APPENDIX

SENATE BILL 31
MAY 21, 1997 TESTIMONY OF ASSOCIATE DEPUTY STATE TREASURER DAVID KEHLER, BEFORE THE SENATE BUDGET AND APPROPRIATION COMMITTEE

Mr. Chairperson and members of the committee, thank you for giving the Department of the Treasury an opportunity to testify today.

Treasury would like to express our appreciation to the sponsors of the bill who recognize that with the advent of competition into the State's energy markets, energy tax reform is vital to protect municipal revenues and to level the competitive playing field among energy suppliers. This bill will substantially reduce energy taxes for all energy consumers and promote economic development and job creation.

Senate Bill 31, comes after more than two years of study of many complex and difficult issues as well as our extensive consideration of the invaluable input received from all affected parties. This process included discussions with residential and business energy consumers, unicipalities, independent power producers and energy and telecommunication utilities.

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Treasury strongly supports S-31. However, we have some concerns with respect to provisions providing an exemption from the Sales and Use Tax to certain co-generation or self-generation facilities on their purchases of gas and utility service (transportation). This tax exemption, and related provisions dealing with grandfathering, as set forth in the bill differ from that proposed by Treasury and Board of Public Utilities. Treasury and the Board of Public Utilities proposed that only co-generation or self-generation facilities existing as of December 31, 1995 be so grandfathered. Furthermore, Treasury and the Board of Public Utilities proposed that the volume of purchased gas subject to the exemption be equal to a "base level of volume" defined to be each facilities average gas purchase from any source for the years 1995, 1994, 1993 and 1992. The Treasury/BPU rationale was that grandfathering/tax exemptions should be minimized to avoid unfair competition. However, Treasury/BPU also recognized that persons owning co-generators and self-generators made investments in facilities based upon the existing tax situation and that those investments should be protected.

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Treasury and the Board of Public Utilities chose December 31, 1995 as the cutoff date for grandfathering. That date was chosen because it was the date that all concerned parties should have been put on notice by the issuance of the 1995 Energy Master Plan Phase I Report that the State was contemplating major changes in its energy tax policies. That Master Plan Report discussed the fact that reform of energy tax policy was necessary due to the existing unlevel playing field wherein all energy suppliers were and are currently not taxed the same. As a result, it is the position of Treasury and the Board of Public Utilities that all investments in co-generation or self-generation facilities subsequent to December 31, 1995 were made with full knowledge that there would be future changes made in energy tax policy to level the playing field. Therefore, Treasury is concerned with those provisions of S-31 which determine the amount of natural gas and utility service that is grandfathered as well as the date chosen for the cutoff for grandfathering eligibility. S-31 grandfathers or exempts from the Sales and Use Tax gas and utility service (transportation) purchases of natural gas by co-generation or self-generation facilities up to an amount used to

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generate electricity at the facility's name plate capacity rating as of March 10, 1997. Furthermore, S-31 utilizes a cutoff date of March 10, 1997. This tax exemption applies not only to persons who owned a co-generation or self-generation facility in operation on or before March 10, 1997, but also to those persons who filed an application for an air quality operating permit, for future electricity production, with the Department of Environmental Protection on or before March 10, 1997. It is Treasury's position that use of the December 31, 1995 cutoff date to grandfather gas and utility service up to an average level of prior usage is better suited to create a level playing field.

While addressing the issue of grandfathering, Treasury recognizes that there are constituencies seeking amendments to S-31 to extend grandfathering benefits. Treasury will oppose all amendments which seek to extend the application of the existing grandfathering provisions.

In conclusion, with no reservations other than those concerns expressed today, Treasury **strongly** advocates support for Senate Bill 31 and requests that the Legislature adopt the bill as soon as possible.

TRBTESTS
BBK
5/20/97

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TESTIMONY OF

HERBERT H. TATE, PRESIDENT

NEW JERSEY BOARD OF PUBLIC UTILITIES

SENATE BILL NO. 31

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

THE HONORABLE ROBERT E. LITTELL, CHAIRMAN

THE HONORABLE PETER A. INVERSO, VICE CHAIRMAN

THE HONORABLE JOHN H. EWING

THE HONORABLE RICHARD LaROSSA

THE HONORABLE JOSEPH M. KYRILLOS, JR.

THE HONORABLE BERNARD F. KENNY, JR.

THE HONORABLE WYNONA M. LIPMAN

MAY 21, 1997

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GOOD MORNING. THANK YOU FOR THE OPPORTUNITY TO TESTIFY ON THIS IMPORTANT ISSUE.

FEDERAL AND STATE ACTIONS, ALONG WITH CHANGING TECHNOLOGIES OVER THE PAST DECADE, HAVE LED TO THE INTRODUCTION OF COMPETITION INTO THE STATE'S ENERGY MARKETS WHICH WERE TRADITIONALLY SERVED BY REGULATED MONOPOLIES. DEREGULATION OF THE STATE'S NATURAL GAS MARKETS BEGAN IN 1984 WHEN THE FEDERAL ENERGY REGULATORY COMMISSION OPENED UP THE INTERSTATE NATURAL GAS PIPELINES. IN 1994, NEW JERSEY BECAME THE FIRST STATE TO OFFER COMPETITIVE NATURAL GAS TO ALL OF ITS COMMERCIAL AND INDUSTRIAL CUSTOMERS AND THE BOARD OF PUBLIC UTILITIES RECENTLY APPROVED THREE PILOT PROGRAMS TO BRING COMPETITIVE OPTIONS TO RESIDENTIAL NATURAL GAS CUSTOMERS. ON APRIL 30, 1997, THE BOARD OF PUBLIC UTILITIES ADOPTED RECOMMENDATIONS TO THE GOVERNOR AND THE LEGISLATURE WHICH WOULD OPEN UP THE STATE'S ELECTRICITY MARKET TO COMPETITION STARTING IN OCTOBER OF 1998.

GOVERNOR CHRISTINE TODD WHITMAN HAS STRESSED TWO MAJOR THEMES DURING HER ADMINISTRATION. THE FIRST IS TO CUT TAXES FOR THE CITIZENS OF THE STATE INCLUDING HER PROPOSAL TO CUT INCOME TAXES BY 30%. THE SECOND IS TO DECLARE NEW JERSEY OPEN FOR BUSINESS TO PROMOTE ECONOMIC DEVELOPMENT AND JOB CREATION. ASSEMBLY BILL 2825 SUPPORTS BOTH OF THESE THEMES.

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END

NEW JERSEY HAS AMONG THE HIGHEST ENERGY COSTS AND ENERGY TAXES IN THE COUNTRY WITH OUR ELECTRICITY COSTS BEING ABOUT 50% ABOVE THE NATIONAL AVERAGE AND OUR ENERGY TAXES THE SECOND HIGHEST AMONG THE INDUSTRIAL STATES ARE SURVEYED. NEW JERSEY'S HIGH ENERGY COSTS AND TAXES, HOWEVER, ACT AS A DETERENT TO BUSINESSES LOCATING OR REMAINING IN THE STATE. THIS LEGISLATION, COMBINED WITH THE BOARD OF PUBLIC UTILITIES EFFORTS TO INTRODUCE COMPETITION INTO THE STATE'S NATURAL GAS AND ELECTRIC POWER INDUSTRIES, REPRESENT A SIGNIFICANT STEP TOWARDS LOWER ENERGY BILLS FOR ALL OF THE STATE'S RESIDENCES AND BUSINESSES. THEY WILL ENSURE THAT BOTH ENERGY TAXES AND RATES WILL GO DOWN. LOWER ENERGY RATES WILL HELP MAKE NEW JERSEY MORE ATTRACTIVE TO BUSINESSES CONSIDERING EXPANDING OR MOVING INTO THE STATE.

EXISTING ENERGY TAX POLICIES WERE DEVELOPED OVER A CENTURY AGO IN AN ERA THAT CONTEMPLATED NATURAL GAS AND ELECTRICITY BEING PROVIDED BY REGULATED MONOPOLY UTILITIES. EXISTING ENERGY TAX LAW RESULTS IN UTILITY AND NON-UTILITY SUPPLIERS OF NATURAL GAS AND ELECTRICITY BEING TAXED DIFFERENTLY. INCREASED COMPETITION HAS LED TO A GROWING CONCERN REGARDING DIFFERENCES IN THE WAY UTILITY AND NON-UTILITY SUPPLIERS OF ENERGY ARE TAXED. DIFFERENTIAL TAX POLICIES THAT FAVOR ONE ENTITY OVER ANOTHER IN A COMPETITIVE MARKETPLACE COULD LEAD TO UNFAIR COMPETITION AND COMPROMISE ECONOMIC EFFICIENCY WHICH COULD LEAD TO HIGHER PRICES FOR THE STATE'S ENERGY CONSUMERS.

SIGNIFICANTLY, THE DIFFERENTIAL TAX POLICY HAS LED TO A DECLINE IN THE STATE'S COLLECTION OF GROSS RECEIPTS AND FRANCHISE TAX REVENUES THAT ARE DISTRIBUTED TO MUNICIPALITIES. THIS DECLINE OCCURS AS CUSTOMERS SWITCH TO NON-UTILITY SUPPLIERS OF ENERGY SINCE UTILITY CUSTOMERS MUST PAY GROSS RECEIPTS AND FRANCHISE TAXES WHILE NON-UTILITY CUSTOMERS DO NOT.

THE NEW JERSEY ENERGY MASTER PLAN COMMITTEE RECOGNIZED THESE CONCERNS IN ITS 1995 ENERGY MASTER PLAN PHASE I REPORT AND RECOMMENDED THAT THE BOARD OF PUBLIC UTILITIES AND THE DEPARTMENT OF TREASURY FORM A JOINT TASK FORCE TO INVESTIGATE THESE AND OTHER RELATED ISSUES. THE JOINT TASK FORCE, AFTER AN EXTENSIVE, OPEN PROCESS OVER THE PAST TWO YEARS, WHICH INCLUDED PUBLIC WORKSHOPS AND THREE PUBLIC HEARINGS ACROSS THE STATE, DEVELOPED PROPOSED MODIFICATIONS TO THE STATE'S ENERGY TAX POLICIES.

THE PROPOSED LEGISLATION, WHICH IS GENERALLY CONSISTENT WITH OUR RECOMMENDATIONS WILL:

* CUT ENERGY TAX RATES BY APPROXIMATELY 45% OVER FIVE YEARS FOR EACH HOUSEHOLD AND BUSINESS CURRENTLY RECEIVING NATURAL GAS AND ELECTRIC UTILITY SERVICE;

* REQUIRE THAT 100% OF ALL REDUCTIONS IN ENERGY TAXES BE PASSED THROUGH TO RESIDENTIAL AND BUSINESS CUSTOMERS TO LOWER THEIR ENERGY RATES. THIS WILL RESULT IN ALL CUSTOMERS' RATES GOING DOWN BY ABOUT 6 CENTS ON THE DOLLAR;

* PREVENT FUTURE EROSION OF GROSS RECEIPTS AND FRANCHISE TAX REVENUES TO MUNICIPALITIES DUE TO INCREASED COMPETITION IN THE NATURAL GAS AND ELECTRIC MARKETS;

* ENHANCE ECONOMIC EFFICIENCY BY TAXING COMPETING UTILITY AND NON-UTILITY ENTITIES THE SAME; AND

* STIMULATE ECONOMIC DEVELOPMENT AND ENHANCE THE STATE'S ABILITY TO ATTRACT AND RETAIN JOBS.

IN THE NATURAL GAS INDUSTRY, COMPETITIVE REFORM TOOK PLACE PRIOR TO CHANGING TAX POLICIES. THIS HAD LED TO THE CURRENT SITUATION WHERE NON-UTILITY SUPPLIERS OF NATURAL GAS HAVE A 13% PRICE ADVANTAGE OVER UTILITY SUPPLIERS SINCE NON-UTILITY SUPPLIERS DO NOT HAVE TO COLLECT THE GROSS RECEIPTS AND FRANCHISE TAXES. NOT SURPRISINGLY, MANY NON-UTILITY SUPPLIERS ARE OFFERING DISCOUNTS OF ABOUT 13%.

NON-UTILITY ENTITIES CURRENTLY SUPPLY RETAIL CUSTOMERS WITH OVER $230 MILLION DOLLARS WORTH OF NATURAL GAS PER YEAR. THIS HAS LED TO THE STATE LOSING OVER $30 MILLION DOLLARS PER YEAR IN GROSS RECEIPTS AND FRANCHISE TAXES THAT WOULD HAVE BEEN COLLECTED HAD THE GAS BEEN SUPPLIED BY UTILITIES.

LAST YEAR, THE STATE COLLECTED OVER $1.1 BILLION IN ENERGY GROSS RECEIPTS AND FRANCHISE TAXES. OVER $875 MILLION OR 75% OF THIS AMOUNT WAS COLLECTED ON ELECTRICITY SALES. ON THAT BASIS, THE BOARD OF PUBLIC UTILITIES BELIEVES IT IS CRITICAL THAT ENERGY TAX

POLICIES BE MODIFIED BEFORE THE ELECTRIC MARKETS ARE OPENED TO COMPETITION. IF NOT, THE AMOUNT OF GROSS RECEIPTS AND FRANCHISE TAXES LOST DUE TO COMPETITION IN THE ELECTRICITY MARKETPLACE WILL DWARF THE AMOUNT LOST DUE TO COMPETITION IN THE NATURAL GAS MARKETPLACE.

NEW JERSEY HAS AMONG THE HIGHEST ELECTRICITY RATES AND TAXES IN THE REGION. TABLE 1 IN MY TESTIMONY COMPARES OUR ELECTRIC RATES TO OTHER INDUSTRIALIZED STATES WHILE TABLE 2 COMPARES NEW JERSEY'S ENERGY TAXES. AS YOU CAN SEE, BOTH ARE AMONG THE HIGHEST IF NEW JERSEY IS TO BE COMPETITIVE IN ATTRACTING JOBS, PARTICULARLY IN ENERGY INTENSIVE BUSINESSES, WE MUST FIND WAYS TO LOWER OUR ENERGY COSTS AND ENERGY TAXES.

TABLE 1

COMPARISON OF ELECTRIC RATES FOR 1994 (CENTS/KWH)

STATE	INDUSTRIAL	COMMERCIAL	RESIDENTIAL
NEW JERSEY	7.96	9.94	11.50
CALIFORNIA	7.22	10.62	12.17
NEW YORK	6.54	11.52	12.77
PENNSYLVANIA	5.62	8.15	9.21
NORTH CAROLINA	4.65	6.31	7.66
OHIO	4.44	6.80	7.75
GEORGIA	4.38	7.05	7.28
TEXAS	4.23	6.82	7.96
INDIANA	4.21	5.97	6.85
VIRGINIA	4.08	5.63	7.38

TABLE 2

COMPARISON OF ENERGY TAXES

(AS A PERCENTAGE OF REVENUES)

STATE	ELECTRIC	NATURAL GAS
NEW YORK	16.5%	7.9%
NEW JERSEY	12.4%	12.8%
OHIO	12.2%	7.7%
INDIANA	11.8%	4.7%
NORTH CAROLINA	10.5%	5.4%
GEORGIA	8.3%	2.3%
PENNSYLVANIA	8.3%	3.0%
CALIFORNIA	8.1%	2.5%
TEXAS	6.7%	2.6%
VIRGINIA	4.3%	3.0%

THE BOARD OF PUBLIC UTILITIES, IN ITS RECOMMENDATIONS ON THE RESTRUCTURING OF THE ELECTRIC POWER INDUSTRY, CALLED FOR NEAR TERM RATE REDUCTIONS OF FROM 5 TO 10% FOR ALL CUSTOMERS COMMENCING IN 1998. THE BOARD CLARIFIED ITS INITIAL PROPOSAL TO REQUIRE THAT THE REDUCTIONS ARE OFF OF EXISTING RATES, THEREBY PREVENTING UTILITIES FROM FIRST RAISING RATES PRIOR TO LOWERING THEM. THE BOARD CLARIFIED THAT THE TOTAL RATE TO CUSTOMERS WOULD BE LOWERED AND WOULD NOT BE OFFSET BY ANY STRANDED COST CHARGE, RESULTING IN REAL RATE REDUCTIONS TO ALL CUSTOMERS. THIS IS DUE TO THE FACT THAT STRANDED COSTS ARE CURRENTLY IN RATES AND, THEREFORE, NO RATE INCREASE IS NECESSARY TO RECOVER STRANDED COSTS. THE BOARD ANTICIPATES THAT COMPETITION WILL PROVIDE ADDITIONAL SAVINGS TO RATEPAYERS OVER AND ABOVE THE 5 TO 10% REDUCTIONS MANDATED.

THE PROPOSED ENERGY TAX POLICIES WOULD REDUCE CUSTOMERS' ENERGY TAX RATES FROM ABOUT 13 CENTS ON THE DOLLAR TO ABOUT 7 CENTS ON THE DOLLAR. THIS 45% REDUCTION IN ENERGY TAXES WOULD REDUCE CUSTOMER RATES BY ABOUT 6% OR 6 CENTS ON THE DOLLAR.

THE ENERGY TAX PROPOSAL, COMBINED WITH THE BOARD'S ELECTRIC INDUSTRY RESTRUCTURING PROPOSAL, WILL REDUCE CUSTOMERS' RATES BY ABOUT 10-15%. SINCE THE BILL REQUIRES 100% OF ANY TAX REDUCTIONS TO BE PASSED THROUGH TO CUSTOMERS, THIS IS TRULY A TAX BREAK FOR THE STATE'S RESIDENTIAL AND BUSINESS CUSTOMERS, NOT FOR UTILITIES. THIS WILL ASSIST NEW JERSEY IN ATTRACTING JOBS.

THE NEW ENERGY TAXES WILL LEVEL THE PLAYING FIELD FOR ALL ENERGY SUPPLIERS. THE PROPOSAL ELIMINATES DISPARITIES IN THE WAY UTILITY AND NON-UTILITY SUPPLIERS ARE TAXED. THIS IS DONE BY:

* ELIMINATING THE GROSS RECEIPTS AND FRANCHISE TAXES CURRENTLY INCLUDED IN UTILITY BILLS AT A RATE OF APPROXIMATELY 13% FOR NATURAL GAS, ELECTRIC AND TELECOMMUNICATIONS UTILITIES.

* APPLYING THE EXISTING 6% SALES TAX TO RETAIL SALES OF NATURAL GAS AND ELECTRICITY

* APPLYING THE EXISTING CORPORATION BUSINESS TAX (9% OF NET INCOME), ESTIMATED TO EQUAL 1% OF CUSTOMERS' BILLS TO NATURAL GAS, ELECTRIC AND TELECOMMUNICATIONS UTILITIES, WHICH ARE CURRENTLY EXEMPT AND

* IMPOSING A TRANSITIONAL ENERGY FACILITIES ASSESSMENT TO INITIALLY MAKE UP THE DIFFERENCE BETWEEN WHAT GR&FT WOULD HAVE COLLECTED AND THE NEW TAXES WILL COLLECT. THE TRANSITIONAL ENERGY FACILITIES ASSESSMENT WOULD INITIALLY BE SET TO ENSURE THAT RATES DO NOT INCREASE FOR ANY CUSTOMERS.

THIS ENERGY TAX SCHEME WILL TAX ALL ENERGY SUPPLIERS SIMILARLY.

ONE ISSUE I WISH TO DISCUSS CONCERNS THE TIMING OF THE PROPOSAL. IT HAS BEEN SUGGESTED THAT SINCE THE LAW WOULD NOT TAKE EFFECT UNTIL JANUARY 1, 1998, LEGISLATION IS NOT NECESSARY UNTIL LATER

THIS YEAR. THIS IS INCORRECT SINCE IT IGNORES THE FACT THAT THE LAW WOULD REQUIRE UTILITIES TO DEVELOP AND SUBMIT TO THE BOARD MODIFIED RATES AND THE BOARD IS REQUIRED TO CONDUCT A RATEMAKING PROCEEDING PRIOR TO PUTTING THE NEW RATES IN PLACE. WE ESTIMATE THAT THIS PROCESS WILL TAKE APPROXIMATELY SIX MONTHS. ON THAT BASIS, LEGISLATION MUST BE ENACTED BY THE END OF JUNE 1997 FOR THE BOARD TO HAVE THE NEW RATES IN PLACE BY JANUARY 1, 1998.

IN CLOSING, THE PROPOSED LEGISLATION IS THE RESULT OF OVER TWO YEARS OF EXTENSIVE EFFORT AIMED AT MODIFYING 100-YEAR-OLD TAX POLICIES TO CONFORM TO TODAY'S COMPETITIVE REALITIES. THE PROPOSAL WILL:

* PROTECT MUNICIPAL REVENUES
* LOWER CONSUMERS ENERGY TAXES BY 45%
* LEVEL THE COMPETITIVE PLAYING FIELD, AND
* STIMULATE ECONOMIC DEVELOPMENT

ON THAT BASIS, I STRONGLY URGE THE PASSAGE OF THESE BILLS.

NEW JERSEY

CITIZENACTION

Phyllis Salowe-Kaye/Executive Director

Staci A. Berger, Energy Organizer
New Jersey Citizen Action (908) 246-4772
Testimony to the Senate Budget and Appropriations Committee

Good afternoon. My name is Staci Berger and I am the Energy Organizer for New Jersey Citizen Action, the state's largest independent citizen watchdog coalition. On behalf of our 60,000 family members and our 85 affiliated tenant, labor, senior and religious organizations, we have been monitoring the discussion of this legislation very closely. We feel that S.31 and its companion, S.30, meet the minimum guidelines of fair and equitable energy taxation in a changing marketplace. However, we are cautious of the claims made by Governor Whitman and her political appointees that these tax changes will result in significant and meaningful reductions in the energy bills of New Jersey's residential and small business ratepayers.

As participants in the Master Plan proceedings which culminated last month in the BPU's Final Order on Restructuring the Electric Industry, NJCA has been the strongest voice for lower rates for New Jersey's residential and small business ratepayers. In my work, I speak to groups of tenants, workers, seniors and low-income residents. They all tell me the same thing: we need lower rates, and we need them now! It is positive that S.31 seeks to bring the tax portion of energy bills under control and to create a level playing field for all suppliers, while protecting local governments from budget bloodshed. This is no easy task. With that in mind, I would like to outline our three major concerns relating to the changes in the

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NJCA is an affiliate of Citizen Action, a national progressive coalition

state's energy taxation policies, and the impact on these changes will have on our rates.

1. *The elimination of GRFT must not result in an increase in local taxes*

We feel that the frozen funding, based on the highest aid in the last three years is certainly a step in the right direction to ensure that municipalities are not zapped by this tax change. While this funding formula protects local governments from an ever-shrinking pool of revenue, it does not account for inflation. Mechanisms for review of these dollar amounts must be investigated so as not to completely tie the hands of local government. We are pleased that this legislation moves away from the Administration's policy of lowering one tax while raising another.

2. *Tax changes should be progressive, and not disproportionately harm working people.*

The elimination of GRFT does not fundamentally alter the reliance of energy revenue on regressive taxation, but it is a move in the right direction. By applying the corporate tax to all of energy suppliers doing business in New Jersey, the proposed legislation attempts to equalize taxation between businesses and customers. Unlike GRFT which was a complete pass-through to consumers, the use of the corporate tax will go a long way to balanced taxation and shift some of the responsibility on to the suppliers. They may attempt to pass through those costs, but in a restructured environment companies will be unlikely to increase the direct cost to their customers. We hope that the restructuring of the electric industry will help keep the taxation mechanisms fair and competitive, and this legislation can make that happen.

3. *Ratepayers must be protected against budget shortfalls in the General Treasury.*

The Transitional Energy Facilities Assessment is a common sense approach to the problem of the original budget gap initially reported last fall. Because TEFA will be phased out over a five year period, the municipalities will not be shell shocked from a loss of revenue. This means that the real savings to ratepayers will not be fully realized until 2003. It is here, on the question of the bottom line, that we part company with most of the representatives before you today. The people of New Jersey need lower rates, and they need them now.

