

[Fourth Reprint]

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 2529

STATE OF NEW JERSEY
214th LEGISLATURE

ADOPTED JUNE 10, 2010

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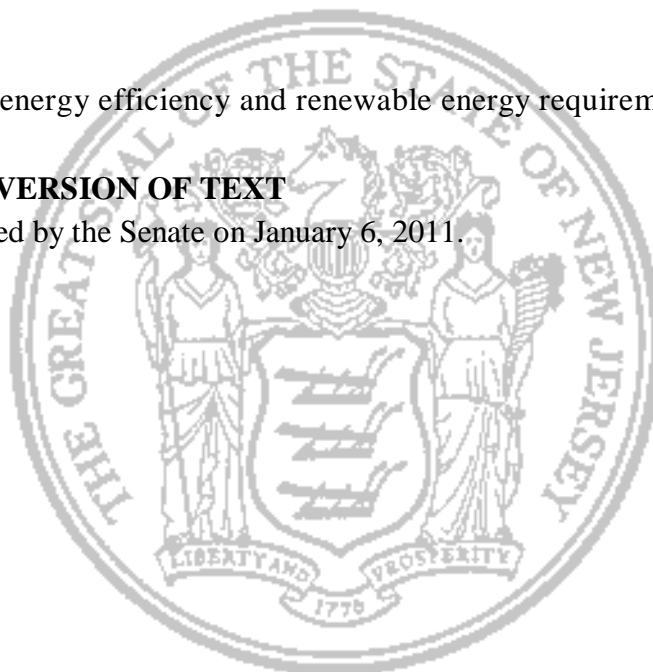
Assemblymen Albano, Milam, Senators B.Smith, Van Drew, Bateman and Whelan

SYNOPSIS

Concerns energy efficiency and renewable energy requirements.

CURRENT VERSION OF TEXT

As amended by the Senate on January 6, 2011.



(Sponsorship Updated As Of: 1/11/2011)

1 AN ACT concerning ³**[alternative energy technology]** energy
2 efficiency and renewable energy³ and amending P.L.1999, c.23.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 ²[1. Section 3 of P.L.1999, c.23 (C.48:3-51) is amended to read
8 as follows:

9 3. As used in this act:

10 "Approved alternative technologies" means energy production
11 technologies that have been approved by the Department of
12 Environmental Protection, in consultation with the Board of Public
13 Utilities, as technologies that ¹[promote energy efficiency and
14 energy conservation or that] ¹reduce ¹[energy supply demand]
15 fossil fuel use or greenhouse gas emissions¹;

16 "Assignee" means a person to which an electric public utility or
17 another assignee assigns, sells or transfers, other than as security,
18 all or a portion of its right to or interest in bondable transition
19 property. Except as specifically provided in P.L.1999, c.23
20 (C.48:3-49 et al.), an assignee shall not be subject to the public
21 utility requirements of Title 48 or any rules or regulations adopted
22 pursuant thereto;

23 "Basic gas supply service" means gas supply service that is
24 provided to any customer that has not chosen an alternative gas
25 supplier, whether or not the customer has received offers as to
26 competitive supply options, including, but not limited to, any
27 customer that cannot obtain such service for any reason, including
28 non-payment for services. Basic gas supply service is not a
29 competitive service and shall be fully regulated by the board;

30 "Basic generation service" or "BGS" means electric generation
31 service that is provided, to any customer that has not chosen an
32 alternative electric power supplier, whether or not the customer has
33 received offers for competitive supply options, including, but not
34 limited to, any customer that cannot obtain such service from an
35 electric power supplier for any reason, including non-payment for
36 services. Basic generation service is not a competitive service and
37 shall be fully regulated by the board;

38 "Basic generation service provider" or "provider" means a
39 provider of basic generation service;

40 "Basic generation service transition costs" means the amount by
41 which the payments by an electric public utility for the procurement

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly floor amendments adopted June 21, 2010.

²Assembly ATU committee amendments adopted September 20, 2010.

³Senate SEN committee amendments adopted December 9, 2010.

⁴Senate floor amendments adopted January 6, 2011.

1 of power for basic generation service and related ancillary and
2 administrative costs exceeds the net revenues from the basic
3 generation service charge established by the board pursuant to
4 section 9 of P.L.1999, c.23 (C.48:3-57) during the transition period,
5 together with interest on the balance at the board-approved rate, that
6 is reflected in a deferred balance account approved by the board in
7 an order addressing the electric public utility's unbundled rates,
8 stranded costs, and restructuring filings pursuant to P.L.1999, c.23
9 (C.48:3-49 et al.). Basic generation service transition costs shall
10 include, but are not limited to, costs of purchases from the spot
11 market, bilateral contracts, contracts with non-utility generators,
12 parting contracts with the purchaser of the electric public utility's
13 divested generation assets, short-term advance purchases, and
14 financial instruments such as hedging, forward contracts, and
15 options. Basic generation service transition costs shall also include
16 the payments by an electric public utility pursuant to a competitive
17 procurement process for basic generation service supply during the
18 transition period, and costs of any such process used to procure the
19 basic generation service supply;

20 "Board" means the New Jersey Board of Public Utilities or any
21 successor agency;

22 "Bondable stranded costs" means any stranded costs or basic
23 generation service transition costs of an electric public utility
24 approved by the board for recovery pursuant to the provisions of
25 P.L.1999, c.23 (C.48:3-49 et al.), together with, as approved by the
26 board: (1) the cost of retiring existing debt or equity capital of the
27 electric public utility, including accrued interest, premium and other
28 fees, costs and charges relating thereto, with the proceeds of the
29 financing of bondable transition property; (2) if requested by an
30 electric public utility in its application for a bondable stranded costs
31 rate order, federal, State and local tax liabilities associated with
32 stranded costs recovery or basic generation service transition cost
33 recovery or the transfer or financing of such property or both,
34 including taxes, whose recovery period is modified by the effect of
35 a stranded costs recovery order, a bondable stranded costs rate order
36 or both; and (3) the costs incurred to issue, service or refinance
37 transition bonds, including interest, acquisition or redemption
38 premium, and other financing costs, whether paid upon issuance or
39 over the life of the transition bonds, including, but not limited to,
40 credit enhancements, service charges, overcollateralization, interest
41 rate cap, swap or collar, yield maintenance, maturity guarantee or
42 other hedging agreements, equity investments, operating costs and
43 other related fees, costs and charges, or to assign, sell or otherwise
44 transfer bondable transition property;

45 "Bondable stranded costs rate order" means one or more
46 irrevocable written orders issued by the board pursuant to P.L.1999,
47 c.23 (C.48:3-49 et al.) which determines the amount of bondable

1 stranded costs and the initial amount of transition bond charges
2 authorized to be imposed to recover such bondable stranded costs,
3 including the costs to be financed from the proceeds of the
4 transition bonds, as well as on-going costs associated with servicing
5 and credit enhancing the transition bonds, and provides the electric
6 public utility specific authority to issue or cause to be issued,
7 directly or indirectly, transition bonds through a financing entity
8 and related matters as provided in P.L.1999, c.23, which order shall
9 become effective immediately upon the written consent of the
10 related electric public utility to such order as provided in P.L.1999,
11 c.23;

12 "Bondable transition property" means the property consisting of
13 the irrevocable right to charge, collect and receive, and be paid
14 from collections of, transition bond charges in the amount necessary
15 to provide for the full recovery of bondable stranded costs which
16 are determined to be recoverable in a bondable stranded costs rate
17 order, all rights of the related electric public utility under such
18 bondable stranded costs rate order including, without limitation, all
19 rights to obtain periodic adjustments of the related transition bond
20 charges pursuant to subsection b. of section 15 of P.L.1999, c.23
21 (C.48:3-64), and all revenues, collections, payments, money and
22 proceeds arising under, or with respect to, all of the foregoing;

23 "British thermal unit" or "Btu" means the amount of heat
24 required to increase the temperature of one pound of water by one
25 degree Fahrenheit;

26 "Broker" means a duly licensed electric power supplier that
27 assumes the contractual and legal responsibility for the sale of
28 electric generation service, transmission or other services to end-use
29 retail customers, but does not take title to any of the power sold, or
30 a duly licensed gas supplier that assumes the contractual and legal
31 obligation to provide gas supply service to end-use retail customers,
32 but does not take title to the gas;

33 "Buydown" means an arrangement or arrangements involving the
34 buyer and seller in a given power purchase contract and, in some
35 cases third parties, for consideration to be given by the buyer in
36 order to effectuate a reduction in the pricing, or the restructuring of
37 other terms to reduce the overall cost of the power contract, for the
38 remaining succeeding period of the purchased power arrangement
39 or arrangements;

40 "Buyout" means an arrangement or arrangements involving the
41 buyer and seller in a given power purchase contract and, in some
42 cases third parties, for consideration to be given by the buyer in
43 order to effectuate a termination of such power purchase contract;

44 "Class I ~~renewable~~ ~~alternate~~ alternative¹ energy" means
45 electric energy produced from;

46 (1) facilities ~~connected to the distribution system~~¹ utilizing
47 the following technologies and sources: solar technologies,

1 photovoltaic technologies, '[solar thermal technologies,]' wind
2 energy, sustainably-fueled fuel cells, geothermal technologies, wave
3 or tidal action, and methane gas from landfills or a biomass facility,
4 provided that the biomass is cultivated and harvested in a
5 sustainable manner '[, approved alternative technologies, and
6 technologies that have been developed or deployed under eligible
7 energy efficiency and energy conservation programs that reduce
8 energy supply demand]'; '[or]'

9 (2) small scale hydropower facilities connected to the
10 distribution system with a capacity of three megawatts or less and
11 put into service after the effective date of P.L. , c. (C.)
12 (pending before the Legislature as this bill)'; ['.]:

13 (3) approved alternative technologies; or

14 (4) industrial by-product technologies consisting of the use of a
15 by-product from an industrial process, including the reuse of energy
16 from exhaust gases or other manufacturing by-products that are
17 used in the direct production of electricity at the facility of a
18 customer.'

19 Whenever any law, rule, regulation, order, contract, tariff,
20 document, reorganization plan, ruling in the course of a judicial or
21 administrative proceeding, or other written declaration of legal
22 rights or obligations, refers to Class I renewable energy, the same
23 shall mean and refer to "Class I '[alternate] alternative' energy" ',
24 however, reference to Class I renewable energy in any contracts or
25 other written agreement in effect prior to the effective date of
26 P.L. , c. (C.) (pending before the Legislature as this bill)
27 shall have the same meaning as it did when such contracts or
28 written agreements were executed';

29 "Class II [renewable] '[alternate] alternative' energy" means
30 (1) '[thermal or]' electric energy from micro-combined heat and
31 power generating equipment or wastewater treatment facilities,
32 which '[equipment and facilities are connected to the distribution
33 system] have requested air permits from the Department of
34 Environmental Protection after the effective date of P.L. ,
35 c. (C.) (pending before the Legislature as this bill)', or (2)
36 electric energy produced at a resource recovery facility, or at a
37 hydropower facility with a capacity of greater than three megawatts
38 and less than 30 megawatts, '[connected to the distribution
39 system]', provided that such resource recovery or hydropower
40 facility is located where retail competition is permitted and
41 provided further that the Commissioner of Environmental
42 Protection has determined that such facility meets the highest
43 environmental standards [and], minimizes any adverse impacts to
44 the environment and local communities, 'and that any resource
45 recovery facility' meets this State's applicable air pollution permit
46 requirements, and maintains a battery recycling program, if

1 applicable, which substantially meets applicable State standards for
2 such programs. Whenever any law, rule, regulation, order, contract,
3 tariff, document, reorganization plan, ruling in the course of a
4 judicial or administrative proceeding or other written declaration of
5 legal rights or obligations, refers to Class II renewable energy, the
6 same shall mean and refer to “Class II ‘[alternate] alternative’
7 energy”¹, however, reference to Class II renewable energy in any
8 contracts or other written agreement in effect prior to the effective
9 date of P.L. , c. (C.) (pending before the Legislature as this
10 bill) shall have the same meaning as it did when such contracts or
11 written agreements were executed¹;

12 "Co-generation" means the sequential production of electricity
13 and steam or other forms of useful energy used for industrial or
14 commercial heating and cooling purposes;

15 "Combined heat and power facility" or "co-generation facility"
16 means a generation facility which produces electric energy, steam
17 or other forms of useful energy such as heat, which are used for
18 industrial or commercial heating or cooling purposes. A combined
19 heat and power facility or co-generation facility shall not be
20 considered a public utility;

21 "Competitive service" means any service offered by an electric
22 public utility or a gas public utility that the board determines to be
23 competitive pursuant to section 8 or section 10 of P.L.1999, c.23
24 (C.48:3-56 or C.48:3-58) or that is not regulated by the board;

25 "Commercial and industrial energy pricing class customer" or
26 "CIEP class customer" means that group of non-residential
27 customers with high peak demand, as determined by periodic board
28 order, which either is eligible or which would be eligible, as
29 determined by periodic board order, to receive funds from the Retail
30 Margin Fund established pursuant to section 9 of P.L.1999, c.23
31 (C.48:3-57) and for which basic generation service is hourly-priced;

32 "Comprehensive resource analysis" means an analysis including,
33 but not limited to, an assessment of existing market barriers to the
34 implementation of energy efficiency and renewable technologies
35 that are not or cannot be delivered to customers through a
36 competitive marketplace;

37 “Connected to the distribution system” means ¹(1)¹ connected to
38 ¹[the] a net metering¹ customer’s side of a meter, regardless of the
39 voltage at which that customer connects to the electric grid, or
40 ¹[is]¹ connected at ¹[less than 100] 69¹ kilovolts ¹[regardless of
41 how a electric public utility classifies that portion of its
42 transmission and distribution system] or less¹, with the exception of
43 solar facilities that are greater than ten megawatts in capacity and
44 either not net metered or not an on-site generation facility. Any
45 proposed solar facility that is greater than ten megawatts in capacity
46 and either not net metered or not an on-site generation facility shall
47 require designation by the board, after notice to the public and

1 opportunity for public comment or hearing, as a facility connected
2 to the distribution system. In determining such designation, the
3 board shall consider the electric rate benefits and impacts of such
4 solar facility to customers and its impact on the development of the
5 solar power and SREC market. Any facility connected above 69
6 kilovolts shall not be considered connected to the distribution
7 system¹;

8 "Customer" means any person that is an end user and is
9 connected to any part of the transmission and distribution system
10 within an electric public utility's service territory or a gas public
11 utility's service territory within this State;

12 "Customer account service" means metering, billing, or such
13 other administrative activity associated with maintaining a customer
14 account;

