Testimony before

THE SENATE ECONOMIC GROWTH COMMITTEE and THE SENATE ENVIRONMENT COMMITTEE

DECEMBER 11, 2008
1 P.M., Committee Room 4
State House Annex
Trenton, NJ

SENATE BILL No. 2428
CONCERNING FORMULA-BASED RATES FOR UTILITIES

MEMBERS OF COMMITTEES PRESENT:

Senator Raymond J. Lesniak, Co-Chair

Senator Bob Smith, Co-Chair

Senator Sandra B. Cunningham, Co-Vice Chair

Senator Jeff Van Drew, Co-Vice Chair

Senator Robert M. Gordon

Senator M. Teresa Ruiz

Senator Christopher "Kip" Bateman

Senator Joseph M. Kyrillos Jr.

Senator Steven V. Oroho

RAYMOND J. LESNIAK
Chair

SANDRA B. CUNNINGHAM
Vice-Chair

M. TERESA RUIZ
JOSEPH M. KYRILLOS, JR.
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New Jersey State Legislature

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PUBLIC HEARING NOTICE

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*COMMITTEE NOTICE

The Senate Economic Growth Committee and the Senate Environment Committee will hold a joint public hearing on Thursday, December 11, 2008 at 1:00 PM in Committee Room 4, 1st Floor, State House Annex, Trenton, New Jersey.

The public may address comments and questions to Kevin J. Donahue, Committee Aide, at (609) 984-7381 (for economic growth and energy/telecommunications bills) or Richard M. Handelman, Committee Aide, at (609) 292-7676 (for agriculture and animal bills), or make bill status and scheduling inquiries to Kathleen Zurka, Committee Secretary, at (609) 984-7381, fax (609) 292-0561, or e-mail: OLSAideSEG@njleg.org. Written and electronic comments, questions and testimony submitted to the committee by the public, as well as recordings and transcripts, if any, of oral testimony, are government records and will be available to the public upon request.

The following bill will be heard:

S-2428 Lesniak	Authorizes electric or gas public utilities to implement formula based rates.

Those wishing to testify are asked to provide 20 copies of any written testimony to the committee aides prior to the start of the hearing.

The Senate Economic Growth Committee will have a committee meeting immediately following the public hearing to consider the following bill:

(OVER)

Released/SCS S-1537 Smith/Bateman	Establishes procedures for guaranteed energy savings contracts by governmental entities.

Issued 12/4/2008
*Revised 12/8/08 (Added committee meeting following the public hearing)

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APPENDIX

SENATOR RAYMOND J. LESNIAK (CHAIR): I want to thank Senator Smith and his Committee members for joining us today. It's just a public hearing -- just a public hearing -- but no vote on any bills; although the Senate Economic Growth Committee will be voting on one bill after

the public hearing. We are -- the genesis of this hearing came when I had heard about a proposal that would create billions of dollars of investments in New Jersey, thousands of jobs -- new jobs, and energy efficiency. And those are issues that are very dear to my heart and particularly in these trying economic times.

I immediately spoke to Senator Smith because I know these issues are very dear to him as well. And in the -- the most important thing I believe to come out of today's hearing will be the information that we have gathered, both in terms of the testimony at the hearing and the written testimony that you have provided for us.

We are going to try to do this in an efficient manner by calling up representatives from groups to testify -- and in a concise manner -- and whether they're for or against. And I'm sure even those who are against will have constructive proposals to deal-- As Senator Oroho mentioned to me, you know there may be other ways and there should be other ways; and we want to hear other ways in addition to the proposal in the legislation that I introduced to provide energy efficiency, job growth, and investment.

Just for the-- And Yoshi will be -- after he straightens out all these forms, he'll go in the back of the room and talk to different groups so that you can kind of designate one or two people to provide concise testimony. As I see it, Senator, there are -- there's certainly the energy companies. Then there are business companies who are both for and against. There are union leaders who are both for and against. There's BPU, and government representatives, and there are citizen groups. I think that's probably a good way to categorize this.

So, Senator, would you like to say a few words? Any members of the Committee?

And we'll call the first group.

SENATOR BOB SMITH (CHAIR): Brevity is the soul of wit. Let me thank you, Chairman Lesniak. I think so many issues today are combined issues of environment and energy, and it's a pleasure to be working with your Committee today.

SENATOR LESNIAK: Thank you, Mr. Chair. Any other statements from the Committee?

If not, we will call up Ralph LaRossa from PSE&G.

RALPH LaROSSA: Thank you, Chairman Lesniak and Chairman Smith, and other members of the Economic Growth and Environment Committees.

I appreciate being here today. Rick Thigpen is going to be joining me here at the table.

I believe that everyone you'll hear from today shares the same end goal. We want to stimulant investment and create jobs here in New Jersey during these tough economic times. In my testimony over the next few minutes I'd like to accomplish two things. First, to explain briefly why we think the legislation being discussed today is an effective way to achieve this goal. And second, to clear up any misconceptions about this proposal.

I'm submitting more detailed written testimony for the record, and we also have copies available here today and on our website.

Our support for this legislation can be traced to two important challenges. First, the policy makers here in New Jersey and those incoming to Washington have expressed a desire to create jobs through infrastructure improvements and, specifically, investments in energy infrastructure.

The investments include traditional pipes and wires, grid modernization, energy efficiency and renewables. Utilities can play a big role in making these plans a reality. Second, we are in an economic crisis that has restricted access to the capital market to all but the most secure investments. That means we need timely and predictable recovery of our investments in order to access the capital we need to make the investments and create the jobs. And with timely and predictable revenue streams, we will get access to more affordable capital which will create a savings and a benefit to our ratepayers.

This legislation will enable policy makers and the utility industry to address the two challenges I've laid out. The bill will empower but not direct the BPU and utilities to choose a ratemaking mechanism that will spur job creation, protect consumer interest, and enable economic stimulus. The draft legislation does not spell out how all the details will work. We anticipate that will be part of a regulatory process that each utility that chooses to use formula rates will need to complete with the BPU. However, it is clear to us that the following basics shouldn't *(sic)* be included, and following principles.

First, there should be an annual regulatory review, including continued review of the prudency of all investments. Second, incremental rate treatments that do not – that are implemented do not overly burden consumers and reflect some reasonable cap. Third, performance standards to ensure utility performance should be put in place. Fourth, returns are given to the utilities that reflect the economic conditions as they change.

As many of you know, I'm a lifelong resident of New Jersey. Born, raised, educated, and still living here. I care about the well-being of the state, as do the other 6,500 employees of PSE&G that I have the privilege to work with day in and day out. Our goal here is rather simple. We want to make the kind of green and traditional investments that the Governor, other state leaders, and President-elect Obama have said we need. We want to contribute to New Jersey's economic recovery and sustainable future as a valued corporate citizen.

We stand ready to help and look forward to working with the others to make sure these investments become a reality.

That's it.

SENATOR LESNIAK: Wow.

MR. LaROSSA: You wanted to keep it brief.

SENATOR LESNIAK: Wow. That's very good.

Rick, do you have anything to say?

R I C K   T H I G P E N: Yes, very briefly. I would say this Committee is faced with the challenges of, like the rest of our country, of reducing carbon emission, reducing energy consumption, and creating jobs in hard economic times. We hope that this proposal helps stimulate that discussion and hopefully moves our state forward.

Thank you.

SENATOR LESNIAK: Thank you.

Any questions from the Committee?

SENATOR SMITH: Two quick ones. Are any other states in the United States using this approach? And number two, with regard to Public Service Electric and Gas, what do you anticipate to be the costs of the upgrading of the grid to make it a smart grid, and what do you see as the initial investment of Public Service for energy efficiency programs?

MR. LaROSSA: Well, Senator, I'll try -- I'll start from the beginning there. The other states that have this in place, most of them are in the Southeast. Most of them are integrated utilities where both generation and distribution are together within the same entity. We're a little unique there. The only other entity that has that in place, that has this type of mechanism in place today, is FERC, the Federal Energy Regulatory Commission. It has spurred investment. It has created new investment in the infrastructure. And we think that while this is not a model that we're wed to by any stretch of the imagination, it's a model that deserves to be looked at in some detail.

As far as the impact on rates or the impact on bills, that's a decision that will be made through the process. We could decide jointly between the regulators and the utilities to not spend any money. That prudency test would be done up front where we would agree upon the investment that we would make going forward.

What this bill and this ratemaking process gives is a clear line of site to the investment community to understand that that agreement has been reached up front in the process and, therefore, the revenue stream will be agreed upon on the back end of the process. It just moves the prudency up forward.

We could agree that we want to spend billions of dollars because we want to stir the economy in the state, and we can hire contractors and increase all workforce to meet that desire. Or we could scale back tremendously because the economic times just don't dictate that today.

SENATOR LESNIAK: Please excuse my ignorance. So this formula-based return on investment, whatever you want to call that, would have to be approved by BPU?

MR. LaROSSA: It would have to be approved by the BPU and the expenditures will be agreed upon up front.

SENATOR LESNIAK: Okay. Motion to move the bill? (laughter)

Senator Kyrillos.

SENATOR JOSEPH M. KYRILLOS Jr.: Thank you, Senator Lesniak. This is a big bill, big initiative for the State of New Jersey. I appreciate your calling this hearing.