It is inappropriate of the Board of Public Utilities and the Treasurer's office to make claims of lower energy bills until the TEFA has been completely phased out. Many people have touted the

45% reduction in energy taxes as immediately convertible to a 6% reduction in overall bills; this will not be true in this election cycle or even the next one. The proposed changes in GRFT and the promises made by the BPU will result in a small and perhaps insignificant reduction in the high cost of electricity in New Jersey. S.31, while important and necessary legislation to even the playing field, is not a panacea for high rates. In the last two years, over 15,000 people have signed NJCA's petition for a 25% reduction in electric rates. If the Legislature truly wants to give residential and small business consumers the real, immediate rate relief that is so desperately needed in New Jersey, you should mandate this reduction when the BPU's Restructuring Proposal comes before you in the fall.

There is no guarantee that the elimination of GRFT and its replacement as outlined in S.31 will lead to permanently lower rates for residential and small business customers, or at least not as low as rates can be. A conservative estimate of the tinkering and hoop jumping being done by the utilities and the BPU show only a 10% reduction, before the public is forced to bail out the monopolies for their stranded costs. As S.31 moves through the Legislature, all eyes are on Trenton to see who will have the political courage to do what is right by ratepayers, and their wallets and really bring lower rates to New Jersey.

Thank you for your time today.

GPU ENERGY

TESTIMONY

ENERGY TAX REFORM
SENATE BILL 31

PRESENTED TO:

NEW JERSEY STATE ASSEMBLY
POLICY AND REGULATORY AFFAIRS COMMITTEE

MAY 21, 1997

KEVIN LYNOTT
MANAGER, GOVERNMENT AFFAIRS
GPU ENERGY

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GOOD MORNING.... MY NAME IS KEVIN LYNOTT AND I AM THE MANAGER OF GOVERNMENT AFFAIRS FOR GPU ENERGY.

I AM HERE TODAY TO PROVIDE OUR TESTIMONY IN SUPPORT OF SENATE BILL NO. 31. THIS BILL, IF ENACTED, WILL DRAMATICALLY CHANGE THE WAY TELECOMMUNICATIONS, NATURAL GAS AND ELECTRIC UTILITY SALES ARE TAXED HERE IN NEW JERSEY.

I DON'T NEED TO REMIND ANYONE IN ANY OF THE INDUSTRIES AFFECTED BY THIS BILL THAT CONSTANT CHANGE IS NOW THE NORM IN OUR WORLD. GPU AS A BUSINESS AND WE INDIVIDUALLY AS ELECTRIC CONSUMERS ARE IN THE MIDST OF A PARADIGM SHIFT IN NEW JERSEY'S ENERGY POLICY. IN THE ELECTRIC POWER INDUSTRY, WE ARE FAST APPROACHING THE DAY THAT OUR CUSTOMERS WILL BE ABLE TO CHOOSE THEIR ENERGY SUPPLIER. IN FACT, JUST THREE WEEKS AGO THE NEW JERSEY BOARD OF PUBLIC UTILITIES RELEASED RECOMMENDATIONS FOR HOW TO PROCEED WITH RESTRUCTURING IN THE ELECTRIC POWER INDUSTRY IN NEW JERSEY. THOSE RECOMMENDATIONS INCLUDE INTRODUCING ELECTRIC SUPPLY COMPETITION BEGINNING IN OCTOBER OF 1998... ONLY 17 SHORT MONTHS AWAY.

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GPU IS A STRONG AND VOCAL SUPPORTER OF PLANS TO BRING COMPETITION TO OUR INDUSTRY. WE WILL ALL NEED TO MAKE BOLD CHANGES TO ALLOW CUSTOMER CHOICE TO BECOME A REALITY FOR NEW JERSEY ELECTRIC UTILITY CUSTOMERS. WHICH BRINGS ME TO EMPHASIZE WHY THIS LEGISLATION AND THIS HEARING IS SO IMPORTANT.

GPU ENERGY VIEWS THE ENACTMENT OF ENERGY TAX REFORM LEGISLATION AS A CRUCIAL STEP TOWARDS A SMOOTH TRANSITION TO A DEREGULATED POWER INDUSTRY. WE CERTAINLY AGREE WITH THE BPU WHO STATED IN THEIR RECENTLY RELEASED REPORT ON RESTRUCTURING THAT ....." THE BPU REGARDS THESE EFFORTS TO REFORM THE EXISTING ENERGY TAX ESSENTIAL TO THE INTRODUCTION OF RETAIL ELECTRIC COMPETITION. IN OUR MINDS, THIS HEARING PUTS US ON THE ROAD TOWARD COMPETITION IN A VERY SIGNIFICANT AND ESSENTIAL WAY.

GPU ENERGY HAS HAD IN DEPTH DISCUSSIONS WITH MANY THE STAKEHOLDERS REGARDING THE MUCH NEEDED OVERHAUL OF THE CURRENT ENERGY TAX SYSTEM KNOWN AS THE GROSS RECEIPTS AND FRANCHISE TAX. OUR BASIC REQUIREMENTS FOR TAX REFORM LEGISLATION WHICH WE CAN SUPPORT ARE AS FOLLOWS:

1. THE GROSS RECEIPTS AND FRANCHISE TAX SHOULD BE ELIMINATED.

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2. TAX REFORM MUST BE FAIR TO THE STATE , MUNICIPALITIES , CONSUMERS, ELECTRIC UTILITIES AND OTHER ELECTRIC SUPPLIERS.

3. TAX REFORM LEGISLATION MUST ENSURE THAT ANY NEW TRANSITIONAL CHARGES ARE TEMPORARY.

4. ENERGY TAX REFORM IS AN INTEGRAL AND ESSENTIAL COMPONENT OF INTRODUCING COMPETITION IN THE ELECTRIC UTILITY INDUSTRY.

WE AT GPU BELIEVE THAT SENATE BILL 31 ALONG WITH SENATE BILL 30 SATISFIES THE AFORE-MENTIONED REQUIREMENTS AND APPROPRIATELY BALANCES THE NEEDS OF ALL CONCERNED. AS SUCH WE SUPPORT THE ENACTMENT OF THIS LEGISLATION. WE COMMEND SENATOR *DIFRANCESCO* AS PRIME SPONSOR OF S-31 FOR TAKING ON A DIFFICULT TASK.

WE NOTE THAT THE SENATE IS NOT TAKING COMMENTS ON SENATE BILL NO. 30 KNOWN AS THE "ENERGY TAX RECEIPTS PROPERTY TAX RELIEF ACT". S-30 GUARANTEES MUNICIPALITIES THE SAME LEVEL OF FUNDING THEY RECEIVED IN 1996. THIS IS AN IMPORTANT PROTECTION FOR MUNICIPALITIES WHO HAVE COME TO RELY ON GRFT TO HOLD DOWN PROPERTY TAXES . PERHAPS IT IS BECAUSE GPU HAS CUSTOMERS IN 236 MUNICIPALITIES HERE IN NEW JERSEY

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BUT WE AT GPU STRONGLY BELIEVE THAT THESE COMMUNITIES MUST BE TREATED FAIR. WITH THAT CONCERN IN MIND, WE WOULD LIKE TO GO ON THE RECORD SUPPORTING BOTH SENATE BILLS NO. 30 AND NO. 31.

IN CLOSING, GPU ENERGY BELIEVES THIS LEGISLATIVE PACKAGE IS A CRITICAL STEP IN ENSURING AN ORDERLY BUT EXPEDITIOUS TRANSITION TO COMPETITIVE MARKETS. WE BELIEVE IT IS BALANCED AND FAIR TO ALL CONCERNED, AND IS NEEDED BEFORE NEW JERSEY'S ELECTRIC CONSUMERS CAN BE GIVEN THE OPPORTUNITY TO CHOOSE THEIR ELECTRIC SUPPLIER.

IT IS CLEAR ALSO THAT THE LEGISLATURE AND THE WHITMAN ADMINISTRATION ARE VERY CONCERNED ABOUT PROTECTING REVENUES FOR MUNICIPALITIES. THIS ENERGY TAX REFORM PACKAGE ACCOMPLISHES THIS IMPORTANT GOAL. IT DEMONSTRATES A STRONG FINANCIAL COMMITMENT TO NEW JERSEY'S MUNICIPALITIES AND WILL GREATLY BENEFIT THE STATE'S ECONOMY AND PROTECT ITS JOBS. THANK YOU FOR THIS OPPORTUNITY TO PROVIDE OUR COMMENTS TO THE LEGISLATION. I WOULD BE HAPPY TO ANSWER ANY QUESTIONS YOU MIGHT HAVE.

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PSE&G

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William J. Walsh, Jr. Manager — State Governmental Affairs

Testimony on Senate Bill 31 before the
Senate Budget and Appropriations Committee
May 21, 1997
William J. Walsh, Jr., PSE&G

Good afternoon. My name is Bill Walsh. I am the Manager of State Governmental Affairs for PSE&G, and I, too, would like to thank Chairman Littell and members of the committee for the opportunity to present our position on this landmark legislation.

S-31 represents the culmination of nearly two and a half years of work. This bill is fair and is being supported by nearly all of the many constituencies represented here today. We compliment the Senate President and Senator Inverso for their leadership in moving this issue forward with the knowledge that these tax inequities must be resolved before retail competition in the electric industry can become a reality in New Jersey.

We do have a concern, however, raised by the testimony given before the Assembly Policy and Regulatory Oversight Committee just a few weeks ago. We believed, that after more than two years of discussion, the affected parties had reached agreement on the major tax issues addressed in this bill. However, we have now heard requests for additional changes to the bill which go beyond the level of technical adjustments, and represent changes in policy. Two issues are of particular concern. (1) The cogeneration community currently enjoys a tax exemption on the natural gas they purchase to produce electricity. We agree that existing plants, which represent investments made under a set of rules which provided this tax incentive, should retain their tax-exempt status to honor the commitments made in another era. Going forward, however, the bill provides that new cogeneration projects will be subject to the sales tax on the gas purchased to produce electricity for behind the fence consumption but maintain the exemption on electric and that is fair. Cogeneration interests are seeking to continue their tax exemption on natural gas for all projects, including anything they might do in the future, in perpetuity. **We believe that continuing a tax exemption for cogeneration gas provides an unfair competitive advantage to one generation source over another and is an unjustifiable tax subsidy for a**

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technology that is no longer new, does not require subsidies to compete and may in fact become outdated in the future. (2) Our other concern is the desire of the cogenerators to wheel electricity between sites and cities anywhere in the state. It has been raised in prior testimony that due to the definition of the term "site", certain facilities will lose their current tax free status because a right-of-way or a street runs through their property. This is clearly not the intent of the legislation. Public Service agrees with the intent of the bill, with respect to the definition of the term "site", to permit existing cogeneration plants to provide power to facilities which may in fact be "across the street" from the plant, but which are part of a single site or corporate location. The Hoffman-LaRoche situation is such an example. However, we strongly oppose any attempt to broaden the definition of the term "site" to permit a company to wheel electricity, exempt from taxation, from a single cogen plant between sites anywhere in the State. Broadening the definition in this manner would also create a loophole in the law which may permit a consortium of businesses to erect a cogen facility and wheel tax free to multiple locations. If we are to create equity for all generators as we move forward, then let's be sure we do just that. **To modify this bill and create new loopholes that some entities may take advantage of and avoid paying their fair share of energy taxes, I believe undermines the goal of the sponsors -- stable tax revenues for municipalities in a competitive marketplace.** We strongly urge the committee to maintain the spirit of compromise crafted over the last two and one half years, and to reject requests for these changes to the bill in your deliberations.

PSE&G believes the major policy issues have been addressed in this bill. More importantly, it parallels the goals and objectives of the Energy Master Plan, which is our State's blueprint for consumer retail choice. **Our message today is that the State, the municipalities, consumers, and the energy industry need this legislation sooner, rather than later, to provide a flexible policy with lower energy tax rates as we move into a competitive marketplace.**

Under the Energy Master Plan schedule, electricity will be open to retail access beginning in the Fall of 1998 -- a little over a year away. The natural gas market is already nearly totally deregulated. All industrial and commercial customers can now shop for tax-free natural gas anywhere in the United States, and residential natural gas pilot programs are under way, as well as the first residential electric choice program with the announcement of the Monroe Township pilot.

Under the deregulated market, gas utilities are losing customers at a rate of about 500 to 1,000 per month, and because of our antiquated tax policy, the municipal tax revenues are going with them. We must address the issue before the electric market opens to competition. **If we permit the electric market to open under the existing tax structure, the result will be that the bottom will drop out of the tax revenues, creating severe economic dislocations for State and local revenues and, potentially, utility industry jobs, as thousands of customers exit the system to purchase tax exempt energy.**

Our energy policy is poised for the new millennium, but our current tax policy is rooted in 19th century economics. The Gross Receipts and Franchise Tax methodology has long outlived its relevance. GRAFT taxes only public utilities, and in a marketplace where there may soon be 700 energy purveyors instead of the current 7, the need to develop a new policy is apparent. **S-31 proposes a forward-looking tax policy, that is balanced, fair, and flexible enough to handle any transaction in the new energy marketplace.**

The time to make this change is now. Competition is not something for the future; it is here. Pennsylvania deregulated in April, the New England states have passed deregulation bills, and New York and Delaware are right behind. The majority of states in the country are restructuring the electric industry and will provide choice in part, if not totally, by the turn of the century. New Jersey utilities must file their deregulation plans with the BPU in July, two months from now. In the short timeframe between now and imposition of the new tax structure on January 1, 1998, we must re-file all tariffs reflecting the new tax policy, and the BPU must review and approve all of the filings. **This is a major policy change. Six months is not an unreasonable period to effect all of the administrative changes which must be made to comply with this law. We simply must adopt a new tax policy now.**

II. If I may, Mr. Chairman, I would like to comment briefly on the importance of the tax parity issue.

A hallmark of this legislation is the establishment of similar tax liabilities for similar energy transactions. This ensures that energy choices will be made by consumers on the basis of what makes the best economic sense and not what is the best tax-avoidance scheme.

Currently a public utility industrial or commercial electric customer pays Gross Receipts and Franchise Taxes equaling about $75,000 per megawatt. Cogeneration customers pay about one-tenth of this amount for the same megawatt of energy.

Under S-31, public utilities will collect a tax after the TEFA phaseout, of about $43,500 per megawatt. It will take six years to get to this reduced tax level. New cogeneration plants will pay a 6% sales tax on the natural gas used to generate energy, and continue to pay their existing Corporate Business Tax liability. Taxes on their megawatt of energy will be about $23,000. This results in a sustained and continuing tax advantage to cogeneration of over $20,000 per megawatt and it will take six years for utilities to close the gap to this level.

Despite this disadvantage, PSE&G believes that this legislation represents the most equitable compromise that can be reached short of charging sales tax on the electricity which is produced by cogeneration. S-31 strikes a careful balance while still providing the cogeneration community with a significant competitive advantage.

Let's look at this issue from the point of view of a utility employee at one of our generating stations that burns clean, natural gas in new and efficient boilers to generate energy. Right now, they work to produce a product that they know will be sold at a cost at least 13% higher than the same product produced by non-utility generators burning the same gas.

With a more balanced tax structure between utility and non-utility generation, we believe our workers will feel that the new policy **fairly** honors past commitments to those who invested under the old regulatory requirements, **fairly** requires all energy suppliers and consumers to bear similar tax burdens going forward and gives them a **fair chance** to compete to hold their jobs in the open market by ensuring taxes do not provide an unfair competitive advantage to one source at the expense of another in the energy business.

We hope the Committee will carefully consider the balance struck in this bill which took almost two and a half years to achieve. The tax revenues associated with the proposal are measured fairly across the constituencies competing on both sides of the equation. PSE&G is pleased to support the bill in its current form.

Thank you for your attention.

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Testimony: S-31

New Jersey State Senate
Budget & Appropriations Committee
Hon. Robert Littell (R-24), Chairman

May 21, 1997

presented by:
Michael C. Karlovich
Director of Community Relations
Tosco Refining Company
Linden, New Jersey

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Testimony: Energy Deregulation

Mister Chairman, members of the Committee, and staff, I am Michael C. Karlovich, Director of Community Relations for Tosco Refining Company in Linden, NJ. Thank you very much for providing Tosco with an opportunity to testify today - we salute the leadership being shown by the Legislature, the Whitman Administration and the Board of Public Utilities in moving forward with deregulating NJ's electric utilities.

In our testimony, we will be addressing the changes proposed for the Gross Receipts and Franchise Taxes and related issues. First, we would like to provide you with some background on our Company and our industry so that you have a clearer understanding of why lowering our cost of electricity is so critically important to us.

Tosco moved to New Jersey in 1993 when we purchased the Bayway Refinery in Linden. Bayway has ~950 highly-skilled employees who earned a combined payroll of ~$63 million dollars in 1996. Bayway produces more than 6 million gallons of gasoline every day - about ½ of all the products we make. In fact, *if* our gasoline production were consumed solely in New Jersey, we would provide more than one of every two gallons sold in the state each day.

We also route flue gases from one of our processing units through a turbine to make ~200,000 kilowatts of electricity daily, which we use consume internally. This power is currently tax exempt and we respectfully request that the Legislature ensure that self-generated electricity for on-site use remains untaxed under the GR&FT reforms.

However, this is not enough electricity to meet our own needs. In fact, we are Public Service Electric & Gas' single largest electric customer in the State, other than government. Our total cost of electricity in 1996 was approximately $41 million dollars! This expenditure represents our third largest business cost, after purchasing raw materials and paying salaries. We are currently purchasing power from PSE&G under a 5-year flex rate contract. The approval of this contract resulted in our foregoing an onsite cogeneration in 1993.

We are testifying today because ***we absolutely need to lower our electric rates*** so that we can effectively compete in our industry, which is a globally-oriented, commodity-based business. For example, New York Harbor is the destination for more than 50% of the gasoline being brought into the United States from foreign countries, ***and as much as 20% of total northeast demand is currently satisfied by overseas imports!***

The foreign refiners we compete against are primarily located in Europe, the Caribbean basin, Canada and South America, as well as other regions. These refineries, as well as most US refiners, benefit from much lower electricity costs than ours. Consequently, lower utility costs and taxes are critical objectives for Tosco in NJ.

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Unlike US oil companies, many foreign refineries are either owned by or are subsidized by their governments. For example, PDVSA, the Venezuelan government's state oil company, is the principal owner of the #1 gasoline retailer in the US - Citgo. In addition, because Venezuela has extensive crude oil reserves, PDVSA is entering into crude oil processing agreements with numerous Gulf Coast refiners, against whom we compete.

The US refineries that we compete with include facilities in Texas and Louisiana, where electric rates are sharply lower than Tosco pays in NJ. Closer to home, we compete with refineries in Pennsylvania and Delaware. Pennsylvania just deregulated its electric utilities and we recently negotiated a very competitive rate with a large utility for our refinery there, so we have a proprietary basis with which to compare electric rates between the two states. We are not alone - Sun, the largest refiner in the Philadelphia area, has also negotiated a competitive electric deal with a local utility.

All of the refiners we've referenced view New Jersey and the Northeast as primary markets. To effectively compete with them and keep our jobs in New Jersey, we have to continuously find ways to lower our operating costs. This is largely because electric rates paid by our US competitors generally range in the tenths of a penny on either side of three cents per kilowatt hour (KWH) or lower, versus the 5 cents to 7 cents per KWH off-tariff rate we pay in NJ.

To illustrate how important electric costs are throughout our industry, refiners in states where electric costs are ~50% less than NJ's are still switching to cogeneration to further lower their rates. In an era of deregulation, lower electric rates are a sensible means of lowering our operating costs and there are a number of companies, including publicly-traded utilities, that are willing to bid competitively for our business.

From a public policy perspective, lower utility rates should make it easier for the State of New Jersey to attract, retain and expand business. This is especially important to the high-paying manufacturing sector, where New Jersey has lost more than 300,000 jobs since 1975, according to the NJ Business & Industry Association. Many of these jobs were lost to states with lower operating costs than NJ's, including lower electric rates.

The erosion of NJ's competitiveness has been slowed by progressive measures championed by this Legislature. Nevertheless, the State's ability to attract, retain, and grow jobs is linked to utility prices. This is why reducing Gross Receipts and Franchise Taxes is only one component of the NJ Board of Public Utilities' vision for reducing utility costs in New Jersey, as referenced in the Board's "Electric Industry Restructuring Plan." Tosco agrees with this premise and encourages you to move forward expeditiously to reform the GR&FT taxes, while ensuring that self-generated electricity remains untaxed, as outlined earlier.

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Although Tosco is optimistic that New Jersey is heading in the right direction with respect to utility deregulation, we are particularly concerned about the "Proposed Interim Competition Transition Charge Tariff," or ICTC, which was outlined in a petition to the NJ Board of Public Utilities by Public Service Electric & Gas on September 19, 1996.

We understand that Public Service desires to have the exit fee apply to its 2000 largest customers. Consequently, the state's largest electric users now find themselves in a frustrating position - they cannot negotiate electric contracts with another provider; they cannot pursue new technology cogeneration investments. In summary, they cannot lower their electric costs or improve their competitiveness.

To our knowledge, the ICTC has not been endorsed as a means of recovering stranded costs by New Jersey's other electric utilities, even though this issue is very important to them. Nevertheless, their largest customers also face the same uncertainty as we do.

Let me explain why Tosco is concerned about this anti-competitive, anti-business exit fee and how it directly affects our planning. According to the formula that PSE&G included in its ICTC proposal, if Bayway were to develop a cogeneration option and leave the utility's grid, we would be required to pay an "exit fee" that would range from $10 million dollars to $25 million dollars for an indeterminate length of time. (The exact amount of the exit fee depends on how the Departing Load is factored and the price of natural gas. Range: 4.5 cents per KWH to 7 cents per KWH.) This is a penalty that equals 25% to 50% of our current electric bill, which is unacceptable.

From our perspective, exit fees provide the utility with a distinct negotiating advantage, not a means of recovering stranded costs. As we have stated, other utilities are retaining and developing competitive arrangements with their large customers without the need for an exit fee. In addition, the situation makes it very difficult to develop future business plans, particularly budgets. This exit fee proposal is actually impacting investment plans because of the uncertainties it has spawned.

As the rest of the state awaits competition and lower-cost electricity, is it appropriate to make the business environment in New Jersey even less competitive than it is today? In 1993, when we negotiated our off-tariff rate with PSE&G, competition was the key to PSE&G retaining Bayway as a customer.

We ask:

1. Why were competitive rates the desired remedy for retaining customers in 1993, but not, in itself, a sufficient remedy in 1997?
2. Why are exit fees appropriate at the onset of deregulation, when for years large business customers have had the option to leave a utility without any penalty?
3. Why should a utility be allowed to discriminate against a select group of customers?

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With these questions as a catalyst, we urge you, the members of this committee and other interested legislators, to closely monitor the Board of Public Utility's actions with respect to exit fees. If this issue is not satisfactorily resolved - via a BPU rejection of the proposal - we will return to request that you amend or pass legislation that would prohibit any utility from charging exit fees.

Quite frankly, New Jersey utilities should compete for customers, rather than retaining them through exorbitant, discriminatory exit fees. By becoming truly competitive electricity suppliers that utilities will keep jobs in New Jersey, maintain shareholder value, and be a survivor in the brave new world of deregulated utilities. Many utilities in other states are already acting in such a manner.

At a time when the State of New Jersey is considering ways to foster deregulation, we see the exit fee proposal as the antithesis of competition. The utility wants to compel us to remain their customer, rather than competing with other suppliers for our business. When all is said and done, however, the State's best interests will be served by promoting competition, not captivity.

To summarize Tosco's position:

1. deregulation will be good for New Jersey's economy
2. proposed GR&FT reforms are an important first step in lowering utility rates for all of New Jersey's energy consumers, as long as the reforms do not result in new taxes
3. the anti-competitive, anti-business exit fee proposal should be rejected

That ends my testimony, Chairman Littell. Thank you for providing Tosco with an opportunity to testify in favor of true deregulation of New Jersey's utilities. At this time I would be glad to try and answer any questions that you or other members of the committee may have.

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BLOSSOM A. PERETZ, ESQ.
Ratepayer Advocate and Director

REMARKS OF BLOSSOM A. PERETZ

Director,
New Jersey Division of the Ratepayer Advocate

Testimony before the
Senate Budget and Appropriations Committees
regarding
Senate Bill S-31

May 21, 1997

Good morning, Chairman Littell and members of the Committee. My name is Blossom Peretz and I am the Director of the Division of the Ratepayer Advocate. I wish to extend my appreciation to the Committee for giving me the opportunity to testify on the proposed legislative reforms to the current gross receipts and franchise tax structure.

