made pursuant to this subsection (the determination year); and

(b) The sum of (i) the total of each remitter's base year liability, as defined in section 37 of P.L.1997, c.162 (C.54:30A-101), and (ii) the cumulative TEFA obligation, defined as the sum through the determination year of the amounts calculated by multiplying, for the applicable year, the percentage in the second column of the following table:

Determination Year	% of Year 1998 TEFA
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1999	80%
2000	60%

by the Year 1998 TEFA,

where the Year 1998 TEFA is calculated as the total of each remitter's base year liability less the sales and use taxes collected and the corporation business taxes booked for the privilege period ending in calendar year 1998 by the gas and electric utilities and other entities subject to the TEFA provisions of this act. For purposes of this subsection, the amounts assumed for the determination year, including the year 1998 liability when first determined for the purposes of this subsection, shall be estimates based on nine months of actual data through and including the month of September, and three months of data forecast for the months of October through December.

(4) If the TEFA surcharge adjustment determined for the determination year is positive (that is, if the amount determined pursuant to subparagraph (a) of paragraph (3) of this subsection is greater than the amount determined pursuant to subparagraph (b) of paragraph (3) of this

subsection), no reduction shall be made in the reduction in the TEFA unit rate surcharges provided for in paragraph (2) of this subsection for the year following the determination year. If the TEFA surcharge adjustment is negative, the reduction in the TEFA unit rate surcharges that otherwise would have been implemented on January 1 of the year following the determination year pursuant to paragraph (2) of this subsection shall be reduced by an amount (by percentage points) equal to the percentage the TEFA surcharge adjustment is of the total of the base year transitional energy facility assessment of all remitters, as defined in section 37 of P.L.1997, c.162 (C.54:30A-101), provided however, that such reduction in the reduction in the TEFA unit rate surcharges shall not exceed the percentage shown in paragraph (2) of this subsection for that year; and provided further that in the first two years, that such reduction shall not exceed 10 percentage points for each year.

(5) (a) The TEFA unit rate surcharges for calendar years 2002 through 2006 shall be the same as the TEFA unit rate surcharges in effect for calendar year 2001.

(b) The TEFA unit rate surcharges in effect for calendar year 2006 shall be reduced annually on January 1, 2007 through January 1, 2010 by the following percentages:

January 1, 2007	20%
January 1, 2008	40%
January 1, 2009	60%
January 1, 2010	80%

e. The utility's filing with the board to implement the rate changes provided for by this act shall include proof of revenue schedules that show for each rate schedule included in the utility's tariff, aggregated by unit-based energy tax unit tax classes, the number of customers billed under the rate schedule, the billing determinants of such customers (i.e. the kilowatts of billing demand and kilowatthours of electric energy consumed, and the million cubic feet/decatherm subject to gas capacity-related charges and decatherm of gas consumed) and the associated revenue, both as booked in the base year and on a pro forma basis reflecting the rate changes implemented pursuant to this act. The proof of revenue shall additionally show the amount of unit-based energy taxes included in the base year revenue as booked, the unit-based energy taxes that would have been collected at the unit-based energy tax unit tax rates effective January 1, 1997, if different, as well as the corporation business tax, sales and use tax and transitional energy facility assessment revenue that would have been collected or received on a pro forma basis if the rates implemented pursuant to this act had been in effect in the base year.

f. The board may, in its discretion, permit the rate changes provided for by this act to be implemented as part of a pending base rate case or other proceeding in which the utility's rates are to be changed, provided that the effective date of the changes is not delayed beyond the date on which the changes would have been implemented under subsection c. of this section. The board may also, pursuant to its powers provided by law, permit or require further modifications in the implementation of this section to address unforeseen consequences arising out of the implementation of this act.

g. Customers of the utility who are exempt from the sales and use tax imposed on sales of gas and/or electricity or as a result of rate changes occurring prior to the effective date of this act or for other valid reasons are due a refund of sales or use tax inadvertently imposed on such customers as a result of implementing the rate changes provided for by this act shall file with the State Treasurer to obtain such refunds. The State Treasurer shall promptly notify the utility of customers granted refunds under this provision in order to prevent additional collections of the sales and use tax from such customers.

h. Public utilities providing telecommunications service regulated by the board shall file for the board's review and approval revised tariffs that eliminate from the rates applicable to such service the excise tax liability included therein pursuant to P.L.1940, c.4 (C.54:30A-16 et seq.), and shall include therein the corporation business tax calculated using the methodology used in calculating the adjustment factor set forth in paragraph (2) of subsection c. of this section. Subsection d. of this section shall not apply to telecommunication utilities, and telecommunication utilities subject to a plan of regulation other than rate base/rate of return shall

additionally not be required to file the rate of return information required by paragraph (2) of subsection c. Such utilities shall, however, include a narrative and/or other documentation as required by the board to support the reasonableness of the after-tax income, which may be adjusted to eliminate the effect of non-recurring or other atypical events, on which the corporate business tax inclusion in rates is based. Telecommunications utilities shall comply with all other applicable provisions of this section.

i. (1) The board shall not adjust the rates of a public utility, as provided in subsections c. and d. of this section, for a purchase by a cogenerator of natural gas and the transportation of that gas, that is exempt from sales and use tax pursuant to paragraph (2) of subsection b. of section 26 of P.L.1997, c.162 (C.54:32B-8.46). The board shall not allocate, in any future rate case, any sales and use tax, corporation business tax, or transitional energy facility assessment to rates for this purpose.

(2) The board shall adjust the rates, as provided in subsection c. of this section, for a purchase by a cogenerator of any quantity of natural gas and the transportation of that gas that is not exempt from sales and use tax pursuant to paragraph (2) of subsection b. of section 26 of P.L.1997, c.162 (C.54:32B-8.46).

(3) For the purposes of this section, "cogenerator" means a person or business entity that owns or operates a cogeneration facility in the State of New Jersey, which facility is a plant, installation or other structure whose primary purpose is the sequential production of electricity and steam or other forms of useful energy which are used for industrial, commercial, heating or cooling purposes, and which is designated by the Federal Energy Regulatory Commission, or its successor, as a "qualifying facility" pursuant to the provisions of the "Public Utility Regulatory Policies Act of 1978," Pub.L.95-617.

3. This act shall take effect immediately.

Approved June 29, 2004.