15 "Demand side management" means the management of customer
16 demand for energy service through the implementation of cost-
17 effective energy efficiency technologies, including, but not limited
18 to, installed conservation, load management and energy efficiency
19 measures on and in the residential, commercial, industrial,
20 institutional and governmental premises and facilities in this State;

21 ¹"EE certificate" means a certificate issued by the board or its
22 designee, representing one megawatt hour (MWh) of eligible energy
23 efficiency and energy conservation and has value based upon, and
24 driven by, the energy market;¹

25 "Electric generation service" means the provision of retail
26 electric energy and capacity which is generated off-site from the
27 location at which the consumption of such electric energy and
28 capacity is metered for retail billing purposes, including agreements
29 and arrangements related thereto;

30 "Electric power generator" means an entity that proposes to
31 construct, own, lease or operate, or currently owns, leases or
32 operates, an electric power production facility that will sell or does
33 sell at least 90 percent of its output, either directly or through a
34 marketer, to a customer or customers located at sites that are not on
35 or contiguous to the site on which the facility will be located or is
36 located. The designation of an entity as an electric power generator
37 for the purposes of P.L.1999, c.23 (C.48:3-49 et al.) shall not, in
38 and of itself, affect the entity's status as an exempt wholesale
39 generator under the Public Utility Holding Company Act of 1935,
40 15 U.S.C.s.79 et seq.;

41 "Electric power supplier" means a person or entity that is duly
42 licensed pursuant to the provisions of P.L.1999, c.23 (C.48:3-49 et
43 al.) to offer and to assume the contractual and legal responsibility to
44 provide electric generation service to retail customers, and includes
45 load serving entities, marketers and brokers that offer or provide
46 electric generation service to retail customers. The term excludes an
47 electric public utility that provides electric generation service only

1 as a basic generation service pursuant to section 9 of P.L.1999, c.23
2 (C.48:3-57);

3 "Electric public utility" means a public utility, as that term is
4 defined in R.S.48:2-13, that transmits and distributes electricity to
5 end users within this State;

6 "Electric related service" means a service that is directly related
7 to the consumption of electricity by an end user, including, but not
8 limited to, the installation of demand side management measures at
9 the end user's premises, the maintenance, repair or replacement of
10 appliances, lighting, motors or other energy-consuming devices at
11 the end user's premises, and the provision of energy consumption
12 measurement and billing services;

13 "Electronic signature" means an electronic sound, symbol or
14 process, attached to, or logically associated with, a contract or other
15 record, and executed or adopted by a person with the intent to sign
16 the record;

17 "Eligible energy efficiency and energy conservation programs"
18 means programs ¹subject to measurement and verification standards
19 adopted by the board which create an EE certificate, and¹ which
20 utilize demand side management consisting of the management of
21 customer consumption of electricity or of the demand for or
22 generation of electricity through the implementation of (1) the
23 deployment of energy efficiency technologies, management
24 practices, or other strategies in residential, commercial institutional,
25 or government customers that reduce electricity consumption by
26 those customers, (2) load management or demand response
27 technologies, management practices or other strategies in
28 residential, commercial, industrial, institutional and government
29 customers that shift electric load from periods of higher demand to
30 periods of lower demand, or (3) ¹["industrial by-product
31 technologies consisting of the use of a by-product from an industrial
32 process, including the reuse of energy from exhaust gases or"] ¹ other
33 ¹["manufacturing by-products that are used in the direct production
34 of electricity at the facility of a customer"] measures determined by
35 the board to be appropriate¹;

36 "Energy agent" means a person that is duly registered pursuant to
37 the provisions of P.L.1999, c.23 (C.48:3-49 et al.), that arranges the
38 sale of retail electricity or electric related services or retail gas
39 supply or gas related services between government aggregators or
40 private aggregators and electric power suppliers or gas suppliers,
41 but does not take title to the electric or gas sold;

42 "Energy consumer" means a business or residential consumer of
43 electric generation service or gas supply service located within the
44 territorial jurisdiction of a government aggregator;

45 "Energy efficiency portfolio standard" means a requirement to
46 procure a specified amount of energy efficiency or demand side

1 management resources as a means of managing and reducing energy
2 usage and demand by customers;

3 "Energy year" or "EY" means the 12-month period from June 1st
4 through May 31st and shall be numbered according to the calendar
5 year in which it ends;

6 "Financing entity" means an electric public utility, a special
7 purpose entity, or any other assignee of bondable transition
8 property, which issues transition bonds. Except as specifically
9 provided in P.L.1999, c.23 (C.48:3-49 et al.), a financing entity
10 which is not itself an electric public utility shall not be subject to
11 the public utility requirements of Title 48 or any rules or regulations
12 adopted pursuant thereto;

13 "Gas public utility" means a public utility, as that term is defined
14 in R.S.48:2-13, that distributes gas to end users within this State;

15 "Gas related service" means a service that is directly related to
16 the consumption of gas by an end user, including, but not limited to,
17 the installation of demand side management measures at the end
18 user's premises, the maintenance, repair or replacement of
19 appliances or other energy-consuming devices at the end user's
20 premises, and the provision of energy consumption measurement
21 and billing services;

22 "Gas supplier" means a person that is duly licensed pursuant to
23 the provisions of P.L.1999, c.23 (C.48:3-49 et al.) to offer and
24 assume the contractual and legal obligation to provide gas supply
25 service to retail customers, and includes, but is not limited to,
26 marketers and brokers. A non-public utility affiliate of a public
27 utility holding company may be a gas supplier, but a gas public
28 utility or any subsidiary of a gas utility is not a gas supplier. In the
29 event that a gas public utility is not part of a holding company legal
30 structure, a related competitive business segment of that gas public
31 utility may be a gas supplier, provided that related competitive
32 business segment is structurally separated from the gas public
33 utility, and provided that the interactions between the gas public
34 utility and the related competitive business segment are subject to
35 the affiliate relations standards adopted by the board pursuant to
36 subsection k. of section 10 of P.L.1999, c.23 (C.48:3-58);

37 "Gas supply service" means the provision to customers of the
38 retail commodity of gas, but does not include any regulated
39 distribution service;

40 "Government aggregator" means any government entity subject
41 to the requirements of the "Local Public Contracts Law," P.L.1971,
42 c.198 (C.40A:11-1 et seq.), the "Public School Contracts Law,"
43 N.J.S.18A:18A-1 et seq., or the "County College Contracts Law,"
44 P.L.1982, c.189 (C.18A:64A-25.1 et seq.), that enters into a written
45 contract with a licensed electric power supplier or a licensed gas
46 supplier for: (1) the provision of electric generation service, electric
47 related service, gas supply service, or gas related service for its own

1 use or the use of other government aggregators; or (2) if a
2 municipal or county government, the provision of electric
3 generation service or gas supply service on behalf of business or
4 residential customers within its territorial jurisdiction;

5 "Government energy aggregation program" means a program and
6 procedure pursuant to which a government aggregator enters into a
7 written contract for the provision of electric generation service or
8 gas supply service on behalf of business or residential customers
9 within its territorial jurisdiction;

10 "Governmental entity" means any federal, state, municipal, local
11 or other governmental department, commission, board, agency,
12 court, authority or instrumentality having competent jurisdiction;

13 "Greenhouse gas emissions portfolio standard" means a
14 requirement that addresses or limits the amount of carbon dioxide
15 emissions indirectly resulting from the use of electricity as applied
16 to any electric power suppliers and basic generation service
17 providers of electricity;

18 "Leakage" means an increase in greenhouse gas emissions
19 related to generation sources located outside of the State that are not
20 subject to a state, interstate or regional greenhouse gas emissions
21 cap or standard that applies to generation sources located within the
22 State;

23 "Market transition charge" means a charge imposed pursuant to
24 section 13 of P.L.1999, c.23 (C.48:3-61) by an electric public
25 utility, at a level determined by the board, on the electric public
26 utility customers for a limited duration transition period to recover
27 stranded costs created as a result of the introduction of electric
28 power supply competition pursuant to the provisions of P.L.1999,
29 c.23 (C.48:3-49 et al.);

30 "Marketer" means a duly licensed electric power supplier that
31 takes title to electric energy and capacity, transmission and other
32 services from electric power generators and other wholesale
33 suppliers and then assumes the contractual and legal obligation to
34 provide electric generation service, and may include transmission
35 and other services, to an end-use retail customer or customers, or a
36 duly licensed gas supplier that takes title to gas and then assumes
37 the contractual and legal obligation to provide gas supply service to
38 an end-use customer or customers;

39 "Micro-combined heat and power generating equipment" means
40 an integrated, co-generating building heating and electrical power
41 generation system, operating on any fuel and with any applicable
42 engine, fuel cell, or other technology, with a rated capacity of at
43 least one kilowatt and not more than fifty kilowatts electric and any
44 thermal output at full load, having a design total fuel use efficiency
45 in the production of heat and electricity of not less than eighty
46 percent, or at least fifty-one kilowatts electric and not more than
47 two hundred and fifty kilowatts electric design total fuel use

1 efficiency in the production of heat and electricity of not less than
2 sixty-five percent, that annually produces at least two thousand
3 kilowatt hours of useful energy in the form of electricity that may
4 work in combination with supplemental or parallel conventional
5 heating systems, that is manufactured, installed and operated in
6 accordance with applicable government and industry standards, and
7 that is connected to the electric transmission or distribution system
8 and operated in conjunction with an electric public utility's
9 transmission or distribution facilities;

10 "Net proceeds" means proceeds less transaction and other related
11 costs as determined by the board;

12 "Net revenues" means revenues less related expenses, including
13 applicable taxes, as determined by the board;

14 "Off-site end use thermal energy services customer" means an
15 end use customer that purchases thermal energy services from an
16 on-site generation facility, combined heat and power facility, or co-
17 generation facility, and that is located on property that is separated
18 from the property on which the on-site generation facility,
19 combined heat and power facility, or co-generation facility is
20 located by more than one easement, public thoroughfare, or
21 transportation or utility-owned right-of-way;

22 "On-site generation facility" means a generation facility, and
23 equipment and services appurtenant to electric sales by such facility
24 to the end use customer located on the property or on property
25 contiguous to the property on which the end user is located. An on-
26 site generation facility shall not be considered a public utility. The
27 property of the end use customer and the property on which the on-
28 site generation facility is located shall be considered contiguous if
29 they are geographically located next to each other, but may be
30 otherwise separated by an easement, public thoroughfare,
31 transportation or utility-owned right-of-way, or if the end use
32 customer is purchasing thermal energy services produced by the on-
33 site generation facility, for use for heating or cooling, or both,
34 regardless of whether the customer is located on property that is
35 separated from the property on which the on-site generation facility
36 is located by more than one easement, public thoroughfare, or
37 transportation or utility-owned right-of-way;

38 "Person" means an individual, partnership, corporation,
39 association, trust, limited liability company, governmental entity or
40 other legal entity;

41 "Private aggregator" means a non-government aggregator that is
42 a duly-organized business or non-profit organization authorized to
43 do business in this State that enters into a contract with a duly
44 licensed electric power supplier for the purchase of electric energy
45 and capacity, or with a duly licensed gas supplier for the purchase
46 of gas supply service, on behalf of multiple end-use customers by
47 combining the loads of those customers;

1 "Public utility holding company" means: (1) any company that,
2 directly or indirectly, owns, controls, or holds with power to vote,
3 ten percent or more of the outstanding voting securities of an
4 electric public utility or a gas public utility or of a company which
5 is a public utility holding company by virtue of this definition,
6 unless the Securities and Exchange Commission, or its successor,
7 by order declares such company not to be a public utility holding
8 company under the Public Utility Holding Company Act of 1935,
9 15 U.S.C.s.79 et seq., or its successor; or (2) any person that the
10 Securities and Exchange Commission, or its successor, determines,
11 after notice and opportunity for hearing, directly or indirectly, to
12 exercise, either alone or pursuant to an arrangement or
13 understanding with one or more other persons, such a controlling
14 influence over the management or policies of an electric public
15 utility or a gas public utility or public utility holding company as to
16 make it necessary or appropriate in the public interest or for the
17 protection of investors or consumers that such person be subject to
18 the obligations, duties, and liabilities imposed in the Public Utility
19 Holding Company Act of 1935 or its successor;

20 "Regulatory asset" means an asset recorded on the books of an
21 electric public utility or gas public utility pursuant to the Statement
22 of Financial Accounting Standards, No. 71, entitled "Accounting for
23 the Effects of Certain Types of Regulation," or any successor
24 standard and as deemed recoverable by the board;

25 "Related competitive business segment of an electric public
26 utility or gas public utility" means any business venture of an
27 electric public utility or gas public utility including, but not limited
28 to, functionally separate business units, joint ventures, and
29 partnerships, that offers to provide or provides competitive services;

30 "Related competitive business segment of a public utility holding
31 company" means any business venture of a public utility holding
32 company, including, but not limited to, functionally separate
33 business units, joint ventures, and partnerships and subsidiaries, that
34 offers to provide or provides competitive services, but does not
35 include any related competitive business segments of an electric
36 public utility or gas public utility;

37 "Renewable energy certificate" or "REC" means a certificate
38 representing the environmental benefits or attributes of one
39 megawatt-hour of generation from a generating facility that
40 produces Class I or Class II renewable energy, but shall not include
41 a solar renewable energy certificate;

42 "Resource recovery facility" means a solid waste facility
43 constructed and operated for the incineration of solid waste for
44 energy production and the recovery of metals and other materials
45 for reuse which the Department of Environmental Protection has
46 determined are in compliance with current environmental standards,