As you may know, the Division of the Ratepayer Advocate represents and protects the interests of utility customers in the State of New Jersey, including the interests of industrial, small business and residential consumers. This is an unorthodox mix of constituents for a traditional utility consumer advocate, but it reflects the fact that no consumer group is isolated from the economic well-being of the entire community. This is especially true in the new competitive environment, where consumer interests in lower energy costs are a driving force towards deregulation and are a significant factor in the proposed gross receipts and franchise tax reform legislation.

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Let me say right up front, as Ratepayer Advocate, I fully endorse the goals and general approach of the proposed energy tax reform legislation. The time has arrived to reform the outmoded utility taxes to position New Jersey to better compete in a deregulated energy world. Although this reform is essential, it must not be done at the expense of our municipalities' budgets, which rely to a great extent on the significant contributions made by the current gross receipt and franchise tax. This legislation addresses those concerns. Additionally, we have some proposals that may provide additional protections and incentives for municipalities.

High energy taxes under the existing tax structure impact the consumers of New Jersey in many ways. First, New Jersey's consumers pay among the highest energy rates in the country, and part of that high cost is due to the high taxes. The high taxes also impact New Jersey's economic development by increasing business costs here in comparison to those in other states. This places us at a competitive disadvantage in vying for new businesses or for existing businesses to expand. That hurts our job growth. High energy costs are also particularly detrimental to New Jersey's manufacturing sector, which has been in a steep decline for many years.

High energy taxes, like high energy costs generally, are regressive in nature, and fall most heavily on families with limited means, because their energy costs consume a higher proportion of their household budgets than those of higher-income families.

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The current gross receipts and franchise tax falls exclusively on regulated utilities and as such, is ill-suited to a restructured energy industry, where regulated and unregulated companies will be competing with each other. True competition requires competitively neutral taxes, part of that level playing field we hear so much about.

Finally, the current gross receipts and franchise tax is administratively unsuited to an energy industry where more and more transactions are occurring in interstate, versus intrastate commerce. The current tax structure promotes doing business outside the state. That is not a situation we want to encourage.

Much as we all agree that reform is drastically needed, this cannot be done at the expense of municipalities. We cannot relieve New Jersey ratepayers of their heavy energy tax burden by merely shifting this burden to New Jersey's property owners. I am satisfied that the proposed legislation largely corrects the main defects of the present tax regime, while preserving local tax revenues.

There are, however, several changes to this legislation that would provide additional protections for ratepayers and taxpayers. I respectfully recommend that the legislature consider certain amendments to the proposed legislation which I believe will further benefit the residents, businesses and municipalities of New Jersey.

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A. Impose An Ad Valorem Tax on Utility Owned Transmission Plant

My foremost concern about the proposed legislation is to insure there be an adequate revenue source to preserve the local property tax relief historically obtained from the Gross Receipts and Franchise Tax. Since the transition charge will be phased out over five years, it does not provide a long-term solution to this problem. I respectfully submit that the legislature consider imposing an ad valorem (or property) tax on electric and other utility owned transmission plant that will be dedicated to the Property Tax Relief Fund, and will serve to reduce the level of the TEFA. Most states impose such a tax on electric and gas transmission plant crossing through their territory. Our neighboring states of New York, Maryland, and Delaware impose such a tax, and Pennsylvania imposes taxes which achieve similar results.

Utility owned transmission plant is an optimal object of ad valorem taxation for a number of reasons:

a) Utility owned transmission plant is immobile and will not be relocated or abandoned because of property tax burdens; nor, for that matter, will transmission siting or routing decisions be significantly affected by reasonable levels of property taxes.

(b) Utility owned transmission plant (unlike distribution plant, which confers a direct benefit to the surrounding community) imposes significant externality costs on surrounding communities in terms of diminished property values, aesthetics, and increased health concerns.

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(c) Out-of-state suppliers and users of utility owned transmission systems located in New Jersey will bear a portion of the costs of these taxes proportionate to their use of this system. That is precisely the situation now with New Jersey suppliers and users who bear a portion of the property taxes on transmission lines which they use in other states.

(d) The exemption from taxation to New Jersey's utility owned transmission plant creates an asymmetry which works to the detriment of New Jersey ratepayers and taxpayers, since electricity imported to New Jersey generally includes costs for transmission plant property taxes imposed by other states, while electricity consumed elsewhere but transported through New Jersey includes no such equivalent taxes.

(e) This asymmetrical "free ride" to out-of-state entities using New Jersey's utility owned transmission system seems particularly inappropriate in view of the widely voiced concern that open transmission access will result in the importation of cheap and environmentally harmful coal-fired energy from the Midwest.

Although we do not know the exact revenue potential of an ad valorem tax on utility owned transmission plant, we believe that it could be substantial, particularly if the plant is valued on a "replacement cost" approach, taking into consideration the present costs of assembling replacement right-of-way and obtaining necessary permits and consents. Consistent with the practice in many other states, this tax could be centrally assessed by the State to insure objectivity and consistency. At the very least, we suggest that this matter be seriously considered.

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The benefit of this tax is not only that it would initially reduce the level of the TEFA, but after the TEFA phase-out, the ad valorem tax would continue to provide revenues for municipalities.

B. Tax Benefits to Independent Power Producers Should Be Contingent Upon Willingness to Engage in Good-Faith Renegotiation of Uneconomic Power Purchase Agreements with New Jersey Utilities

The proposed legislation provides for favorable treatment to New Jersey's independent power production industry. It not only exempts the sales of electric power by IPPs for resale, it exempts from the sales and use tax purchases and delivery of natural gas to IPPs, even though most entities (including manufacturing, governmental and charitable entities) must pay the tax on the energy they consume. This continuing exemption is being offered to the IPP industry at a time when New Jersey ratepayers are being asked to absorb billions of dollars of uneconomic costs associated with overpriced long-term power purchase agreements which government-mandate required utilities to enter into with these same IPPs. Many of the long-term purchase agreements were based on long-range avoided cost forecasts which assumed continued cost-of-service regulation in the utility industry and have proven wildly inaccurate. As a result, many of these government- mandated contracts have become immensely profitable to IPPs, way beyond original expectations.

New Jersey ratepayers have a strong interest that IPPs holding government- mandated power purchase agreements renegotiate these agreements based on changed circumstances. Although the IPP tax benefits under the proposed legislation largely perpetuate existing tax

benefits, I believe that it would be inappropriate to continue these benefits absent a genuine willingness by the IPPs to renegotiate these contracts in good faith, as determined by the Board of Public Utilities in the current Energy Master Plan proceedings. During those proceedings the issue of stranded cost investment, which includes the cost of the above market price IPP contracts, will be considered. Unless these contracts are renegotiated, the consumers of New Jersey will not realize the promise of lower energy costs in the restructuring of the electric industry.

Although this change will arguably deny IPPs which decline to renegotiate uneconomic power purchase agreements a tax exemption available to other wholesale generators, we submit that this is an entirely appropriate and lawful use of tax policy to advance meaningful social and economic ends and would withstand constitutional challenge.[1] Moreover, the Board of Public Utilities, recognizing the burden of these high priced contracts on ratepayers and its own inability to compel the renegotiation of these uneconomic contracts directly, has specifically requested the legislature's assistance in this regard. As the Board discussed in detail in its Restructuring the Electric Power Industry in New Jersey: Findings and Recommendations, (April 30, 1997):

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[1]As recently stated by the United States Supreme Court in General Motors v. Tracy, 117 S.Ct. 811 (1997), which upheld a tax scheme which denied unregulated gas marketers a sales tax exemption enjoyed by electric utilities, "in taxation, even more than in other fields, legislatures possess the greatest freedom in classification." Nor do we believe that the statutory scheme of PURPA preempts the state from this use of a tax exemption as an inducement to renegotiate uneconomic IPP contracts, as was the case with the direct efforts of the BPU to compel renegotiation through its regulatory authority. *See* Freehold Cogeneration Associates v. Board of Regulatory Commissioners of New Jersey, 44 F.3rd 1178 (3rd Cir. 1995.)

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> [W]ithout some mitigation of high-priced IPP contracts it will be much more difficult to achieve any near term rate reductions [. . .] [H]igh-priced non-utility generators contracts contribute in no small way to the current high level of rates experienced in New Jersey. Indeed, the Status Report estimates attribute anywhere from 1/3 to 1/2 of the entire stranded cost problem in the State to above-market IPP contracts. Moreover, these contracts are primarily long term agreements (mostly 20 years and in some cases up to 30 years) with many years remaining. [. . .] To date, with some limited exceptions, there has been very little evidence of serious attempts on the part of IPPs through voluntary negotiations to mitigate the relatively high prices being paid by utilities under these contracts.
>
> We strongly encourage all stakeholders to renew their efforts to explore all reasonable means to mitigate IPP contracts. **Moreover, this is in an area in which the FERC, the Congress and the New Jersey State Legislature may wish to review in order to provide an added impetus for parties to these contracts to seriously consider mitigation.** (pp.109 - 110, Emphasis added.)

Accordingly, I propose that the legislation make the eligibility of an IPP holding above-market power purchase agreements with New Jersey utilities for tax exemptions on natural gas purchases contingent upon a finding by the BPU that the IPP has made a good-faith effort to renegotiate the agreements. The legislation should establish general guidelines for making such determinations, and require that the BPU promulgate appropriate rules. Such negotiations in New York by Niagara Mohawk with its IPPs are resulting in lower energy costs for New York ratepayers.

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C. Elimination of Punitive Disincentive for Municipal Utilities to Expand Service Territories

Although the proposed legislation preserves through the sales and use and corporate business taxes the tax exemptions which municipal utilities have historically enjoyed under the Gross Receipts and Franchise Tax, it contains a needlessly punitive disincentive for municipalities to expand services outside their pre-1996 service territories. The municipal utility which expands beyond these territories will be subject to the sales and use and corporate business tax not only with respect to the revenues and net income from these extra-territorial sales, but lose its existing exemption from the sales and use and corporate business tax with respect to all operations, including those within its historic service territory.

If the sole goal of the proposed legislation is to be competitively neutral as between investor owned and municipal utilities outside the historic boundaries of these municipal utilities, then this punitive loss of the municipal exemption within the historic territorial boundaries is unnecessary. Moreover, this punitive measure cannot even be defended as "leveling the playing field" as between municipal and investor owned utilities within the historic boundaries of the municipal utilities. Instead, the measure tilts the playing field sharply to the detriment of municipal utility ratepayers. Under the proposed legislation's formula for revenue distribution based on historic allocation, the long-standing municipal ratepayers will now be required to pay these taxes, but will (unlike their investor owned utility ratepayer counterparts) not see any portion of these taxes returned to their local communities, since these local communities did not

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share in gross receipts and franchise tax revenue distributions in the past. These tax revenues will, instead, go to other communities or into the State's general fund.

In sum, this punitive measure will simply deter municipal utilities from becoming potential competitors to the investor owned utilities outside the traditional boundaries of the municipal utilities. This is unnecessary, unfair, anti-competitive, and inconsistent with the goal of customer choice.

Accordingly, I propose that municipal utilities which choose to expand outside their traditional service area, retain existing tax benefits with respect to operations within their existing service territories (i.e. be grandfathered for existing operations), and only lose their exemption with respect to new business outside their historic service areas. Attached to this Statement is an Addendum setting forth my proposed amendments to the proposed legislation to preserve the existing municipal exemption.

D. Creating a Positive Tax Incentive for Municipal Aggregation

My primary concern regarding the restructuring of New Jersey's energy utilities is whether retail competition will benefit small and mid-sized users. While large users have the resources, expertise and magnitude of load necessary to negotiate favorable purchases of power and related services, small and mid-sized users lack these resources and expertise.

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One way that small users can obtain bargaining leverage needed to secure favorable rates is to become part of a purchase group. One recognized vehicle for creating energy purchase groups for the benefit of small customers is through " municipal load aggregation." A municipal load agregator would match a supply portfolio with demand from municipal residents.

The concept of municipal load aggregation is being explored in numerous states and should be explored and tested in New Jersey, because I believe that municipalities can and should play an active role in insuring that the maximum benefits of energy competition reach their constituents. Municipalities are the grantors of the underlying gas and electric franchises which enable our utilities to locate and operate pipes, poles, wires and mains in the public right of way. Moreover, municipalities have long been in the business of procuring public services on behalf of their constituents from third parties, through bids or otherwise. Finally, the level of confidence enjoyed by municipalities might encourage customers who might otherwise be too bewildered and confused to risk leaving their traditional utility to test their competitive options.

To encourage municipalities to aggregate on behalf of the small and mid-sized consumers who might otherwise lose out in the retail wheeling restructuring model, I propose a very modest tax incentive. Under this model, municipalities and other government agencies which participate in municipal aggregation will be exempt from the sales and use tax on their own purchases of electricity and gas for municipal use, provided that a minimum portion of the purchases of the group are for small customers. I believe this tax incentive is appropriate to spur municipalities to

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action in this regard, as well as to reward them for their efforts. The costs of this tax incentive is small in comparison with the potential benefit for small and mid-sized users.

I thank you for your attention, and ask that you seriously consider the proposed modifications for the benefit of New Jersey's ratepayers and municipalities. This Office stands ready at any time to assist the legislature in the monumental task it has undertaken to reform New Jersey's outmoded and costly utility tax structure, in order to create a more competitive economic environment, to the ultimate good of New Jersey's consumers.

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ADDENDUM

PROPOSED AMENDMENTS TO A-2825 TO CONTINUE MUNICIPAL ELECTRIC CORPORATIONS EXISTING TAX EXEMPTIONS.

Amend language Section 1 pertaining to paragraph 3(j) of P.L. 1945, c.162 (C.54:10A-3) which provides exemptions from the corporate business tax, to include:

(j) Municipal electric corporations that are in existence as of December 31, 1995 and were exempt from tax under the provisions of P.L. 1940,c.5(C.54:30A-49 et seq.),but only for the geographic area served at that time.

Amend the language of paragraph a(1) of Section 26 of A-2825 to continue to exempt (i.e. grandfather) existing municipal electric utilities from the sales and use tax within their current geographic service area, if the electricity:

(1) Is sold by a municipal electric utility in existence as of December 31, 1995, and exempt from the provisions of P.L. 1940, c.5 (C.54:30A-49 et seq.) provided however, that if the utility expands service beyond its municipal boundaries or expands its facility base beyond the geographic service area fixed as of December 31, 1995, all receipts from sales made by the municipal utility beyond the geographic service area served as of December 31, 1995 shall be subject to the tax imposed under the Sales and Use Tax Act.

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Legislative Viewpoint

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STATEMENT BY THE HONORABLE MILLARD WILKINSON,
LEAGUE FIRST VICE-PRESIDENT, MAYOR, BERLIN BOROUGH
CONCERNING S-31 (AND S-30)
-- UTILITY TAX REFORM --
DELIVERED BEFORE THE
SENATE BUDGET AND APPROPRIATIONS COMMITTEE
WEDNESDAY, MAY 21, 1997
COMMITTEE ROOM 4
STATE HOUSE ANNEX
TRENTON, NEW JERSEY

GOOD AFTERNOON, CHAIRMAN LITTELL AND MEMBERS OF THE COMMITTEE. I AM MAYOR MILLARD WILKINSON OF BERLIN BOROUGH. FOR THE PAST TWO YEARS, I HAVE SERVED ON THE LEAGUE OF MUNICIPALITIES' UTILITY TAX REFORM COMMITTEE. FOR EVEN LONGER THAN THAT, THE LEAGUE HAS BEEN WARNING STATE-LEVEL POLICY-MAKERS OF THE NEED FOR REFORM. WE ARE EXTREMELY PLEASED THAT THE LEGISLATURE IS PREPARED TO RESOLVE THIS ISSUE.

IN ORDER TO UNDERSTAND OUR POSITION ON S-31, I WILL NEED TO TALK A LITTLE BIT ABOUT ITS COMPANION BILL -- S-30. AND, WHILE WE REALIZE THAT S-30 IS NOT BEFORE YOU, TODAY; YOU ALL MUST REALIZE THAT THE TWO BILLS MUST MOVE TOGETHER AND MUST BOTH BE ENACTED, IF UTILITY TAX REFORM

IS TRULY TO BENEFIT THE PEOPLE AND THE BUSINESSES OF OUR GARDEN STATE.

FIRST, LET ME SAY THAT WE ARE COMMITTED TO TIMELY ACTION ON THE LEGISLATION. OUR POSITION WAS FORGED ON A BIPARTISAN BASIS. THIS ISSUE IS TOO IMPORTANT TO MUNICIPAL OFFICIALS, AND TO THE PROPERTY TAXPAYERS WHO THEY STRUGGLE TO SERVE, TO BE USED TO SERVE PARTISAN POLITICAL ENDS.

THE FACT IS THAT THE GROSS RECEIPTS AND FRANCHISE TAXES CAN NO LONGER DELIVER THE RELIABLE PROPERTY TAX RELIEF PUNCH, AS THEY HAVE IN THE PAST. FROM 1995 TO 1996, NEW JERSEY MUNICIPALITIES LOST $52 MILLION FROM THIS SOURCE. BUT FOR THE SEVERITY OF THE WINTER OF 1995-1996, THOSE LOSSES WOULD HAVE CONTINUED, THIS YEAR.

THE TAX POLICY CHANGES CONTAINED IN S-31 WILL HELP TO SOLVE THIS CRISIS. THIS IS A GOOD BILL. WITH JUST A FEW AMENDMENTS, WE WILL BE HAPPY TO GIVE IT OUR UNQUALIFIED SUPPORT, AND TO JOIN IN THE PUSH FOR ITS PASSAGE.

WE HAVE GIVEN TO THE COMMITTEE A FULL EXPLANATION OF THE NEED FOR THESE AMENDMENTS. I WILL, AT THIS TIME, GIVE YOU A BRIEF SUMMARY.

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FIRST, WE NEED EXPLICIT LEGISLATIVE RECOGNITION OF THE RIGHT OF MUNICIPALITIES TO CONTINUE TO ENFORCE EXISTING, AND TO NEGOTIATE FUTURE, HOST COMMUNITY BENEFIT CONTRACTS, FOR ENERGY AND TELECOMMUNICATIONS FACILITIES WITHIN THEIR JURISDICTIONS. BECAUSE OF THE ELIMINATION OF GROSS RECEIPTS AND FRANCHISE TAXES, AND BECAUSE OF OTHER PARTS OF OUR STATE'S TAX POLICY, HOST COMMUNITY BENEFITS ARE NEEDED TO PROTECT OUR RESIDENTIAL PROPERTY TAXES.

SECOND, LANGUAGE THAT WOULD SUBJECT MUNICIPAL ELECTRIC UTILITIES TO THE SALES TAX AND THE CORPORATION BUSINESS TAX, IF THEY DECIDE TO EXPAND THEIR SERVICE AREAS, WITHIN THEIR MUNICIPAL BOUNDARIES, NEEDS TO BE REMOVED. AS A PRACTICAL POINT, THIS WOULD PENALIZE ONE MUNICIPALITY -- THE CITY OF VINELAND. AND IT BENEFITS ONLY ONE INVESTOR-OWNED UTILITY -- ATLANTIC ELECTRIC. THE ABILITY OF VINELAND ELECTRIC TO EXTEND SERVICE THROUGHOUT THE MUNICIPALITY IS A VITAL PART OF THE CITY'S ECONOMIC DEVELOPMENT STRATEGY. THAT STRATEGY SHOULD NOT BE UNDERMINED BY THE PROVISIONS OF S-31.

THIRD, CERTAIN LANGUAGE IN THE BILL COULD BE READ TO PENALIZE ANY MUNICIPAL ELECTRIC UTILITY THAT CITES ANY NEW INSTALLATIONS, EVEN WITHIN ITS CURRENT SERVICE AREA. WE ARE CERTAIN THAT THIS IS NOT THE SPONSOR'S INTENT. WE URGE YOU TO CLARIFY THAT LANGUAGE.

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FOURTH, THE BILL CONTAINS LANGUAGE WHICH WOULD EXEMPT FUTURE TELECOMMUNICATIONS SERVICE PROVIDERS FROM THE SAME LOCAL PERSONAL PROPERTY TAX, CURRENTLY PAID BY BELL ATLANTIC AND OTHERS. IN THE INTEREST OF EQUITY AND FAIR COMPETITION, WE URGE THE LEGISLATURE TO PERMIT THE IMPOSITION OF THE SAME TAX ON ALL NEW ENTRANTS INTO THE COMPETITION FOR THE LOCAL EXCHANGE SERVICE MARKET.

WE HAVE ONE OTHER OBSERVATION ON S-31. AND THIS IS NOT A REQUEST FOR AMENDMENT.

S-31 WOULD, FOR THE FIRST TIME, SUBJECT PUBLIC SECTOR PURCHASERS OF GOODS AND SERVICES TO THE STATE'S SALES AND USE TAX. WHILE WE RECOGNIZE THE NEED FOR THIS PROVISION, AND APPRECIATE THE FACT THAT WE WILL ENJOY A SUBSTANTIAL NET REVENUE BENEFIT BECAUSE OF IT, WE STILL SEE THIS AS A DANGEROUS PRECEDENT.

ALL INVOLVED IN THE PROCESS MUST REALIZE THE UNIQUE SET OF CIRCUMSTANCES WHICH DICTATES OUR SUPPORT FOR THIS PROVISION, IN THE CONTEXT OF UTILITY TAX REFORM. LIKEWISE, ALL INVOLVED MUST REALIZE THAT ANY ATTEMPT TO EXTEND THIS PRECEDENT WILL MEET WITH OUR STRENUOUS RESISTANCE.

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WITH REGARDS TO S-30, THE "ENERGY TAX RECEIPTS PROPERTY TAX RELIEF ACT," WE URGE YOU ALL TO KEEP THESE FACTS IN MIND.

1. PUBLIC UTILITY GROSS RECEIPTS AND FRANCHISE TAXES ARE DESIGNED TO COMPENSATE MUNICIPALITIES FOR THE USE OF THE PUBLIC'S RIGHTS-OF-WAY AND FOR THE SERVICES PROVIDED BY MUNICIPALITIES TO UTILITY FACILITIES.

2. THE STATE, AT THE REQUEST OF THE UTILITIES, HAS STANDARDIZED THE TAX RATE AND MADE ITSELF THE COLLECTION AGENT FOR THESE TAXES.

3. THE DISTRIBUTION OF THE PROCEEDS TO MUNICIPALITIES IS NOT STATE AID. RATHER, IT IS THE CONVEYANCE, TO MUNICIPALITIES, OF REVENUES TO WHICH THEY ARE STATUTORILY AND CONSTITUTIONALLY ENTITLED.

IMPLICIT IN S-30 IS A STATE-LEVEL ACKNOWLEDGMENT OF THOSE FACTS. WE SINCERELY APPRECIATE THAT. THE "POISON PILL" PROVISION IS TESTIMONY TO THE LENGTHS YOU WILL GO TO PROTECT OUR PROPERTY TAXPAYERS WITH A BASIC LEVEL OF THE NEW UTILITY TAX REVENUES. AND IT IS TO THE SPONSORS' CREDIT THAT THEY HAVE INCLUDED SUCH NOVEL AND RELIABLE PROTECTION.

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S-30 NEEDS ONLY A FEW MODIFICATIONS TO EARN OUR UNQUALIFIED SUPPORT. AGAIN, THE COMMITTEE HAS BEEN PROVIDED WITH A FULL DESCRIPTION OF THOSE CHANGES. I WILL ONLY HIGHLIGHT THEIR PURPOSES.

THE AMENDMENTS WE SEEK ARE DESIGNED TO:

1. MAXIMIZE THE PROPERTY TAX RELIEF POTENTIAL OF THE "ENERGY TAX RECEIPTS PROPERTY TAX RELIEF ACT" BY INCREASING THE AMOUNT TO BE DISTRIBUTED, IN THE FIRST YEAR, TO THE AMOUNT DISTRIBUTED, PURSUANT TO ITS PREDECESSOR TAXES, DURING 1995 -- THE YEAR DURING WHICH OUR PROPERTY TAXPAYERS ENJOYED THE GREATEST BENEFIT FROM THOSE TAXES;

2. PROMOTE PREDICTABILITY BY PROVIDING A FORMULA FOR THE FULL DISTRIBUTION OF ENERGY AND TELECOMMUNICATIONS TAX REVENUES.