On the one hand I understand why you want more certainty, predictability by going before the BPU on an annual basis. One might also think that it's overly burdensome, instead of going every three years or four years or five years. This would be every year. And as I understand it,that certainty, predictability, assurance of rates will help you in the capital markets during this difficult time.

Is that correct?

MR. LaROSSA: That's correct.

SENATOR KYRILLOS: And I think that we all appreciate the investment that the state's largest utility may be prepared to make on behalf of the company, of the citizenry, of the ratepayer, of those that need jobs during this very difficult time in the country's history. I don't begin to understand all that the new green economy and the jobs that will be created from it -- what they mean, what they can do; but I take it that it puts some people to work, and we need that.

On the other hand, I'm concerned about some of the people that are already working; and some of the people that can be hired by New Jersey's private sector if we can find a way to make things more hospitable for them here in a very highly taxed, highly regulated state – where there's a lot of competition from states around the region, the country, countries around the world. And you know, Mr. President, you know the numbers, and the statistics, and the competition out there. So let me just put this out there, you know, right at the outset, because people are concerned about this. Are these formula rates, so to speak, are they going to increase rates for a lot of people out there in the society, electric rates, and disproportionately so for some people?

MR. LaROSSA: The question is certainly valid and we share the concerns. The issue comes right down to: the rate mechanism does not increase rates; the expenditures could increase rates. We as a society need to determine whether or not the expenditures are needed. And we fully believe that the policy makers, as I stated earlier, have indicated that this is a direction we want to move in. The formula will drive the investment level. So as said earlier, if we decide to spend a dollar next year rather than $100, that will obviously have a different impact on the ratepayers. I believe that the utilities are a great mechanism to use to drive the infrastructure growth.

If I think back 100 years ago when this company was started, it was started on the premise that we were going to provide universal access to all customers for these types of services, electric and gas, and that that would be spread out over time so folks could afford to make those payments. And it would be done in a way that was -- regulated the return rate. This bill continues that tradition. It changes the timing of when the prudency takes place.

SENATOR KYRILLOS: To your contention then, if I'm hearing you correctly, it is not the new methodology, per se, that could increase rates, but the policy decisions thereafter with regard to infrastructure, what it is, how much of it we need, what the jobs are that could drive rates?

MR. LaROSSA: That's correct.

SENATOR KYRILLOS: For some people.

MR. LaROSSA: Right. So the best example -- and it's not an electric example, although people talk about electric quite a bit. Let's just talk about our gas replacement program. That program is currently around an 80 year replacement time frame. We could shrink that to 40 years, replace those assets sooner, put more people to work, create that economic stimulus.

But that's a decision we should make together with the regulators to ensure that we're all on the same page and that we do not put an undo burden on the ratepayers.

SENATOR KYRILLOS: And from your point of view, how is that -- how are those decisions going to be made with regard to infrastructure in the kind of example you just mentioned?

MR. LaROSSA: Again, I believe --

SENATOR KYRILLOS: It's a blank check for the utilities, or are there going to be other people at the table?

MR. LaROSSA: No, we continue – that has to be a joint decision. Now, there are two changes, one that I mentioned, which is the timing of that prudency in the up-front. The other point is, it is a compressed time frame. What we need to ensure is to work with all the interested parties to ensure that that proof -- that burden, that proof of burden of the investment is done in an appropriate manner. We don't want to ramrod anything down anyone's throat. What we're trying to do is expedite the process.

A normal rate proceeding will take up to 13 months. I'm not sure that we as a state can wait 13 months to move forward on this type of initiative. Now, I know it's asking a lot and it's going to be putting some people in positions to work long hours. But the question remains as to whether or not we want to compress that timeline, ensure that prudency on the up-front part of process, and allow us the access to the capital market at a fair level.

Overall, for customers, if we do this right and we have energy efficiency across all of our customer classes, we could reduce bills. Rates may go up, but the bills themselves will go down.

SENATOR KYRILLOS: Well, I'm all for access to the capital markets and increasing your capacity to get money quicker and invest in New Jersey. And all of us, I'm sure you included, have to be concerned about what kind of infrastructure investment, what kind of stimulus, so to speak, do we need; what's sustainable, what's affordable, what's practical. And you know, that's the stuff of this hearing and others to come, I'm sure.

SENATOR LESNIAK: Thank you, Senator.

Senator Cunningham, followed by Senator Van Drew.

SENATOR SANDRA B. CUNNINGHAM (Vice Chair): Through the Chair, good afternoon.

I understand the significance and the importance of a program such as this, but I am concerned about -- there are so many people in our communities now who cannot pay their gas and electric bills. I'm concerned when you say that they're going to be affected. Is there going to be some sort of cap to decide how much more they're going to be paying, or how is the formula going to work?

MR. LaROSSA: Well, as I mentioned in my testimony, I believe there should be a cap. We should agree upon that through the regulatory process. It is not in the bill today. If that makes sense to put it in, from a legislative standpoint, we certainly would support that. The concept remains the same.

The question is, where along the approval process this makes sense to put into the bill. The bill, as it currently stands, we believe could be modified, and in some cases should be to make more clarity. It's obvious by the reaction that this bill has created that folks have differences of opinion. I'm not a lawyer. Folks are obviously-- Good, smart folks will read and interpret language in different ways. I want to make sure this is very clear, and I would suggest that we continue to work together to make it clear so everyone could benefit.

SENATOR CUNNINGHAM: Okay.

SENATOR LESNIAK: Thank you, Senator Cunningham. And you raise a good point; and we could talk to BPU when they testify about that -- finding ways where we can ease any increases on the lower income folks. Because certainly we do not want to hurt them. At the same time, we do not want to inhibit investment, and job growth, and economic development in our state.

Senator Van Drew.

SENATOR JEFF VAN DREW (Vice Chair): Thank you, Chairman.

Through the Chairman, there was some discussions of this, and I assume this is a reaction to the recent economic challenges that we have in the economic downturn.

MR. LaROSSA: It is, from a standpoint of access in the capital markets.

SENATOR VAN DREW: Okay. Through the Chairman, though, there was discussions of this beforehand as well, wasn't there? Hasn't this been a subject, a discussion -- this type of formula-based rate has been discussed before as well?

MR. LaROSSA: Not by PS in a committee. I don't believe so.

SENATOR VAN DREW: Not in committee; but I mean just in general discussion, the idea of doing it?

MR. LaROSSA: I believe we have floated this idea in the past three or four months since the economic downturn.

SENATOR VAN DREW: Perhaps a little bit before that.

But the question I would have is, through the Chair: If we do it -- I understand that certainly -- perhaps we hopefully would increase capital investment. At the same time, if the rates and costs go up, if the -- in plain English, if the electric bill and the gas bill goes up for the small business person, for the average consumer, for the middle class consumer and for the poor consumer, aren't we also disincentivizing business and economic growth in the state as well?

I'm not quite sure why we can't have -- and maybe there's something I'm not understanding, and that's what I would like to understand better -- why we can't have this increased capital investment without changing this formula in a way that I think or I believe could possibly hurt individual consumers as well as small businesses.

MR. LaROSSA: I would agree with you that the investment can still take place. The question is whether or not the capital cost of borrowing that money will be as cheap as it could be. If the investment community -- and you could-- We've had -- many utilities have gone to the capital markets to borrow money over the last month or so. Those interest rates that they're paying on their debt average anywhere from 7.75 to almost 9 percent. Our historical cost of debt has been about 6.21 percent.

So for us to borrow money and make those investments, we could still do it at the higher rates. The question becomes whether or not that's the best thing for the consumers in the long run. If we can show the investment community that there's a clear line of sight to revenues because decisions have been made around the prudency of the investments ahead of time, then we can ensure -- we can ensure that we'll get the lowest rates available to the utility community.

Same thing if we take a look at the cost of equity, shareholders' cost. One of the other utilities in the state recently went out and issued stock. Again, I'm an engineer. I'm not on the investment side of the house. But you can argue that that cost was about 13 percent. Rates are going up. Interest rates are going up. Access to those markets is expensive for all the folks that are doing business here in the State of New Jersey, as well as across the country. We just see this as a way to keep those as low as possible, because they will be a firm and clear line of sight to the revenue stream.

SENATOR VAN DREW: Through the Chair, would I be inaccurate if I said that it would increase predictability because you would predictably be able to say that you would be able to charge consumers and businesses more for their utilities?

MR. LaROSSA: Not charge them more, but that we would be able to recover the cost. Again, I believe if we do this right we can actually reduce the overall bill for customers because they'll be using less product.

SENATOR VAN DREW: And through the Chair, they'll be using less product because they would be discouraged from using product at certain times, at peek times and other times; is that correct?

MR. LaROSSA: No, I'm not -- you would have just energy efficiency as a whole within the household or within the business. We would be able to drive that. We would be able to replace some of our transformers that are not providing efficient delivery of the electrons or replace some of our gas facilities, so that we can continue to improve the efficiency, overall efficiency for customers.

So it's not necessarily a one for one that we would automatically raise a bill for a customer. It just simply puts the ratemaking in a more timely and more certain fashion for the investment community.

SENATOR VAN DREW: Okay. I will digest that.

Thank you, Chairman.

SENATOR LESNIAK: Senator Van Drew.

Senator Oroho, followed by Senator Gordon.

SENATOR SEVEN V. OROHO: Thank you, Chair, and thank you very much for being here this afternoon.