1 including, but not limited to, all applicable requirements of the
2 federal "Clean Air Act" (42 U.S.C. s.7401 et seq.);
3 "Restructuring related costs" means reasonably incurred costs
4 directly related to the restructuring of the electric power industry,
5 including the closure, sale, functional separation and divestiture of
6 generation and other competitive utility assets by a public utility, or
7 the provision of competitive services as such costs are determined
8 by the board, and which are not stranded costs as defined in
9 P.L.1999, c.23 (C.48:3-49 et al.) but may include, but not be limited
10 to, investments in management information systems, and which
11 shall include expenses related to employees affected by
12 restructuring which result in efficiencies and which result in
13 benefits to ratepayers, such as training or retraining at the level
14 equivalent to one year's training at a vocational or technical school
15 or county community college, the provision of severance pay of two
16 weeks of base pay for each year of full-time employment, and a
17 maximum of 24 months' continued health care coverage. Except as
18 to expenses related to employees affected by restructuring,
19 "restructuring related costs" shall not include going forward costs;
20 "Retail choice" means the ability of retail customers to shop for
21 electric generation or gas supply service from electric power or gas
22 suppliers, or opt to receive basic generation service or basic gas
23 service, and the ability of an electric power or gas supplier to offer
24 electric generation service or gas supply service to retail customers,
25 consistent with the provisions of P.L.1999, c.23 (C.48:3-49 et al.);
26 "Retail margin" means an amount, reflecting differences in
27 prices that electric power suppliers and electric public utilities may
28 charge in providing electric generation service and basic generation
29 service, respectively, to retail customers, excluding residential
30 customers, which the board may authorize to be charged to
31 categories of basic generation service customers of electric public
32 utilities in this State, other than residential customers, under the
33 board's continuing regulation of basic generation service pursuant to
34 sections 3 and 9 of P.L.1999, c.23 (C.48:3-51 and 48:3-57), for the
35 purpose of promoting a competitive retail market for the supply of
36 electricity;
37 "Shopping credit" means an amount deducted from the bill of an
38 electric public utility customer to reflect the fact that such customer
39 has switched to an electric power supplier and no longer takes basic
40 generation service from the electric public utility;
41 "Small scale hydropower facility" means a facility located within
42 this State and connected to the distribution system, and that meets
43 the requirements of, and has been certified by, a nationally
44 recognized low-impact hydropower organization that has
45 established low-impact hydropower certification criteria applicable
46 to: (1) river flows; (2) water quality; (3) fish passage and
47 protection; (4) watershed protection; (5) threatened and endangered

1 species protection; (6) cultural resource protection; (7) recreation;
2 and (8) facilities recommended for removal;

3 "Social program" means a program implemented with board
4 approval to provide assistance to a group of disadvantaged
5 customers, to provide protection to consumers, or to accomplish a
6 particular societal goal, and includes, but is not limited to, the
7 winter moratorium program, utility practices concerning "bad debt"
8 customers, low income assistance, deferred payment plans,
9 weatherization programs, and late payment and deposit policies, but
10 does not include any demand side management program or any
11 environmental requirements or controls;

12 "Societal benefits charge" means a charge imposed by an electric
13 public utility, at a level determined by the board, pursuant to, and in
14 accordance with, section 12 of P.L.1999, c.23 (C.48:3-60);

15 "Solar alternative compliance payment" or "SACP" means a
16 payment of a certain dollar amount per megawatt hour (MWh)
17 which an electric power supplier or provider may submit to the
18 board in order to comply with the solar electric generation
19 requirements under section 38 of P.L.1999, c.23 (C.48:3-87);

20 "Solar renewable energy certificate" or "SREC" means a
21 certificate issued by the board or its designee, representing one
22 megawatt hour (MWh) of solar energy that is generated by a facility
23 connected to the distribution system in this State and has value
24 based upon, and driven by, the energy market;

25 "Stranded cost" means the amount by which the net cost of an
26 electric public utility's electric generating assets or electric power
27 purchase commitments, as determined by the board consistent with
28 the provisions of P.L.1999, c.23 (C.48:3-49 et al.), exceeds the
29 market value of those assets or contractual commitments in a
30 competitive supply marketplace and the costs of buydowns or
31 buyouts of power purchase contracts;

32 "Stranded costs recovery order" means each order issued by the
33 board in accordance with subsection c. of section 13 of P.L.1999,
34 c.23 (C.48:3-61) which sets forth the amount of stranded costs, if
35 any, the board has determined an electric public utility is eligible to
36 recover and collect in accordance with the standards set forth in
37 section 13 of P.L.1999, c.23 (C.48:3-61) and the recovery
38 mechanisms therefor;

39 "Thermal efficiency" means the useful electric energy output of a
40 facility, plus the useful thermal energy output of the facility,
41 expressed as a percentage of the total energy input to the facility;

42 "Transition bond charge" means a charge, expressed as an
43 amount per kilowatt hour, that is authorized by and imposed on
44 electric public utility ratepayers pursuant to a bondable stranded
45 costs rate order, as modified at any time pursuant to the provisions
46 of P.L.1999, c.23 (C.48:3-49 et al.);

1 "Transition bonds" means bonds, notes, certificates of
2 participation or beneficial interest or other evidences of
3 indebtedness or ownership issued pursuant to an indenture, contract
4 or other agreement of an electric public utility or a financing entity,
5 the proceeds of which are used, directly or indirectly, to recover,
6 finance or refinance bondable stranded costs and which are, directly
7 or indirectly, secured by or payable from bondable transition
8 property. References in P.L.1999, c.23 (C.48:3-49 et al.) to
9 principal, interest, and acquisition or redemption premium with
10 respect to transition bonds which are issued in the form of
11 certificates of participation or beneficial interest or other evidences
12 of ownership shall refer to the comparable payments on such
13 securities;

14 "Transition period" means the period from August 1, 1999
15 through July 31, 2003;

16 "Transmission and distribution system" means, with respect to an
17 electric public utility, any facility or equipment that is used for the
18 transmission, distribution or delivery of electricity to the customers
19 of the electric public utility including, but not limited to, the land,
20 structures, meters, lines, switches and all other appurtenances
21 thereof and thereto, owned or controlled by the electric public
22 utility within this State; and

23 "Universal service" means any service approved by the board
24 with the purpose of assisting low-income residential customers in
25 obtaining or retaining electric generation or delivery service.
26 (cf: P.L.2009, c.289, s.1)]²

27

28 ²1. Section 3 of P.L.1999, c.23 (C.48:3-51) is amended to read
29 as follows:

30 3. As used in P.L.1999, c.23 (C.48:3-49 et al.):

31 ³["Approved alternative technologies" means energy production
32 technologies that have been approved by the Department of
33 Environmental Protection, in consultation with the Board of Public
34 Utilities, as technologies that reduce fossil fuel use or greenhouse
35 gas emissions, or geothermal heat pumps and solar thermal energy
36 technologies provided that the percentage of renewable energy from
37 geothermal heat pumps and solar thermal energy technologies and
38 their corresponding values shall be determined by the Department
39 of Environmental Protection, in consultation with the Board of
40 Public Utilities;]³

41 "Assignee" means a person to which an electric public utility or
42 another assignee assigns, sells or transfers, other than as security,
43 all or a portion of its right to or interest in bondable transition
44 property. Except as specifically provided in P.L.1999, c.23
45 (C.48:3-49 et al.), an assignee shall not be subject to the public
46 utility requirements of Title 48 or any rules or regulations adopted
47 pursuant thereto;

1 "Basic gas supply service" means gas supply service that is
2 provided to any customer that has not chosen an alternative gas
3 supplier, whether or not the customer has received offers as to
4 competitive supply options, including, but not limited to, any
5 customer that cannot obtain such service for any reason, including
6 non-payment for services. Basic gas supply service is not a
7 competitive service and shall be fully regulated by the board;

8 "Basic generation service" or "BGS" means electric generation
9 service that is provided, to any customer that has not chosen an
10 alternative electric power supplier, whether or not the customer has
11 received offers for competitive supply options, including, but not
12 limited to, any customer that cannot obtain such service from an
13 electric power supplier for any reason, including non-payment for
14 services. Basic generation service is not a competitive service and
15 shall be fully regulated by the board;

16 "Basic generation service provider" or "provider" means a
17 provider of basic generation service;

18 "Basic generation service transition costs" means the amount by
19 which the payments by an electric public utility for the procurement
20 of power for basic generation service and related ancillary and
21 administrative costs exceeds the net revenues from the basic
22 generation service charge established by the board pursuant to
23 section 9 of P.L.1999, c.23 (C.48:3-57) during the transition period,
24 together with interest on the balance at the board-approved rate, that
25 is reflected in a deferred balance account approved by the board in
26 an order addressing the electric public utility's unbundled rates,
27 stranded costs, and restructuring filings pursuant to P.L.1999, c.23
28 (C.48:3-49 et al.). Basic generation service transition costs shall
29 include, but are not limited to, costs of purchases from the spot
30 market, bilateral contracts, contracts with non-utility generators,
31 parting contracts with the purchaser of the electric public utility's
32 divested generation assets, short-term advance purchases, and
33 financial instruments such as hedging, forward contracts, and
34 options. Basic generation service transition costs shall also include
35 the payments by an electric public utility pursuant to a competitive
36 procurement process for basic generation service supply during the
37 transition period, and costs of any such process used to procure the
38 basic generation service supply;

39 "Board" means the New Jersey Board of Public Utilities or any
40 successor agency;

41 "Bondable stranded costs" means any stranded costs or basic
42 generation service transition costs of an electric public utility
43 approved by the board for recovery pursuant to the provisions of
44 P.L.1999, c.23 (C.48:3-49 et al.), together with, as approved by the
45 board: (1) the cost of retiring existing debt or equity capital of the
46 electric public utility, including accrued interest, premium and other
47 fees, costs and charges relating thereto, with the proceeds of the

1 financing of bondable transition property; (2) if requested by an
2 electric public utility in its application for a bondable stranded costs
3 rate order, federal, State and local tax liabilities associated with
4 stranded costs recovery or basic generation service transition cost
5 recovery or the transfer or financing of such property or both,
6 including taxes, whose recovery period is modified by the effect of
7 a stranded costs recovery order, a bondable stranded costs rate order
8 or both; and (3) the costs incurred to issue, service or refinance
9 transition bonds, including interest, acquisition or redemption
10 premium, and other financing costs, whether paid upon issuance or
11 over the life of the transition bonds, including, but not limited to,
12 credit enhancements, service charges, overcollateralization, interest
13 rate cap, swap or collar, yield maintenance, maturity guarantee or
14 other hedging agreements, equity investments, operating costs and
15 other related fees, costs and charges, or to assign, sell or otherwise
16 transfer bondable transition property;

17 "Bondable stranded costs rate order" means one or more
18 irrevocable written orders issued by the board pursuant to P.L.1999,
19 c.23 (C.48:3-49 et al.) which determines the amount of bondable
20 stranded costs and the initial amount of transition bond charges
21 authorized to be imposed to recover such bondable stranded costs,
22 including the costs to be financed from the proceeds of the
23 transition bonds, as well as on-going costs associated with servicing
24 and credit enhancing the transition bonds, and provides the electric
25 public utility specific authority to issue or cause to be issued,
26 directly or indirectly, transition bonds through a financing entity
27 and related matters as provided in P.L.1999, c.23, which order shall
28 become effective immediately upon the written consent of the
29 related electric public utility to such order as provided in P.L.1999,
30 c.23;

31 "Bondable transition property" means the property consisting of
32 the irrevocable right to charge, collect and receive, and be paid
33 from collections of, transition bond charges in the amount necessary
34 to provide for the full recovery of bondable stranded costs which
35 are determined to be recoverable in a bondable stranded costs rate
36 order, all rights of the related electric public utility under such
37 bondable stranded costs rate order including, without limitation, all
38 rights to obtain periodic adjustments of the related transition bond
39 charges pursuant to subsection b. of section 15 of P.L.1999, c.23
40 (C.48:3-64), and all revenues, collections, payments, money and
41 proceeds arising under, or with respect to, all of the foregoing;

42 "British thermal unit" or "Btu" means the amount of heat
43 required to increase the temperature of one pound of water by one
44 degree Fahrenheit;

45 "Broker" means a duly licensed electric power supplier that
46 assumes the contractual and legal responsibility for the sale of
47 electric generation service, transmission or other services to end-use

1 retail customers, but does not take title to any of the power sold, or
2 a duly licensed gas supplier that assumes the contractual and legal
3 obligation to provide gas supply service to end-use retail customers,
4 but does not take title to the gas;

5 "Buydown" means an arrangement or arrangements involving the
6 buyer and seller in a given power purchase contract and, in some
7 cases third parties, for consideration to be given by the buyer in
8 order to effectuate a reduction in the pricing, or the restructuring of
9 other terms to reduce the overall cost of the power contract, for the
10 remaining succeeding period of the purchased power arrangement
11 or arrangements;

12 "Buyout" means an arrangement or arrangements involving the
13 buyer and seller in a given power purchase contract and, in some
14 cases third parties, for consideration to be given by the buyer in
15 order to effectuate a termination of such power purchase contract;

16 ["Class I renewable energy" means electric energy produced
17 from solar technologies, photovoltaic technologies, wind energy,
18 fuel cells, geothermal technologies, wave or tidal action, and
19 methane gas from landfills or a biomass facility, provided that the
20 biomass is cultivated and harvested in a sustainable manner;]

21 ³["Class I alternative energy" means electric energy produced
22 from:

23 (1) facilities utilizing the following technologies and sources:
24 solar technologies, photovoltaic technologies, wind energy,
25 sustainably-fueled fuel cells, geothermal technologies, wave or tidal
26 action, and methane gas from landfills or a biomass facility,
27 provided that the biomass is cultivated and harvested in a
28 sustainable manner;

29 (2) small scale hydropower facilities connected to the
30 distribution system with a capacity of three megawatts or less and
31 put into service after the effective date of P.L. , c. (C.)
32 (pending before the Legislature as this bill);

33 (3) approved alternative technologies; or

34 (4) industrial by-product technologies consisting of the use of a
35 by-product from an industrial process, including the reuse of energy
36 from exhaust gases or other manufacturing by-products that are
37 used in the direct production of electricity at the facility of a
38 customer but not including co-generation, unless such co-generation
39 would otherwise qualify as an industrial by-product technology.