3. PROVIDE FOR INCREMENTAL INCREASES TO THE FUND, IN ORDER TO INSULATE OUR PROPERTY TAXPAYERS FROM THE EFFECTS OF INFLATION ON THE ABILITY OF THIS REVENUE SOURCE TO RESTRAIN FUTURE TAX INCREASES; AND

4. PREVENT PROSPECTIVE STATE SKIMS OF THE REVENUES DERIVED FROM THE UTILITY TAXES, WHICH WERE DESIGNED TO COMPENSATE OUR CITIZENS FOR

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THE PRIVILEGE GRANTED, TO THE UTILITIES, TO USE THE PUBLIC'S RIGHTS-OF-WAY, IN ORDER TO SECURE PRIVATE PROFITS.

I THANK YOU FOR YOUR TIME AND YOUR KIND ATTENTION.

I LOOK FORWARD TO WORKING WITH YOU ALL AND WITH THE SPONSORS, SO THAT OUR PROPERTY TAXPAYERS, AS WELL AS OUR UTILITY RATE PAYERS, CAN ENJOY THE BENEFITS OF UTILITY TAX REFORM, NEXT YEAR. AFTER ALL, THEY ARE THE SAME PEOPLE.

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League Conceptual Amendments to: S-31 (A-2825)

A. We need explicit legislative recognition of the right of municipalities to continue to enforce existing, and to negotiate future, Host Community Benefit (HCB) contracts with energy and telecommunications companies, locating facilities within their jurisdictions. These facilities impose unique burdens on municipal programs and services. Because they are not, or will no longer be, subject to franchise taxes, and because the provisions of the Business Retention Act will preclude real property taxation of all but a fraction of their full value, municipalities that host such facilities must have a means to cushion their impact on the tax bills of residential property owners. We are not asking the State to bear any part of this burden. All we ask is that we be given the opportunity to strike a bargain that is fair to the corporate entity and to our property taxpaying constituents, and to continue to enforce previously agreed to contracts, unless and until the taxpayer negotiates a new contract.

B. Language that would subject Municipal Electric Utilities to the Sales and Use Tax and the Corporation Business Tax, were they to expand their service areas within their municipal boundaries, needs to be removed. In point of fact, this would penalize only two municipalities--Vineland and Lavalette. And, as a practical point, it would only effect Vineland. Vineland created its electric utility some 80 years ago. It did so, because the city was considered too remote to be served by any profit-making, privately-owned utility. Over the years, both the municipality and the utility industry grew. Today, about two-thirds of the land area of Vineland is served by the municipal utility. The remaining third falls within the service area of Atlantic Electric. If the expansion of municipal service to that remaining area is made economically prohibitive, the residents of that part of the city would be denied the benefits of competitive rate-making, as between the municipal utility and Atlantic Electric.

Conversely, there is nothing in the bill that would prevent Atlantic Electric from "cherry picking" within Vineland Electric's service area. It appears that this section of the bill is explicitly designed to protect Atlantic Electric, at the expense of a municipal electric utility, which only exists to give its citizens dependable, reliable electric power, at the lowest possible rate. We see no State interest in this provision. And we see a strong local and citizen interest in preserving the municipal utility's ability to expand, within its municipal boundaries, free from any new state taxation. This violates the principals of Home Rule. State legislation should not circumscribe Vineland's current right to serve all of its citizens, in the manner that their elected representatives deem best. That includes the right, which every municipality has, heretofore, enjoyed to extend municipal power service to residents, throughout its geographic expanse, while maintaining its tax exemptions. The ability of Vineland Electric to expand service throughout

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(OVER)

the municipality is a vital component of Vineland's Economic Development Strategy. Urban aid communities, like Vineland, should be encouraged in their efforts to secure a more prosperous future for their property taxpayers. The language in the current bill benefits Atlantic Electric, at the expense of the people of Vineland. It needs to be removed.

C. Along the same lines, certain language may penalize any municipal electric utility that places any new installations, even within its service area/municipal boundaries. We are certain that this is not the bill's intent. We urge the Legislature to adopt clarifying language.

D. Language at Section 60 of the bill, on page 58 at lines 20 and 27, would effectively exempt future local telecommunications service providers from the same local personal property tax, which is currently paid by Bell Atlantic. This is inequitable and anti-competitive. The legislature can correct this in one of two ways. It can similarly exempt Bell Atlantic from the tax. If it does so, it will deny municipal government, State-wide, of over $100 million. Our property taxpayers should not be asked to absorb that burden. The legislature should, instead, permit the imposition of the same tax on all new entrants into the competition for the local exchange service market. This creates a "Level Playing Field," as it benefits, rather than harms, our local property taxpayers.

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Statement regarding the League's proposed Amendments to: S-30 (A-2824)

It is the purpose of these Amendments to:

1. Maximize the Property Tax Relief potential of the "Energy Tax Receipts Property Tax Relief Act" by increasing the amount to be distributed, in the first year, to the amount distributed, pursuant to its predecessor taxes, during 1995--the year during which our property taxpayers enjoyed the greatest benefit from those taxes;

2. Provide for incremental increases to the fund, in order to insulate our property taxpayers from the corrosive effects of inflation on the ability of this revenue source to restrain future tax increases; and

3. Prevent prospective State skims from the revenues derived from Utility taxes, which were designed to compensate our citizens for the privilege granted, to the utilities, to use the public's rights-of-way, in order to secure private profits.

League Recommended Amendments to:

S-30 (A-2824)

Section	Page	Line	Amendment
2a.	1	18	Delete "the sum of $730,000,000.00" and insert "All revenue derived"
2a.	1	35	Delete "$730,000,000.00" and insert "the amount required paid to the municipalities of the State pursuant to Sections 2.b. (1) and 2.b. (2), of this bill"
2b. (1)	2	3-4	Delete "and during each fiscal year thereafter"
2b. (1)	2	6	Delete and insert "$730,000,000.00" and insert "$782,000,000.00"
2b. (1)	2	7-23	Delete and insert new subsection (2). "In the State Fiscal Year 1999 and in each fiscal year thereafter, there shall

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			be paid from the "Energy Tax Receipts Property Tax Relief Fund" to the municipalities of the State a sum equal to the amount paid in the previous State fiscal year plus an amount to be determined by applying the index rate for the fourth quarter of the preceding calendar year, as promulgated, by the Director of the Division of Local Government Services, pursuant to NJSA 40A:4-45.1a, to the amount paid in the previous State fiscal year." New subsection (3) - "The entire amount to be paid to the municipalities of the State, pursuant to Section 2.b. (1) and 2.b. (2) of this bill, shall be allocated to each municipality by the following formula: Select the largest annual amount received or to be received by a municipality from the proceeds of the public utilities franchise and gross receipts taxes under P.L. 1940, c.4 (C.54:30A-16, et seq.) and P.L. 1940, c.5 (C.54:30A-49, et seq.) inclusive of any amount received pursuant to any supplemental appropriations, in the calendar year 1995, 1996 or 1997; divide that amount by the total of all amounts so received by all of the municipality of the State; and multiply the resultant quotient by the total amount to be paid to the municipalities of the State, pursuant to Section 2.b. (1) and 2.b. (2) of this bill."
3.a.	2	33	Delete "$730,000,000.00" and insert "the total amount to be paid to the municipalities of the State, pursuant to Sections 2.b (1) and 2.b. (2), of this bill"
3.b.	2	43	Delete "after" and insert "before."
Somewhere			A provision needs to be added which would hold Salem County harmless, as well. Salem gets a portion of Lower Alloways Creek's Distribution. If the county is not held harmless, all of the county's municipalities will be asked to raise the taxes needed to fill the gap.
Statement	3-4		(The Statement would need to be changed to reflect the impact of the above amendments.)

Township of Lacey
818 W. LACEY ROAD
FORKED RIVER, N.J. 08731
(609) 693-1100

ASSEMBLY BILL 2825

Hi! My name is Jorge Rod, Administrator from Lacey Township, Ocean County, New Jersey. In March of 1996, the New Jersey Board of Public Utilities (BPU) and the Department of Treasury released the findings and recommendations of their Joint Task Force on Energy Tax Policy. The group had met numerous times during the previous twelve months, and had invited members of the public, including representatives from the Lacey Township Economic Development Commission and the League of Municipalities to help guide the discussions. Based upon their study of the issues, and after hearing public comments, the Joint Task Force recommended a major overhaul of the State's current system of taxing utility and non-utility suppliers of natural gas and electricity.

The Joint Task Force identified several reasons why it is imperative that the current energy tax system be changed. First, reforms are necessary to prevent the continued erosion of future gross receipts and franchise tax revenues available for allocation to municipalities, due to increased competition in the State's natural gas and electricity markets. Second, New Jersey's energy taxes are among the highest in the nation, hindering the State's ability to attract and retain businesses. Third, a system which taxes utility and non-utility suppliers differently can comprise economic efficiency

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and lead to higher costs for consumers as the State moves toward more competitive electricity and natural gas markets.

With so much at stake, the issue of deregulation of the electric industry will neither fade away nor be simple to resolve.

Again, let me state to you the gross receipts and franchise tax revenue is going to diminish at a very fast rate, and this legislation is designed to fix this problem permanently.

I support this very important legislation along with the Mayor and Township Committee.

Jorge Rod

Administrator for Lacey Township

TESTIMONY

ENERGY TAX REFORM LEGISLATION

Submitted by: Richard Fritzky
President
Meadowlands Regional Chamber of Commerce

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As the world changes, we need to adjust the maps that we use if we are to maintain our balance. The Energy Tax Reform bill that is now before you is just that -- a response to change, an adjustment that will help us keep our balance and provide a fair and level playing field in what can fairly be described as an incredibly important energy retail marketplace.

The legislation, before you, of course, is not driven by fairness, equity and level competitive impulses alone but such factors and arguments should be enough to warrant its passage. Still, it is much more than that. It is a **pro economy bill**, an **economic development** and **retention bill.** And it is ultimately a **"lower energy cost" bill** both for businesses and consumers alike.

The present 13 percent Gross Receipts and Franchise tax that the State's public utilities tack on to the retail purchase of natural gas and electricity is clearly deficient.

- **Deficient** because it places New Jersey at a competitive disadvantage. Since we now have the second highest rate in the nation, it forces New Jersey customers to pay inordinately more.

- **Deficient** because the national average is 7.7%.

- **Deficient** because it is no longer an appropriate mechanism in what will be an increasingly competitive environment. Simply put, the revenue raised has been dropping as more businesses purchase energy from non utility providers and independent producers who are not required to collect the tax.

- **Deficient** because residential customers will soon have the same option.

- **Deficient** because, if unchanged, it places the established utilities, who have invested in and driven the economy of our State forward, in a disadvantaged competitive position. The playing field should and must be leveled for all energy retailers.

The financing formula for replacing the GR & FT is sound, it assures a stable revenue source for municipalities as New Jersey moves to a competitive energy market and it inevitably leads to what will be a 45 per cent reduction in the energy tax rate in five years.

It assures fairness in the industry, lower costs for customers, property tax relief for municipalities and a better competitive economic position for the State as a whole.

It is a win-win formula for New Jersey that will drive investment, generate jobs and sustain economy. Not only will it help us keep our balance, but it will also place us on the right road with the right map.

Simple-fair-objective.

Good for the provider - Good for the User - Good for the State.

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TESTIMONY OF ENR0N CORPORATION
TO THE SENATE BUDGET AND APPROPRIATIONS COMMITTEE
PERTAINING TO REVISIONS TO THE ENERGY TAX LAWS
MAY 21, 1997

My name is Steven Montovano, and I am Director, State Regulatory Affairs for the Enron Corporation. I want to thank you for the opportunity to testify on the pending legislation to revise New Jersey's energy taxation policies.

Enron sells both natural gas and electric, and in New Jersey currently sells natural gas to New Jersey business customers at competitive prices. In my role at Enron, I am responsible for implementing competitive utility tariffs on a national basis. For 15 years prior to this, I worked at two major gas utilities and one state regulatory agency with the responsibility for developing and reviewing rates and tariffs. Prior to my employment at Enron, I was responsible for the development of rates and tariffs at Elizabethtown Gas Company.

There is one critical point I would like to make with you today, and this is it: For the emerging competitive marketplace to offer all of the cost savings possible to business and residential customers, neither utilities nor non-utilities can be given any competitive business advantage.

The tariff rates charged by New Jersey utilities to customers who purchase their natural gas from alternative suppliers favor the customers who choose to buy gas from that utility. Here is the problem: Under existing utility rates, customers who choose to purchase their gas from companies like Enron are still required to pay the utilities for unnecessary and duplicative services. If you

do not address this inequity, the harm to the competitive marketplace will be irreparable.

All utility customers today basically pay for three things when they purchase their gas: the cost of the gas, the Gross Receipts and Franchise Tax of $.76 per unit, as well as a delivery charge to the utility.

Compare this to Enron customers: they pay Enron for the cost of their gas, the Gross Receipts and Franchise Tax to the utility of approximately $.16 per unit, as well as a delivery charge.

However, customers who buy their gas from a non-utility supplier pay the utility a premium to do so, even though these same customers receive less service from the utility than they did before. This is so because Enron, rather than the utility, now manages the customer's natural gas needs, including providing the gas, billing, and other administrative services. Yet, the utility continues to bill for these services, even though alternative suppliers such as Enron provide the service.

One might argue that the non-utility customer currently receives a benefit because of the reduced Gross Receipts and Franchise tax. However, although the customer pays the lower tax, the true benefit goes to the utility through the higher rate it charges to that customer to deliver the gas -- not to provide any services to the customer.

This legislation properly corrects the tax inequity. However, its silence on the rate inequity that I have discussed with you today will stifle the development of a competitive marketplace.

Without a competitive marketplace, the New Jersey economy, and, therefore, energy demand will not grow as assumed by this legislation, and the TEFA will become permanent.

Under this bill, the Gross Receipts and Franchise Tax is eliminated, and all customers, both utility and non-utility pay the same energy tax of $.76 per unit. Both customers continue to pay different delivery charges to the utilities. While this may appear to be fairer, non-utility customers lose the credit that they previously received from the Gross Receipts and Franchise Tax which offset the higher delivery costs that they paid to the utility. The impact of this legislation (as written, and without resolution of the tariff issues), upon the average small business owner is reflected on the attachment to this testimony.

This attachment, which represents the demand of a typical pizza parlor served by Enron, clearly shows that today this customer pays $10,383 annually in total gas charges to Enron and the utility. In the first year after this bill becomes effective, the Enron customer will pay an additional $900 in taxes, raising its annual gas bill to $11,312. Even after the TEFA expires in year 5, this customer will pay $600 more per year in taxes than they are paying today, while receiving the same level of service. By the time the TEFA is phased out, assuming this customer remains an Enron customer, it will have paid approximately $3,500 in additional taxes.

In addition to that, this customer will still be required to pay the utilities for the services previously described that they

no longer receive from that utility.

At the same time, a similar pizza parlor served by the utility, will enjoy a tax reduction in an equivalent amount and will not pay more for the services that they receive. The "Level Playing Field" that this bill is proposed to create will tilt clearly in the utilities' favor and will drive the pizza parlor as well as all other customers back to the utility.

This bill as drawn will force non-utility suppliers to other states where the inequities that I have described do not exist. In the absence of competition, the utilities will remain in the market, charging monopoly prices for monopoly services. There will be no cost savings for New Jersey consumers, who currently pay among the nation's highest rates for their energy supply.

Thank you for listening to our comments, I would be happy to address any questions that you may have.

KEY POINTS OF ENRON'S TESTIMONY
BEFORE THE SENATE BUDGET AND APPROPRIATIONS COMMITTEE
MAY 21, 1997

For deregulation to offer all of the cost savings possible to business and residential customers, neither utilities nor non-utilities can be given any competitive business advantage.

The tariff rates charged by utilities to non-utility customers served by companies like Enron, favor the utilities by allowing them to charge rates for services they no longer provide. Because non-utility customers will pay the same energy tax as utility customers under this legislation, this will result in a competitive disadvantage for non-utility companies and higher costs to non-utility customers.

Enron urges this committee to mandate in this legislation that the BPU address the inequities contained in the utilities' tariffs prior to implementing any change in the existing tax laws for natural gas customers.

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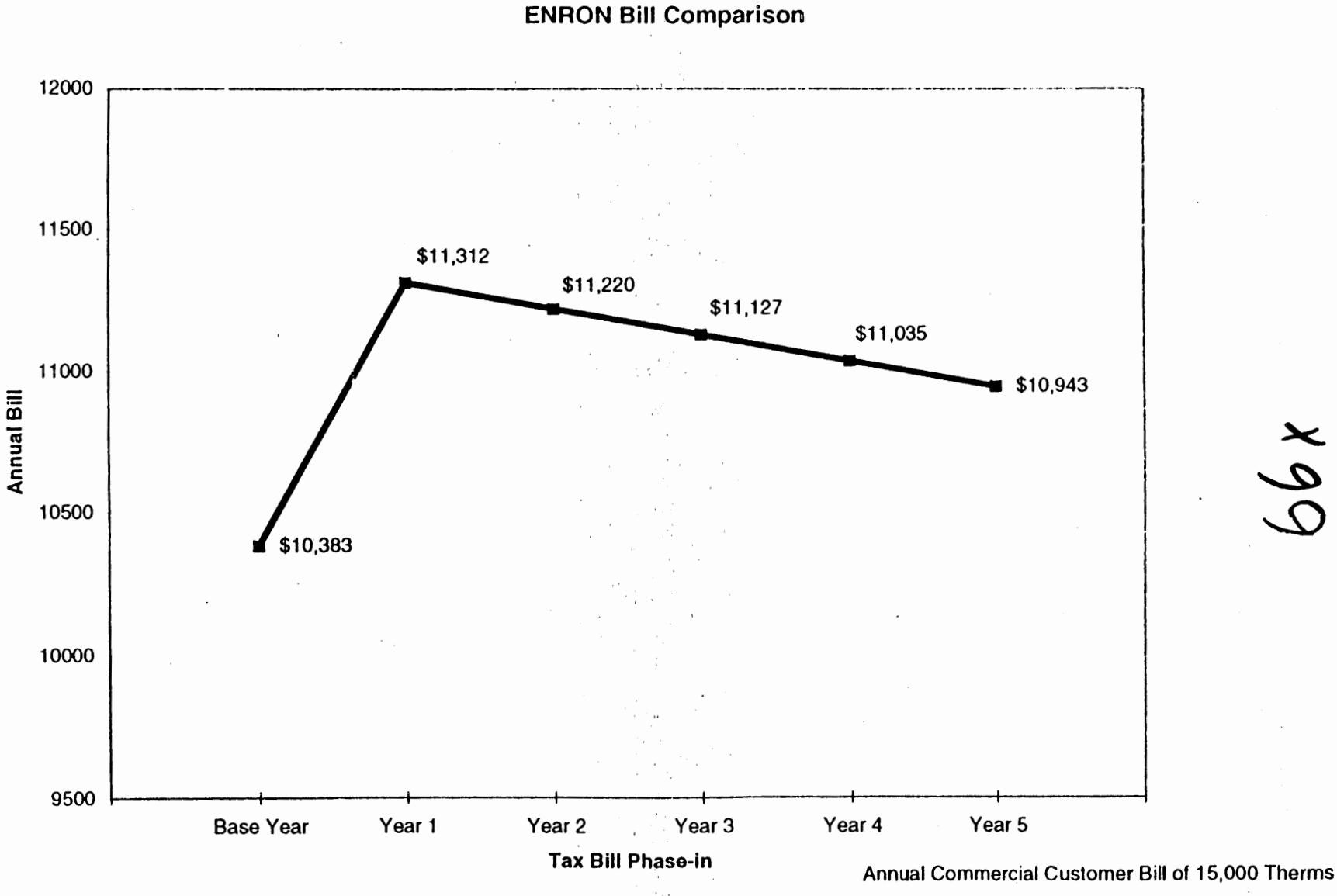
ENRON Bill Comparison
12000
11500
11000
10500
10000
9500
Annual Bill
$10,383
$11,312
$11,220
$11,127
$11,035
$10,943
Base Year
Year 1
Year 2
Year 3
Year 4
Year 5
Tax Bill Phase-in
Annual Commercial Customer Bill of 15,000 Therms

PROPOSED AMENDMENT BY ENRON CORPORATION
TO S.31

Section 72

By this and related enactments of law, it is the intent of the Legislature to promote the development of a fully competitive and robust marketplace for the sale of natural gas and electric to New Jersey consumers. Accordingly, one purpose of this Act is to eliminate the advantage that has been enjoyed by the customers of non-utility suppliers of natural gas occasioned by the inapplicability of the Gross Receipts and Franchise Tax ("GRFT") to sales of natural gas by non-utility suppliers.

The repeal of the GRFT and implementation of the energy tax structure set forth in this Act will assure the elimination of the GRFT differential that has been included in, and therefore increases, utility rates to customers. However, these utility rates must also be simultaneously examined and, as appropriate, revised to eliminate any advantages that they currently afford to utilities so as to further promote fair competition in the deregulated energy marketplace. The utility rates shall also be examined and, as appropriate, adjusted in conjunction with the GRFT revisions in order to prevent rate increases to customers that currently obtain their energy from non-utility suppliers.

It appears to the Legislature that Utility Local Distribution

Company ("LDC") unbundled gas transportation tariffs, as previously approved by the Board of Public Utilities, contain discriminatory transportation charges that favor LDCs over non-utility suppliers. Any such advantages or excessive charges, to the extent that they exist, are inconsistent with the Legislature's goal to establish a fully competitive energy marketplace that will provide necessary rate relief to New Jersey consumers. It is, therefore, appropriate that all such tariff-related issues be addressed and resolved simultaneously with the resolution of any advantages that resulted from the State's former energy taxation policies.

The Board of Public Utilities is directed to convene a proceeding to review all utility natural gas transportation tariffs and to conduct a complete cost of service review regarding natural gas transportation rates. The purpose of the proceeding shall be to determine whether the LDC's bundled tariffs should be further unbundled to assure that equivalent transportation rates are charged to customers of non-utility suppliers and the LDCs. The Board of Public Utilities shall assure that (1) all natural gas transportation rates shall be cost-based and fully delineated; (2) all duplicative and non-transportation related costs are eliminated from all transportation tariff rates; (3) consumers pay only for the level of service that they actually receive; and (4) equality of rate treatment is afforded to all natural gas suppliers and transportation customers.

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The Board of Public Utilities shall issue a Final Order that shall direct each affected LDC to file a revised tariff that eliminates all discriminatory, excessive or duplicative charges and assures fair competition in the sale of natural gas. The provisions of this Act that are applicable to the sale of natural gas shall become effective upon the approval, by the Board of Public Utilities, of all appropriate revised utility gas transportation rate tariffs.

69X

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CHARLES WOWKANECH LAUREL BRENNAN

TESTIMONY
of the
NEW JERSEY STATE AFL-CIO
before the
SENATE BUDGET AND
APPROPRIATIONS COMMITTEE
May 21, 1997

SUPPORT S-31
"ENERGY AND TELECOMMUNICATIONS TAX REFORM"

The New Jersey State AFL-CIO strongly supports the replacement of Gross Receipts and Franchise Tax (GR&FT) as ***S-31 DiFrancesco/Inverso*** provides for. The sponsors intend ~~A-2825~~ to prepare the way for a smooth transition from GR&FT and the regulated era, to an open market and equal tax for all providers. It appears to allow the utilities to stay in business while serving many interests of taxpayers, rate payers, municipalities and the state. The positive provisions of the bill, and companion legislation, will provide the following:

- A statutory increase in the guaranteed municipal share of tax revenue to $730 million;

70%

- A guaranteed revenue source to municipalities as the transition to a deregulated energy and telephony market moves forward;

- Ensure equitable tax rates to all providers while it grandfathers certain tax commitments to existing or permitted co-generators;

- The forty five percent energy tax cut will help keep New Jersey energy producers in business and keeping residents employed, with proper conditions, in high skill, high wage Jersey Jobs;

- Provide a level playing field upon which all may come to play, while New Jerseyans enjoy the ability to choose the best quality, most economical energy or telecommunications provider.