And I'd like to -- one's a statement and one's just a question, because I know there will be a lot of testimony today. But as I've read through a number of the comments, it seems like right now, and correct me if I'm wrong or if somebody else could correct me, we right now in New Jersey, I think, have the highest utility rates in the Mid-Atlantic region; and then I think we're like fifth highest in the nation in utility rates.

So my observation or my question is: obviously we're doing something wrong and we're not in a good spot. And I think we would like to try and do a lot better. Does anybody have -- or does PSE&G, or the BPU, or anybody have an analysis or competitive analysis -- okay? -- that says "Here's the components of our utilities rates and why they're more expensive than our neighboring states" and, I guess, 45 other states?

MR. LaROSSA: I can speak to that at a very high level.

First of all, New York does have higher rates. They're not in the Mid-Atlantic region, but they are -- New York City and New York State have higher rates than we have here in New Jersey. Pennsylvania does not. And as we move to the west into more of the pole regions, their rates are not as high as ours are. So if you were to break down the components of our bill, I'm proud to say the distribution portion of the bill is well in line with regional averages, if not better. But the commodity price, both on the gas side and on the electric side, are higher; and a lot of that, arguably, has to do with congestion in the system.

SENATOR OROHO: I would -- through the Chair, if anybody even in the audience or PSE&G happens to have that analysis, I'd love to see as far as what makes up those components.

Now, with respect-- If we talk about the cost of cap -- and I understand the predictability in the capital markets and how that could lower the cost of capital. And I guess historically you were about 6.2, and now it's about 7.75 to 9.

MR. LaROSSA: To 9, in some utilities.

SENATOR OROHO: Have you done any estimates of how much savings on a cost capital basis would be affected by this process?

MR. LaROSSA: Our financial folks believe-- Now, again, it's against-- Yes. Where we expect to be is about 75 basis points below where we would have been.

SENATOR OROHO: Would have been.

MR. LaROSSA: Right.

SENATOR OROHO: I know it moves all the time. So you're expecting about 75 -- or three- quarters of one percentage point of a savings. How does that translate into savings to the consumer?

MR. LaROSSA: Through the formula.

SENATOR OROHO: But how much?

MR. LaROSSA: So what that-- Depending upon our investment level -- and again I said that could be from a dollar to a billion or more, depending on what we want to do from a policy standpoint -- that will translate directly back into customers because those interest rates would go down. And the following year, as a result, they would be less than they would have been. That money would come back to the consumers.

SENATOR OROHO: Now, let me just-- How much-- Of the 75 basis points, is there like 50 percent that would benefit the consumer, or is it, you know-- How much of that basis point savings would go to the company versus to the consumer?

MR. LaROSSA: Well, basically our returns are regulated at a given percentage. So any savings that we have on it would just flow back to the bottom line.

SENATOR OROHO: So arguably 100 percent would go to the consumer?

MR. LaROSSA: That's correct. There's always a question of prudency and whether all those costs are allowed, but assuming that they would be allowed, because they were prudent investments, that would be true.

SENATOR OROHO: Okay. One other thing. So since your -- obviously the rate of return is set and regulated, the total cost-- If you looked at just the component of the cost of energy, the total cost of capital -- except for maybe the equity portion -- gets passed on to, obviously, to the consumer: total cost of capital of the debt, the debt component.

MR. LaROSSA: The debt component.

SENATOR OROHO: 100 percent of that gets passed to the consumer. It would have to.

MR. LaROSSA: The interest is an expense line within our -- within the formula.

SENATOR OROHO: Just one more, if you would: The intent of the bill itself is that the investment, as I understand it -- your investment plan into the distribution system, that would be approved by the BPU up front?

MR. LaROSSA: Both. For all investments: the distribution system; the energy efficiency, if that's so chosen to be pursued; as well as any renewable investment.

SENATOR OROHO: So would there be a discussion -- let's say you've made analysis that you think, in the distribution -- in the efficiency of the distribution system that your investment of *X* millions of dollars is going to drive efficiency. And say the BPU disagrees -- they take it out of the investment schedule?

MR. LaROSSA: That's correct. As well as what we-- When I mentioned the performance -- performance standards -- we should be held accountable for achieving those levels if we claim that we can achieve them with that investment. So if we say we're going to save a megawatt, we should be held accountable to save a megawatt. If we're going to invest in more reliable grid, we should be held accountable for keeping the lights on.

SENATOR OROHO: Thank you.

Thank you, Chair.

SENATOR LESNIAK: Senator Gordon.

SENATOR ROBERT M. GORDON: Thank you, Mr. Chairman.

And Mr. LaRossa, thanks for being with us today. I'm still a bit confused about the rationale for doing this. The state governments around the country recognized a long time ago that because of the significant economies of scale and utilities, they're natural monopolies, and as a result established a system of rate regulation.

It's still unclear to me what's wrong with that system. It seems to provide protection to the consumer and a reasonable rate of return to the utilities. Couldn't we achieve the goals of this simply by trying to streamline the existing process so that it doesn't take all those months to get a rate change approved? Why do we have to completely change the system?

MR. LaROSSA: We can certainly do that. We could modify the existing structure. We can find ways to streamline it. This is a proposal that we put forward that we believe is sound, exists, and can be copied relatively easily and quickly to achieve the goals we've all heard we want to achieve.

I can be no clearer than to say that from a PSE&G standpoint this is not something we need to have. This is something we're trying to do to help to enable the infrastructure growth. We think it would help to drive that investment at the lowest cost possible. Again, the energy efficiency, the renewables, and our traditional infrastructure investment.

Our company is sound, our 6,500 employees are strong. We're very proud of the work that we've done over the past hundred years. We're proud of the work that you'll hear from some of our unions. We have great employees and we received the National Reliability Award again this year. We're not a company in trouble. We're a company trying to help. And we think – we think that the access to the capital markets and to bring that cheaper capital to the State of New Jersey is something worth pursuing.

SENATOR LESNIAK: Thank you. I just have one final question. I'd like to read you a statement from testimony submitted and I'd like you to respond to it.

MR. LaROSSA: Sure.

SENATOR LESNIAK: "Not only will the utility spending be unchecked, but the profit would be tied not to the level of service or whether they operate an efficient system, but to how much they spend. Does this bill actually provide an incentive for the utility to overspend? If they buy gold-plated infrastructure, their profits would be calculated off of the higher investment cost. The bill, therefore, creates a disincentive for the utilities to operate efficiently."

What would be your response to that?

MR. LaROSSA: Those are concerns that we expected to hear. First, from an efficiency standpoint, we believe that's why we advocate for performance standards. We believe that we should be held accountable to those performance standards to drive the efficiency, first and foremost.

Secondly, as I said earlier, I believe that smart people can read language differently. We should sit down together, draft a language so we achieve what I've spoken about here today. If there's a desire to do that, we would love to have that conversation and to move that process along. We trust our lawyers that we have. They made a good attempt at drafting language that we felt was accomplishing the intent of what I've spoken to. We're fully open to have that.

I would also ask the Committee -- and we have copies if you'd like to look at it. President Obama -- President-elect Obama and Vice-President-elect

Biden have put out a white paper on energy that they've shared and is available on their website, and it speaks directly to the issue about the incentives and how utilities make money. And if it would be okay, I would just like to read one sentence of this here.

"The Federal government under an Obama administration will play an important and positive role in flipping the profit model for the utility sector so that shareholder profit is based on reliability and performance, as opposed to total production."

We believe in that statement, we believe in that sentence, and we're just hoping that this initiative will get us ahead of the curve so we can set New Jersey up to make those investments.

SENATOR LESNIAK: Hopefully next time if we hear this bill we'll be able to get the EPA administrator here to testify. (laughter)

I just asked Senator Smith -- since your generous offer to meet with all the parties and find out the best way to do this-- And Senator Gordon suggested that if we may do we don't have to continue with the hearing. Oh, no, no, no, no. Don't do that. But I think that alone will be a great benefit to come out of that hearing, because I know everyone on this Committee wants to get jobs going, wants to get investment in New Jersey, and wants to get this economy going. And we want to find a way to get it done.

So thank you for your testimony.

17 MR. LaROSSA: Thank you. Thank you, Committee.

19 SENATOR LESNIAK: Okay. So the next group, if I could see my notes, will be the BPU. And I think they decided-- Listen to this. This is the first time this has ever happened, I believe, right? New Jersey Business & Industry Association, Citizen Action and the environmental groups testifying as a

group, opposed. But more importantly, testifying as a group. You guys, can you come, can you keep your hands off of each other and play nice? (laughter)

Can we get a photograph? Can we get a photograph of this? Where's the -- You may never see it again. Whatever you guys want to do. Well, you guys figure out how you want to handle this and we're all right with that.

Senator Smith, we achieved something that no other legislature has been able to achieve -- something to be proud of. Happy holidays guys.

Nick Asselta.

NICHOLAS ASSELTA: Good afternoon, Senator Lesniak -- Chairman Lesniak and Chairman Smith, and honorable members of the Senate Environmental and Economic Growth Committee.

For the record, my name is Nicholas Asselta. I'm a Commissioner with the New Jersey Board of Public Utilities. Thank you for the opportunity to testify in regards to S2428, which authorizes electric or gas public utilities to implement formula-based rates.

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

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

Specifically, the BPU already has the authority to ensure that utilities can make additional capital investment with certainty, while simultaneously allowing utilities to regain the cost of their investments. The utilities can recover those costs and earn a return appropriately with the current increased cost of capital. The BPU has historically done this in cases in which the affected utilities did not have sufficient cash flow to meet the cost of constructing major facilities.