40 Whenever any law, rule, regulation, order, contract, tariff,
41 document, reorganization plan, ruling in the course of a judicial or
42 administrative proceeding, or other written declaration of legal
43 rights or obligations, refers to Class I renewable energy, the same
44 shall mean and refer to "Class I alternative energy," however,
45 reference to Class I renewable energy in any contracts or other
46 written agreement in effect prior to the effective date of P.L. , c.
47 (C.) (pending before the Legislature as this bill) shall have the

1 same meaning as it did when such contracts or written agreements
2 were executed;]

3 "Class I renewable energy" means electric energy produced from
4 solar technologies, photovoltaic technologies, wind energy, fuel
5 cells, geothermal technologies, wave or tidal action, small scale
6 hydropower facilities with a capacity of three megawatts or less and
7 put into service after the effective date of P.L. , c. (C.)
8 (pending before the Legislature as this bill), and methane gas from
9 landfills or a biomass facility, provided that the biomass is
10 cultivated and harvested in a sustainable manner;³

11 ["Class II renewable energy" means electric energy produced at
12 a resource recovery facility or hydropower facility, provided that
13 such facility is located where retail competition is permitted and
14 provided further that the Commissioner of Environmental
15 Protection has determined that such facility meets the highest
16 environmental standards and minimizes any impacts to the
17 environment and local communities;]

18 ³["Class II alternative energy" means (1) electric energy from
19 micro-combined heat and power generating equipment or
20 wastewater treatment facilities, which have requested air permits
21 from the Department of Environmental Protection after the effective
22 date of P.L. , c. (C.) (pending before the Legislature as this
23 bill), or (2) electric energy produced at a resource recovery facility,
24 or at a hydropower facility with a capacity of greater than three
25 megawatts and less than 30 megawatts, provided that such resource
26 recovery or hydropower facility is located where retail competition
27 is permitted, and provided further that the Commissioner of
28 Environmental Protection has determined that such facility meets
29 the highest environmental standards, minimizes any adverse
30 impacts to the environment and local communities, and that any
31 resource recovery facility meets this State's applicable air pollution
32 permit requirements, and maintains a battery recycling program, if
33 applicable, which substantially meets applicable State standards for
34 such programs. Whenever any law, rule, regulation, order, contract,
35 tariff, document, reorganization plan, ruling in the course of a
36 judicial or administrative proceeding or other written declaration of
37 legal rights or obligations, refers to Class II renewable energy, the
38 same shall mean and refer to "Class II alternative energy," however,
39 reference to Class II renewable energy in any contracts or other
40 written agreement in effect prior to the effective date of P.L. , c.
41 (C.) (pending before the Legislature as this bill) shall have the
42 same meaning as it did when such contracts or written agreements
43 were executed;]

44 "Class II renewable energy" means electric energy produced at a
45 hydropower facility with a capacity of greater than three megawatts
46 or a resource recovery facility, provided that such facility is located
47 where retail competition is permitted and provided further that the

1 Commissioner of Environmental Protection has determined that
2 such facility meets the highest environmental standards and
3 minimizes any impacts to the environment and local communities;³

4 "Co-generation" means the sequential production of electricity
5 and steam or other forms of useful energy used for industrial or
6 commercial heating and cooling purposes;

7 "Combined heat and power facility" or "co-generation facility"
8 means a generation facility which produces electric energy ³[,] ³
9 and³ steam ³[,]³ or other forms of useful energy such as heat,
10 which are used for industrial or commercial heating or cooling
11 purposes. A combined heat and power facility or co-generation
12 facility shall not be considered a public utility;

13 "Competitive service" means any service offered by an electric
14 public utility or a gas public utility that the board determines to be
15 competitive pursuant to section 8 or section 10 of P.L.1999, c.23
16 (C.48:3-56 or C.48:3-58) or that is not regulated by the board;

17 "Commercial and industrial energy pricing class customer" or
18 "CIEP class customer" means that group of non-residential
19 customers with high peak demand, as determined by periodic board
20 order, which either is eligible or which would be eligible, as
21 determined by periodic board order, to receive funds from the Retail
22 Margin Fund established pursuant to section 9 of P.L.1999, c.23
23 (C.48:3-57) and for which basic generation service is hourly-priced;

24 "Comprehensive resource analysis" means an analysis including,
25 but not limited to, an assessment of existing market barriers to the
26 implementation of energy efficiency and renewable technologies
27 that are not or cannot be delivered to customers through a
28 competitive marketplace;

29 "Connected to the distribution system" means ⁴, for a solar
30 facility,⁴ (1) connected to a net metering customer's side of a
31 meter, regardless of the voltage at which that customer connects to
32 the electric grid, or (2) directly connected to the electric grid at 69
33 kilovolts or less, regardless of how an electric public utility
34 classifies that portion of its electric grid, ⁴[with the exception of]
35 except that notwithstanding that it meets the criterion set forth in
36 paragraph (1) or in paragraph (2) hereof, a⁴ solar ⁴[facilities]
37 facility⁴ that ⁴[are] is⁴ greater than ten megawatts in capacity and
38 either not net metered or not an on-site generation facility⁴ shall not
39 be considered "connected to the distribution system" unless it shall
40 have been designated as such by the board pursuant to subsection r.
41 of section 38 of P.L.1999, c.23 (C.48:3-87)⁴. Any facility, other
42 than that of a net metering customer on the customer's side of the
43 meter, connected above 69 kilovolts shall not be considered
44 connected to the distribution system⁴[. Any proposed solar facility
45 that is greater than ten megawatts in capacity and either not net
46 metered or not an on-site generation facility, may be considered

1 “connected to the distribution system” only upon designation by the
2 board, after notice to the public and opportunity for public comment
3 or hearing. In making such designation, the board shall consider,
4 among other factors, the electric rate benefits and impacts of such
5 solar facility to customers, its impact on the development of the
6 solar power and SREC market, and, in consultation with the
7 Department of Environmental Protection, the land use impact of the
8 facility]⁴;

9 "Customer" means any person that is an end user and is
10 connected to any part of the transmission and distribution system
11 within an electric public utility's service territory or a gas public
12 utility's service territory within this State;

13 "Customer account service" means metering, billing, or such
14 other administrative activity associated with maintaining a customer
15 account;

16 "Demand side management" means the management of customer
17 demand for energy service through the implementation of cost-
18 effective energy efficiency technologies, including, but not limited
19 to, installed conservation, load management and energy efficiency
20 measures on and in the residential, commercial, industrial,
21 institutional and governmental premises and facilities in this State;

22 "EE certificate" means a certificate issued by the board or its
23 designee, representing one megawatt hour (MWh) of eligible energy
24 efficiency and energy conservation and has value based upon, and
25 driven by, the energy market;

26 "Electric generation service" means the provision of retail
27 electric energy and capacity which is generated off-site from the
28 location at which the consumption of such electric energy and
29 capacity is metered for retail billing purposes, including agreements
30 and arrangements related thereto;

31 "Electric power generator" means an entity that proposes to
32 construct, own, lease or operate, or currently owns, leases or
33 operates, an electric power production facility that will sell or does
34 sell at least 90 percent of its output, either directly or through a
35 marketer, to a customer or customers located at sites that are not on
36 or contiguous to the site on which the facility will be located or is
37 located. The designation of an entity as an electric power generator
38 for the purposes of P.L.1999, c.23 (C.48:3-49 et al.) shall not, in
39 and of itself, affect the entity's status as an exempt wholesale
40 generator under the Public Utility Holding Company Act of 1935,
41 15 U.S.C. s.79 et seq.;

42 "Electric power supplier" means a person or entity that is duly
43 licensed pursuant to the provisions of P.L.1999, c.23 (C.48:3-49 et
44 al.) to offer and to assume the contractual and legal responsibility to
45 provide electric generation service to retail customers, and includes
46 load serving entities, marketers and brokers that offer or provide
47 electric generation service to retail customers. The term excludes an

1 electric public utility that provides electric generation service only
2 as a basic generation service pursuant to section 9 of P.L.1999, c.23
3 (C.48:3-57);

4 "Electric public utility" means a public utility, as that term is
5 defined in R.S.48:2-13, that transmits and distributes electricity to
6 end users within this State;

7 "Electric related service" means a service that is directly related
8 to the consumption of electricity by an end user, including, but not
9 limited to, the installation of demand side management measures at
10 the end user's premises, the maintenance, repair or replacement of
11 appliances, lighting, motors or other energy-consuming devices at
12 the end user's premises, and the provision of energy consumption
13 measurement and billing services;

14 "Electronic signature" means an electronic sound, symbol or
15 process, attached to, or logically associated with, a contract or other
16 record, and executed or adopted by a person with the intent to sign
17 the record;

18 "Eligible energy efficiency and energy conservation programs"
19 means programs subject to measurement and verification standards
20 adopted by the board which create an EE certificate, and which
21 utilize demand side management consisting of the management of
22 customer consumption of electricity or of the demand for or
23 generation of electricity through the implementation of (1) the
24 deployment of energy efficiency technologies, management
25 practices, or other strategies in residential, commercial, industrial,
26 institutional, or government customers that reduce electricity
27 consumption by those customers, (2) load management or demand
28 response technologies, management practices or other strategies in
29 residential, commercial, industrial, institutional and government
30 customers that shift electric load from periods of higher demand to
31 periods of lower demand, or (3) ³[other measures determined by the
32 board to be appropriate] industrial by-product technologies
33 consisting of the use of a by-product from an industrial process,
34 including the reuse of energy from exhaust gases or other
35 manufacturing by-products that are used in the direct production of
36 electricity at the facility of a customer³ ;

37 "Energy agent" means a person that is duly registered pursuant to
38 the provisions of P.L.1999, c.23 (C.48:3-49 et al.), that arranges the
39 sale of retail electricity or electric related services or retail gas
40 supply or gas related services between government aggregators or
41 private aggregators and electric power suppliers or gas suppliers,
42 but does not take title to the electric or gas sold;

43 "Energy consumer" means a business or residential consumer of
44 electric generation service or gas supply service located within the
45 territorial jurisdiction of a government aggregator;

46 "Energy efficiency portfolio standard" means a requirement to
47 procure a specified amount of energy efficiency or demand side

1 management resources as a means of managing and reducing energy
2 usage and demand by customers;

3 "Energy year" or "EY" means the 12-month period from June 1st
4 through May 31st and shall be numbered according to the calendar
5 year in which it ends;

6 "Financing entity" means an electric public utility, a special
7 purpose entity, or any other assignee of bondable transition
8 property, which issues transition bonds. Except as specifically
9 provided in P.L.1999, c.23 (C.48:3-49 et al.), a financing entity
10 which is not itself an electric public utility shall not be subject to
11 the public utility requirements of Title 48 or any rules or regulations
12 adopted pursuant thereto;

13 "Gas public utility" means a public utility, as that term is defined
14 in R.S.48:2-13, that distributes gas to end users within this State;

15 "Gas related service" means a service that is directly related to
16 the consumption of gas by an end user, including, but not limited to,
17 the installation of demand side management measures at the end
18 user's premises, the maintenance, repair or replacement of
19 appliances or other energy-consuming devices at the end user's
20 premises, and the provision of energy consumption measurement
21 and billing services;

22 "Gas supplier" means a person that is duly licensed pursuant to
23 the provisions of P.L.1999, c.23 (C.48:3-49 et al.) to offer and
24 assume the contractual and legal obligation to provide gas supply
25 service to retail customers, and includes, but is not limited to,
26 marketers and brokers. A non-public utility affiliate of a public
27 utility holding company may be a gas supplier, but a gas public
28 utility or any subsidiary of a gas utility is not a gas supplier. In the
29 event that a gas public utility is not part of a holding company legal
30 structure, a related competitive business segment of that gas public
31 utility may be a gas supplier, provided that related competitive
32 business segment is structurally separated from the gas public
33 utility, and provided that the interactions between the gas public
34 utility and the related competitive business segment are subject to
35 the affiliate relations standards adopted by the board pursuant to
36 subsection k. of section 10 of P.L.1999, c.23 (C.48:3-58);

37 "Gas supply service" means the provision to customers of the
38 retail commodity of gas, but does not include any regulated
39 distribution service;

40 "Government aggregator" means any government entity subject
41 to the requirements of the "Local Public Contracts Law," P.L.1971,
42 c.198 (C.40A:11-1 et seq.), the "Public School Contracts Law,"
43 N.J.S.18A:18A-1 et seq., or the "County College Contracts Law,"
44 P.L.1982, c.189 (C.18A:64A-25.1 et seq.), that enters into a written
45 contract with a licensed electric power supplier or a licensed gas
46 supplier for: (1) the provision of electric generation service, electric
47 related service, gas supply service, or gas related service for its own

1 use or the use of other government aggregators; or (2) if a
2 municipal or county government, the provision of electric
3 generation service or gas supply service on behalf of business or
4 residential customers within its territorial jurisdiction;

5 "Government energy aggregation program" means a program and
6 procedure pursuant to which a government aggregator enters into a
7 written contract for the provision of electric generation service or
8 gas supply service on behalf of business or residential customers
9 within its territorial jurisdiction;

10 "Governmental entity" means any federal, state, municipal, local
11 or other governmental department, commission, board, agency,
12 court, authority or instrumentality having competent jurisdiction;

13 "Greenhouse gas emissions portfolio standard" means a
14 requirement that addresses or limits the amount of carbon dioxide
15 emissions indirectly resulting from the use of electricity as applied
16 to any electric power suppliers and basic generation service
17 providers of electricity;

18 "Leakage" means an increase in greenhouse gas emissions
19 related to generation sources located outside of the State that are not
20 subject to a state, interstate or regional greenhouse gas emissions
21 cap or standard that applies to generation sources located within the
22 State;

23 "Market transition charge" means a charge imposed pursuant to
24 section 13 of P.L.1999, c.23 (C.48:3-61) by an electric public
25 utility, at a level determined by the board, on the electric public
26 utility customers for a limited duration transition period to recover
27 stranded costs created as a result of the introduction of electric
28 power supply competition pursuant to the provisions of P.L.1999,
29 c.23 (C.48:3-49 et al.);

30 "Marketer" means a duly licensed electric power supplier that
31 takes title to electric energy and capacity, transmission and other
32 services from electric power generators and other wholesale
33 suppliers and then assumes the contractual and legal obligation to
34 provide electric generation service, and may include transmission
35 and other services, to an end-use retail customer or customers, or a
36 duly licensed gas supplier that takes title to gas and then assumes
37 the contractual and legal obligation to provide gas supply service to
38 an end-use customer or customers;

39 ³"Micro-combined heat and power generating equipment"
40 means an integrated, co-generating building heating and electrical
41 power generation system, operating on any fuel and with any
42 applicable engine, fuel cell, or other technology, with a rated
43 capacity of at least one kilowatt and not more than fifty kilowatts
44 electric and any thermal output at full load, having a design total
45 fuel use efficiency in the production of heat and electricity of not
46 less than eighty percent, or at least fifty-one kilowatts electric and
47 not more than two hundred and fifty kilowatts electric design total

1 fuel use efficiency in the production of heat and electricity of not
2 less than sixty-five percent, that annually produces at least two
3 thousand kilowatt hours of useful energy in the form of electricity
4 that may work in combination with supplemental or parallel
5 conventional heating systems, that is manufactured, installed and
6 operated in accordance with applicable government and industry
7 standards, and that is connected to the electric transmission or
8 distribution system and operated in conjunction with an electric
9 public utility's transmission or distribution facilities;]³

10 "Net proceeds" means proceeds less transaction and other related
11 costs as determined by the board;

12 "Net revenues" means revenues less related expenses, including
13 applicable taxes, as determined by the board;

14 "Offshore wind energy" means electric energy produced by a
15 qualified offshore wind project;

16 "Offshore wind renewable energy certificate" or "OREC" means
17 a certificate, issued by the board or its designee, representing the
18 environmental attributes of one megawatt hour of electric
19 generation from a qualified offshore wind project;