It is understood GR&FT must be revised or the existing power companies will be unable to produce energy to compete with out of state providers. However, the legislature cannot ignore that even the incumbent monopoly producers can easily make the transition to resellers, while purchasing energy produced at Mid-West coal fired plants. This activity will result in ever increasing excess generating capacity at our New Jersey plants which will trigger more closings and job loss. Nationally we have experienced large job losses due to the movement of jobs to Mexico under NAFTA. Look around us here in Trenton. The best we can do is turn solid well built industrial plants building everything from air conditioners to automobiles, into retail malls and markets. Our responsibility is to collectively find a way to ensure the existing power companies do not use the pollution spewing Mid-West power plants, as American manufacturers have used NAFTA and lax or non-existent Mexican conditions and laws, to lay off New Jersey workers due to excess capacity. We recognize the legislature may not wish to legislate job protections, but we urge

you to consider the results of this legislation may also include; increased pollution as Mid-West Coal fired plants increase production; decreased tax revenue due to job losses and a deteriorating standard of living in our state. We must work together to ensure the prevailing winds which carry the pollution from west to east stop forcing us to close our plants and lose our jobs due to air pollution from the west. We will work with all parties to ensure the goal of a truly level playing field is attained.

It seems some of the mistakes made in other industries as they deregulated, may be avoided here. Everyone may want cheaper energy, but if there is no one left here working to consume it, what good is the cheaper rate. It is hoped the committee works to ensure this legislation does not provide any amendments granting special privilege to newcomers or penalties to established providers ***who, in the public interest,*** have built, operated and invested in physical plant and service under previous statute.

Please note, we ask only that the rules of the game be applied to all participants equally. Consideration should be given to support for a regulation, federal or state enforceable by tariff or other mechanism, which provides that power cannot be sold in New Jersey from sources with lower safety, health, or labor standards than those in effect in New Jersey. Our Unions and Unionized Companies are confident that when given the same set of rules, we will more than hold our own in the competitive market. We trust the committees intent is to open the markets on a fair and equal basis not just to business and consumers, but to workers and their families as well.

In conclusion, although deregulation in other industries have historically proven to be catalysts for the lowering standards of living for workers and their families, we believe without this legislation existing providers will be out of business and our members out of work. Therefore we respectfully request the committee support the legislation.

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TESTIMONY BEFORE THE
SENATE BUDGET AND APPROPRIATIONS COMMITTEE
REGARDING THE GROSS RECEIPTS AND FRANCHISE TAX
SENATE BILL 31

MAY 21, 1997

GOOD AFTERNOON CHAIRMAN LITTLE AND MEMBERS OF THE COMMITTEE. MY NAME IS BRUCE E. FLAEMIG I AM A SENIOR COMMUNICATIONS TECHNICIAN AND A MEMBER OF LOCAL UNION 210. I WORK FOR ATLANTIC ELECTRIC, AN INVESTOR OWNED ELECTRIC UTILITY SERVING APPROXIMATELY A MILLION PEOPLE IN SOUTHERN NEW JERSEY.

AS A CITIZEN OF NEW JERSEY AND A MEMBER OF LOCAL UNION 210 I AM PLEASED TO PARTICIPATE IN THIS HEARING BECAUSE OF THE IMPORTANCE THIS ENERGY TAX POLICY WILL PLAY ON THE LIVES OF NEW JERSEY CITIZENS OUR CUSTOMERS AND MY FELLOW WORKERS.

PRESENTLY, UTILITIES ANNUALLY PAY APPROXIMATELY 13 PERCENT OF THEIR TOTAL REVENUES TO THE STATE TREASURY IN THE FORM OF A GROSS RECEIPTS AND FRANCHISE TAX. THE

STATE DISTRIBUTES A PORTION OF THIS TAX AMOUNT TO MUNICIPALITIES. UNDER THE CURRENT LAW, NON-UTILITY PROVIDERS AND UTILITIES LOCATED OUTSIDE OF NEW JERSEY ARE NOT REQUIRED TO PAY THE GROSS RECEIPTS AND FRANCHISE TAXES TO NEW JERSEY. THIS HAS RESULTED IN LESS TAX COLLECTED FOR DEREGULATED NATURAL GAS. BEGINNING IN OCTOBER 1998, WITH THE IMPLEMENTATION OF RETAIL ELECTRIC ACCESS, NEW JERSEY ENERGY USERS WILL BE ABLE TO PURCHASE ELECTRICITY FROM ENERGY PROVIDERS OTHER THAN THOSE IN THIS STATE. UNDER THE CURRENT LAW, THESE ENERGY PURCHASES WILL NOT BE SUBJECT TO THE GROSS RECEIPTS AND FRANCHISE TAX. IF THE EXISTING NEW JERSEY ENERGY TAX POLICY IS NOT CHANGED, THE STATE AND MUNICIPALITIES WILL BE ADVERSELY EFFECTED.

AS A CITIZEN AND A MEMBER OF LOCAL UNION 210, I SUPPORT SENATE BILL 31. IT WILL LOWER THE NEW JERSEY CUSTOMER GROSS RECEIPTS AND FRANCHISE TAX BURDEN BY APPROXIMATELY FORTY FIVE PERCENT UPON FULL IMPLEMENTATION. THIS WILL ALLOW FOR ECONOMIC DEVELOPMENT AND FAIR COMPETITION OF UTILITIES IN AND

OUT OF THE STATE, WHILE INSURING NO FURTHER DECLINE OF ENERGY TAX REVENUES TO MUNICIPALITIES.

I AGREE WITH THE BILL'S APPROACH TO SUBSTITUTE THE GROSS RECEIPTS AND FRANCHISE TAX WITH A USE AND SALES TAX OF APPROXIMATELY 6%, A 9% CORPORATE BUSINESS TAX ON NET INCOME AND A TRANSITIONAL ENERGY FACILITY ASSESSMENT WHICH WILL MAKE UP THE DIFFERENCE IN THE FIRST YEAR, THEN PHASE OUT IN THE NEXT FIVE YEARS.

THE SALES TAX APPROACH IS A POSITIVE STEP IN THE RIGHT DIRECTION, LEVELING THE PLAYING FIELD FOR ENERGY PRODUCERS IN AND OUT OF THE STATE. AS THE ENERGY TAX SITUATION STANDS NOW, ENERGY PRODUCERS OUTSIDE OF NEW JERSEY HAVE AN UNFAIR ADVANTAGE. THE STATE, LOCAL MUNICIPALITIES, AND WORKERS FOR THE ENERGY PRODUCERS IN THIS STATE WILL LOSE IF THERE IS NOT EQUITY IN COMPETITION. SURROUNDING STATES ALSO HAVE LOWER ENERGY TAXES THAN NEW JERSEY. IT IS VERY IMPORTANT THAT THE TRANSITIONAL ENERGY FACILITY ASSESSMENT BE PHASED OUT AS SOON AS POSSIBLE.

COMPETITION IS GOOD FOR THE STATE AND IT'S PEOPLE. AS A CONSUMER, I WOULD LIKE TO PAY A FAIR PRICE FOR

CLEAN ENERGY. AS A TAXPAYER, I DO NOT WANT THE BURDEN OF INCREASED TAXES DO TO UNFAIR COMPETITION. AS A WORKER I WANT TO WORK IN A FAIR, COMPETITIVE ENVIRONMENT.

I WOULD LIKE TO THANK YOU FOR GIVING ME THE OPPORTUNITY TO PARTICIPATE IN THIS PROCEEDING.

BRUCE E. FLAEMIG
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TESTIMONY OF

JON P. SPINNANGER
DIRECTOR - GOVERNMENT RELATIONS

BELL ATLANTIC - NEW JERSEY

BEFORE THE SENATE BUDGET AND APPROPRIATIONS COMMITTEE

PUBLIC HEARING CONCERNING SENATE BILL NO. 31

MAY 21, 1997

GOOD MORNING. THANK YOU FOR THE OPPORTUNITY TO ADDRESS THIS COMMITTEE CONCERNING SENATE BILL 31. BELL ATLANTIC ENTHUSIASTICALLY SUPPORTS THIS LEGISLATION. WE COMMEND THE ADMINISTRATION AND LEGISLATURE FOR RECOGNIZING THE NEED FOR NEW JERSEY TO CHANGE THE WAY IT TAXES ENERGY AND TELECOMMUNICATIONS UTILITIES. THE CURRENT SYSTEM HAS FAILED TO KEEP PACE WITH THE TRANSITION FROM ENERGY AND TELECOMMUNICATIONS MONOPOLY TO COMPETITION.

FOR TELECOMMUNICATIONS, THIS LEGISLATION IS AN IMPORTANT STEP TOWARD REALIZING THE PROMISE OF INDUSTRY REFORM. THE SINGLE OVERRIDING GOAL OF THE FEDERAL TELECOMMUNICATIONS ACT OF 1996 IS TO OPEN MARKETS AND CREATE A LEVEL PLAYING FIELD THAT ALLOWS FULL AND FAIR COMPETITION AMONG ALL PROVIDERS OF TELECOMMUNICATIONS SERVICES. THE OLD

MONOPOLY SYSTEM, ALREADY ENDED BY MARKET AND TECHNOLOGICAL FORCES, WAS STATUTORILY ENDED IN 1996.

PASSAGE OF THE FEDERAL ACT GAVE LOCAL TELEPHONE COMPANY COMPETITORS - - LONG DISTANCE COMPANIES, FOR EXAMPLE - - THE ABILITY TO ENTER THE LOCAL TELEPHONE SERVICE MARKET IN ADVANCE OF LOCAL TELEPHONE COMPANIES BEING ABLE TO ENTER THE LONG DISTANCE MARKET. LOCAL TELEPHONE COMPANY COMPETITORS ALSO WON EXPANDED COMPETITION IN THE LOCAL TOLL MARKET. FOR ALMOST THREE YEARS -- SINCE JULY 1, 1994, WHEN THE BAN ON LOCAL TOLL COMPETITION ENDED IN NEW JERSEY - - PROVIDERS OF TELECOMMUNICATIONS SERVICES HAVE BEEN AUTHORIZED TO OFFER CUSTOMERS ALTERNATIVES TO BELL ATLANTIC'S LOCAL TOLL SERVICE.

MAY 5, 1997 MARKED THE BEGINNING OF FULL-BLOWN SHORT DISTANCE TOLL COMPETITION IN THIS STATE. TELEPHONE CUSTOMERS ARE ABLE TO SELECT THEIR LOCAL TOLL SERVICE COMPANY JUST AS THEY SELECT THEIR LONG DISTANCE CARRIER. OUR COMPETITORS ARE AGGRESSIVELY ATTEMPTING TO WOO OUR CUSTOMERS.

WITH SUCH VIGOROUS TELECOMMUNICATIONS COMPETITION UNDER WAY, NOT ONLY WOULD LOCAL TELEPHONE COMPANIES LIKE BELL ATLANTIC BE HARMED BY MAINTAINING THE CURRENT TAX STRUCTURE. MUNICIPAL TAX REVENUES ALSO ARE AT RISK. THE CONTINUING DECLINE IN ENERGY MUNICIPAL GROSS RECEIPTS TAX REVENUES ILLUSTRATES THE INEVITABLE RESULT OF TAXING COMPETITORS DIFFERENTLY. MUNICIPALITIES NO LONGER CAN COUNT ON "UTILITY" TAXES SELECTIVELY IMPOSED ON A FEW COMPANIES TO BE A STABLE SOURCE OF REVENUES WHEN THESE TAXPAYERS' CUSTOMERS ARE BEING COURTED BY COMPETITORS THAT ARE TAXED DIFFERENTLY.

AS LONG AS ONLY LOCAL TELEPHONE COMPANIES PAY GROSS RECEIPTS TAXES, THE PROVISION OF LOCAL TELEPHONE SERVICE BY NEW COMPANIES WILL SHIFT TAX REVENUES FROM THE UTILITY TAX BASE TO THE CORPORATE BUSINESS TAX BASE -- AND THUS FROM MUNICIPALITIES TO THE STATE.

SENATE BILL 31 ADDRESSES THIS ISSUE, AND BELL ATLANTIC APPRECIATES THIS INITIATIVE TO HELP REMEDY THE TELECOMMUNICATIONS TAX PROBLEM. REPLACEMENT OF THE GROSS RECEIPTS TAX CURRENTLY IMPOSED ON LOCAL TELEPHONE COMPANIES WITH THE CORPORATE BUSINESS TAX PAID BY ALL OTHER PROVIDERS

OF TELECOMMUNICATIONS SERVICES IS A NECESSARY FIRST STEP TOWARD TAXING COMPETITORS EQUALLY.

UNDER THIS CHANGE, THE AMOUNT OF CORPORATE BUSINESS TAXES BELL ATLANTIC WILL PAY IN EFFECT SHOULD APPROXIMATE THE AMOUNT OF TAXES THE COMPANY NOW PAYS UNDER THE GROSS RECEIPTS TAX. THESE PAYMENTS WILL BE ALLOCATED TO THE "ENERGY TAX RECEIPTS PROPERTY TAX RELIEF FUND" ESTABLISHED BY SENATE BILL 30 AND WILL CONTINUE TO BE DISTRIBUTED TO MUNICIPALITIES. BELL ATLANTIC FULLY SUPPORTS THIS PLAN TO ENSURE A STABLE MUNICIPAL REVENUE STREAM.

ALTHOUGH BELL ATLANTIC ENDORSES GROSS RECEIPTS AND FRANCHISE TAX REFORM, WE ARE CONCERNED ABOUT TWO PROVISIONS IN THE PROPOSED LEGISLATION - - SECTIONS 60 AND 69 WHICH PERTAIN TO TELECOMMUNICATIONS. WE BELIEVE THAT THESE CONCERNS ARE IMPORTANT TO THIS COMMITTEE'S DELIBERATIONS.

FIRST, REGARDING SECTION 60 - - SECTION 60 PERTAINS TO THE APPLICABILITY OF THE LOCAL PERSONAL PROPERTY TAX (PPT). ALTHOUGH IT WOULD BE PREFERABLE TO CONSIDER THIS COMPLEX ISSUE SEPARATELY FROM GROSS RECEIPTS TAX REFORM AND ONCE

S-31 IS ENACTED, SECTION 60 DOES NOT PERMIT DISCUSSION OF THE PPT TO WAIT.

FOR BELL ATLANTIC, THE PPT IS A $100M TAX BURDEN THAT IS NOT BORNE BY OTHER PROVIDERS OF TELECOMMUNICATIONS SERVICES WITH THE EXCEPTION OF THE STATE'S OTHER LOCAL TELEPHONE COMPANIES, WARWICK VALLEY AND UNITED. PURSUANT TO SECTION 60, THIS TAX BURDEN WOULD NEVER BE APPLICABLE TO LOCAL TELEPHONE COMPANY COMPETITORS. ACCORDINGLY, THE CHANGE MADE TO THE EXISTING PPT STATUTE IN SECTION 60 CREATES A GROSS INEQUITY BETWEEN LOCAL COMPANIES AND OTHER TELECOMMUNICATIONS SERVICE PROVIDERS - - AND BETWEEN THE CUSTOMERS OF THESE COMPANIES.

THIS TAX DISPARITY NEEDS TO BE CORRECTED SOON TO AVOID THE DWINDLING MUNICIPAL TAX BASE AND CUSTOMER INEQUITIES CREATED BY THE CONTINUED IMPOSITION OF A CENTURY OLD TAX SYSTEM THAT DID NOT RESPOND TO COMPETITION IN THE ENERGY INDUSTRY. TO PROTECT MUNICIPALITIES FROM REVENUE LOSS AND ESTABLISH TAX PARITY, THERE IS NO REASON WHY LONG DISTANCE, CABLE, AND OTHER COMPANIES ENTERING THE LOCAL TELEPHONE SERVICE MARKET SHOULD BE TAXED DIFFERENTLY THAN COMPANIES HISTORICALLY CLASSIFIED AS LOCAL TELEPHONE COMPANIES.

ACCORDINGLY, THE PPT ALSO MUST BE REFORMED TO ENSURE THAT TELECOMMUNICATIONS COMPETITION IN NEW JERSEY IS WAGED ON A LEVEL PLAYING FIELD.

AT LEAST TWO POSSIBLE WAYS TO TAX COMPETITORS EQUALLY ARE TO (1) EXPAND THE PPT TO ALL TELECOMMUNICATIONS COMPANIES AUTHORIZED BY THE BOARD OF PUBLIC UTILITIES TO PROVIDE LOCAL TELECOMMUNICATIONS SERVICES OR (2) REPLACE THE PPT WITH A TAX THAT APPLIES EQUALLY TO ALL TAXPAYERS SELLING OR PROVIDING SIMILAR TELECOMMUNICATIONS SERVICES AND PRODUCTS.

AS DRAFTED, SECTION 60 OF S-31 PREVENTS ONE OF THESE ALTERNATIVES, THE EXPANSION OF PROVIDERS SUBJECT TO THE PPT. THIS OCCURS BECAUSE SECTION 60 EFFECTIVELY PROHIBITS THE IMPOSITION OF THE PPT ON LOCAL TELEPHONE COMPANY COMPETITORS. AS DRAFTED, THE LEGISLATION PROVIDES THAT THE PPT WOULD ONLY APPLY TO LOCAL TELEPHONE COMPANIES THAT PAID THE GROSS RECEIPTS AND FRANCHISE TAX AS OF APRIL 1, 1997.

PHILOSOPHICALLY, WE DO NOT ADVOCATE EXPANSION OF THIS TAX. IN FACT, OPTIMALLY, THE TELECOMMUNICATIONS SECTOR - - ONE OF THE STATE'S LEADING INDUSTRIES - - SHOULD NOT BE

SINGLED OUT TO PAY A TAX ON ITS PERSONAL PROPERTY INVESTMENT. SUCH A TAX IS INCONSISTENT WITH THE STATE'S "OPEN FOR BUSINESS" MESSAGE. YOU WILL RECALL THAT TAXATION OF THE PERSONAL PROPERTY OF OTHER BUSINESSES WAS REPEALED IN 1993 FOR ANY PROPERTY USED AFTER OCTOBER 1, 1993.

WE RECOGNIZE, THOUGH, THAT UNLIKE THE BUSINESS PERSONAL PROPERTY TAX PAID TO THE STATE, OUTRIGHT REPEAL OF THE PPT PAID TO MUNICIPALITIES IS NOT IMMEDIATELY FEASIBLE DUE TO THE IMPACT THAT SUCH A REPEAL WOULD HAVE ON MUNICIPAL REVENUES AND STATE BUDGET CONSIDERATIONS. CONSEQUENTLY, THE LEGISLATURE MIGHT DETERMINE THAT EXPANSION OF THE LOCAL PERSONAL PROPERTY TAX IS THE MOST ACCEPTABLE AND BALANCED WAY TO ESTABLISH TAX PARITY WITHIN THE TELECOMMUNICATIONS INDUSTRY. SECTION 60 WOULD NOT PERMIT SUCH AN APPROACH.

THUS, ABSENT THE OPTION TO DELETE SECTION 60 AND FULLY CONSIDER THE PPT ISSUE APART FROM THIS LEGISLATION, BELL ATLANTIC PROPOSES THE AMENDMENT ("I") ATTACHED TO THIS TESTIMONY. OUR AMENDMENT (1) DELETES THE LANGUAGE THAT WOULD PROHIBIT THE PPT FROM EVER BEING IMPOSED ON OTHER COMPANIES AUTHORIZED BY THE BOARD OF PUBLIC UTILITIES TO PROVIDE LOCAL TELECOMMUNICATIONS SERVICES AND (2) UPDATES

THE DEFINITION OF "LOCAL EXCHANGE TELEPHONE COMPANY" TO BE CONSISTENT WITH THE DEFINITION IN PUBLIC LAW 1991, CHAPTER 428, WHICH REVISED THE STATE'S REGULATORY SCHEME FOR TELECOMMUNICATIONS.

FORTUNATELY, S-31 DOES NOT NEED TO SOLVE THE PPT DILEMMA, BUT, IF SECTION 60 IS NOT AMENDED AS BELL ATLANTIC SUGGESTS, THE POSSIBILITY OF ATTAINING ANY FUTURE SOLUTION TO THE PROBLEM WILL BE SUBSTANTIALLY LESSENED.

THE SECOND PROVISION IN S-31 THAT BELL ATLANTIC WOULD LIKE TO ADDRESS IS SECTION 69. AS CURRENTLY WRITTEN, SECTION 69 CORRECTLY APPLIES ONLY TO ENERGY AND LOCAL TELEPHONE UTILITIES. THESE COMPANIES ARE EXCLUDED FROM PAYING LOCAL FEES BECAUSE MOST OF THE TAX REVENUES FROM THE CORPORATE BUSINESS TAX THAT IS IMPOSED ON THEM IN LIEU OF THE GROSS RECEIPTS TAX ARE STILL DISTRIBUTED TO THE MUNICIPALITIES. THIS PROVISION IS NECESSARY TO ENSURE THAT THE TAX REFORM CALLED FOR IN S-31 DOES NOT RESULT IN THE IMPOSITION OF ADDITIONAL REPLACEMENT TAXES BY LOCALITIES, I.E., IN DOUBLE TAXATION OF LOCAL TELEPHONE COMPANIES' RECEIPTS AT BOTH THE STATE AND LOCAL LEVEL.

LOCAL TELEPHONE AND ENERGY COMPANIES HAVE ALWAYS PAID FOR THEIR USE OF LOCAL RIGHT-OF-WAYS THROUGH THE STATE GROSS RECEIPTS AND FRANCHISE TAX WHICH WAS PASSED ON TO LOCAL GOVERNMENTS. THESE COMPANIES WILL CONTINUE TO BE A MAJOR SOURCE OF MUNICIPAL REVENUES THROUGH THEIR CORPORATE BUSINESS TAX PAYMENTS PAID TO THE STATE AND ALLOCATED TO THE "ENERGY TAX RECEIPTS PROPERTY TAX RELIEF FUND" ESTABLISHED BY S-30. THIS FUND WILL BE DEDICATED TO THE DISTRIBUTION OF FUNDS GUARANTEED TO MUNICIPALITIES OUT OF THE STATE'S TAXATION OF ENERGY AND LOCAL TELEPHONE COMPANIES.

IN ADDITION TO BEING THE ONLY TELECOMMUNICATIONS SERVICE PROVIDERS CONTRIBUTING TO THE TAX RELIEF FUND, ONLY LOCAL TELEPHONE COMPANIES PAY LOCAL PERSONAL PROPERTY TAXES TO LOCAL GOVERNMENTS. UNLIKE THE PPT AND, PURSUANT TO THIS LEGISLATION, THE CORPORATE BUSINESS TAX PAID BY LOCAL TELEPHONE COMPANIES, CORPORATE BUSINESS TAXES PAID BY OTHER TELECOMMUNICATIONS COMPANIES ARE NOT A SOURCE OF MUNICIPAL REVENUE FUNDING. THE CORPORATE BUSINESS TAXES PAID BY SUCH COMPANIES DO NOT GET DISTRIBUTED TO THE MUNICIPALITIES AND WILL NOT FUND THE "ENERGY TAX RECEIPTS PROPERTY TAX RELIEF FUND." FURTHERMORE, THESE COMPANIES DO NOT PAY THE PPT TO LOCALITIES.

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FOR THESE REASONS, BELL ATLANTIC BELIEVES THAT IT MAKES SENSE TO LEAVE SECTION 69 AS IT IS CURRENTLY DRAFTED. THIS PROVISION IS ESSENTIAL TO THE OVERALL PLAN FOR REVAMPING THE TAXATION OF ENERGY AND TELECOMMUNICATIONS PUBLIC UTILITIES.

IN ADDITION, WE ARE HOPEFUL THAT YOU WILL SUPPORT OUR PROPOSED AMENDMENT TO SECTION 60. THIS AMENDMENT IS IMPORTANT TO MUNICIPALITIES AND TO LOCAL TELEPHONE COMPANIES AND THEIR CUSTOMERS.