SENATOR LESNIAK: Commissioner, can I ask you a question on that?

MR. ASSELTA: Sure.

SENATOR LESNIAK: Are you limited to those circumstances, or could you adjust that procedure for instances of capital investment, as outlined previously?

MR. ASSELTA: We can adjust. We believe we can adjust.

Those major facilities, just for an example -- nuclear plants that were constructed 15, 20 years ago -- this particular statute was utilized. In doing so, it has relied on its authority under N.J.S.A. 48:2-23 to require utilities to provide safe, adequate and proper service; and its authority under that statute to require extensions of existing utility facilities when the financial condition of the utility so warrants.

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

The BPU continues to approve mechanisms to provide companies with the opportunity to stabilize earnings while continuing to provide ratepayers. In 2006, the BPU approved the Conversation Incentive Program, CIP, for Natural -- New Jersey Natural Gas and South Jersey Gas, so they would continue to recover the cost of improving, operating, and maintaining their distribution infrastructure even if the volume of the companies' natural gas sales were to fall as a result of their conservation and energy efficiency initiatives.

The CIP was the first of its kind and continues to be a national model. About a year ago, this legislature approved the RGGI law, allowing electric and gas companies to invest in energy efficiency and renewable energy to obtain cost recovery on an expedited basis and to be eligible for incentives. Under that law, the Board has approved a $100 million solar loan program and a $46 million carbon abatement program for PSE&G.

The existing regulatory approach by the BPU to developing electric and gas rates has protected consumers while providing sufficient revenues for utilities to attract the capital they need to maintain and improve the reliability of their infrastructure. New Jersey utilities have rarely begun a rate case with the BPU when their revenues are sufficient. Over the last 10 years, each of the seven electric and gas utilities have filed only one or more, at most two, times to increase their base delivery rates to customers.

Also, there is a provision within every rate case that prescribes relief for utilities if their current rates threaten their ability to continue to maintain safe and reliable service to New Jersey ratepayers, as they are required to do by law. In short, the current regulatory system works and can deal with challenges facing New Jersey utilities and ratepayers.

Finally, with respect to S2428, the Board feels that the formula-based rate system would be a dramatic departure from our regulatory process that has worked well for more than 100 years. The use of a formula rate eliminates one of the most important elements of traditional regulation, the incentive to improve productivity and minimize costs between rate cases. These incentives are beneficial to both utilities and to your constituents. They provide the impetus for the utility to maintain or lower its cost structure, allowing for the potential to earn or even exceed its allowed rate of return. The ratepayer benefits from the long-term lower cost structure of the rate of return.

The absence of this incentive will result in an annual rate increase to New Jersey's citizens that's undoubtedly-- Our current ratemaking system is a semi-judicial stakeholder process that relies on the testimony, and the Board's ability to hold accountable the utilities for their documents that they submit to us. With this formula system, the due process for taxpayers will be lost entirely.

Our agency supports the goal of the needed construction of utility infrastructure and creation of jobs for New Jersey's citizens. Our alternative proposal would provide for cooperation between the Board, as it always has been, and our public utilities will ensure that the objectives of this bill are realized.

Chairman, thank you for the opportunity. I have Victor Fortkiewicz here also, our Executive Director, who could lend some insight to this issue.

Thank you.

SENATOR LESNIAK: Thank you, Commissioner. I want to add a few comments of my own. First of all, I do believe some of that statutory language that you read was – would restrict your ability to do what you said. It can, and we'll certainly take a look at that. Because it certainly did not appear to apply to the cases that -- the investments that the representatives from PSE&G talked about and that certainly would be something that we could do.

Secondly, I'm going to disagree with you just a tad, sighting Senator Oroho's statement about how we have the highest utility cost in the Northeast, fifth or fourth highest in the nation -- fifth. And I remember we used to have the highest insurance cost as well, which has gone down dramatically. And we had a rate-setting review process that was in place for about 100 years and that worked terribly. So, you know, I'm not buying, necessarily, the fact that because something has been in place for 100 years that that's necessarily good and we should keep a closed mind and close our thoughts, as that-- There's always room for improvement. Certainly we would love to improve and get better than the highest utility rates in the Northeast. So that in and of itself-- As I said, the oversight often increases costs rather than decreases cost. So we will take that into consideration.

I think there are a lot of good points raised both in previous testimony and your testimony, you know, whether it's done by performance standards, whether it's done by accelerated hearings, whether it's done by predefined formulas, who knows. But I think the most important thing, as we started, is that we find a way by working together to get this investment going, the jobs going, and at the same time protect the ratepayer.

And I think we can do it. With your support, I think we will.

MR. ASSELTA: Absolutely.

Through the Chair, I would assume -- and as I've seen in my first nine months, there's been some dramatic changes and cooperation that I've seen, and I think the utility -- Board of Public Utility is moving forward in that fashion.

I know Mr. Fortkiewicz would like to add a couple of comments to your comments.

VICTOR FORTKIEWICZ: This is a point that Mr. LaRossa just echoed. And in fact, the delivery portion of both gas and electric rates -- the part that is still regulated -- those compare very favorably to other states and are even lower than other states. They only represent about 30 percent of the bill.

The reason why our rates have gotten above is, it's the other 70 percent which has been deregulated, in fact. Those are the commodity costs on the electricity or for natural gas. So that's driving these costs higher -- that which has already been deregulated.

Thank you, Mr. Chairman.

SENATOR LESNIAK: Madam. Madam.

There we go.

STEFANIE A. BRAND: Thank you. I'm Stefanie Brand. I'm the Director of the Division of Rate Counsel in the Department of Public Advocate. We have submitted extensive written testimony. I will not—

UNIDENTIFIED SPEAKER: (Indiscernible)

MS. BRAND: Yes, I believe you did. And I just wanted to touch on a couple of points that I think are of importance in terms of considering this bill. And I want to thank the Chairman and members of the Committee for the opportunity to testify.

First of all, I do want to stress that we already have a statutory provision that is intended to encourage investment in energy efficiency and renewable energy without the need to go through the formal ratemaking process.

Less than a year ago, in the RGGI legislation, there was a provision that was enacted that allows utilities to come in to propose programs for energy efficiency and renewable energy, and recover through charges on rates or some other form of alternate rate mechanism that does not require them to go through a formal rate case in order to recover. So that this bill -- what's in this bill is not needed in order to encourage investment in energy efficiency and renewable energy. It is aimed at extending that to the traditional utility investments.

And in terms of the prudency review, I think it's important to note that what it does is bring any review of the expenditures by the utility not only up front, but into sort of a hypothetical circumstance. The utility will come in -- at least as the bill is written right now -- and they will propose categories of spending and a band in which they can invest. As long as they're not making over the top end of the band, they can continue to spend on whatever is within those category of cases. It takes away the analysis of a particular project, so that if they're saying we want to build a substation here, it takes away the specific review by the BPU of that project and what they're spending on that project. As long as they stay within their formula, then they can spend.

That's where the danger comes in. Because there are many ways to do many of these projects. And unless they're done in a cost-effective manner, then we don't get the benefits that we want. And what we're urging is that we must maintain that prudency review to make sure that, to the extent the utilities are spending money that is going to get folded into rates, that it's done in a cost-effective manner.

Finally, I'd like to talk a little bit about what we should do. I don't think anybody in this room thinks that the goals here of creating jobs and encouraging energy efficiency are things we don't agree with. But in addition to the alternative mentioned by Commissioner Asselta, another thing is to spend that money -- not necessarily on infrastructur improvements, because the current system allows for spending, and as long as its cost-effective they will recover and it will bring them savings -- but to put that money into energy efficiency. Because when you're talking about energy efficiency, you're also talking about cost savings that will ultimately reap to the benefit of ratepayers. We have very limited ratepayer dollars to spend on these -- on job creation, and we should do it in a way that minimizes the ultimate cost. If you're talking about energy efficiency, there will be energy savings that will ultimately, hopefully, bring the burden on ratepayers down.

Thank you.

SENATOR LESNIAK: Questions from the Committee?

Senator Oroho.

SENATOR OROHO: I just want to make sure I understand. So if the consumer looks at their bill, 30 percent of that -- you think 30 percent is from the distribution and 70 percent is from the generation?

MR. FORTKIEWICZ: That's correct. And on the gas side 70 percent of it is from the gas that's bought in Texas or Louisiana, which is deregulated.

SENATOR OROHO: Any idea how that 30 percent compares to our other surrounding--

MR. FORTKIEWICZ: It does compare favorably, as I said before. And they've – as Commissioner Asselta pointed out, because the mechanism is in place now where they have an incentive to keep costs down, they have not come in to raise that rate. I know in the case of New Jersey Natural, I think they've been in once in the last 15 years. And certainly what this bill would do would result in, each year, small but steady and predictable increases in that rate, even if it were tied to performance standards.

SENATOR OROHO: Through the Chair, if you have any of those analysis with respect to, you know, the generation and distribution side of that competitive analysis I spoke about, I'd love to see it.

MR. FORTKIEWICZ: Yes, Senator, we'll provide those. Certainly.

SENATOR LESNIAK: Thank you.

Senator Van Drew.