20 "Off-site end use thermal energy services customer" means an
21 end use customer that purchases thermal energy services from an
22 on-site generation facility, combined heat and power facility, or co-
23 generation facility, and that is located on property that is separated
24 from the property on which the on-site generation facility,
25 combined heat and power facility, or co-generation facility is
26 located by more than one easement, public thoroughfare, or
27 transportation or utility-owned right-of-way;

28 "On-site generation facility" means a generation facility, and
29 equipment and services appurtenant to electric sales by such facility
30 to the end use customer located on the property or on property
31 contiguous to the property on which the end user is located. An on-
32 site generation facility shall not be considered a public utility. The
33 property of the end use customer and the property on which the on-
34 site generation facility is located shall be considered contiguous if
35 they are geographically located next to each other, but may be
36 otherwise separated by an easement, public thoroughfare,
37 transportation or utility-owned right-of-way, or if the end use
38 customer is purchasing thermal energy services produced by the on-
39 site generation facility, for use for heating or cooling, or both,
40 regardless of whether the customer is located on property that is
41 separated from the property on which the on-site generation facility
42 is located by more than one easement, public thoroughfare, or
43 transportation or utility-owned right-of-way;

44 "Person" means an individual, partnership, corporation,
45 association, trust, limited liability company, governmental entity or
46 other legal entity;

1 "Private aggregator" means a non-government aggregator that is
2 a duly-organized business or non-profit organization authorized to
3 do business in this State that enters into a contract with a duly
4 licensed electric power supplier for the purchase of electric energy
5 and capacity, or with a duly licensed gas supplier for the purchase
6 of gas supply service, on behalf of multiple end-use customers by
7 combining the loads of those customers;

8 "Public utility holding company" means: (1) any company that,
9 directly or indirectly, owns, controls, or holds with power to vote,
10 ten percent or more of the outstanding voting securities of an
11 electric public utility or a gas public utility or of a company which
12 is a public utility holding company by virtue of this definition,
13 unless the Securities and Exchange Commission, or its successor,
14 by order declares such company not to be a public utility holding
15 company under the Public Utility Holding Company Act of 1935,
16 15 U.S.C. s.79 et seq., or its successor; or (2) any person that the
17 Securities and Exchange Commission, or its successor, determines,
18 after notice and opportunity for hearing, directly or indirectly, to
19 exercise, either alone or pursuant to an arrangement or
20 understanding with one or more other persons, such a controlling
21 influence over the management or policies of an electric public
22 utility or a gas public utility or public utility holding company as to
23 make it necessary or appropriate in the public interest or for the
24 protection of investors or consumers that such person be subject to
25 the obligations, duties, and liabilities imposed in the Public Utility
26 Holding Company Act of 1935 or its successor;

27 "Qualified offshore wind project" means a wind turbine
28 electricity generation facility in the Atlantic Ocean and connected
29 to the electric transmission system in this State, and includes the
30 associated transmission-related interconnection facilities and
31 equipment, and approved by the board pursuant to section 3 of
32 P.L.2010, c.57 (C.48:3-87.1);

33 "Regulatory asset" means an asset recorded on the books of an
34 electric public utility or gas public utility pursuant to the Statement
35 of Financial Accounting Standards, No. 71, entitled "Accounting for
36 the Effects of Certain Types of Regulation," or any successor
37 standard and as deemed recoverable by the board;

38 "Related competitive business segment of an electric public
39 utility or gas public utility" means any business venture of an
40 electric public utility or gas public utility including, but not limited
41 to, functionally separate business units, joint ventures, and
42 partnerships, that offers to provide or provides competitive services;

43 "Related competitive business segment of a public utility holding
44 company" means any business venture of a public utility holding
45 company, including, but not limited to, functionally separate
46 business units, joint ventures, and partnerships and subsidiaries, that
47 offers to provide or provides competitive services, but does not

1 include any related competitive business segments of an electric
2 public utility or gas public utility;

3 "Renewable energy certificate" or "REC" means a certificate
4 representing the environmental benefits or attributes of one
5 megawatt-hour of generation from a generating facility that
6 produces Class I or Class II renewable energy, but shall not include
7 a solar renewable energy certificate or an offshore wind renewable
8 energy certificate;

9 "Resource recovery facility" means a solid waste facility
10 constructed and operated for the incineration of solid waste for
11 energy production and the recovery of metals and other materials
12 for reuse which the Department of Environmental Protection has
13 determined are in compliance with current environmental standards,
14 including, but not limited to, all applicable requirements of the
15 federal "Clean Air Act" (42 U.S.C. s.7401 et seq.);

16 "Restructuring related costs" means reasonably incurred costs
17 directly related to the restructuring of the electric power industry,
18 including the closure, sale, functional separation and divestiture of
19 generation and other competitive utility assets by a public utility, or
20 the provision of competitive services as such costs are determined
21 by the board, and which are not stranded costs as defined in
22 P.L.1999, c.23 (C.48:3-49 et al.) but may include, but not be limited
23 to, investments in management information systems, and which
24 shall include expenses related to employees affected by
25 restructuring which result in efficiencies and which result in
26 benefits to ratepayers, such as training or retraining at the level
27 equivalent to one year's training at a vocational or technical school
28 or county community college, the provision of severance pay of two
29 weeks of base pay for each year of full-time employment, and a
30 maximum of 24 months' continued health care coverage. Except as
31 to expenses related to employees affected by restructuring,
32 "restructuring related costs" shall not include going forward costs;

33 "Retail choice" means the ability of retail customers to shop for
34 electric generation or gas supply service from electric power or gas
35 suppliers, or opt to receive basic generation service or basic gas
36 service, and the ability of an electric power or gas supplier to offer
37 electric generation service or gas supply service to retail customers,
38 consistent with the provisions of P.L.1999, c.23 (C.48:3-49 et al.);

39 "Retail margin" means an amount, reflecting differences in
40 prices that electric power suppliers and electric public utilities may
41 charge in providing electric generation service and basic generation
42 service, respectively, to retail customers, excluding residential
43 customers, which the board may authorize to be charged to
44 categories of basic generation service customers of electric public
45 utilities in this State, other than residential customers, under the
46 board's continuing regulation of basic generation service pursuant to
47 sections 3 and 9 of P.L.1999, c.23 (C.48:3-51 and 48:3-57), for the

1 purpose of promoting a competitive retail market for the supply of
2 electricity;

3 "Shopping credit" means an amount deducted from the bill of an
4 electric public utility customer to reflect the fact that such customer
5 has switched to an electric power supplier and no longer takes basic
6 generation service from the electric public utility;

7 "Small scale hydropower facility" means a facility located within
8 this State and connected to the distribution system, and that meets
9 the requirements of, and has been certified by, a nationally
10 recognized low-impact hydropower organization that has
11 established low-impact hydropower certification criteria applicable
12 to: (1) river flows; (2) water quality; (3) fish passage and
13 protection; (4) watershed protection; (5) threatened and endangered
14 species protection; (6) cultural resource protection; (7) recreation;
15 and (8) facilities recommended for removal;

16 "Social program" means a program implemented with board
17 approval to provide assistance to a group of disadvantaged
18 customers, to provide protection to consumers, or to accomplish a
19 particular societal goal, and includes, but is not limited to, the
20 winter moratorium program, utility practices concerning "bad debt"
21 customers, low income assistance, deferred payment plans,
22 weatherization programs, and late payment and deposit policies, but
23 does not include any demand side management program or any
24 environmental requirements or controls;

25 "Societal benefits charge" means a charge imposed by an electric
26 public utility, at a level determined by the board, pursuant to, and in
27 accordance with, section 12 of P.L.1999, c.23 (C.48:3-60);

28 "Solar alternative compliance payment" or "SACP" means a
29 payment of a certain dollar amount per megawatt hour (MWh)
30 which an electric power supplier or provider may submit to the
31 board in order to comply with the solar electric generation
32 requirements under section 38 of P.L.1999, c.23 (C.48:3-87);

33 "Solar renewable energy certificate" or "SREC" means a
34 certificate issued by the board or its designee, representing one
35 megawatt hour (MWh) of solar energy that is generated by a facility
36 connected to the distribution system in this State and has value
37 based upon, and driven by, the energy market;

38 "Stranded cost" means the amount by which the net cost of an
39 electric public utility's electric generating assets or electric power
40 purchase commitments, as determined by the board consistent with
41 the provisions of P.L.1999, c.23 (C.48:3-49 et al.), exceeds the
42 market value of those assets or contractual commitments in a
43 competitive supply marketplace and the costs of buydowns or
44 buyouts of power purchase contracts;

45 "Stranded costs recovery order" means each order issued by the
46 board in accordance with subsection c. of section 13 of P.L.1999,
47 c.23 (C.48:3-61) which sets forth the amount of stranded costs, if

1 any, the board has determined an electric public utility is eligible to
2 recover and collect in accordance with the standards set forth in
3 section 13 of P.L.1999, c.23 (C.48:3-61) and the recovery
4 mechanisms therefor;

5 "Thermal efficiency" means the useful electric energy output of a
6 facility, plus the useful thermal energy output of the facility,
7 expressed as a percentage of the total energy input to the facility;

8 "Transition bond charge" means a charge, expressed as an
9 amount per kilowatt hour, that is authorized by and imposed on
10 electric public utility ratepayers pursuant to a bondable stranded
11 costs rate order, as modified at any time pursuant to the provisions
12 of P.L.1999, c.23 (C.48:3-49 et al.);

13 "Transition bonds" means bonds, notes, certificates of
14 participation or beneficial interest or other evidences of
15 indebtedness or ownership issued pursuant to an indenture, contract
16 or other agreement of an electric public utility or a financing entity,
17 the proceeds of which are used, directly or indirectly, to recover,
18 finance or refinance bondable stranded costs and which are, directly
19 or indirectly, secured by or payable from bondable transition
20 property. References in P.L.1999, c.23 (C.48:3-49 et al.) to
21 principal, interest, and acquisition or redemption premium with
22 respect to transition bonds which are issued in the form of
23 certificates of participation or beneficial interest or other evidences
24 of ownership shall refer to the comparable payments on such
25 securities;

26 "Transition period" means the period from August 1, 1999
27 through July 31, 2003;

28 "Transmission and distribution system" means, with respect to an
29 electric public utility, any facility or equipment that is used for the
30 transmission, distribution or delivery of electricity to the customers
31 of the electric public utility including, but not limited to, the land,
32 structures, meters, lines, switches and all other appurtenances
33 thereof and thereto, owned or controlled by the electric public
34 utility within this State; and

35 "Universal service" means any service approved by the board
36 with the purpose of assisting low-income residential customers in
37 obtaining or retaining electric generation or delivery service.²

38 (cf: P.L.2010, c.57, s.1)

39

40 ²[¹2. Section 38 of P.L.1999, c.23 (C.48:3-87) is amended to
41 read as follows:

42 38. a. The board shall require an electric power supplier or
43 basic generation service provider to disclose on a customer's bill or
44 on customer contracts or marketing materials, a uniform, common
45 set of information about the environmental characteristics of the
46 energy purchased by the customer, including, but not limited to:

- 1 (1) Its fuel mix, including categories for oil, gas, nuclear, coal,
2 solar, hydroelectric, wind and biomass, or a regional average
3 determined by the board;
- 4 (2) Its emissions, in pounds per megawatt hour, of sulfur
5 dioxide, carbon dioxide, oxides of nitrogen, and any other pollutant
6 that the board may determine to pose an environmental or health
7 hazard, or an emissions default to be determined by the board; and
- 8 (3) Any discrete emission reduction retired pursuant to rules and
9 regulations adopted pursuant to P.L.1995, c.188.
- 10 b. Notwithstanding any provisions of the "Administrative
11 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the
12 contrary, the board shall initiate a proceeding and shall adopt, in
13 consultation with the Department of Environmental Protection, after
14 notice and opportunity for public comment and public hearing,
15 interim standards to implement this disclosure requirement,
16 including, but not limited to:
- 17 (1) A methodology for disclosure of emissions based on output
18 pounds per megawatt hour;
- 19 (2) Benchmarks for all suppliers and basic generation service
20 providers to use in disclosing emissions that will enable consumers
21 to perform a meaningful comparison with a supplier's or basic
22 generation service provider's emission levels; and
- 23 (3) A uniform emissions disclosure format that is graphic in
24 nature and easily understandable by consumers. The board shall
25 periodically review the disclosure requirements to determine if
26 revisions to the environmental disclosure system as implemented
27 are necessary.
- 28 Such standards shall be effective as regulations immediately
29 upon filing with the Office of Administrative Law and shall be
30 effective for a period not to exceed 18 months, and may, thereafter,
31 be amended, adopted or readopted by the board in accordance with
32 the provisions of the "Administrative Procedure Act."
- 33 c. (1) The board may adopt, in consultation with the
34 Department of Environmental Protection, after notice and
35 opportunity for public comment, an emissions portfolio standard
36 applicable to all electric power suppliers and basic generation
37 service providers, upon a finding that:
- 38 (a) The standard is necessary as part of a plan to enable the
39 State to meet federal Clean Air Act or State ambient air quality
40 standards; and
- 41 (b) Actions at the regional or federal level cannot reasonably be
42 expected to achieve the compliance with the federal standards.
- 43 (2) By July 1, 2009, the board shall adopt, pursuant to the
44 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
45 seq.), a greenhouse gas emissions portfolio standard to mitigate
46 leakage or another regulatory mechanism to mitigate leakage
47 applicable to all electric power suppliers and basic generation

1 service providers that provide electricity to customers within the
2 State. The greenhouse gas emissions portfolio standard or any other
3 regulatory mechanism to mitigate leakage shall:

4 (a) Allow a transition period, either before or after the effective
5 date of the regulation to mitigate leakage, for a basic generation
6 service provider or electric power supplier to either meet the
7 emissions portfolio standard or other regulatory mechanism to
8 mitigate leakage, or to transfer any customer to a basic generation
9 service provider or electric power supplier that meets the emissions
10 portfolio standard or other regulatory mechanism to mitigate
11 leakage. If the transition period allowed pursuant to this
12 subparagraph occurs after the implementation of an emissions
13 portfolio standard or other regulatory mechanism to mitigate
14 leakage, the transition period shall be no longer than three years;
15 and

16 (b) Exempt the provision of basic generation service pursuant to
17 a basic generation service purchase and sale agreement effective
18 prior to the date of the regulation.

19 Unless the Attorney General or the Attorney General's designee
20 determines that a greenhouse gas emissions portfolio standard
21 would unconstitutionally burden interstate commerce or would be
22 preempted by federal law, the adoption by the board of an electric
23 energy efficiency portfolio standard pursuant to subsection g. of this
24 section, a gas energy efficiency portfolio standard pursuant to
25 subsection h. of this section, or any other enhanced energy
26 efficiency policies to mitigate leakage shall not be considered
27 sufficient to fulfill the requirement of this subsection for the
28 adoption of a greenhouse gas emissions portfolio standard or any
29 other regulatory mechanism to mitigate leakage.