FINALLY, BELL ATLANTIC RECOMMENDS AMENDMENTS II THROUGH III D PROVIDED IN THE ATTACHMENT TO THIS TESTIMONY. THESE TECHNICAL AMENDMENTS WILL HELP TO CLARIFY CERTAIN PROVISIONS IN S-31.

UPON ENACTMENT OF S-31, WE LOOK FORWARD TO WORKING WITH THE LEGISLATURE AND INDUSTRY MEMBERS TO COMPLETE TELECOMMUNICATIONS TAX REFORM AND IMPLEMENT AN EQUITABLE AND NONDISCRIMINATORY TAX SYSTEM FOR NEW JERSEY. WE CONGRATULATE THE SPONSORS OF THIS LEGISLATION FOR SEEKING TO CHANGE A TAX SYSTEM THAT WAS DESIGNED FOR A MONOPOLY ENVIRONMENT. THIS SYSTEM SIMPLY DOES NOT WORK WELL IN A COMPETITIVE MARKETPLACE. WITH BELL ATLANTIC FACING COMPETITION IN ITS

LOCAL SERVICE MARKET AND SEEKING TO COMPETE IN NEW MARKETS SUCH AS LONG DISTANCE THIS YEAR, WE MERELY WANT TO BE TAXED THE SAME WAY AS OUR COMPETITORS. WE SEEK NO MORE FAVORABLE TREATMENT THAN OTHER COMPANIES.

FOR NEW JERSEY'S MUNICIPALITIES, PASSAGE OF THIS PROPOSAL WILL SHORE UP AND STABILIZE AN ERODING SOURCE OF MUNICIPAL REVENUES. REVAMPING THE WAY NEW JERSEY TAXES ENERGY COMPANIES WILL DECREASE ENERGY COSTS FOR RESIDENTIAL AND BUSINESS CUSTOMERS. IMPORTANTLY, LOWER ENERGY RATES WILL STRENGTHEN THE STATE'S ABILITY TO RETAIN AND ATTRACT BUSINESSES.

SENATE 31 IS LANDMARK LEGISLATION THAT DEMONSTRATES NEW JERSEY'S DETERMINATION TO UNDERSTAND, RESPOND TO, AND BENEFIT FROM COMPETITION WITHIN ITS CORE INDUSTRIES.

THANK YOU.

Attachment

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ATTACHMENT

BELL ATLANTIC -- NEW JERSEY
RECOMMENDED AMENDMENTS TO S-31

I. SECTION 60. -- (pp. 57-58)

Amend R.S.54:4-1 as follows:
"54:4-1. All property real and personal within the jurisdiction of this State not expressly exempted from taxation or expressly excluded from the operation of this chapter. . .and the tangible goods and chattels, exclusive of inventories, used in business of local exchange tele[phone]**communications**, telegraph and messenger systems companies, corporations or associations [that were subject to tax as of April 1, 1997 under P.L. 1940, c.4 (C.54:30A-16 et seq.) as amended], and shall not include any intangible personal property whatsoever whether or not such personalty is evidenced by a tangible or intangible chose in action except as otherwise provided by R.S.54:4-20. As used in this section, "local exchange tele[phone]**communications** company" means a telecommunications carrier, **authorized by the Board of Public Utilities to provide local telecommunications services, which** provid[ing]**es** dial tone and access to [substantially all] 51% of a local telephone exchange. . . ."

DELETE MATTER ENCLOSED [THUS]

Rationale: As currently drafted, the Personal Property Tax ("PPT") provision in the legislation will not permit full and fair telecommunications industry competition. Rather, the provision effectively prohibits the PPT from ever being imposed on local telephone company competitors. This prohibition occurs because the amendment included in the draft legislation provides that the PPT would only apply to local telephone companies that pay the Franchise and Gross Receipts Tax ("GR&FT") as of April 1, 1997. For Bell Atlantic - New Jersey, the PPT imposes a very substantial tax burden that presently is not and, pursuant to the amendment contained in Section 60, would never be applicable to our competitors. Bell Atlantic - New Jersey recommends (i) the deletion of the language that would effectively prohibit the PPT from ever being imposed on its competitors, and (ii) the substitution of language updating the definition of a local telephone company and clarifying that the tax is imposed on companies authorized by the BPU to provide local telecommunications services.

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II. **SECTION 52. (New Section) c.(3)(b) -- (page 53)**

Bell Atlantic - New Jersey recommends the addition of language providing for the expiration of the applicability of this section to telecommunications companies ("First Alternative") or, alternatively, the amendment of this section ("Second Alternative") as follows:

First Alternative:
Add new subsection to Section 52 -- (New Section) c.(3)(e):

"(e) Under no circumstances shall the uniform transitional utility assessment be imposed on telecommunications remitters under this act for any year commencing after December 31, 2002."

Rationale: It is discriminatory to impose the Uniform Transitional Utility Assessment only on local telephone companies (determined as of the time of enactment of this legislation), indefinitely, while their competitors are not subject to any such burden. The telecommunications industry is presently undergoing a period of monumental change and legislation reform should not impose tax burdens on certain telecommunications providers that are not borne by their competitors. Having the provision expire at the end of 2002 would alleviate the State's budget concerns without putting local exchange companies at a competitive disadvantage for too long a period of time. In addition, the expiration date coincides with the expiration of the TEFA provisions, which are applicable to the energy utilities.

Second Alternative:
Amend Section 52 -- (New Section) c.(3)(b):

"(b) for telecommunications remitters shall not exceed [the greater of (1)] 50% of the tax shown on the remitter's corporation business tax return, or tentative return filed with an application for extension of time to file, for the preceding year[, or (ii) 50 % of the remitter's base year gross receipts and franchise tax liability pursuant to P.L.1940, c.4 (C.54:30A-16 et seq.)]."

DELETE MATTER ENCLOSED [THUS]

Rationale: Going forward, it is anticipated that competition will lead to structural changes within the telecommunications industry. Such changes would likely -3

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result in the "remitter's base year gross receipts and franchise tax liability" being an inappropriate basis for determining a local telephone company's UTUA liability, in the event the State Treasurer rejects a telecommunications remitter's Corporate Business Tax estimate. For example, the business activities that contribute to the revenue base for purposes of determining a local telephone company's current tax liability could change; e.g., regulatory requirements could require one or more business activities to be divested from the local telephone companies. If this were to occur, the New Jersey income of the separate entities would still be subject to the Corporate Business Tax, but a local telephone company's UTUA payment could still be based on the GR&FT liability in the base year which would be irrelevant and could be far greater than the local telephone company's current Corporate Business Tax liability. This provision could result in the local telephone company effectively paying UTUA tax payments with respect to revenues received by other entities that are separately liable for the Corporate Business Tax.

III. OTHER TECHNICAL AMENDMENTS:

A. SECTION 52. (New Section) c.(3) -- (pp. 53-54)

Amend as follows:

"(3) The estimates described in paragraphs (1) and (2) of this subsection, as applicable, shall be certified **as reasonable** by the State Treasurer. The State Treasurer may, based upon each remitter's immediate prior year's sales tax remittances, immediate prior year's estimated corporation business tax liability and/or payments, current year sales tax remittances and current year estimated corporation business tax payments[, as well as the economic conditions of the State, consideration of the State's revenues and expenditures and anticipated revenues and expenditures for the fiscal year and any other factor or factors which the State Treasurer deems relevant], reject the estimation **as unreasonable** and not certify same. . . ."

DELETE MATTER ENCLOSED [THUS]

Rationale: The State Treasurer should only have the discretion to certify the estimates as "reasonable" or "unreasonable" -- the additional language is necessary

to clarify that the State Treasurer does not have the discretion to refuse to certify the estimates if the estimates are reasonable. In addition, the amendment also deletes the language that provides the State Treasurer with broad discretion to consider economic factors in determining whether it will reject an estimate. Such broad discretion appears excessive and would potentially result in the burden of State revenue shortfalls being borne solely by companies subject to UTUA.

B. SECTION 69. (New Section) a. -- (Page 71)

Amend as follows:
"a. No municipal, regional, or county governmental agency may impose any fees, taxes, levies or assessments in the nature of a local franchise, right of way, or gross receipts fee, tax, levy or assessment against energy **companies subject to the provisions of P.L. 1940, c.5 (C.54:30A-49 et seq.) prior to January 1, 1998** or telecommunications companies subject to **[**a public utility tax immediately prior to January 1, 1998**]** **the provisions of P.L. 1940, c.4 (C.54:30A-16 et seq.) as of April 1, 1997.** Nothing in this section shall be construed as a bar to **reasonable** fees for **actual** services made by any municipal, regional or county governmental agency."

Rationale: This amendment is necessary to conform the reference used in this section (i.e., energy or telecommunications companies subject to a public utility tax) to those used throughout the proposed legislation (i.e., the statutory provisions and dates which determined those energy and telecommunications companies subject to tax under the GR&FT), such as the reference in part b. of this Section 69. This amendment avoids any ambiguity regarding the determination of what companies qualify as energy or telecommunications companies subject to a "public utility tax". In addition, this amendment is intended to clarify that the savings clause only permits **reasonable** fees for **actual** services rendered by local governmental agencies. Bell Atlantic - New Jersey believes such a clarification would avoid confusion and would be advisable in order to prevent the telecommunications industry and local governments from becoming embroiled in the controversies

that are occurring in other local jurisdictions nationwide.

C. **SECTION 2. C.54:10A-4(k)(8) -- (pp. 9)**

Amend as follows:
"(8) In the case of taxpayers that are gas, electric, **or** gas and electric[,or telecommunication] public utilities as defined pursuant to subsection (q) of this section, the director shall have authority to promulgate rules and issue guidance correcting distortions and adjusting timing differences, resulting from the adoption of P.L. , c. (C.) (now pending before the Legislature as this bill)."

DELETE MATTER ENCLOSED [THUS]

Rationale: Inclusion of "telecommunication" in this provision is inappropriate. Telecommunications companies are subject to 4(k)(2)(F)(ii) and 4(k)(3) -- these provisions already grant the director broad authority to promulgate rules that address timing issues; the inclusion of "telecommunications" in this provision would only lead to confusion and uncertainty.

D. **SECTION 67. (New Section) h. -- (page 70)**

Amend as follows:
"h. Public utilities providing telecommunications service regulated by the board shall file for the board's review and approval revised tariffs that eliminate from the rates applicable to such service the excise tax liability included therein pursuant to P.L.1940, c.4 (C.54:30A-16 et seq.), and shall include therein the corporation business tax [calculated using the same methodology as set forth in paragraph (2) of subsection c. of this section for gas and electric utilities]. Telecommunications utilities shall comply with all other applicable provisions of this section."

DELETE MATTER ENCLOSED [THUS]

Rationale: Although Bell Atlantic - New Jersey is not opposed to filing revised tariffs that reflect the changes made in this legislation, it would be inappropriate for telecommunications providers to use the rate base/rate of return methodology applicable to

the energy utilities (set forth in Section 67) to prepare such filings. It is inappropriate to apply the rate base/rate of return regulation methodology to Bell Atlantic - New Jersey (as a public utility providing telecommunications service) because Bell Atlantic - New Jersey is subject to a plan of alternative regulation.

An Analysis of Local Switched Services Market Share in the Bell Atlantic-New Jersey Region

Competitive Local Exchange Company Shared Study

ATLANTIC ▪ ACM

148 State Street, No. 400 Boston, MA 02109 Tel 617-720-3700 Fax 617-720-1077 atlantic@atlantic-acm.com

Boston Buenos Aires London Paris Quito Tokyo

Survey Methodology

- **ATLANTIC • ACM, in conjunction with the Association for Local Telecommunications Services (ALTS), surveyed all competitive local exchange carriers (CLECs) certified to provide service in the Bell Atlantic region**
  - ALTS sent out surveys to all of its members and ATLANTIC • ACM sent out surveys to all other companies who were certified or whose certification was pending as competitive local exchange carriers in any of the Bell Atlantic states
    - *Companies certified or pending certification in each state were identified by contacting the state public utilities commission in each of the Bell Atlantic states*
    - *The list of certified CLECs is believed to be accurate as of March 31, 1997*
  - All certified CLECs were then called to solicit their participation in the study
  - All CLEC responses were made to ATLANTIC • ACM under non-disclosure agreements and are therefore presented only in aggregate format (ATLANTIC • ACM did not disclose any individual company data)
- **In analyzing and presenting the data, a distinction is made between "Surveyed" and "Estimated" data**
  - Surveyed data presents the actual data received from the participating CLECs
  - Estimated data was calculated to compensate for those certified CLECs who did not participate
    - *The estimates of lines and customers were derived by assuming that the non-participating CLECs each had the same number of lines and customers as the average participating company*
    - *The numbers of switches operated by CLECs were estimated by assuming that the non-participating CLECs each had the same number of operational switches as the CLEC with the most operational switches in that state (except where other information was known to contradict that assumption)*

This report details the level of competition in the local switched services market in New Jersey

- **ATLANTIC • ACM, in conjunction with the Association for Local Telecommunications Services, surveyed all competitive local exchange carriers (CLECs) certified to provide service in New Jersey**
  - The results of that survey are contained herein
  - Survey results were compared with Bell Atlantic data obtained from public documents
- **70% of certified CLECs in New Jersey responded to the survey**
  - For total market share of lines and customers, this report details:
    - *The total number of lines and customers of the CLECs which responded (marked "Surveyed")*
    - *An estimate of the total CLEC lines and customers (marked "Estimated")*
      - The estimate was derived by assuming that the non-participating CLECs each had the same number of lines and customers as the average participating company
      - ATLANTIC • ACM believes that the number of CLEC lines and customers is unlikely to be higher than this estimate and is most likely lower

x96

This survey was sponsored by eight competitive local exchange carriers

- American Communication Services Inc.
- AT&T
- Eastern Telelogic Corporation
- MCI
- MFS/WorldCom
- NEXTLINK
- Sprint Communications
- Teleport Communications Group

X46

Competitive Local Exchange Carriers fit into three categories

- 70% of those companies that are certified to provide local service in New Jersey responded to the survey

Participating Certified Local Exchange Carriers

- AT&T
- Comcast Corporation
- Eastern Telelogic Corporation
- MCI
- MFS/WorldCom
- Sprint Communications
- Teleport Communications Group

Non-Participating Certified Local Exchange Carriers

- Winstar Wireless
- Commonwealth Long Distance
- New Jersey Fiber Technologies/ Hyperion

Local Companies with Certification Pending as of 3/31/97

- Advanced American Telecom
- Intermedia Communications, Inc.
- LCI International Corp.
- Manhattan Telecommunications Corp.
- US One Communications Corp.

Note: Wherever available, ATLANTIC • ACM confirmed that companies with certification pending had no lines or customers
For a definition of terms see Appendix 1

Executive Summary

Through data collected for this CLEC shared study, ATLANTIC • ACM found the following*:

- **In 1996, Bell Atlantic reported 3.8% growth in access lines for the entire Bell Atlantic region (all states)[1]**
- **Competitive local exchange carriers have achieved little penetration in the Bell Atlantic-New Jersey market**
  - Bell Atlantic services 99.99% of all lines (business and residential) in the Bell Atlantic-New Jersey territory
  - Penetration by CLECs has been limited to a total of less than 37 business customers with a total of less than 839 business lines
- **Of the lines in New Jersey that are serviced by CLECs, none are done so through simple resale, combinations of unbundled network elements, or unbundled loops purchased from Bell Atlantic**
- **Bell Atlantic owns the majority of New Jersey operational switching facilities**
  - Bell Atlantic owns 98.7% of the operational switches in its New Jersey territory
  - Bell Atlantic owns 98.2% of the total operational switches that service the New Jersey territory
- **Of the 207 Bell Atlantic wire centers in New Jersey, CLECs are physically collocated in six and virtually collocated in ten**

*All data reported is as of 3/31/97

Source: 1. Bell Atlantic 1996 Annual Report

In the Bell Atlantic-New Jersey territory, competitive local exchange carriers serve less than 0.05% of business lines and no residential lines

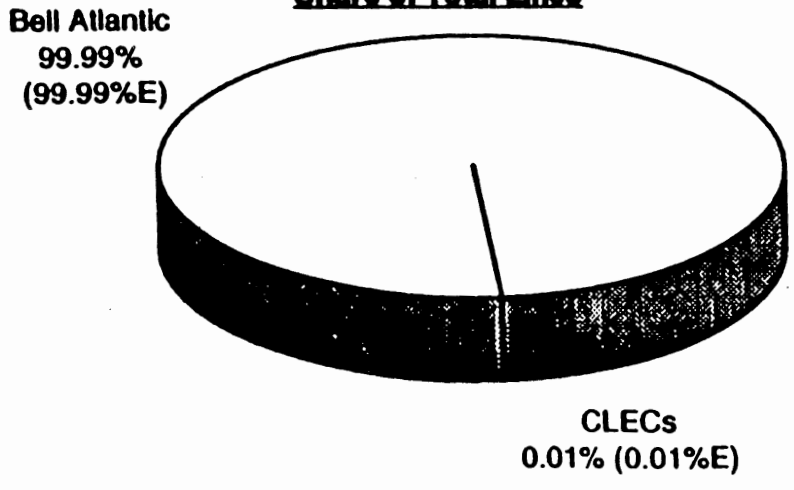
- **Bell Atlantic services nearly 100% of the lines in the Bell Atlantic-New Jersey territory**

Summary of Aggregate CLEC lines vs. Bell Atlantic lines in Bell Atlantic-New Jersey Territory

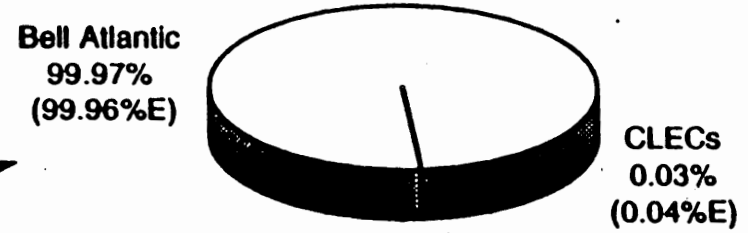
	Total Business Lines - Surveyed	Total Business Lines - Estimated	Total Residential Lines - Surveyed	Total Residential Lines - Estimated	Total Lines - Surveyed	Total Lines - Estimated
Total Bell Atlantic Lines	1,922,001	-	3,698,577	-	5,692,573*	-
Total CLEC Lines	587	839(E)	0	0(E)	587	839(E)
Bell Atlantic Share	99.97%	99.96% (E)	100%	100% (E)	99.99%	99.99%(E)
CLEC Share	0.03%	0.04% (E)	0%	0% (E)	0.01%	0 .01%(E)

X001

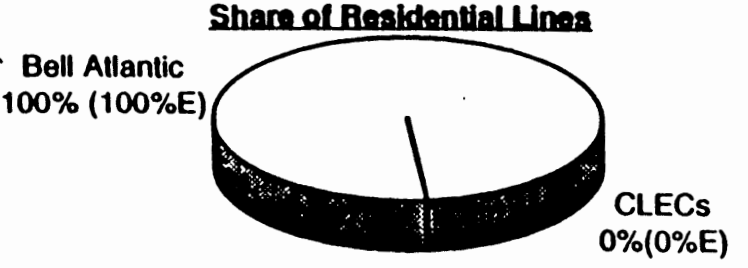
Share of Total Lines



Share of Business Lines



Share of Residential Lines



* Total Lines-Surveyed for Bell Atlantic lines includes mobile and public access lines

Note: Numbers in parentheses are estimated line percentages as if all certified companies had responded

For a definition of terms see Appendix 1

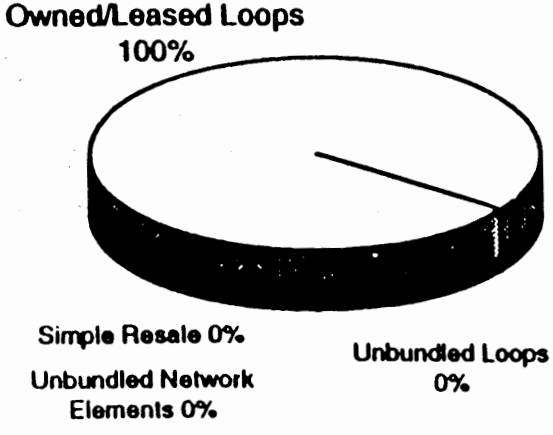
None of the respondents reported utilizing simple resale, combinations of unbundled network elements, or unbundled loops purchased from Bell Atlantic

- **Of the lines in New Jersey that are serviced by the CLECs that participated in the study, all are owned/leased loops**

	Business					Residential					Total				
	Simple Resale	Unbundled Network Elements	Unbundled Loops	Owned/ Leased Loops	TOTAL	Simple Resale	Unbundled Network Elements	Unbundled Loops	Owned/ Leased Loops	TOTAL	Simple Resale	Unbundled Network Elements	Unbundled Loops	Owned/ Leased Loops	TOTAL
Total CLEC Lines	0	0	0	567	567	0	0	0	0	0	0	0	0	567	567
% CLEC Lines	0%	0%	0%	100%	-	0%	0%	0%	0%	-	0%	0%	0%	100%	-

x 101

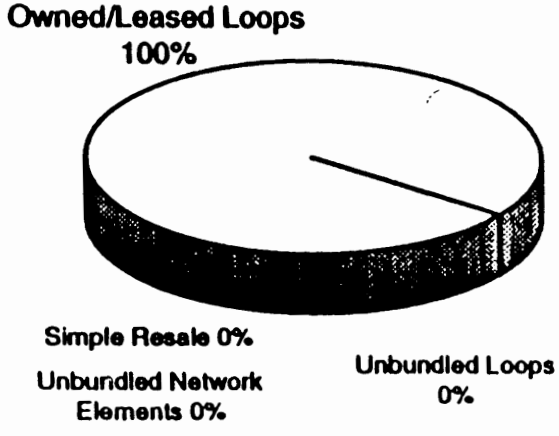
Distribution of CLEC Lines for Business



Distribution of CLEC Lines for Residential

CLECs have no residential lines in the Bell Atlantic- New Jersey territory

Total Distribution of CLEC Lines



For a definition of terms see Appendix 1

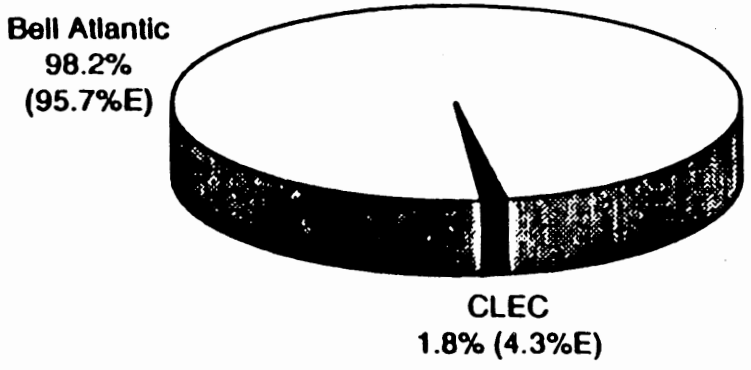
Bell Atlantic owns the majority of operational switches both in New Jersey and remotely serving New Jersey

- **Bell Atlantic owns 98.7% of the operational switches in its New Jersey territory, and 98.2% of the total operational switches that service the New Jersey territory**