SENATOR VAN DREW: Just to rehash and make sure I understand: It's your sense that this wouldn't supply enough for protection for the consumers -- that you currently have now? And secondly, the second part of that question would be: Do you believe there's enough flexibility and that you would be able to help the production of capital investment in the current regulations -- that exist now in the current statutes? Or would you agree, even if you don't necessarily like this legislation or agree with it, that there should be some change, some increase in flexibility so at the same time, while you have the protections that you desire, you'd also have the flexibility to rapidly stimulate the economy and bring in the efficiencies that you want, as well as the capital investment?

MR. FORTKIEWICZ: Yes, Senator, I think we do. And I heard, from Senator Lesniak, his legal review of the statue and what it could permit. I mean, we've looked at it. We believe that we can utilize this, but certainly would require further, you know, review by our lawyers, Attorney General's office. But this is jobs creation that we're after. We think that this could accelerate, during this time period, creation of those jobs.

And as we said, under the energy efficiency and renewable energy we have recently approved, under the new RGGI law which was passed in this -- in 2008, a $100 million solar program, a $45 million carbon abatement program for energy efficiency; and PS is about to file a $1.2 billion solar program within the next couple of weeks, and we're ready to move on it rapidly. And we have under the statue six months to come to a resolution. So we think the mechanisms are in place to address the job creation, the energy efficiency building infrastructure. It would require filings to make sure we get the requisite parameters, but we think we can do that.

SENATOR VAN DREW: But, through the Chair, with the current legislation you believe that you could create the same level of capital investment that this legislation would create, and also create the same -- the level of protection that you have now?

What I'm asking you is, in essence you're kind of saying to me that there isn't actually any need for this legislation because you could do what needs to be done – we don't need this legislation. And the result of this legislation will only, in essence, be an increase in cost to the consumer.

So I'm asking you specifically, do you think that we can do all that we need to do with the current regulations?

MR. FORTKIEWICZ: Senator Van Drew, I believe we can, and I think it's hard to quantify. But basically this issue comes down to timely. I think Mr. LaRossa said it best, it's a timing issue – "changing the timing of liability debt recovery" -- which means the ratepayer is going to pay the timing issue here. That ratepayer is going to pay more quickly so that they can recover their liability in debt, and so that the funds and financial situation is improved so they can build this infrastructure.

But long-term -- and through the Chair, Senator Lesniak -- Federal government really can play a huge role here in helping with the investment liability and the investment here, and that's where we should be focused to. With a new administration, with all the other incentives and bailouts that are happening, this is something that we should be pushing for.

SENATOR VAN DREW: Through the Chair, real quickly, I want to do both. I want us to have the protection that we need and also get the investment that we need as well, and just try to get to the actual essence of the truth here.

MS. BRAND: Senator --

SENATOR LESNIAK: I'm going to disagree with you, Commissioner. I know a little bit about economics. I mean, not enough, but it's not quite-- Timing doesn't make it cost more, you know. If the timing is dragged out more, the investment has to be more, that's all. It's a question of value. And it's a question of, you know, the quicker the timing, the more money you could get in the infrastructure, you know? I mean, if the timing is going to be -- if recovery is going to be dragged out, then the amount of infrastructure improvements is going to be dragged out too.

So it's not as simple, quite frankly, as you made it out to be.

Yes, ma'am.

19 MS. BRAND: Well, I just want to reiterate that I do think we do have the tools necessary to encourage this type of investment and work with the utilities. I spent all day yesterday with the utilities and the BPU working on trying to encourage half a billion dollars in investment in energy efficiency for next year, and I think it is very important that we make sure that they have the ability to recover what they need to recover in order to invest in the market.

But I do believe they do have that under the current scheme. PSE&G did borrow recently. It was slightly more, and, yes, we are going to pay for that, but we have the legal tools available. We don't need this legislation to encourage spending in energy efficiency.

SENATOR LESNIAK: Well, we're going to find out, because what's going to happen after this -- and I'm not sure if we need to hear from anyone else, but we will -- is the guys-- The utility guys are saying they can't make this investment without this and you guys are saying you can. You guys are going to get in a room, right? And you have to discuss, you know, and come up with the right answer.

Thank you very much for your testimony.

I do want to mention a little bit about the issue of deregulation, because it's oftentimes confused with oversight, you know. The financial crisis we've seen was a result of, and lack of, oversight. I've seen deregulation drive up cost a lot more often than I have -- I mean, reduce cost a lot more often than I have increase cost. We saw when we deregulated insurance how much it went down. We saw when we deregulated telecom how much those prices, other costs are coming down. I'm not saying that in all instances, but I heard a little bit from the Executive Director a sense that, "Well, maybe the cost of energy is because we deregulated." And if you regulate so much that you decrease supply, you cannot regulate the laws of supply and demand -- they will take over.

All right. We will hear from some labor representatives who are in favor of this process as opposed to the other process, because I think we all believe we need a process to get things moving in the state.

Linda Pont Vliet, Neil Wojceichowski -- you'd figure I would be able to pronounce that name better -- Chip Gerrity; IBEW, and OPEIU, and VA. And Tony Wieners, State PBA. State PBA is here in favor. What do you guys have to do with energy?

Okay. Evan Piscitelli, Utility Contractors. Steven Gardner, Laborers' Employees Trust. Kevin O'Sullivan, Building Trades. Matt McDermott, Pipe Trades Association, Mechanical Allied Crafts.

How are you guys doing?

(UNIDENTIFIED SPEAKERS): Good. How are you doing?

SENATOR LESNIAK: You guys decide on how you're going to go.

CHIP GERRITY: All right. Everybody ready? Okay. We'll start this thing off.

Good afternoon. My name is Chip Gerrity, President and Business Manager of Local 94 of the IBEW International Brotherhood of Electrical Workers. All righty then. And with me is Linda Pont Vliet -- she is the chief steward of Local 153, Office and Professional Employees International Union -- and business agent Neil Wojceichowski of the VA Local 855. And together we represent about 5,500 employees at PSE&G and related companies.

The brothers and sisters of our locals operate and maintain electrical distribution systems, and even part of the gas distribution system, of PSE&G. They're the ones that keep the lights on and homes warm on days like this. We're here today to support the company's efforts to create and continue good solid jobs for our members and for the members of the construction trades around the state. And we are here to thank Senator Lesniak for sponsoring Senate Bill 2428.

It's a lot of hard, dirty work, often in lousy weather, to make sure that gas and electric systems of a 100-year-old company meet the needs of our customers. And we're proud of the company's reputation for safety and reliability.

The company tells us that it could put more people to work by moving up the schedule for upgrades to electric circuits and substations, and replacement of gas mains. But it can't wisely spend the money in today's economy if slowed down by yesterday's regulatory tools. Same goes for spending on new initiatives like advance street lighting, more efficient transformers, new meters, and other smart grid investments.

Senator Lesniak's bill would give the BPU a new way to regulate utility spending on distribution systems, the same way that the feds use it to regulate spending on high voltage transmission lines. The bill will help accelerate upgrades to electric and gas distribution systems, and the bill will get money out on the street faster for people doing the work on new green jobs, and the state -- as mentioned in the State Energy Master Plan.

If this legislation means the project can be moved up while the BPU still looks after rates, that sounds like a win-win to us and we ask you to go forward.

Thank you.

K E V I N O' S U L L I V A N: Mr. Chairman, my name is Kevin O'Sullivan. I represent the New Jersey State Building and Construction Trades Council's 150,000 members, and I'm here speaking on behalf of President William T. Moen.

Our organization represents 15 trades that do construction in the State of New Jersey. And we are here today in support of Senate Bill 2428. We've had a long-term relationship with PSE&G and it's been a positive one. Hand and glove, we work together going to put forward a better way of life for New Jersey and for its citizens.

Our members are facing projected 30 percent unemployment next year in discussions we've been having with our affiliates and our contracting partners. We are looking at a very tough time ahead. We're looking to make sure that we can do all in our power to ensure that we do not increase the numbers of unemployment, and thereby also collecting various social programs from the State of New Jersey, and thereby further draining our State's budget.

Both Governor Corzine and President-elect Obama have committed largely to investment in infrastructure. But unfortunately this investment into infrastructure is going to be limited to a one-time huge shot. What we're looking at here with this legislation is a long-term projected way of addressing infrastructure investment.

This legislation is very similar, as you have heard, to the Federal regulatory standards; and thereby it is not unprecedented, but rather it's assimilating to what already exists. While opponents of this legislation voice concerns about potential impact, my members are under the duress of the current economic impact. We need to make sure that we promote private investment into the State of New Jersey by addressing the regulatory issues that hinder this process.

So on behalf of the 150,000 members of New Jersey State Building Trades, I thank you as a sponsor and the chairman.

Thank you.

SENATOR LESNIAK: However, we do have some unions who are against, okay, and that would be Bob Master, CWA District 1; Frank Brill, Plumbing-Heating-Cooling Contractors of New Jersey -- he has submitted written testimony; Ira Stern, Local 108 RWDSU; Bob Regan, CWA 1037; and Noel Christmas and Michael Garcia from the Utility Workers Union of America.

And one of you is speaking for the rest. Thank you very much. I like it that way.

Oh, someone else is coming up.

You know, we don't have until Christmas. (laughter)

NOEL J. CHRISTMAS: Good morning, Chairman Lesniak and members of the Committee. My name is Noel Christmas, chairman of the Utility Worker's Union of America, representing 2,500 members currently employed with various utility companies in the state -- PSE&G, Elizabethtown Gas Company, American Water, and United Water. UWUA understands the multitude of energy challenges which are critical to both the economy and the environment of the State of New Jersey. In this regard, UWUA is committed to finding solutions to the many energy challenges which are confronting our state.