30 d. Notwithstanding any provisions of the "Administrative
31 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the
32 contrary, the board shall initiate a proceeding and shall adopt, after
33 notice, provision of the opportunity for comment, and public
34 hearing, renewable energy portfolio standards that shall require:

35 (1) that two and one-half percent of the kilowatt hours sold in
36 this State by each electric power supplier and each basic generation
37 service provider be from Class I or Class II renewable energy
38 sources; **[and]**

39 (2) beginning on January 1, 2001, that one-half of one percent
40 of the kilowatt hours sold in this State by each electric power
41 supplier and each basic generation service provider be from Class I
42 renewable energy sources. The board shall increase the required
43 percentage for Class I renewable energy sources so that by January
44 1, 2006, one percent of the kilowatt hours sold in this State by each
45 electric power supplier and each basic generation service provider
46 shall be from Class I renewable energy sources and shall
47 additionally increase the required percentage for Class I renewable

1 energy sources by one-half of one percent each year until January 1,
2 2012, when four percent of the kilowatt hours sold in this State by
3 each electric power supplier and each basic generation service
4 provider shall be from Class I renewable energy sources[.].

5 An electric power supplier or basic generation service provider
6 may satisfy the requirements of this subsection by participating in a
7 renewable energy trading program approved by the board in
8 consultation with the Department of Environmental Protection.];

9 and

10 (3) that the board establish a multi-year schedule, applicable to
11 each electric power supplier or basic generation service provider in
12 this State, beginning with the one-year period commencing on June
13 1, 2010, and continuing for each subsequent one-year period up to
14 and including, the one-year period commencing on June 1, 2025,
15 that requires suppliers or providers to purchase at least the
16 following number of kilowatt-hours from solar electric power
17 generators connected to the distribution system in this State:

18 EY 2011	306 Gigawatthours (Gwhrs)
19 EY 2012	442 Gwhrs
20 EY 2013	596 Gwhrs
21 EY 2014	772 Gwhrs
22 EY 2015	965 Gwhrs
23 EY 2016	1,150 Gwhrs
24 EY 2017	1,357 Gwhrs
25 EY 2018	1,591 Gwhrs
26 EY 2019	1,858 Gwhrs
27 EY 2020	2,164 Gwhrs
28 EY 2021	2,518 Gwhrs
29 EY 2022	2,928 Gwhrs
30 EY 2023	3,433 Gwhrs
31 EY 2024	3,989 Gwhrs
32 EY 2025	4,610 Gwhrs
33 EY 2026	5,316 Gwhrs

34 EY 2027, and for every energy year thereafter, at least 5,316 Gwhrs
35 per energy year to reflect an increasing number of kilowatt-hours to
36 be purchased by suppliers or providers from solar electric power
37 generators connected to the distribution system in this State, and to
38 establish a framework within which suppliers and providers shall
39 purchase at least 2,518 Gwhrs in the energy year 2021 and 5,316
40 Gwhrs in the energy year 2026 from solar electric power generators
41 in this State, provided, however, that the number of solar kilowatt-
42 hours required to be purchased by each supplier or provider, when
43 expressed as a percentage of the total number of solar kilowatt-
44 hours purchased in this State, shall be equivalent to each supplier's
45 or provider's proportionate share of the total number of kilowatt-
46 hours sold in this State by all suppliers and providers.

1 The solar renewable portfolio standards requirements in
2 paragraph (3) of this subsection shall automatically increase by 20%
3 for the remainder of the schedule in the event that the following two
4 conditions are met: (a) the number of SRECs generated meets or
5 exceeds the requirement for three consecutive reporting years,
6 starting with energy year 2013; and (b) the average SREC price for
7 all SRECs purchased by entities with renewable energy portfolio
8 standards obligations has decreased in the same three consecutive
9 reporting years. The board shall exempt providers' existing supply
10 contracts that are: (a) effective prior to the date of P.L.2009, c.289;
11 or (b) effective prior to any future increase in the solar renewable
12 portfolio standard beyond the multi-year schedule established in
13 paragraph (3) of this subsection. This exemption shall apply to the
14 number of SRECs that exceeds the number mandated by the solar
15 renewable portfolio standards requirements that were in effect on
16 the date that the providers executed their existing supply contracts.
17 This limited exemption for providers' existing supply contracts shall
18 not be construed to lower the Statewide solar purchase requirements
19 set forth in paragraph (3) of this subsection. Such incremental new
20 requirements shall be distributed over the electric power suppliers
21 and providers not subject to the existing supply contract exemption
22 until such time as existing supply contracts expire and all suppliers
23 are subject to the new requirement.

24 An electric power supplier or basic generation service provider
25 may satisfy the requirements of this subsection by participating in a
26 renewable energy trading program approved by the board in
27 consultation with the Department of Environmental Protection, or
28 compliance with the requirements of this subsection may be
29 demonstrated to the board by suppliers or providers through the
30 purchase of SRECs.

31 The renewable energy portfolio standards adopted by the board
32 pursuant to paragraphs (1) and (2) of this subsection shall be
33 effective as regulations immediately upon filing with the Office of
34 Administrative Law and shall be effective for a period not to exceed
35 18 months, and may, thereafter, be amended, adopted or readopted
36 by the board in accordance with the provisions of the
37 "Administrative Procedure Act."

38 The renewable energy portfolio standards adopted by the board
39 pursuant to paragraph (3) of this subsection shall be effective as
40 regulations immediately upon filing with the Office of
41 Administrative Law and shall be effective for a period not to exceed
42 30 months after such filing, and shall, thereafter, be amended,
43 adopted or readopted by the board in accordance with the
44 "Administrative Procedure Act."

45 No later than December 31, 2010, the board shall review the
46 amount of Class I alternative energy required to be purchased by
47 providers and suppliers in each energy year beginning in 2014 and

1 determine whether the current standards are sufficient for
2 supporting the development of additional Class I alternative energy
3 resources. If the board determines that increasing the Class I
4 alternative energy standard in 2014 and beyond is necessary to
5 support the development of additional Class I alternative energy
6 resources, then after opportunity for public comment and public
7 hearing, the board shall adopt regulations that (a) increase the
8 amount of Class I alternative energy required to be purchased by
9 suppliers and providers in 2014 and beyond; (b) consider the cost
10 impact of such increase on ratepayers; and (c) exempt suppliers'
11 and providers' existing supply contracts that are effective prior to
12 the date of a board decision approving a regulation adopted
13 pursuant to this paragraph.

14 e. Notwithstanding any provisions of the "Administrative
15 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the
16 contrary, the board shall initiate a proceeding and shall adopt, after
17 notice, provision of the opportunity for comment, and public
18 hearing:

19 (1) net metering standards for electric power suppliers and basic
20 generation service providers. The standards shall require electric
21 power suppliers and basic generation service providers to offer net
22 metering at non-discriminatory rates to industrial, large
23 commercial, residential and small commercial customers, as those
24 customers are classified or defined by the board, that generate
25 electricity, on the customer's side of the meter, using a Class I
26 renewable energy source, for the net amount of electricity supplied
27 by the electric power supplier or basic generation service provider
28 over an annualized period. Systems of any sized capacity, as
29 measured in watts, are eligible for net metering. If the amount of
30 electricity generated by the customer-generator, plus any kilowatt
31 hour credits held over from the previous billing periods, exceeds the
32 electricity supplied by the electric power supplier or basic
33 generation service provider, then the electric power supplier or
34 basic generation service provider, as the case may be, shall credit
35 the customer-generator for the excess kilowatt hours until the end of
36 the annualized period at which point the customer-generator will be
37 compensated for any remaining credits or, if the customer-generator
38 chooses, credit the customer-generator on a real-time basis, at the
39 electric power supplier's or basic generation service provider's
40 avoided cost of wholesale power or the PJM electric power pool's
41 real-time locational marginal pricing rate, adjusted for losses, for
42 the respective zone in the PJM electric power pool. Alternatively,
43 the customer-generator may execute a bilateral agreement with an
44 electric power supplier or basic generation service provider for the
45 sale and purchase of the customer-generator's excess generation.
46 The customer-generator may be credited on a real-time basis, so
47 long as the customer-generator follows applicable rules prescribed

1 by the PJM electric power pool for its capacity requirements for the
2 net amount of electricity supplied by the electric power supplier or
3 basic generation service provider. The board may authorize an
4 electric power supplier or basic generation service provider to cease
5 offering net metering whenever the total rated generating capacity
6 owned and operated by net metering customer-generators Statewide
7 equals 2.5 percent of the State's peak electricity demand;

8 (2) safety and power quality interconnection standards for Class
9 I renewable energy source systems used by a customer-generator
10 that shall be eligible for net metering.

11 Such standards or rules shall take into consideration the goals of
12 the New Jersey Energy Master Plan, applicable industry standards,
13 and the standards of other states and the Institute of Electrical and
14 Electronic Engineers. The board shall allow electric public utilities
15 to recover the costs of any new net meters, upgraded net meters,
16 system reinforcements or upgrades, and interconnection costs
17 through either their regulated rates or from the net metering
18 customer-generator; and

19 (3) credit or other incentive rules for generators using Class I
20 renewable energy generation systems that connect to New Jersey's
21 electric public utilities' distribution system but who do not net
22 meter.

23 Such rules shall require the board or its designee to issue a credit
24 or other incentive to those generators that do not use a net meter but
25 otherwise generate electricity derived from a Class I renewable
26 energy source and to issue an enhanced credit or other incentive,
27 including, but not limited to, a solar renewable energy credit, to
28 those generators that generate electricity derived from solar
29 technologies.

30 Such standards or rules shall be effective as regulations
31 immediately upon filing with the Office of Administrative Law and
32 shall be effective for a period not to exceed 18 months, and may,
33 thereafter, be amended, adopted or readopted by the board in
34 accordance with the provisions of the "Administrative Procedure
35 Act."

36 f. The board may assess, by written order and after notice and
37 opportunity for comment, a separate fee to cover the cost of
38 implementing and overseeing an emission disclosure system or
39 emission portfolio standard, which fee shall be assessed based on an
40 electric power supplier's or basic generation service provider's share
41 of the retail electricity supply market. The board shall not impose a
42 fee for the cost of implementing and overseeing a greenhouse gas
43 emissions portfolio standard adopted pursuant to paragraph (2) of
44 subsection c. of this section, the electric energy efficiency portfolio
45 standard adopted pursuant to subsection g. of this section, or the gas
46 energy efficiency portfolio standard adopted pursuant to subsection
47 h. of this section.

1 g. The board may adopt, pursuant to the "Administrative
2 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), an electric
3 energy efficiency portfolio standard that may require each electric
4 public utility to implement energy efficiency measures that reduce
5 electricity usage in the State by 2020 to a level that is 20 percent
6 below the usage projected by the board in the absence of such a
7 standard. Nothing in this section shall be construed to prevent an
8 electric public utility from meeting the requirements of this section
9 by contracting with another entity for the performance of the
10 requirements.

11 h. The board may adopt, pursuant to the "Administrative
12 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), a gas energy
13 efficiency portfolio standard that may require each gas public utility
14 to implement energy efficiency measures that reduce natural gas
15 usage for heating in the State by 2020 to a level that is 20 percent
16 below the usage projected by the board in the absence of such a
17 standard. Nothing in this section shall be construed to prevent a gas
18 public utility from meeting the requirements of this section by
19 contracting with another entity for the performance of the
20 requirements.

21 i. After the board establishes a schedule of solar kilowatt-hour
22 sale or purchase requirements pursuant to paragraph (3) of
23 subsection d. of this section, the board may initiate subsequent
24 proceedings and adopt, after appropriate notice and opportunity for
25 public comment and public hearing, increased minimum solar
26 kilowatt-hour sale or purchase requirements, provided that the
27 board shall not reduce previously established minimum solar
28 kilowatt-hour sale or purchase requirements, or otherwise impose
29 constraints that reduce the requirements by any means.

30 j. The board shall determine an appropriate level of solar
31 alternative compliance payment, and establish a 15-year solar
32 alternative compliance payment schedule, that permits each supplier
33 or provider to submit an SACP to comply with the solar electric
34 generation requirements of paragraph (3) of subsection d. of this
35 section. The board may initiate subsequent proceedings and adopt,
36 after appropriate notice and opportunity for public comment and
37 public hearing, an increase in solar alternative compliance
38 payments, provided that the board shall not reduce previously
39 established levels of solar alternative compliance payments, nor
40 shall the board provide relief from the obligation of payment of the
41 SACP by the electric power suppliers or basic generation service
42 providers in any form. Any SACP payments collected shall be
43 refunded directly to the ratepayers by the electric public utilities.

44 k. The board may allow electric public utilities to offer long-
45 term contracts and other means of financing, including but not
46 limited to loans, for the purchase of SRECs and the resale of SRECs
47 to suppliers or providers or others, provided that after such

1 contracts have been approved by the board, the board's approvals
2 shall not be modified by subsequent board orders.

3 1. The board shall implement its responsibilities under the
4 provisions of this section in such a manner as to:

5 (1) place greater reliance on competitive markets, with the
6 explicit goal of encouraging and ensuring the emergence of new
7 entrants that can foster innovations and price competition;

8 (2) maintain adequate regulatory authority over non-competitive
9 public utility services;

10 (3) consider alternative forms of regulation in order to address
11 changes in the technology and structure of electric public utilities;

12 (4) promote energy efficiency and Class I renewable energy
13 market development, taking into consideration environmental
14 benefits and market barriers;

15 (5) make energy services more affordable for low and moderate
16 income customers;

17 (6) attempt to transform the renewable energy market into one
18 that can move forward without subsidies from the State or public
19 utilities;

20 (7) achieve the goals put forth under the renewable energy
21 portfolio standards;

22 (8) promote the lowest cost to ratepayers; and

23 (9) allow all market segments to participate.

24 m. The board shall ensure the availability of financial incentives
25 under its jurisdiction, including, but not limited to, long-term
26 contracts, loans, SRECs, or other financial support, to ensure
27 market diversity, competition, and appropriate coverage across all
28 ratepayer segments, including, but not limited to, residential,
29 commercial, industrial, non-profit, farms, schools, and public entity
30 customers.

31 n. For projects which are owned, or directly invested in, by a
32 public utility pursuant to section 13 of P.L.2007, c.340 (C.48:3-
33 98.1), the board shall determine the number of SRECs with which
34 such projects shall be credited; and in determining such number the
35 board shall ensure that the market for SRECs does not detrimentally
36 affect the development of non-utility solar projects and shall
37 consider how its determination may impact the ratepayers.