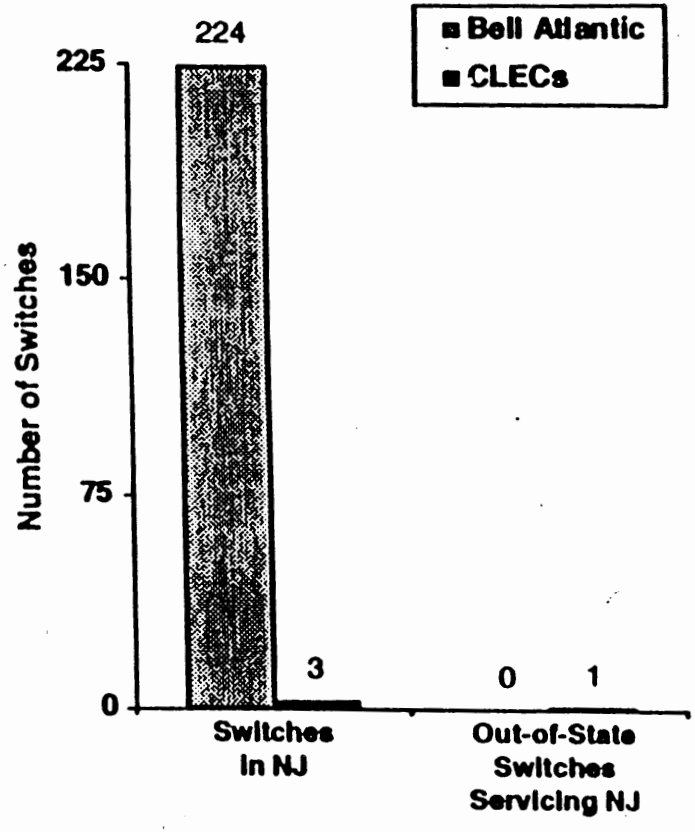
	Switches in New Jersey	Out-of-State Switches Servicing NJ	Total Number of Switches - Surveyed	Total Number of Switches - Estimated
Bell Atlantic Switches[1]	224	0	224	-
CLEC Switches	3	1	4	10(E)
Bell Atlantic Share	98.7%	-	98.2%	95.7%(E)
CLEC Share	1.3%	-	1.8%	4.3%(E)

1021

Ownership Share of Total Operational Switches



Operational Switch Ownership



Note: Estimated number of total operational switches includes switches allocated to the three non-participating companies. The number of operational switches allocated to each non-participating company is equal to the greatest number of operational switches held by any one CLEC certified in New Jersey

For a definition of terms see Appendix 1

For Bell Atlantic numbers, total number of switches is equal to the total number of central office switches

Source: 1. FCC Report 43-08, *ARMIS Operating Data Report, Jan. 1996 to Dec. 1996.*

So far, CLECs have had limited sales in the business market

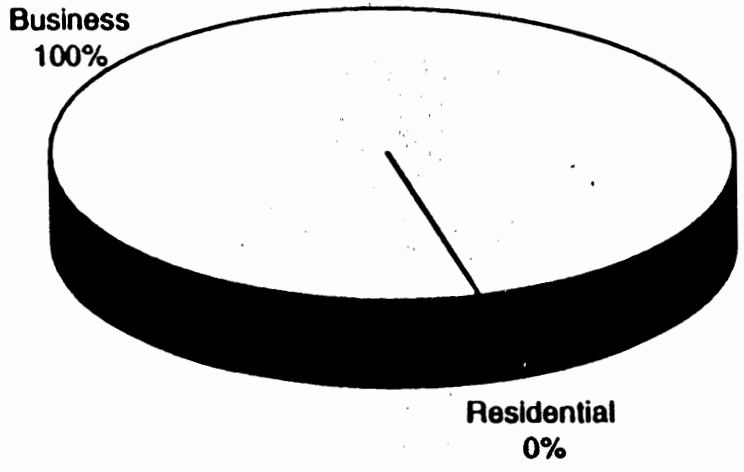
- **CLECs in New Jersey have acquired some business customers, and no residential customers**

Distribution of CLEC Customers

	Business						Residential						Total					
	Simple Resale	Unbundled Network Elements	Unbundled Loops	Owned/ Leased Loops	TOTAL-Surveyed	TOTAL-Estimated	Simple Resale	Unbundled Network Elements	Unbundled Loops	Owned/ Leased Loops	TOTAL-Surveyed	TOTAL-Estimated	Simple Resale	Unbundled Network Elements	Unbundled Loops	Owned/ Leased Loops	TOTAL-Surveyed	TOTAL-Estimated
Total CLEC Customers	0	0	0	28	28	37(E)	0	0	0	0	0	0(E)	0	0	0	28	28	37(E)
% CLEC Customers	0%	0%	0%	100%	-	-	0%	0%	0%	0%	-	-	0%	0%	0%	100%	-	-
Type of Customer	-	-	-	-	100%	-	-	-	-	-	0%	-	-	-	-	-	100%	-

1037

Total Distribution of CLEC Customers

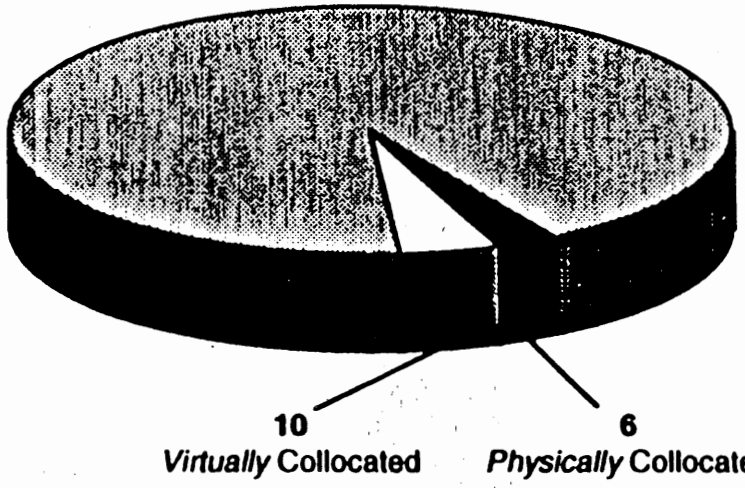


Note: Total-Estimated column is the estimated number of customers if all certified companies had responded
For a definition of terms see Appendix 1

In New Jersey, CLECs service calls through a greater number of virtually collocated wire centers than physically collocated

- **Of the 207[1] wire centers Bell Atlantic has in New Jersey, CLECs are *physically* collocated in six and *virtually* collocated in ten**

Bell Atlantic Wire Centers (207[1])



Wire Centers in Which CLECs report to be *Virtually* Collocated

- Bound Brook
- Livingston
- New Brunswick
- New Brunswick-Metuchen
- Newark
- Princeton
- Princeton-Plainsboro
- Rutherford
- Somerville
- Whippany

Wire Centers in Which CLECs report to be *Physically* Collocated

- Cherry Hill
- Marlton
- Moorestown
- Morristown
- Newark (2)

For the purpose of this survey, a wire center is considered to be equivalent to a central office. Wire Centers were identified through ATLANTIC • ACM's search of Bellcore Traffic Routing Administration's *NPA/NXX Active Code List (NNACL)*. Wire Centers were identified by the eight-character identification code for individual buildings in which switches are housed. Facilities housing wireless and tandem switches were excluded.

For a complete list of definitions see Appendix 1

Source: 1. Bellcore, *NPA/NXX Active Code List (NNACL)*, vol. 7, Issue 1; January 1, 1997.

Appendix 1 - Definitions

Business Lines:	Total voice grade equivalent analog or digital switched access lines to business customers. [The single line business customer premises terminations (CPTs) subject to the single line business interstate subscriber line charge, excluding company official, mobile radiotelephone and public telephone. CPTs are commonly referred to as "main station equivalents" or "billable units." A CPT is a line termination at the customer premises, rather than at the central office. Includes all equivalent 64kb/sec digital business access lines.]
Residential Lines:	Total voice grade equivalent analog or digital switched access lines to residential customers.
Number of Lines:	Total voice grade equivalent analog or digital switched access lines to business or residential customers. The line count should include lines, trunks, Centrex, public access lines and mobile access lines (access lines to a common carrier base station using mobile radio). A fully equipped DS-1 line corresponds to 24 lines. Does not include lines sold to other CLECs or used for company business, e.g. centrex provided to the company.
Simple Resale:	Lines and customers provisioned through the purchase of local services (business & residential) at a discount and then resold to end-users.
Unbundled Network Elements/Platform:	Lines and customers provisioned through the purchase of combinations of unbundled network elements.
Unbundled Loops:	Lines and customers provisioned using CLEC's own switching facilities and unbundled loops purchased from Bell Atlantic.
Owned/Leased Loops:	Lines and customers provisioned using CLEC's own switching facilities and network or facilities leased from another carrier including Bell Atlantic.

X501

Definitions for these terms are taken from the FCC ARMIS report definitions.

Appendix 1 - Definitions, continued

Out-of-State Switch: Because some CLECs serve individual states using a switch or switches not physically located in that state, care was taken to ensure that the data collected reflected the existence of these switches. The term "Out-of-State Switch" refers to a CLEC switch which provides service to customers in a particular state but which is physically located outside the geographic boundaries of that state.

Central Office Switch: Assemblies of equipment designed to establish connections between lines and trunks, including access tandems, local Class 5 switching machines, and any associated remotes. There may be more than one switch per central office or wire center. Switches designed exclusively for operator services are not included. If more than one switch is housed in a single building or structure, each switch is counted separately. Each three-digit telephone number prefix is not counted as a separate switch.

106X

Central Office & Wire Center: **Central Office and Wire Center are considered to be the same for the purposes of this study.**

A Central Office is a major equipment center designed to serve the communications traffic of a specific geographic area. Central Offices are typically owned and operated by LECs and are the sight of a local Class 5 switch. They are often directly connected to other central offices and to IECs.

Appendix 2 - Survey Sample

All responses to questions below should pertain only to the state listed above and only to Bell Atlantic areas within that state.

I. Current Scope of Local Service Market Share

In the chart below, please enter the number of local lines and customers you have in the state listed above. Customers and lines should be broken down by the method in which they are provisioned (No customer or line should be counted in more than one box - see also the guide below for further information)

Summary of Aggregate CLEC - Provided Local Exchange Services for the State of New Jersey (As of March 15, 1997)

	Business Services					Residence Services					Total Services					Grand Total
	Simple Resale	Unbundled Network Elements/ Platform	Unbundled Loops	Owned/ Leased Loops	Total	Simple Resale	Unbundled Network Elements/ Platform	Unbundled Loops	Owned/ Leased Loops	Total	Simple Resale	Unbundled Network Elements/ Platform	Unbundled Loops	Owned/ Leased Loops	Total	
Number of Lines																
Number of Customers																

II. Current Facilities-Based Capabilities in the State

1a. How many operational switches do you have in the state? _____

1b. Do you service this state from a switch(es) located in another state? If so, please list the state(s) and number. _____

1c. How many lines are the switch(es) currently capable of serving? _____

2a. List the Bell Atlantic Wire Centers in which you are *physically* collocated:

1	6	11
2	7	12
3	8	13
4	9	14
5	10	15

2b. List the Bell Atlantic Wire Centers in which you are *virtually* collocated:

1	6	11
2	7	12
3	8	13
4	9	14
5	10	15

Guide

Number of Lines: Total voice grade equivalent analog or digital switched access lines to business or residential customers. The line count should include lines, trunks, Centrex, public access lines and mobile access lines (access lines to a common carrier base station using mobile radio). A fully equipped DS-1 line corresponds to 24 lines. PLEASE NOTE: DO NOT INCLUDE LINES SOLD TO OTHER CLECS OR USED FOR COMPANY BUSINESS, e.g. you provide centrex to your company. These lines should not be included.

Simple Resale: Lines and customers provisioned through the purchase of local services (business & residential) at a discount and then resold to end-users.

Unbundled Network Elements / Platform: Lines and customers provisioned through the purchase of combinations of unbundled network elements.

Unbundled Loops: Lines and customers provisioned using your own switching facilities and unbundled loops purchased from Bell Atlantic.

Own/Leased Loops: Lines and customers provisioned using your own switching facilities and network or facilities leased from another carrier.

ATLANTIC • ACM

April 16, 1997

AUTHENTICATION

I, Dr. J. Reed Smith of ATLANTIC•ACM, have supervised the research which has produced the data in the reports on ***An Analysis of Local Switched Services Market Share in the Bell Atlantic Region***. The data has been collected and analyzed according to the attached methodology, with the described response rates. As the entire population of certified competitive local exchange companies was surveyed for each state, and the response rate is well beyond the level required for statistical validity, this data is considered extremely reliable.

ATLANTIC•ACM is a research company which has been providing research to the domestic and international telecommunications industry since 1988, and to other industries since 1981. Companies offering local exchange, intraLATA, and interexchange services, both wired and wireless, have used the data from ACM research. Please see the attached description of ATLANTIC • ACM.

I hereby attest that the data is correct and true to the best of my knowledge.

Dr. J. Reed Smith
Chief Executive Officer
ATLANTIC•ACM

108 X

148 State Street No 400 Boston MA 02109 617 720-3700 Fax 617 720-1077 atlantic@atlantic-acm.com

ATLANTIC • ACM

ACM Group, Inc, dba ATLANTIC•ACM, is a consulting firm which offers research in the telecommunications, computer and interactive service industries.

Since 1991, ATLANTIC•ACM has been tracking the companies in the competitive long distance market and, since 1993, calculating market sizing and share. As part of that work, ACM has performed annualy a survey of the US based companies providing domestic and international interexchange service. The work is performed with the cooperation of the companies in the industry, who each receive a summary of the data. This data is available to the public through reports distributed domestically by Phillips Business Information, MultiMedia Publishing Corp, Phone Plus Magazine, the International Insider, and ATLANTIC•ACM, as well as internationally by organizations in Australia, England, Japan, and Korea. ACM's research data is collected under the direction of Harvard-trained Dr. J. Reed Smith with teams of research managers and associates from top universities.

ACM has been widely quoted by such organizations as the Wall Street Journal, Kiplingers, Fortune Magazine, Business Week, America's Network, Phone Plus Magazine, Xchange Magazine, and the Telecommunications Resellers Association. In addition, a wide range of companies have purchased ATLANTIC•ACM's data and/or services. A partial list of companies includes:

TM

ACC Long Distance
AEP Energy Services
AGT Limited
Alex. Brown & Sons
America Online
American Express
Ameritech
Anderson Consulting
Apple Computing
Arthur D. Little
A.T. Kearney
AT&T
Bell Atlantic
Bell South
Bellcore
Boston Consulting Group
Cable & Wireless, plc
Carolina Telephone
Cincinnati Bell Information Systems
Century Telephone
Columbia Information Systems
Comcast Cellular
Computer Sciences Corp.
Coopers & Lybrand, LLP

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Ernst & Young
Fortune Financial, Inc.
France Telecom North America
CS First Boston
Detroit Edison
GE Capital
GTE Telecom
ICG Communications
IGI Japan, Inc
ILJIN Gp Wireless (Korea)
InfoCom Research, Inc
IXC Communications
KDD
Korea Info Society Development Institution
Korea Telecom R&D Group
LCI International
LDDS WorldCom
Long Distance International
Marubeni
MCI
McKinsey & Co.
Mercer Management
Merrill Lynch
MFS Intelenet
Mitsubishi
Moore BCS
Morgan Stanley
Monitor Company
MTC Telemanagement Corp
Multimedia Corporation
Nations Bank
NEC Corporation
NORTEL
NTT Data Corp
NYNEX
Pacific Bell Communications
Pacific Telecom Cable
Pacific Telesis Group
Polaroid Corporation
PTT Telecom
Reuters S.A.
Salomon Brothers
San Francisco Consulting Group
SBC Communications
Southern New England Telephone
Sprint
Stentor
Sun Microsystems
Telecom Denmark
Teleglobe, Inc.
Teleport Communications Group
Telewise, Inc
Telintar S.A.
Telnet Global
Telstar Communications
Telstra
TimeWarner Communications
TresCom International
UniDial, Inc
US Long Distance
US Wavelink
USWest
Westinghouse

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For more information please contact:
Dr. Judy Reed Smith, Managing Partner

ATLANTIC ▪ ACM

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Union County Economic Development Corporation

Liberty Hall Center 1085 Morris Ave. Suite 531 Union, NJ 07083 Tel. (908) 527-1166 Fax (908) 527-1207

A private non-profit corporation that helps your business grow!

Union County Economic Development Corporation
Position on S-31/A-2825
May 21, 1997

The Union County Economic Development Corporation's (UCEDC) primary mission is to focus its efforts on retaining and attracting business in and to Union County, New Jersey. In order to make this occur, New Jersey must furnish a business environment that is competitive with its neighboring states as well as the rest of the country. This is especially true when it comes to the subject of energy costs.

The UCEDC is in general support of this energy tax reform legislation. Business in this state thrives on its ability to compete with one another based on a given company's expertise in operating within a respective marketplace. One factor that should not figure into this competitive equation is the tax expense of energy. Tax reform will hopefully level this playing field for business and allow New Jersey to remain competitive with the rest of the nation.

For example, the projected deregulation to occur in the State of New York is expected to ultimately reduce a typical large business's electric bill by at least 10% and possibly as much as 25% for some larger manufacturers. Pennsylvania is expected to see a 10% reduction in rates across the board. New Jersey business must be positioned to counter this scenario. Otherwise, New Jersey may experience severe setbacks in future business retention and expansion.

However, there are three areas of concern which we feel must be addressed in the legislation:

1) Amendments should be implemented to protect against business being forced to pay excessive exit fees to their current energy provider should they wish to change vendors.

2) There must be assurance that utilities can recover adequate stranded investment costs from the proposed Transitional Energy Facilities Assessment (TEFA).

3) Revenue to municipalities must remain stable and rival current levels so as not to affect the taxpayer by shifting the tax burden in the form of increased property tax.

It appears that the nation as a whole is moving in the direction of deregulation. In Washington, Congress continues to consider bills that would mandate electric utility deregulation throughout the entire country in the near future. The UCEDC requests that New Jersey take a proactive role on this issue by continuing to fine-tune the deregulation process so that it is of benefit to business, energy providers and the New Jersey taxpayer.

Thank you for your consideration!

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State of New Jersey
Senate Budget & Appropriations Committee
Senate Bill 31
Comments of Steve Scalera
Assistant Tax Director, AT&T
May 21, 1997

Mr. Chairman, members of the Committee, I am here today on behalf of AT&T to discuss the utility personal property tax and to express our support for Section 60 of Senate Bill 31.

The current personal property tax is imposed solely on monopoly utilities. Prior to 1966, every business in the State was subject to a locally administered tax on their personal property [the "LOCAL TAX"]. In 1966, a State administered tax on business personal property was enacted to exempt that property from local taxation [the "STATE TAX"]. The STATE TAX was not imposed on telephone companies (i.e., monopoly utilities) because they remained subject to the provisions of the LOCAL TAX. However, the STATE TAX was imposed on all competitive long-distance service providers.

The Legislature began to realize the negative impact that the STATE TAX had on retaining and attracting business investment, and amended it in 1977 to exempt machinery and equipment acquired after January 1st of that year. Although this exemption was a step in the right direction, this tax still proved to be burdensome to the State's business community, and was repealed in its entirety in 1993.

Currently, local service providers are subject to the LOCAL TAX in addition to other public utility taxes. Long-distance service providers are not subject to the LOCAL TAX, but are subject to other general business taxes. It is critical to understand that there has been, and still is, a very good reason why there is disparate treatment among these providers: and that reason is COMPETITION. Long-distance service providers operate in a totally competitive marketplace and are taxed as any other general, non-utility business. Local service providers continue to operate in a monopoly environment and are taxed as utilities.

The amendments proposed by Section 60 of this bill would ensure continued application of the LOCAL TAX to incumbent local service providers until their share of the local service market drops below 51%. AT&T supports this amendment for the following reasons:

- ***It maintains a monopoly tax on monopoly providers.*** The divestiture of AT&T in 1984 did not automatically *create* competition, but rather facilitated an environment in which competition *could be created.* In fact, AT&T remained subject to various forms of utility taxation up until 1990, when it was finally, and appropriately, taxed as any other competitive, non-utility business in the State.

- ***It provides a stronger incentive for incumbent local service providers to open their markets up to competition.*** By eliminating a monopoly tax without first eliminating the benefits of monopoly status, you also eliminate all incentive to promote competition in the local service market. Requiring incumbent local service providers to pay this tax until true competition exists in the local service market represents fair tax policy and will serve as a financial catalyst to stimulate competition.

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AT&T is also aware of various proposals that seek to extend this monopoly tax to all telecommunication service providers. AT&T opposes all such proposals for the following reasons:

- ***No other competitive, non-utility business in New Jersey is subject to a personal property tax at the State or local level.*** As noted above, the STATE TAX that was once levied on business personal property began to erode in 1977, and was ultimately repealed in its entirety in 1993.

- ***Extending application of this tax to competitive telecommunication providers would discourage investment and hinder competition.*** The "tax cost" of capital investments is always a consideration when businesses decide where to physically locate assets. Imposing a property tax will increase this tax cost and will jeopardize new and continued investment in the State.

- ***It would mitigate the benefits of recent changes to the Corporation Business Tax Act.*** A.B. 89 (approved and effective September 11, 1995) made substantial changes to the way in which the income of a multi-state business is apportioned to New Jersey for income tax purposes. These changes were specifically designed to retain and attract business investment in the State. It does not make sense to offset the investment incentive created by the Corporation Business Tax change by imposing a property tax.

- ***It would be contrary to State's historical treatment of competitive, non-utility companies.*** After the divestiture of AT&T in 1984, the Legislature did not respond by subjecting new long-distance market entrants to utility taxation. Instead, it created tax policy that: (1) treated them like the competitive businesses that they were, and (2) gradually migrated the incumbent long-distance service provider into the same tax policy once true competition in that market was established.

- ***Creating a level playing field does not mean subjecting a competitive businesses to a monopoly tax.*** The intent of the Telecommunications Act of 1996 was to create competition in all markets so that consumers will benefit from more advanced, affordable, and accessible telecommunication services. Accordingly, tax policy should recognize and support the migration from a monopoly environment to a competitive environment, and not the other way around.

In closing, AT&T supports open and true competition in all telecommunication markets, and advocates equal taxation of all companies providing services in those markets. However, until open and true competition exists, AT&T strongly believes that monopoly providers should remain subject to monopoly taxation.

On behalf of AT&T, and more importantly all consumers of telecommunication services in the State, I urge you to support the provisions of Section 60 of Senate Bill 31.

Thank you.

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State of New Jersey
Overview of the Property Tax
as Applied to Telecommunication Companies

PRIOR TO DIVESTITURE IN 1984:

- Telecommunication companies were subject to the Local (Real and Personal) Property Tax.[1]
- The Business Personal Property Tax[2] enacted in 1966 did not apply to business property used by telephone, telegraph, and messenger systems companies because they remained subject to the Local (Personal) Property Tax.
- In 1977, the Business Personal Property Tax was amended to exempt machinery and equipment acquired after January 1st of that year.[3] Property acquired prior to January 1, 1977 remained subject to tax until was repealed in 1993 in conjunction with the Business Retention Act.[4] This Act was designed to promote the expansion and economic development of competitive businesses in the State.

IMMEDIATELY AFTER DIVESTITURE:

- AT&T remained subject to the Local (Real and Personal) Property Tax.
- Other Competitive Long-Distance Service Providers were subject to the Local (Real) Property Tax and the Business Personal Property Tax.
- Local Service Providers were subject to the Local (Real and Personal) Property Tax.

POST DIVESTITURE - 1989 - 1993:

- In 1989, AT&T became subject to the Business Personal Property Tax.[5]
- In 1990, AT&T was exempted from the Local (Personal) Property Tax.[6]
- In 1993, the Business Personal Property Tax was repealed.[7]

CURRENT:

- AT&T is subject to the Local (Real) Property Tax.
- Other Competitive Long-Distance Service Providers are subject to the Local (Real) Property Tax.
- Local Service Providers are subject to the Local (Real and Personal) Property Tax.

---

[1] §54:4-1 *et seq.*

[2] §54:11A-1 *et seq.*, as added by Ch. 136, Laws 1966. This tax was applicable to personal property taxes due and payable in 1968 and thereafter. The Business Personal Property Tax was adopted as part of a business personal property tax replacement program designed to exempt business personalty, except that of telephone, telegraph, and messenger systems companies, from local taxation.

[3] §54:11A-3.1, as added by Ch.4, Laws 1977.

[4] §54:4-1.13 *et seq.*

[5] §54:11A-6.1, as added by Ch.2, Laws 1989.

[6] §54:4-1, as amended by Ch. 2, Laws 1989.

[7] Ch. 174, Laws 1993.