Having said this, however, eliminating oversight of any investment by eliminating the prudency review of the Board of Public Utilities will be a disservice to workers and ratepayers. Allowing formula-based rates, as proposed, with no oversight only creates a formula of deregulation. If S2428 is passed as is with no regulatory oversight, what is to stop other utilities from proposing the same? Water, cable, and phone.

Let me make this clear: UWUA is all for improved infrastructure; renewable energy resources, including wind and solar, smart appliances, plug-in high grids; smart, safe, and reliable service. However, we must not forget that in this state's recent history, a Chicago-based company named Exelon attempted to purchase PSE&G. If it was not for the regulatory review process in Title 48 requiring a just and reasonable threshold, Exelon would be here today. The State of New Jersey would be sitting here with thousands of jobs being moved to Chicago and many more positions outsourced.

I would also like to point out that if that buyout was a success, PSE&G would not have two leaders held in high esteem in the state, such as Ralph Izzo and Ralph LaRossa. Without oversight, job loss could potentially become a reality, even if the investment does not prove to be a benefit to the ratepayer, the state, and its economy. Without oversight, cost to ratepayers could become a formula of calamity. Jobs that require a minimum education of a GED or high school diploma would be particularly impacted in urban communities.

For example, with respect to entry level positions, a large portion of UWUA members begin their careers with utility companies in these areas. The opportunities that are provided in these positions to many, especially those in urban communities who have citizens that are less fortunate and can't afford to pay for higher education, could possibly be eliminated for good. Call Center jobs can end up in India, like Elizabethtown Gas. Not only do these positions provide a fair starting wage, but they also provide for a full complement of benefits. And these attributes may not be easily replicated in the event that these positions are eliminated.

In closing, the UWUA urges the regulatory review process remain under the jurisdiction of the Board of Public Utilities, therefore continuing the history of New Jersey utilities remaining one of the best in the country.

Thank you for listening and giving me this opportunity to come before you today.

SENATOR LESNIAK: Thank you very much.

R O B E R T   M A S T E R: Chairman Lesniak, members of the Committee, thank you for this opportunity to testify before you.

My name is Bob Master. I'm the legislative and political director for CWA District 1. We represent approximately 200 state workers who are employed at the New Jersey Board of Public Utilities. Our members include professional economists, accountants, rate analysts, auditors, and customer service personnel, plus a broad range of technical and support staff. Together these unionized workers are responsible for the economic regulation of the public utilities servicing New Jersey ratepayers, including electric, gas, water, telecommunications, and cable television companies. They utilize an array of long-established regulatory tools that have made New Jersey electric and gas utilities among the most secure and reliable service providers in the country. This regulatory structure we believe would be dismantled by the bill under discussion today, S2428.

We are here to register our opposition to that legislation. If adopted, we believe it would eliminate the remaining vestiges of government oversight of the state's electric and gas utilities, permitting them to unilaterally raise rates based on imprudent investments and technology. The higher utility rates produced by the proposed formula rate mechanism will impose serious economic burdens on New Jersey businesses while we are facing the worse recession in a generation. It would also undermine the necessity of retaining career professionals at the BPU, replacing many of the expert regulatory functions they currently perform with mere rubber-stamping of the utilities annual formula rate updates. And it would displace the jobs of utility workers through widespread installation of technologies that neither benefit the average utility customer nor are capable of replacing the level of service provided by these workers.

Specifically, S2428 would deregulate the electric and gas utility industries by eliminating the just and reasonable standard for BPU approval of utility investment and expense recovery and rates. Section 3B-3 of the proposed legislation sets aside current statutory requirements outlined in N.J.S.A. 48:2-21 and related rules and regulations. These requirements constitute the prudency review normally conducted in the context of open public base-rate proceedings before the BPU.

CWA members employed at the BPU conduct the evidentiary phase of these proceedings, which is an intensive but necessary fact-finding process designed to produce a comprehensive record that BPU commissioners use to make their final decision on requested rate recovery. Absent this rigorous prudency review, utilities would have the perverse incentive to overinvest in plant, inflate their rate base, and garner excess profits, all at the expense of the general public and the rest of the business community.

The bill asserts the need for this unprecedented financial security in order to access capital markets required to finance infrastructure upgrades. Publicly available information, however, on the financial health of New Jersey utilities does not support this contention. PSE&G, for example, reported in their third-quarter earnings to the investment community a liquidity position of $3.35 billion, and stated the capital needs could be funded with internal cash. While credit markets are, in fact, tight, public utilities remain attractive and secure customers in the credit markets. And I would add that in the same third quarter, PSE&G reported profits of net earnings, I believe, of about $650 million; operating earnings of about $475 million.

It hardly seems necessary to point out that a blind faith in financial deregulation led directly to the economic debacle now facing us. Even many of the conservative economists who advocated that deregulation now acknowledges its failure and the need to deregulate. The New Jersey legislature should spare itself and the state the same tough lessons. This is not the time to embark on further deregulation of our utility industries. This is not the time to raise utility rates.

In the view of our members at the BPU who daily fight to protect the public interest, and in the view of the national union, the system is not broken. We urge the Committee to reject this bill.

SENATOR LESNIAK: I am just going to read now some business representatives in favor. If somebody wants to come up and testify who I read, please come up. But there's an indication here that you do not.

Fletch Creamer, from J. Fletcher Creamer & Son, in favor. Charles Barnes, Associated General Contractors of New Jersey and New Jersey Asphalt Pavement Association, in favor. Alan O'Shea, Mechanical Contractors Association of New Jersey, in favor. Pam Hersh, P.R., Princeton Healthcare System, in favor. Richard Pieper, Henkels & McCoy, in favor. Steven Asplundh, Asplundh Tree Expert Company, in favor. Okay. William Phillips, Lantier Construction-- I could use that tree expert in my backyard. William Phillips, Lantier Construction, in favor. Jim Leonard and Mike Egenton, New Jersey Chamber of Commerce, kind of in favor -- is that fair? Frank Giuliano in favor. Dennis Dooley, Capital Health System.

Who wants to speak on behalf of your group, one or two or three briefly. Take your shots.

FLETCH CREAMER Jr.: I'll start. Thank you, Mr. Chairman.

My name is Fletch Creamer Jr., CEO of J. Fletcher Creamer & Son; lifelong resident of New Jersey. Our company has been in business for 85 years. I'm sure you've been stuck -- by our trucks -- in traffic over some period of time of your lives; but we employ about 1,300 people. About a thousand of those people are in New Jersey, and about 250 people work directly for projects for Public Service right now.

The thought, if they cut back the work -- which they have; they've pulled some of the projects off the street -- it's going to create a ripple effect. It's not just going to affect the people that work for us, it's other people. It's suppliers for asphalt plants, the quarries, even the little guy that drives the coffee trucks to the job. It's all about jobs. We're proud of the fact that we support 1,200 families with our business. The business, again, was started by my grandfather, and over 85 years in construction.

The economy needs a jump start, and the best way to fuel the economy is through the construction industry. It's been a proven fact over the years that it works. Start the construction industry, and other areas ripple because of it. Governor Corzine as well as President-elect Obama have all stated infrastructure, infrastructure. Infrastructure means jobs and we need jobs in this state and in this country. You have a company that's willing to put money on the street, why not take advantage of it?

Yes, there will be oversight, but we need somebody like this in the housing market right now, too, that's willing to put some money on the street to rebuild the housing market.

Thank you for allowing me to speak today. Thank you.

SENATOR LESNIAK: Thank you, Mr. Creamer.

Anyone else?

Excuse me, we have a question from Senator Kyrillos.

Okay. He'll wait. Go right ahead.

RICHARD A. PIEPER: Thank you, Mr. Chairman.

My name is Rick Pieper. I'm representing my company, Henkels & McCoy. We are an infrastructure nationwide contractor. We employ union labor and build transmission lines, gas lines that feed a lot of what goes on. We also have trucks that sit probably in your streets that bother you.

I would like to basically state that right now we have probably about 300 employees that are currently working. We have been up as high as 700 over here. We have seen how -- in my role, I cover the power market, which is a nationwide 30,000-foot view. We have already seen nationwide what is the impact of both the housing market and the financial market. A lot of our clients are rapidly withdrawing the work that they would build in the distribution system, and we are at that point laying off people.

And on the other end of it, we have also seen, across the state, where FERC has put the incentives to build the transmission lines, that people are out building the infrastructure to pull in the wind farms that we connect, that are out there putting in the infrastructure that allows the cheaper power to come in.

And I guess I really want to make sure that everybody understands that we believe, as Fletch does, that this is a good program with good jobs, with good people, and there is a big ripple effect that does affect us.

SENATOR LESNIAK: Thank you. By the way, I missed Jerry Keenan. Jerry, are you here from New Jersey Alliance for Action? Did you make it up to the panel? Can't see that far.

There we are.

WILLIAM PHILLIPS: Good afternoon, Mr. Chairman, members of the Committee. Thank you for the opportunity to speak with you today.

My name is Bill Phillips. I'm the Vice President of Lantier Construction Company. We're one of the largest, most efficient gas distribution contractors in the State of New Jersey. We install natural gas distribution pipelines throughout the state.