38 o. The board, in consultation with the Department of
39 Environmental Protection, electric public utilities, the Division of
40 Rate Counsel in the Department of the Public Advocate, affected
41 members of the solar energy industry, and relevant stakeholders,
42 shall periodically consider increasing the renewable energy
43 portfolio standards beyond the minimum amounts set forth in
44 subsection d. of this section, taking into account the cost impacts
45 and public benefits of such increases including, but not limited to:

46 (1) reductions in air pollution, water pollution, land disturbance,
47 and greenhouse gas emissions;

1 (2) reductions in peak demand for electricity and natural gas,
2 and the overall impact on the costs to customers of electricity and
3 natural gas;

4 (3) increases in renewable energy development, manufacturing,
5 investment, and job creation opportunities in this State; and

6 (4) reductions in State and national dependence on the use of
7 fossil fuels.

8 p. Class I RECs shall be eligible for use in renewable energy
9 portfolio standards compliance in the energy year in which they are
10 generated, and for the following two energy years. SRECs shall be
11 eligible for use in renewable energy portfolio standards compliance
12 in the energy year in which they are generated, and for the
13 following two energy years.

14 q. Notwithstanding any provisions of the "Administrative
15 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the
16 contrary, the board shall initiate a proceeding to evaluate energy
17 efficiency portfolio standards, and after notice, provision of the
18 opportunity for comment, and public hearing, may adopt such
19 energy portfolio standards that require each electric power supplier
20 and each basic generation service provider to purchase a specified
21 number of EE certificates from eligible energy efficiency and
22 energy conservation programs. The board shall permit an electric
23 power supplier or basic generation service provider to satisfy the
24 requirements of this subsection by participating in an energy trading
25 program approved by the board in consultation with the Department
26 of Environmental Protection.

27 The board shall exempt suppliers and providers' existing supply
28 contracts that are effective prior to the date of a board decision
29 approving a rule adoption pursuant to this subsection. Any
30 purchases that would have otherwise been required from exempt
31 suppliers or providers in the absence of such exemption may be
32 distributed over suppliers and providers not subject to the existing
33 contract exemption until such time as existing supply contracts
34 expire and all suppliers and providers are subject to the new
35 requirement.¹

36 (cf: P.L.2009, c.289, s.2)]²

37

38 ²2. Section 38 of P.L.1999, c.23 (C.48:3-87) is amended to read
39 as follows:

40 38. a. The board shall require an electric power supplier or
41 basic generation service provider to disclose on a customer's bill or
42 on customer contracts or marketing materials, a uniform, common
43 set of information about the environmental characteristics of the
44 energy purchased by the customer, including, but not limited to:

45 (1) Its fuel mix, including categories for oil, gas, nuclear, coal,
46 solar, hydroelectric, wind and biomass, or a regional average
47 determined by the board;

1 (2) Its emissions, in pounds per megawatt hour, of sulfur
2 dioxide, carbon dioxide, oxides of nitrogen, and any other pollutant
3 that the board may determine to pose an environmental or health
4 hazard, or an emissions default to be determined by the board; and

5 (3) Any discrete emission reduction retired pursuant to rules and
6 regulations adopted pursuant to P.L.1995, c.188.

7 b. Notwithstanding any provisions of the "Administrative
8 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the
9 contrary, the board shall initiate a proceeding and shall adopt, in
10 consultation with the Department of Environmental Protection, after
11 notice and opportunity for public comment and public hearing,
12 interim standards to implement this disclosure requirement,
13 including, but not limited to:

14 (1) A methodology for disclosure of emissions based on output
15 pounds per megawatt hour;

16 (2) Benchmarks for all suppliers and basic generation service
17 providers to use in disclosing emissions that will enable consumers
18 to perform a meaningful comparison with a supplier's or basic
19 generation service provider's emission levels; and

20 (3) A uniform emissions disclosure format that is graphic in
21 nature and easily understandable by consumers. The board shall
22 periodically review the disclosure requirements to determine if
23 revisions to the environmental disclosure system as implemented
24 are necessary.

25 Such standards shall be effective as regulations immediately
26 upon filing with the Office of Administrative Law and shall be
27 effective for a period not to exceed 18 months, and may, thereafter,
28 be amended, adopted or readopted by the board in accordance with
29 the provisions of the "Administrative Procedure Act."

30 c. (1) The board may adopt, in consultation with the
31 Department of Environmental Protection, after notice and
32 opportunity for public comment, an emissions portfolio standard
33 applicable to all electric power suppliers and basic generation
34 service providers, upon a finding that:

35 (a) The standard is necessary as part of a plan to enable the
36 State to meet federal Clean Air Act or State ambient air quality
37 standards; and

38 (b) Actions at the regional or federal level cannot reasonably be
39 expected to achieve the compliance with the federal standards.

40 (2) By July 1, 2009, the board shall adopt, pursuant to the
41 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
42 seq.), a greenhouse gas emissions portfolio standard to mitigate
43 leakage or another regulatory mechanism to mitigate leakage
44 applicable to all electric power suppliers and basic generation
45 service providers that provide electricity to customers within the
46 State. The greenhouse gas emissions portfolio standard or any other
47 regulatory mechanism to mitigate leakage shall:

1 (a) Allow a transition period, either before or after the effective
2 date of the regulation to mitigate leakage, for a basic generation
3 service provider or electric power supplier to either meet the
4 emissions portfolio standard or other regulatory mechanism to
5 mitigate leakage, or to transfer any customer to a basic generation
6 service provider or electric power supplier that meets the emissions
7 portfolio standard or other regulatory mechanism to mitigate
8 leakage. If the transition period allowed pursuant to this
9 subparagraph occurs after the implementation of an emissions
10 portfolio standard or other regulatory mechanism to mitigate
11 leakage, the transition period shall be no longer than three years;
12 and

13 (b) Exempt the provision of basic generation service pursuant to
14 a basic generation service purchase and sale agreement effective
15 prior to the date of the regulation.

16 Unless the Attorney General or the Attorney General's designee
17 determines that a greenhouse gas emissions portfolio standard
18 would unconstitutionally burden interstate commerce or would be
19 preempted by federal law, the adoption by the board of an electric
20 energy efficiency portfolio standard pursuant to subsection g. of this
21 section, a gas energy efficiency portfolio standard pursuant to
22 subsection h. of this section, or any other enhanced energy
23 efficiency policies to mitigate leakage shall not be considered
24 sufficient to fulfill the requirement of this subsection for the
25 adoption of a greenhouse gas emissions portfolio standard or any
26 other regulatory mechanism to mitigate leakage.

27 d. Notwithstanding any provisions of the "Administrative
28 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the
29 contrary, the board shall initiate a proceeding and shall adopt, after
30 notice, provision of the opportunity for comment, and public
31 hearing, renewable energy portfolio standards that shall require:

32 (1) that two and one-half percent of the kilowatt hours sold in
33 this State by each electric power supplier and each basic generation
34 service provider be from Class I or Class II renewable energy
35 sources;

36 (2) beginning on January 1, 2001, that one-half of one percent
37 of the kilowatt hours sold in this State by each electric power
38 supplier and each basic generation service provider be from Class I
39 renewable energy sources. The board shall increase the required
40 percentage for Class I renewable energy sources so that by January
41 1, 2006, one percent of the kilowatt hours sold in this State by each
42 electric power supplier and each basic generation service provider
43 shall be from Class I renewable energy sources and shall
44 additionally increase the required percentage for Class I renewable
45 energy sources by one-half of one percent each year until January 1,
46 2012, when four percent of the kilowatt hours sold in this State by

1 each electric power supplier and each basic generation service
2 provider shall be from Class I renewable energy sources[.

3 An electric power supplier or basic generation service provider
4 may satisfy the requirements of this subsection by participating in a
5 renewable energy trading program approved by the board in
6 consultation with the Department of Environmental Protection] ³.

7 An electric power supplier or basic generation service provider
8 may satisfy the requirements of this subsection by participating in a
9 renewable energy trading program approved by the board in
10 consultation with the Department of Environmental Protection³;

11 (3) that the board establish a multi-year schedule, applicable to
12 each electric power supplier or basic generation service provider in
13 this State, beginning with the one-year period commencing on June
14 1, 2010, and continuing for each subsequent one-year period up to
15 and including, the one-year period commencing on June 1, 2025,
16 that requires suppliers or providers to purchase at least the
17 following number of kilowatt-hours from solar electric power
18 generators connected to the distribution system in this State:

19 EY 2011	306 Gigawatthours (Gwhrs)
20 EY 2012	442 Gwhrs
21 EY 2013	596 Gwhrs
22 EY 2014	772 Gwhrs
23 EY 2015	965 Gwhrs
24 EY 2016	1,150 Gwhrs
25 EY 2017	1,357 Gwhrs
26 EY 2018	1,591 Gwhrs
27 EY 2019	1,858 Gwhrs
28 EY 2020	2,164 Gwhrs
29 EY 2021	2,518 Gwhrs
30 EY 2022	2,928 Gwhrs
31 EY 2023	3,433 Gwhrs
32 EY 2024	3,989 Gwhrs
33 EY 2025	4,610 Gwhrs
34 EY 2026	5,316 Gwhrs

35 EY 2027, and for every energy year thereafter, at least 5,316 Gwhrs
36 per energy year to reflect an increasing number of kilowatt-hours to
37 be purchased by suppliers or providers from solar electric power
38 generators connected to the distribution system in this State, and to
39 establish a framework within which suppliers and providers shall
40 purchase at least 2,518 Gwhrs in the energy year 2021 and 5,316
41 Gwhrs in the energy year 2026 from solar electric power generators
42 connected to the distribution system in this State, provided,
43 however, that:

44 (a) when the board establishes the multi-year schedule and
45 framework for annual Statewide Gwhr requirements for Energy
46 Years 2011 through 2026 required in paragraph (3) of subsection d.
47 of this section, and any requirements for Energy Years thereafter,

1 the board ensures that each such annual Statewide Gwhr
2 requirement annually requires that a percentage of the kilowatt-
3 hours sold in this State by each provider and supplier be purchased
4 from solar electric power generators connected to the distribution
5 system in this State, based on the percentage relationship that each
6 annual Statewide Gwhr requirement has to the board's weather-
7 normalized projection of the number of kilowatt hours to be sold in
8 this State by all providers and suppliers for each Energy Year,
9 subject to adjustment pursuant to subparagraph (d) of paragraph (3)
10 of this subsection;

11 (b) the number of solar kilowatt-hours required to be purchased
12 by each supplier or provider, when expressed as a percentage of the
13 total number of solar kilowatt-hours purchased in this State, shall be
14 equivalent to each supplier's or provider's proportionate share of the
15 total number of kilowatt-hours projected by the board to be sold in
16 this State by all suppliers and providers;

17 (c) the board shall determine an appropriate period of no less
18 than 120 days following the end of an Energy Year prior to which a
19 provider or supplier must demonstrate compliance with the annual
20 renewable portfolio standard;

21 (d) within 45 days following the period set forth in subparagraph
22 (c) of paragraph (3) of this subsection, to the extent that the board
23 determines that the solar Gwhrs purchased in an Energy Year by all
24 providers and suppliers pursuant to the percentage established by
25 the board were less than the annual Statewide Gwhr requirement
26 specified in paragraph (3) of this subsection, the board shall add the
27 Gwhrs that constitute the shortfall to the annual Gwhr requirement
28 for the Energy Year that is three years after the Energy Year in
29 which the shortfall occurs, and use the increased Gwhr requirement
30 to recalculate the percentage of kilowatt-hours that each provider
31 and supplier sells that are required to be purchased from solar
32 electric power generators connected to the distribution system in
33 this State for that future Energy Year; and

34 (e) providers and suppliers shall comply with the provisions of
35 paragraph (3) of this subsection by complying with the board's
36 percentage requirements established pursuant to subparagraphs (a)
37 through (d) of paragraph (3) of this subsection .

38 The solar renewable portfolio standards requirements in
39 paragraph (3) of this subsection shall automatically increase by 20%
40 for the remainder of the schedule in the event that the following two
41 conditions are met: (a) the number of SRECs generated meets or
42 exceeds the requirement for three consecutive reporting years,
43 starting with energy year 2013; and (b) the average SREC price for
44 all SRECs purchased by entities with renewable energy portfolio
45 standards obligations has decreased in the same three consecutive
46 reporting years. The board shall exempt providers' existing supply
47 contracts that are: (a) effective prior to the date of P.L.2009, c.289;

1 or (b) effective prior to any future increase in the solar renewable
2 portfolio standard beyond the multi-year schedule established in
3 paragraph (3) of this subsection. This exemption shall apply to the
4 number of SRECs that exceeds the number mandated by the solar
5 renewable portfolio standards requirements that were in effect on
6 the date that the providers executed their existing supply contracts.
7 This limited exemption for providers' existing supply contracts shall
8 not be construed to lower the Statewide solar purchase requirements
9 set forth in paragraph (3) of this subsection~~]. Such~~ . provided that
10 the board shall provide for recovery of such incremental new
11 requirements ~~]~~ shall be distributed over the electric power suppliers
12 and providers not subject to the existing supply contract exemption
13 until such time as existing supply contracts expire and all suppliers
14 are subject to the new requirement] in the same manner and future
15 time period specified for Energy Year shortfalls set forth in
16 subparagraph (d) of paragraph (3) of this subsection.

17 An electric power supplier or basic generation service provider
18 may satisfy the requirements of this subsection by participating in a
19 renewable energy trading program approved by the board in
20 consultation with the Department of Environmental Protection, or
21 compliance with the requirements of this subsection may be
22 demonstrated to the board by suppliers or providers through the
23 purchase of SRECs.

24 The renewable energy portfolio standards adopted by the board
25 pursuant to paragraphs (1) and (2) of this subsection shall be
26 effective as regulations immediately upon filing with the Office of
27 Administrative Law and shall be effective for a period not to exceed
28 18 months, and may, thereafter, be amended, adopted or readopted
29 by the board in accordance with the provisions of the
30 "Administrative Procedure Act."

31 The renewable energy portfolio standards adopted by the board
32 pursuant to paragraph (3) of this subsection shall be effective as
33 regulations immediately upon filing with the Office of
34 Administrative Law and shall be effective for a period not to exceed
35 30 months after such filing, and shall, thereafter, be amended,
36 adopted or readopted by the board in accordance with the
37 "Administrative Procedure Act"; and

38 (4) within 180 days after the date of enactment of P.L.2010,
39 c.57 (C.48:3-87.1 et al.), that the board establish an offshore wind
40 renewable energy certificate program to require that a percentage of
41 the kilowatt hours sold in this State by each electric power supplier
42 and each basic generation service provider be from offshore wind
43 energy in order to support at least 1,100 megawatts of generation
44 from qualified offshore wind projects.