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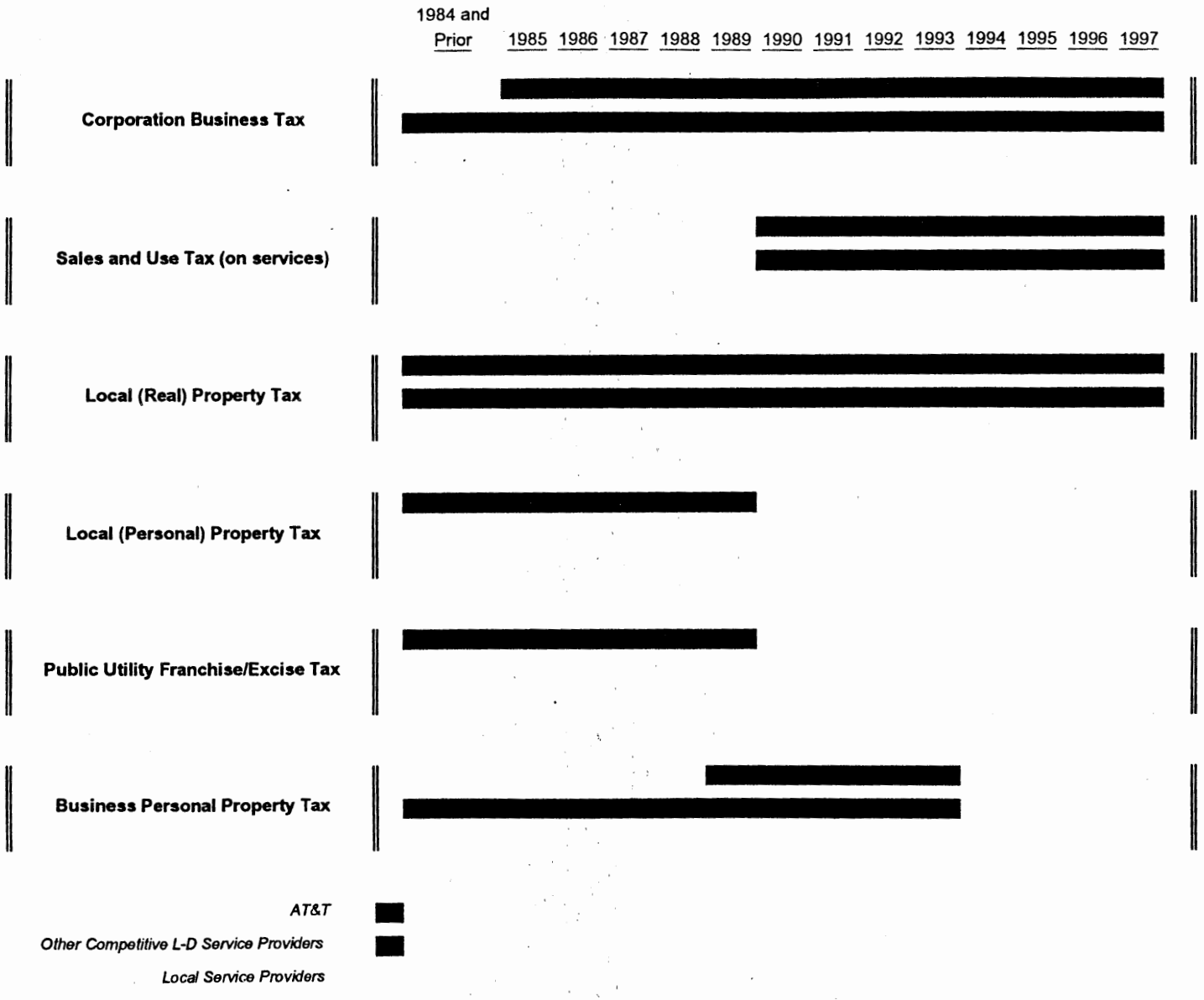
State of New Jersey
Comparison of Certain Taxes Imposed on AT&T, Other Competitive Long-Distance Service Providers, and Local Service Providers



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State of New Jersey
Historical Summary of the Taxation of
Telecommunication Companies

YEAR	EVENT
1884	**Enactment of the first general tax act specifically taxing public utilities (C. 159, P.L. 1884).** This provided for a 2% franchise tax on the gross receipts of telegraph, telephone, cable and express companies. In 1917, the franchise tax rate was increased to 3%, and was increased 1% each year until it reached the current (1997) rate of 5% in 1919 (C. 17, P.L. 1917).
1966	**Enactment of the Business Personal Property Tax.** This subjected tangible personal property used in business to a State level tax EXCEPT business property used by telephone, telegraph, and messenger system companies (i.e., monopoly utlities), who remained subject to local personal property taxation. This tax, which was effective for property taxes payable in 1968 and thereafter, would eventually apply to Competitive Long-Distance Service Providers.
1977	**Business Personal Property Tax exemption for machinery and equipment.** Machinery and equipment acquired by businesses after January 1, 1977 was exempt from the tax.
1984	**Divestiture.** • As a competitive business, AT&T became subject to the Corporation Business Tax, but continued to pay the Local (Real and Personal) Property Tax and the Public Utility Franchise/Excise Tax. • Competitive Long-Distance Service Providers were subject to the Corporation Business Tax, the Local (Real) Property Tax, and the Business Personal Property Tax. • Local Service Providers continued to pay the Local (Real and Personal) Property Tax and the Public Utility Franchise/Excise Tax.
1989	**AT&T became subject to the Business Personal Property Tax.** In recognition of the new competitive environment, AT&T is treated more like a general (non-utility) business.
1990	**AT&T was exempted from the Local (Personal) Property Tax and the Public Utility Franchise/Excise Tax.** AT&T is further exempted from "utility" taxation. **The Sales and Use Tax is extended to receipts from the sale of telephone services.**
1993	**The Business Personal Property Tax was repealed.**
1996	**The Telecommunications Act of 1996.**

State of New Jersey
Description of Taxes Addressed in these Documents

Citation	Description
CORPORATION BUSINESS TAX [N.J.S.A. 54:10A-1 *et seq.*]	A 9% tax upon entire net income, or the portion of net income allocated to New Jersey. *[Corporation Business Taxes date back to 1884 when a franchise tax was imposed upon all domestic corporations. (C. 159, P.L. 1884)].*
SALES AND USE TAX [N.J.S.A. 54:32B-1 *et seq.*]	A 6% tax upon the retail sale, rental or used of tangible personal property and certain services. *[The sales tax became effective on July 1, 1935, but did not apply to telecommunication services until July 1, 1990.]*
LOCAL PROPERTY TAX [N.J.S.A. 54:4-1 *et seq.*]	An annual, local levy on the assessed value of real and tangible personal property. Public utilities (including local telephone service providers) are subject to tax on both their real and tangible personal property. Non-utility companies (which includes competitive long-distance telecommunication service providers) are only subject to a tax on their real property. Rates are determined and applied by local assessors in the municipality in which the property is located. *[Property taxes date back to the latter part of the seventeenth century.]*
PUBLIC UTILITY FRANCHISE/ EXCISE TAX [N.J.S.A. 54:30A-16 *et seq.* and 54:30A-49 *et seq.*]	A combined 6.125% tax (5% municipal, 1.125% state) on the intrastate gross receipts of telegraph, telephone, messenger, and water and sewer companies. The proportion of gross receipts subject to tax is the ratio of the company's total length of lines or mains which are located in, on or over any street, highway, or other public place to the whole length of lines or mains. *[The first general tax act specifically taxing public utilities was enacted in 1884 (C. 159, P.L. 1884, and provided for a 2% franchise tax on the gross receipts of telegraph, telephone, cable and express companies.]*
BUSINESS PERSONAL PROPERTY TAX [N.J.S.A. 54:11A-1 *et seq.*]	Prior to its repeal in 1993, this was a 1.3% State tax on the "taxable value" (i.e., 50% of original cost) of tangible personal property used in business. This tax did not apply to telephone, telegraph and messenger companies because they were subject to other utility taxation. *[This tax first took effect in 1968 (C. 136, P.L. 1966).]*

AT&T

Management of Rights-Of-Way Must Be Consistent With The Law And Encourage Investment In New Jersey

Issue:

Some New Jersey municipalities are attempting to impose ***gross receipts like taxes*** on carriers requesting access to public rights-of-way. Section 69 of S-31 and A-2825, as worded, would encourage these and other municipalities to pursue such a taxing policy in violation of federal law, state law, and sound economic policy.

Proposed Change:

69. (New section) a. No municipal, regional, or county governmental agency may impose any fees, taxes, levies or assessments in the nature of a local franchise, right of way, or gross receipts fee, tax, levy or assessment against energy or telecommunications companies. ~~subject to a public utility tax immediately prior to January 1, 1998.~~

b. Nothing in this section shall be construed to limit municipal taxation of real or personal property pursuant to R.S.54:4-1 of local exchange telephone, telegraph and messenger systems, companies, corporations or associations that were subject to tax under P.L.1940, c.4 (C.54:30A-16 et seq.) as of April 1, 1997.

Rationale

AT&T's requested modification of Section 69 of S-31:

1. ***Ensures consistency with the Telecommunications Act of 1996 -***
   The Telecommunication Act of 1996 prohibits Section 69 of S-31 and A-2825 as written because this section creates a barrier to entry for new competitive local service providers and discriminates among local exchange competitors. See the attachment for details.

2. ***Ensures consistency with existing New Jersey law that does not allow such municipal taxes***

3. ***Supports the Governor's Economic Master Plan to not create taxes which would discourage investment in New Jersey and,***

4. ***Keeps New Jersey competitive with other states like Pennsylvania that already do not allow such Rights-Of-Way "taxes."***

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AT&T

Local and State Government Jurisdiction Over Rights-of-Way Under The Telecommunications Act of 1996

The Telecommunications Act of 1996 establishes a national policy for opening local markets to competition. At the same time, Congress wanted to clarify the extent of local and state government authority over public rights-of-way.

Local and State Governments Cannot Create Barriers to Entry

> *"No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate communications service."*
>
> *Telecommunications Act of 1996, Section 253(a)*

The Congress made it clear that municipalities are not to use their authority to frustrate or delay the key goal of the Act, bringing competition to local markets.

Local and State Governments May Serve as Managers for Rights-of-Way

> *"Nothing in this section affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis."*
>
> *Telecommunications Act of 1996, Section 253(c)*

The Act limits the role of municipalities to managing the time, place and manner of use of public rights-of-way and to recover only the costs incurred by municipalities as a result of such use as spelled out in the FCC's decision in the Classic Telephone order.[1] If state and local governments attempt to go beyond this limited role or fail to act in a competitively neutral or nondiscriminatory manner, the federal government has the authority to preempt such action. The Act reserves to local governments the authority to collect fees based specifically on costs to the municipality dealing with such issues as street repair and paving costs (Classic Telephone decision). A carrier that uses 5000 feet of public right-of-way should be charged a fee by that municipality based on the expense to the locality, not based upon the relative size of the company.

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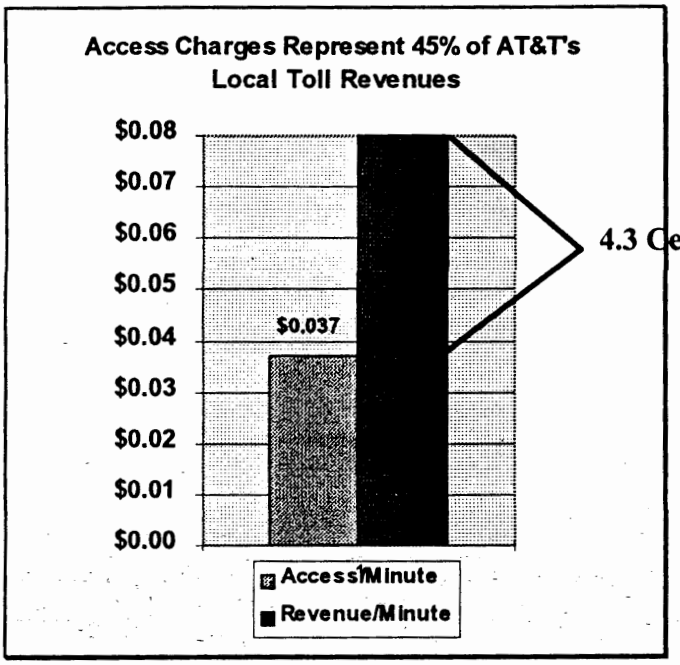
[1] Classic Telephone, Memorandum Opinion and Order, 11 FCC Rcd. 13082, 13101 (1996).

The Real Local Toll Story
Excessive Access Charges Impede Competition

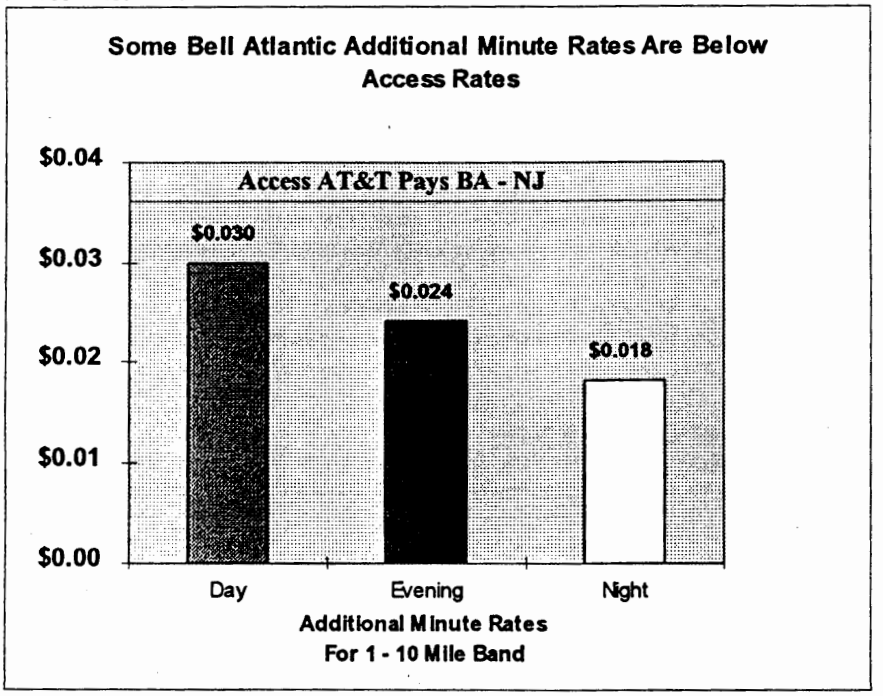
Bell Atlantic Has A Price Squeeze On Its Competitors



There is not much profit left in 4.3 cents after paying for:

- billing
- network
- maintenance
- customer service
- taxes
- marketing
- advertising

Bell Atlanitic Even Prices Rates Below Access Cost



AT&T

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Subsidies In The Telecommunications Industry

AT&T

The Big Picture On Subsidies - Interstate & State

$ *20 billion*	*Paid in access charges by long distances companies* to the largest LECs
- 5 billion	Cost to provide *universal service* at today's affordable rates
- 5 billion	Cost to *connect to local companies*
$ *10 billion*	*Surplus* **(NJ Surplus is Approximately $400 Million)**

The FCC Has Begun To Address The Interstate Surplus

Of 10 Billion Access Surplus, The FCC's May 7, 1997 Universal Service & Access Charge Orders Require A $1.7 Billion *Interstate* Access Reduction Effective 7/1/97. The Long Distance Companies Will Pass These Access Saving Along To Customers In The Form Of Lower *Interstate* Long Distance Rates. Specifically, AT&T Will Lower Its "Basic" *Interstate* Rates Available To All Consumers By 5% to 15%. However, It Will Take Four or Five Years For The FCC's Plan To Produce Cost Based Access Rates. The BPU Must Similarly Address The Surplus In *State* Access Charges In Its Pending Universal Service Case Scheduled To Begin In June.

Bell Atlantic - New Jersey Subsidies	
Average Monthly Customer Rates Per Line	$13.21
Average Monthly Cost of Local Service Per Line	$15.19
Average Monthly Subsidy Per Line	$1.98
Total Annual Subsidy Required For 3.07M Residence Lines	$73.4 Million
Total 1995 Access Charges Paid To BA -NJ	$137 Million
State Surplus Being Collected By BA-NJ	$63.6 Million

AT&T

Status Of Telecommunications Competition In New Jersey

NJ Long Distance Market

- **Fully Competitive**
- **Over 130 Companies Providing Service In the State**
- **$600 Million Market Shared By Many Carriers**
- **Over 1 Million Customers Changed Their Long Distance Carrier Last Year**
- **NJ's Telecom Act Of 1992 Allowed BPU To Lessen Regulation Of Competitive Long Distance Market**

NJ Local Toll - (Toll Calls Close To Home)

- **Competition Authorized 7/1/94 - 10XXX Calling Required**
- **Equal Access Presubscription (No Need to Dial 10XXX) Just Began on 5/5/97.**
- **$700 Million Market With BA - NJ Having The Vast Majority Of Customers**
- **BPU Currently Considering Declaring Local Toll Market To Be Competitive**

NJ Local Service -The True Bottle Neck & A Significant Reason For The 1984 Break -Up Of AT&T

- **Telecom Act Of 1996 Sets The Rules For Local Competition; Local Competition Is Not Guaranteed**
- **Bell Atlantic Territory Covers - 97% Of Market , Sprint & Warwick Valley - 3%; Bell Revenue = $1.3 Billion**
- **15 Months After the Act, Virtually No Competition Yet - Bell Share In Territory = 99.99%; See Attached ACM Study**
- **All Other Competitive Local Exchange Carriers (CLECs) Serve Only 30 Business Customers For A Total Of 587 Lines Out Of 5.7 Million Lines; See Attached ACM Study**
- **No Residence Competition Yet; See Attached ACM Study**
- **FCC Must Find Viable Competition Before Allowing Bell Atlantic - NJ Into Long Distance Market**
- **Market Will Not Be Competitive Until Bottleneck Elements Are Made Available To All New Entrants On A Nondiscriminatory Basis.**

123X

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James N. Kenny
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Senate Budget and Appropriations Committee
Hearing on S-31
May 21, 1997

Good morning, Mr. Chairman and members of the Senate Budget and Appropriations Committee, my name is James N. Kenny. I am Senior Manager of Tax Legislative Affairs for MCI Telecommunications Corporation. I would like to thank you for the opportunity to testify before you. My remarks will be limited to Section 69 of S-31 and a proposal to extend the current monopoly local personal property tax to new entrants in the local exchange business.

MCI is concerned with Section 69 as introduced in S-31. MCI created competition in the long distance industry with the break-up of AT&T in 1984. It, too, intends to eventually compete in the local exchange business with Bell Atlantic. However, it is MCI's interpretation that the above language does not protect MCI and others. Since MCI never operated in a monopoly telecommunication business it was never subject to New Jersey's public utility taxes. This section only protects local exchange companies, such as Bell Atlantic.

This section would place MCI at a competitive disadvantage. It is MCI's contention that the section, as introduced, in S-31 violates the equal protection clause of the U.S. Constitution and the Telecommunications Act of 1996. This proposal could result in the enactment of an anti-competitive tax.

MCI respectfully requests that the legislature amend the section, with the noted deletion, as follows:

> 69. (New Section) a. No municipal, regional, or county governmental agency may impose any fees, taxes, levies or assessments in the nature of a local franchise, right of way, or gross receipts fee, tax, levy or assessment against energy or telecommunications companies ~~subject to a public utility tax prior to January 1, 1998~~. Nothing in this section shall be construed as a bar to fees for services made by any municipal, regional or county governmental agency.

This amendment would protect all companies equally and correct the existing flaw in the legislative proposal, as introduced.

With regard to a proposal on local personal property taxes; this tax is currently imposed exclusively on monopoly local exchange telecommunication companies (LECs).

This tax is a classic monopoly tax, imposed on a monopoly business, which should be repealed when the company no longer has a monopoly and competition truly exists. The legislature should not attempt to retrofit this tax on new entrants or competitive long distance providers.

The LECs **do not** yet **face competition**. The Telecommunications Act of 1996 merely established the structure for a changed telecommunications industry to occur sometime in the future but the Act **did not create competition**. The LECs continue to operate in a monopoly business; to extend the local personal property tax to new entrants or all telecommunications providers will impose a monopoly type of tax on a truly competitive business thus impeding true competition and plant expansion. This regressive proposal contradicts the spirit of the Business Retention Act of 1993. The legislature's intent, in passing the Business Retention Act, was to spur economic development in New Jersey. This proposal will stifle expansion in the non-monopoly telecommunications industry - considered to be the one of the most dynamic and competitive industries in America today. It is in conflict with the "spirit" of the Telecommunications Act of 1996 which was designed to advance competition in the telecommunications industry not stifle it.

The Telecommunications Act of 1996 did not create competition in the local exchange market. It simply entitles the LECs to enter full long-distance competition upon meeting certain requirements. In order for there to be real competition in the local market, the LECs must fundamentally alter the way they do business, enter into agreements with companies who want to offer local exchange service, secure assent of the local regulatory authority and approval of the whole process by the Federal Communications Commission. This will take time. Until all these conditions are met and a competitive provider successfully enters the local exchange market, there is no competition. Ironically, at the same time the incumbent monopolies are crying "competition" they are doing everything possible to squelch its development through legal maneuvering.

The proposal is anti-competitive and anti-economic development for the people and economy of New Jersey. It is a typical reaction by a monopoly minded company, like Bell Atlantic, which claim to want competition. The fact remains that if a residential customer wants local telephone service, in the State of New Jersey, they must rely on the incumbent LEC, Bell Atlantic, to provide the service.

Currently in the United States, there are approximately 500 companies competing for consumers' long distance business. **That's competition!!!** There is a long regulatory and legal road to be traveled before the consumers of New Jersey will be able to reap the benefits of competition in the local exchange industry. When competition exists, we should all work together to repeal the local personal property tax on Bell Atlantic and, if necessary, replace it with a new revenue source borne by all taxpayers - regardless of industry. It is currently premature and unnecessary to amend any parts of the existing local personal property tax law.

New Jersey Business & Industry Association

NJBIA

Testimony

of the

New Jersey Business & Industry Association

presented

by

Arthur J. Maurice

on

S-31 (DiFrancesco/Inverso)

May 21, 1997

126x

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The New Jersey Business & Industry Association supports Senate bill 31, legislation designed to lower New Jersey energy taxes on natural gas and electric energy, with amendments. In particular, the Association is pleased that the legislation establishes a firm schedule for the phased reduction of energy taxes via elimination of the temporary transitional energy facilities assessment.

We do not need to reiterate the fact that with Gross Receipts and Franchise Taxes averaging 12.5 percent of energy rates, New Jersey consumers pay among the highest energy taxes in the nation. We would like to point out through that without energy tax reduction, much of the competitive advantage our state's economy will realize from lower electric rates due to electric industry restructuring will be lost.

We want to compliment the sponsors for maintaining the tax exemption on purchases and transportation of natural gas for cogeneration and self-generation facilities. It's simply a matter of fairness: where business people have made substantial economic investments based in part on tax policies, those policies should not be altered. Likewise, where businesses have entered into contracts to purchase tax exempt natural gas from non-utility suppliers, those tax exemptions should be maintained. The legislation contains a grandfather clause maintaining the tax exemption for these businesses only if these businesses have not changed natural gas supplier since 1995. The relationship between a business and its natural gas supplier is irrelevant to whether or not the natural gas purchase should be tax exempt. This provision should be removed.

Similarly, fairness demands that those approximately 10,000 businesses which in 1996 entered into contracts to purchase natural gas from non-utility suppliers with the expectation of a tax exemption should continue to receive the exemption at least through the contract period. The Association urges committee members to extend the grandfather provision to these businesses as well.

The Association will forward to committee and staff technical amendments clarifying the tax exemption in special circumstances.

In conclusion, this energy tax reform legislation is the first necessary step to bringing energy rate relief to New Jersey's consumers. The sooner the legislature can enact S-31, the sooner you can consider legislation needed to introduce competition into the electric industry, something the Association strongly supports.

Thank you for your consideration.

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New Jersey Energy Taxes are Among the Highest In the Nation

Energy Tax as a Percentage of Utility Revenues

State	Natural Gas	Electric
New York	7.9%	16.5%
New Jersey	**12.8%**	**12.4%**
Ohio	7.7%	12.2%
Indiana	4.7%	11.8%
N. Carolina	5.4%	10.5%
Pennsylvania	3.0%	8.3%
Georgia	2.7%	8.3%
California	2.5%	8.1%
Texas	2.6%	6.7%
Virginia	3.0%	4.3%

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High energy taxes significantly hinder New Jersey's ability to ATTRACT and RETAIN jobs.