As a New Jersey-based contractor, without this act several gas lines specialty contractors are at risk of losing their business. This will not only mean the loss of many jobs, but eliminate the opportunity to create new jobs. Factoring the ripple effect, think about the impact we will have on our suppliers who are directly rated *(sic)* to the installation and maintenance of the natural gas line industry. Not to mention the loss of income for all our local suppliers: people we purchase our vehicles from, our heavy duty equipment, our materials, sand, stone, the asphalt, the concrete; the recycling plants that we use on a daily basis installing new gas line.

This bill will prevent the collapse of many of our specialty gas line product distributors who supply us with the necessary materials and tools needed to perform our work. This bill will also secure the hundreds of subcontractors needed to complete gas line projects, such as the milling and paving contractors, concrete construction contractors, the line striping, the pavement cutting specialists, traffic control companies, and the training people that train our especially needed gas distribution people in the schooling and safety regulations of the gas line installation procedures. It takes numerous hours of manpower and several types of material to build and maintain an up-to-date system that meets all of the requirements of the today's society.

As you can see, there's many crafts and trades that will be impacted by the outcome of this bill. On behalf of Lantier Construction Company and the thousands of people employed by our subcontractors and suppliers, I urge you to sign this bill so we can assist Public Service Electric and Gas Company in rebuilding and maintaining the utility infrastructure that New Jersey needs and has worked so hard to build.

Thank you for your time.

SENATOR LESNIAK: Thank you. This is going to be interesting, because BPU says that we already have in place a process to get this done. And there will be a way where we can determine that, you know, because either the financial markets will put up the billions of dollars under what BPU says we're going to do or they won't.

So we're going to find out. We are determined to get this done in the best way possible to get these folks to work.

Yes.

FRANK GIULIANO: Chairman Lesniak, Chairman Smith, and members of the Committee. Senator Kyrillos, in his question early on today, put his finger on the pulse to some extent of how serious the problem is. He asked about the people who were already working.

I represent the Okonite Company. My name is Frank Giuliano. I'm the Vice President and General Counsel of the corporation. We go back to 1878 in the State of New Jersey. We had our first factory here. We are incorporated in New Jersey. We have a factory in the City of Paterson. We have our research facilities in the City of Paterson; and we have two sales offices, one in North Jersey and one in South Jersey. We are intimately involved with the state, always have been and hopefully always will be.

The problem today is this: We manufacture electric insulated cable; Public Service is a major customer of ours, as are the utilities across the country. What we're seeing today is an emergency of immense proportion. Orders are evaporating before our eyes. We have -- the Paterson factory is a perfect example. By the way, the Okonite Company is totally employee-owned from top to bottom. We have three shifts in the Paterson factory. It recently had to be reduced to two. Now, the people on the third shift-- We consider this almost a trust. We don't want to be laying anyone off, but we put all of them on the second shift. But I ask again now, especially in response to Senator Kyrillos' question, what happens when the second shift has to disappear?

The problem is there simply isn't business out there. And as the President-elect has said, as the Governor has said, and as the Committee obviously recognizes, we need to jump-start the economy. There is no more effective way, from the standpoint of Public Service or from the standpoint of our business, than to encourage the investment in the cables that will actually carry the electricity in the intelligent grid.

Chairman Lesniak also raised the question about timing and indicated that he understood timing was important. While we debate about whether or not the present laws afford enough of a mechanism to do this, that, or the other thing, the question I think that the Committee needs to address -- in the context of Public Service's President indicating that they need this bill to jump-start what they will do in investing infrastructure. He's saying, in so many words, we need to do it and in order to do it quickly we need this bill. From our standpoint, while the debate goes on, if Public Service is delayed in making the investment that they need to make, there will be pain -- there will be tremendous pain on the part of the employees of our company.

As I said, we would rather not lay anyone off, and this is not a question of survival -- the company will survive. We have to make difficult decisions and we're all going to pay the price. As I said, we all own the company. But it will be painful for all of us. But as we know, when you work in a factory and you have to have time off, the pain is greater.

There is a particular harm to the Okonite Company, and when I make that point I will conclude my remarks. We have workers who have learned their trade basically on their feet. When they come to us, it doesn't matter the extent to which they may have an education if they have an ability to read the meters and to deal with the things they have to deal with day-to-day. And if that's lacking, we train them. Once we start laying off these people, we are losing skilled workers who have excellent paying jobs, excellent benefits.

We're not asking for help from anyone. We don't need loans. Initially the company became employee-owned in 1976 when we got EDA money from New Jersey and from the Federal government. We have paid back every dime with interest. What we're saying we need now is, we need a recognition on the part of the government that this is a true emergency; and to avoid the pain of those already employed and those whose jobs, once they disappear, will be gone to the company -- with the end result that the company itself now has a permanent problem of trying to replace very valuable, skilled workers.

So if Public Service says that they would be able to make their investment quicker with a bill like this, then from our standpoint, and also from the standpoint of all the other companies that would be involved in supplying equipment for the intelligent grid -- many of which are in New Jersey, by the way, and if the Committee were interested I could name some -- but from those standpoints it is a true emergency, and we would ask that the debate come to a quick end and that, to the extent Public Service needs this bill, they should get it.

Thank you very much.

SENATOR LESNIAK: Thank you.

Is there anyone else?

JIM LEONARD: Mr. Chairman, Jim Leonard. I'm going to summarize my testimony, that I've distributed, in a sentence or two.

Simply put, capital investment is on the endangered species list in New Jersey. It's important for us to do as much as we can to improve the ability of businesses to spend capital dollars, to get access to credit so the jobs can be created. The State Chamber's position was characterized when our name was read as "kind of in favor." The reason is because we are concerned about the energy costs and how they may be impacted by this piece of legislation.

But make it clear, make it known clear that the State Chamber supports the components of this bill that push through capital expenditures.

It's time; it needs to be done. Thank you.

SENATOR SMITH: Is that panel now complete?

I'm sorry. Ma'am.

P A M H E R S H: Good afternoon and thank you, Chairman Lesniak and Chairman Smith. I'm Pam Hersh. I'm Vice President at Princeton HealthCare System. And I'll take a little different tact, and I'll just also summarize the testimony that is being handed out.

After nearly 100 years, we are trying to build a replacement hospital just two-and-a-half miles from our current site. We're building in Plainsboro. And I don't think it's any news to any of you sitting here about the very precarious financial state of healthcare and hospitals in the State of New Jersey.

Just briefly, in the past 24 months more than five hospitals have filed for bankruptcy, and 24 hospitals have closed since 1992. And that was before the economic meltdown. So building a $450 million new hospital in this climate is an extremely daunting challenge.

However, we've tried to do it right from the beginning. We have numerous sustainability and green initiatives. We ourselves have committed millions of dollars for green initiatives such as creating a 32-acre park. There are several millions of dollars of sustainable features, however, that we don't have the money to do. And it seems almost criminal to build a new facility without making it as sustainable as possible. But in healthcare, if it comes down to choosing an operating room or solar shades, we're going to do choose an operating room.

We have been trying for a year to somehow find government support to make these investments in this new hospital for energy efficient initiatives. And we have made no progress and we have broken ground, and if we don't get a commitment very soon, many of these very important environmentally sustainable initiatives will not be done. And there is enormous research in the field on how sustainability is good for the health of the patients in the hospital and it's good for society in general. And obviously, the job creation is huge and that has been talked to extensively.

I didn't address it here, but this is a billion dollar construction project that is happening in central New Jersey. And the government support for these initiatives, we feel, is a crucial public policy. And we happen to applaud PSE&G's carbon abatement program.

And I just hope you find the mechanism in these conversations to make a decision on this sooner than later.

Thank you very much.

SENATOR SMITH: Thank you very much.

Is there anyone else in that front panel that hasn't spoken?

Yes, sir.

G E R A L D T. K E E N A N: Yes. Thank you very much for your time. My name is Jerry Keenan. I'm the Executive Vice President of the New Jersey Alliance for Action.

Real quickly, the Alliance is a coalition of business, and labor, and government that works to promote economic development through the investment of infrastructure. We were created back in the '70s during times very similar to today when unemployment rates were going up, interest rates were going up -- and we see a lot of that today.

Our mission has never been more important -- than ever. It's clear that everywhere you hear, it's jobs -- it's jobs. And I'm glad to see what's happening here in Trenton and what's happening in Washington --that they're going to be pushing money out. Well, PSE&G is trying to do the same thing with their investment.

PSE&G, throughout the years, has been one of the best neighbors New Jersey could ever have. And here they have a program where they're looking to invest billions of dollars into our economy, create thousands of permanent, as well as construction, jobs. It's up to us to help them help us. It's up to us to help them put more jobs and more money into the economy, which is why we're in favor of the formula rates. This will open the door, as I said, to those billions of dollars, and to those new jobs, and the construction and permanent jobs, and to additional dollars into the economy. It will also set up a fair rate-setting process that will allow all utilities and their financial backers to recapture their costs in a reasonable and timely manner, which will once again encourage more investment.

So I don't want to speak a long time today. You have a number of people here, but I want to say thank you very much, and I call on you to approve the formula rate structure.

SENATOR SMITH: Thank you, Jerry.

Senator Kyrillos, you have a question?

SENATOR KYRILLOS: You know, I have a question, maybe a comment; maybe it's just a rhetorical question for the good of the order.