45 The percentage established by the board pursuant to this
46 paragraph shall serve as an offset to the renewable energy portfolio
47 standard established pursuant to paragraphs (1) and (2) of this

1 subsection and shall reduce the corresponding Class I renewable
2 energy requirement.

3 The percentage established by the board pursuant to this
4 paragraph shall reflect the projected OREC production of each
5 qualified offshore wind project, approved by the board pursuant to
6 section 3 of P.L.2010, c.57 (C.48:3-87.1), for twenty years from the
7 commercial operation start date of the qualified offshore wind
8 project which production projection and OREC purchase
9 requirement, once approved by the board, shall not be subject to
10 reduction.

11 An electric power supplier or basic generation service provider
12 shall comply with the OREC program established pursuant to this
13 paragraph through the purchase of offshore wind renewable energy
14 certificates at a price and for the time period required by the board.
15 In the event there are insufficient offshore wind renewable energy
16 certificates available, the electric power supplier or basic generation
17 service provider shall pay an offshore wind alternative compliance
18 payment established by the board. Any offshore wind alternative
19 compliance payments collected shall be refunded directly to the
20 ratepayers by the electric public utilities.

21 The rules established by the board pursuant to this paragraph
22 shall be effective as regulations immediately upon filing with the
23 Office of Administrative Law and shall be effective for a period not
24 to exceed 18 months, and may, thereafter, be amended, adopted or
25 readopted by the board in accordance with the provisions of the
26 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
27 seq.).

28 ³[No later than December 31, 2010, the board shall review the
29 amount of Class I alternative energy required to be purchased by
30 providers and suppliers in each energy year beginning in 2014 and
31 determine whether the current standards are sufficient for
32 supporting the development of additional Class I alternative energy
33 resources. If the board determines that increasing the Class I
34 alternative energy standard in 2014 and beyond is necessary to
35 support the development of additional Class I alternative energy
36 resources, then after opportunity for public comment and public
37 hearing, the board shall adopt regulations that (a) increase the
38 amount of Class I alternative energy required to be purchased by
39 suppliers and providers in 2014 and beyond; (b) consider the cost
40 impact of such increase on ratepayers; and (c) exempt suppliers'
41 and providers' existing supply contracts that are effective prior to
42 the date of a board decision approving a regulation adopted
43 pursuant to this paragraph.]³

44 e. Notwithstanding any provisions of the "Administrative
45 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the
46 contrary, the board shall initiate a proceeding and shall adopt, after

1 notice, provision of the opportunity for comment, and public
2 hearing:

3 (1) net metering standards for electric power suppliers and basic
4 generation service providers. The standards shall require electric
5 power suppliers and basic generation service providers to offer net
6 metering at non-discriminatory rates to industrial, large
7 commercial, residential and small commercial customers, as those
8 customers are classified or defined by the board, that generate
9 electricity, on the customer's side of the meter, using a Class I
10 renewable energy source, for the net amount of electricity supplied
11 by the electric power supplier or basic generation service provider
12 over an annualized period. Systems of any sized capacity, as
13 measured in watts, are eligible for net metering. If the amount of
14 electricity generated by the customer-generator, plus any kilowatt
15 hour credits held over from the previous billing periods, exceeds the
16 electricity supplied by the electric power supplier or basic
17 generation service provider, then the electric power supplier or
18 basic generation service provider, as the case may be, shall credit
19 the customer-generator for the excess kilowatt hours until the end of
20 the annualized period at which point the customer-generator will be
21 compensated for any remaining credits or, if the customer-generator
22 chooses, credit the customer-generator on a real-time basis, at the
23 electric power supplier's or basic generation service provider's
24 avoided cost of wholesale power or the PJM electric power pool's
25 real-time locational marginal pricing rate, adjusted for losses, for
26 the respective zone in the PJM electric power pool. Alternatively,
27 the customer-generator may execute a bilateral agreement with an
28 electric power supplier or basic generation service provider for the
29 sale and purchase of the customer-generator's excess generation.
30 The customer-generator may be credited on a real-time basis, so
31 long as the customer-generator follows applicable rules prescribed
32 by the PJM electric power pool for its capacity requirements for the
33 net amount of electricity supplied by the electric power supplier or
34 basic generation service provider. The board may authorize an
35 electric power supplier or basic generation service provider to cease
36 offering net metering whenever the total rated generating capacity
37 owned and operated by net metering customer-generators Statewide
38 equals 2.5 percent of the State's peak electricity demand;

39 (2) safety and power quality interconnection standards for Class
40 I renewable energy source systems used by a customer-generator
41 that shall be eligible for net metering.

42 Such standards or rules shall take into consideration the goals of
43 the New Jersey Energy Master Plan, applicable industry standards,
44 and the standards of other states and the Institute of Electrical and
45 Electronic Engineers. The board shall allow electric public utilities
46 to recover the costs of any new net meters, upgraded net meters,
47 system reinforcements or upgrades, and interconnection costs

1 through either their regulated rates or from the net metering
2 customer-generator; and

3 (3) credit or other incentive rules for generators using Class I
4 renewable energy generation systems that connect to New Jersey's
5 electric public utilities' distribution system but who do not net
6 meter.

7 Such rules shall require the board or its designee to issue a credit
8 or other incentive to those generators that do not use a net meter but
9 otherwise generate electricity derived from a Class I renewable
10 energy source and to issue an enhanced credit or other incentive,
11 including, but not limited to, a solar renewable energy credit, to
12 those generators that generate electricity derived from solar
13 technologies.

14 Such standards or rules shall be effective as regulations
15 immediately upon filing with the Office of Administrative Law and
16 shall be effective for a period not to exceed 18 months, and may,
17 thereafter, be amended, adopted or readopted by the board in
18 accordance with the provisions of the "Administrative Procedure
19 Act."

20 f. The board may assess, by written order and after notice and
21 opportunity for comment, a separate fee to cover the cost of
22 implementing and overseeing an emission disclosure system or
23 emission portfolio standard, which fee shall be assessed based on an
24 electric power supplier's or basic generation service provider's share
25 of the retail electricity supply market. The board shall not impose a
26 fee for the cost of implementing and overseeing a greenhouse gas
27 emissions portfolio standard adopted pursuant to paragraph (2) of
28 subsection c. of this section, the electric energy efficiency portfolio
29 standard adopted pursuant to subsection g. of this section, or the gas
30 energy efficiency portfolio standard adopted pursuant to subsection
31 h. of this section.

32 g. The board may adopt, pursuant to the "Administrative
33 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), an electric
34 energy efficiency portfolio standard that may require each electric
35 public utility to implement energy efficiency measures that reduce
36 electricity usage in the State by 2020 to a level that is 20 percent
37 below the usage projected by the board in the absence of such a
38 standard. Nothing in this section shall be construed to prevent an
39 electric public utility from meeting the requirements of this section
40 by contracting with another entity for the performance of the
41 requirements.

42 h. The board may adopt, pursuant to the "Administrative
43 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), a gas energy
44 efficiency portfolio standard that may require each gas public utility
45 to implement energy efficiency measures that reduce natural gas
46 usage for heating in the State by 2020 to a level that is 20 percent
47 below the usage projected by the board in the absence of such a

1 standard. Nothing in this section shall be construed to prevent a gas
2 public utility from meeting the requirements of this section by
3 contracting with another entity for the performance of the
4 requirements.

5 i. After the board establishes a schedule of solar kilowatt-hour
6 sale or purchase requirements pursuant to paragraph (3) of
7 subsection d. of this section, the board may initiate subsequent
8 proceedings and adopt, after appropriate notice and opportunity for
9 public comment and public hearing, increased minimum solar
10 kilowatt-hour sale or purchase requirements, provided that the
11 board shall not reduce previously established minimum solar
12 kilowatt-hour sale or purchase requirements, or otherwise impose
13 constraints that reduce the requirements by any means.

14 j. The board shall determine an appropriate level of solar
15 alternative compliance payment, and establish a 15-year solar
16 alternative compliance payment schedule, that permits each supplier
17 or provider to submit an SACP to comply with the solar electric
18 generation requirements of paragraph (3) of subsection d. of this
19 section. The board may initiate subsequent proceedings and adopt,
20 after appropriate notice and opportunity for public comment and
21 public hearing, an increase in solar alternative compliance
22 payments, provided that the board shall not reduce previously
23 established levels of solar alternative compliance payments, nor
24 shall the board provide relief from the obligation of payment of the
25 SACP by the electric power suppliers or basic generation service
26 providers in any form. Any SACP payments collected shall be
27 refunded directly to the ratepayers by the electric public utilities.

28 k. The board may allow electric public utilities to offer long-
29 term contracts and other means of financing, including but not
30 limited to loans, for the purchase of SRECs and the resale of SRECs
31 to suppliers or providers or others, provided that after such
32 contracts have been approved by the board, the board's approvals
33 shall not be modified by subsequent board orders.

34 l. The board shall implement its responsibilities under the
35 provisions of this section in such a manner as to:

36 (1) place greater reliance on competitive markets, with the
37 explicit goal of encouraging and ensuring the emergence of new
38 entrants that can foster innovations and price competition;

39 (2) maintain adequate regulatory authority over non-competitive
40 public utility services;

41 (3) consider alternative forms of regulation in order to address
42 changes in the technology and structure of electric public utilities;

43 (4) promote energy efficiency and Class I renewable energy
44 market development, taking into consideration environmental
45 benefits and market barriers;

46 (5) make energy services more affordable for low and moderate
47 income customers;

1 (6) attempt to transform the renewable energy market into one
2 that can move forward without subsidies from the State or public
3 utilities;

4 (7) achieve the goals put forth under the renewable energy
5 portfolio standards;

6 (8) promote the lowest cost to ratepayers; and

7 (9) allow all market segments to participate.

8 m. The board shall ensure the availability of financial incentives
9 under its jurisdiction, including, but not limited to, long-term
10 contracts, loans, SRECs, or other financial support, to ensure
11 market diversity, competition, and appropriate coverage across all
12 ratepayer segments, including, but not limited to, residential,
13 commercial, industrial, non-profit, farms, schools, and public entity
14 customers.

15 n. For projects which are owned, or directly invested in, by a
16 public utility pursuant to section 13 of P.L.2007, c.340 (C.48:3-
17 98.1), the board shall determine the number of SRECs with which
18 such projects shall be credited; and in determining such number the
19 board shall ensure that the market for SRECs does not detrimentally
20 affect the development of non-utility solar projects and shall
21 consider how its determination may impact the ratepayers.

22 o. The board, in consultation with the Department of
23 Environmental Protection, electric public utilities, the Division of
24 Rate Counsel in, but not of, the Department of the Treasury,
25 affected members of the solar energy industry, and relevant
26 stakeholders, shall periodically consider increasing the renewable
27 energy portfolio standards beyond the minimum amounts set forth
28 in subsection d. of this section, taking into account the cost impacts
29 and public benefits of such increases including, but not limited to:

30 (1) reductions in air pollution, water pollution, land disturbance,
31 and greenhouse gas emissions;

32 (2) reductions in peak demand for electricity and natural gas,
33 and the overall impact on the costs to customers of electricity and
34 natural gas;

35 (3) increases in renewable energy development, manufacturing,
36 investment, and job creation opportunities in this State; and

37 (4) reductions in State and national dependence on the use of
38 fossil fuels.

39 p. Class I RECs shall be eligible for use in renewable energy
40 portfolio standards compliance in the energy year in which they are
41 generated, and for the following two energy years. SRECs and
42 ORECs shall be eligible for use in renewable energy portfolio
43 standards compliance in the energy year in which they are
44 generated, and for the following two energy years.

45 q. Notwithstanding any provisions of the "Administrative
46 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the
47 contrary, the board shall initiate a proceeding to evaluate energy

1 efficiency portfolio standards, and after notice, provision of the
2 opportunity for comment, and public hearing, may adopt such
3 competitively neutral energy ³efficiency³ portfolio standards that
4 require each electric power supplier and each basic generation
5 service provider to purchase a specified number of EE certificates
6 from eligible energy efficiency and energy conservation programs.
7 The board shall permit an electric power supplier or basic
8 generation service provider to satisfy the requirements of this
9 subsection by participating in an energy trading program approved
10 by the board in consultation with the Department of Environmental
11 Protection.

12 The board shall exempt suppliers and providers' existing supply
13 contracts that are effective prior to the date of a board decision
14 approving a rule adoption pursuant to this subsection. Any
15 purchases that would have otherwise been required from exempt
16 suppliers or providers in the absence of such exemption may be
17 distributed over suppliers and providers not subject to the existing
18 contract exemption until such time as existing supply contracts
19 expire and all suppliers and providers are subject to the new
20 requirement.²

21 ⁴r. A proposed solar facility that is greater than ten megawatts in
22 capacity and either not net metered or not an on-site generation
23 facility, may be considered “connected to the distribution system”
24 only upon designation as such by the board, after notice to the
25 public and opportunity for public comment or hearing. In making
26 such designation, the board shall consider, among other factors, the
27 electric rate benefits and impacts of such solar facility to customers,
28 its impact on the development of the solar power and SREC market,
29 and, in consultation with the Department of Environmental
30 Protection, the land use impact of the facility. The board shall act
31 within 90 days of its receipt of a completed application for
32 designation of a solar facility as “connected to the distribution
33 system,” to either approve or disapprove such an application. If the
34 board fails to either approve or disapprove such an application
35 within 90 days, the application shall be deemed approved, and the
36 solar facility submitting the application shall be considered
37 “connected to the distribution system.” If the proposed solar facility
38 does not commence commercial operations within two years
39 following the date of the designation by the board pursuant to this
40 subsection, the designation of the facility as “connected to the
41 distribution system” shall be deemed to be null and void, and the
42 facility shall thereafter be considered not “connected to the
43 distribution system.”

44 Notwithstanding the foregoing provisions of this subsection, a
45 solar facility that has qualified for a federal grant authorized by
46 section 1603 of Title I, Division B of the “American Reinvestment
47 and Recovery Act of 2009,” signed into law on February 17, 2009,

1 as extended by section 707 of the “Tax Relief, Unemployment
2 Insurance Reauthorization, and Job Creation Act of 2010,” provided
3 that the developer of the facility has filed appropriate certification
4 with the board that it has met the requirements by July 1, 2011 for
5 such a grant, shall be considered “connected to the distribution
6 system.”⁴

7 (cf: P.L.2010, c.57, s.2)

8

9 ¹[2.] 3.¹ This act shall take effect immediately.