But you know, I heard from the Alliance for Action, and from some of the contractor community, and the Chamber of Commerce, and others about infrastructure spending, transportation spending, green job spending, job creation; and we hear a lot about it in the State Capital in general, other state capitals, Washington. You know, I think all of us could benefit from, you know, a brush-up economics lesson as we decide these kinds of big policy and economic issues.

With regard to how this does spill over into the general economy, people use the word *trickle* – or two words, *trickle down*; *ripple effect*, I guess I heard. You know, we need to talk to our constituents who aren't putting a shovel in the ground, aren't climbing a pole, who don't serve lunch to the guys who are working out there on these job sites, who don't have a direct economic stake on how it involves them.

Now, you know, I guess I know a little bit -- enough about economics to know that it does to a degree, but I would like somebody, maybe the Governor's economic czar; or maybe the State Chamber of Commerce, which I guess kind of embraced this idea today, to really talk to us about the job's impact, the economic impact, revenue -- tax revenue impact, and all these decisions that we're going to have to effect in 2009 -- this kind of a bill and other kinds of initiatives to come. Because we're throwing around these words so frivolously -- stimulus and job creation -- and we ought to know. And I don't think most of the members of the Legislature know.

SENATOR SMITH: Thank you, Senator.

Bob Stewart, Anheuser-Busch, indicated Anheuser is opposed to the bill. Joe Starkey, Schering Plough, indicating that Schering Plough is opposed, no need to testify. John Holub, New Jersey Retail Merchants Association, opposed, no need to testify. Neil Eicher, New Jersey Hospital Association, opposed, no need to testify. Scott Ross, New Jersey Food Council, no testimony, letter submitted.

I think we have a whole bunch of people that are still in line to speak. Why don't we get -- we already have Melanie, and Dena, and Phyllis. Why don't you come to the table?

Oh, you're already there? You have microphones?

(UNIDENTIFIED SPEAKER FROM AUDIENCE): We're right here.

SENATOR SMITH: Okay, perfect. Why don't we start with Phyllis.

PHYLLIS SALOWE-KAYE: Actually, I'm last.

SENATOR SMITH: Okay. I'm sorry, I didn't know you had an order.

Melanie, okay?

MELANIE WILLOUGHBY: We got organized while we were waiting to testify, Senator.

SENATOR SMITH: Go right ahead. Who's first?

SENATOR: LESNIAK: Who's on second?

SENATOR SMITH: Go ahead, please. And remember Shakespeare's admonition, "Brevity is the soul of wit."

(UNIDENTIFIED SPEAKER): I'm here on behalf of Dennis Dooley, who had to leave – the Capital Health System, here in support of the bill. So just to continue with that. And, again, looking forward to the assistance PSE&G will provide in the construction of the new hospital that Capital Health has in Hopewell and the rebuild of the hospital in Trenton at Fuld; and working with PSE&G and their climate change and energy initiatives.

MS. WILLOUGHBY: Chairman Lesniak, Chairman Smith. I'm here representing a very broad coalition, as you can see, represented here today -- a group that you may never see come together again. But we thank Senator Lesniak for bringing us together.

We are a coalition that-- Senator, yes?

(UNIDENTIFIED SPEAKER): He wants a picture.

MS. WILLOUGHBY: Okay. Could you take a picture? That's a great idea.

We are coalition that is opposed to the formula rate bill that you have before you, and I just want you to know who is part of the coalition. We have AARP, Citizen Action, NJRMA, Sierra Club, Environment New Jersey, the Chemistry Council, the Large Energy Users, the Food Council, Anheuser-Busch, New Jersey Gasoline Retailers, New Jersey Hospital Association, New Jersey Fuel Merchants, and the New Jersey Business & Industry Association.

And so we have brought together a representative sample to talk with you today. And what I wanted to talk to you about is basically that this bill is a far-reaching change in New Jersey's regulatory structure. And certainly we agree with change, but we feel that this is a change though that should not happen. Right now we do have stable rates while providing sufficient revenues to the utilities to attract necessary capital, to maintain and improve the viability of their distribution systems.

But we feel that this is throwing the baby out with the bathwater. We, as an organization, as you know, have typically not been supportive of a regulatory structure that some might consider to be cumbersome. But we feel that this structure does provide safeguards to electric and gas consumers who rely on the BPU to keep the rates reasonable. And under this bill, the just and prudent review of utility spending will be thrown out the window. In other words, we feel the utilities will become an unregulated monopoly. It would leave ratepayers at the mercy of the utilities that could spend what they want, for whatever they want, with the ratepayers picking up the tab.

The present system provides utilities with incentive to improve productivity and to minimize cost between rate cases. We feel that -- we believe in infrastructure improvements. We believe that it's important to create jobs. And we believe it's present *(sic)* and possible to do it under the present system, that we do not need this bill to effectuate any of those improvements. And we feel that we would be throwing out the regulation that is necessary in order to ensure we have prudency standards.

In essence, this will eliminate what little financial risk utilities face now, and open the door for annual rate increases that the ratepayers will be responsible for during a very difficult financial times which we're all suffering through.

So I would like now to turn it over to Sara, who will continue to explain some of the possible ways that this can be done.

S A R A B L U H M: Good afternoon, Committee. I'd like to remind you that you are 20 days away from higher electric prices. On January 1, the Regional Greenhouse Gas Initiative goes into effect and those costs are going to be passed on to you.

I have examples of bills from trucking firms, local bars, health clinics, supermarkets, the gamut of small businesses who have all reached out to us and said that they are struggling with their high electric cost. And we understand that there may need to be a greener infrastructure, but we're already paying for it.

If you look at what's been going on lately -- and we were discussing why some of our electric bills are higher -- we've got $1.2 billion over the next four years that we're spending on a green economy because of the ratepayers of New Jersey, which is coming through the Societal Benefits Charge. We're going to have at least $70 million a year from the Regional Greenhouse Gas Initiative to spend on this.

SENATOR SMITH: You made the point that rates are high. How about talking about the bill?

MS. BLUHM: I'm telling you we've got 105 million in the retail margin bill.

SENATOR SMITH: I understand that, but we have a limited --

SENATOR LESNIAK: How about this bill? We have a lot of people here wanting to testify on this bill. You feel free to testify on another bill that was passed in the past on -- another time, have a press conference.

Please, on this bill.

MS. BLUHM: Well, to this bill, sir, I don't think we need it because we already have pots of monies ready to spend and deploy on capital infrastructure and on jobs. And we're going to start spending that very shortly.

I know that the committee before this one recently considered the retail margin bill and how we're going to deploy those green jobs. And I think this bill asks ratepayers to add an additional pot of money when we haven't even spent the billion dollars that we have; and going forward, looking at that and how we're going to keep rates sound, but yet still create these jobs. And I think we need to look at the ripple effect in terms of what we're doing to the industry in the state if we drive up the cost.

It was already discussed – the Construction Work in Progress ability. We also have an Economic Development Authority which we're spending quite a bit of capital dollars on. I know we've been discussing investing pension dollars there to loan out to New Jersey businesses. That's an option for the utilities to explore as well. There's no reason why we can't use the EDA for some of these. And looking at that, we haven't explored all of the options that are on the table and a need to lock us in for five years for a temporary economic problem--

And with that, I'm going to turn it over to my cohorts in the environment community.

SENATOR SMITH: Ms. Mottola.

DENA MOTTOLA: Thank you, Chairman Lesniak and Chairman Smith, thank you for your ongoing leadership on clean energy and green jobs.

We are also here to oppose the bill today. My organization has actually called for major clean energy investments at the State and Federal level. We've called for a billion dollar investment at the State level, and 100 to 200 billion a year at the Federal level. We believe very strongly in investment in clean energy, and energy efficiency, and smart grid. And we think the current law has the ability to help us make those investments.

And as Sara said, the current law already is helping us make these investments. I estimate that almost $4 billion is either already coming into the state -- you know, already been allocated by State programs, or will be soon in the next six months -- to do energy efficiency, renewable energy. You know, in the next -- literally in the next six months we will have $4 billion we can spend in the next four years. And that's a lot of green jobs.

So I think -- I really want to just, you know, emphasize that I don't think that we need this legislation to have more green jobs in the state. What I do think this bill is about is about giving -- I think the utility companies want more of a blank check to build out our grid. And I would really caution this Committee and the sponsors to not give them that authority, because we need to look closely at how the utility companies want to build out our grid. Not all the ways they want to build our grid out are smart, and not all the ways they want to build our grid out are good for New Jersey.

Some of the ways they want to build our grid out are better for New York than they are for New Jersey, for example. Other things about how they want to build our grid out come directly in conflict with what we should be doing on energy efficiency. Some of the proposals to build power lines are -- some of the money that would fund some of the distribution lines and power lines would be better spent on energy efficiency, and would be a better investment for the ratepayer.

So I really caution you that you don't give the utility companies a blank check to be able-- Because a lot of this is about building out the grid. Most of the supporters you heard today were talking about pipes and wires, because they understand that this is much more about the grid than renewable energy and energy efficiency. As several people have already testified, including Stefanie Brand, there's already a process in place to do expedited review of energy efficiency and renewable programs run by the utilities. So we don't need this to foster green jobs. The utility companies are looking for it because they want to build out the grid.

Now, I do -- I think other people have mentioned, but we have a new President, we have a great new EPA administrator. There's going to be money coming to New Jersey. So it's going to be even more money coming in for green jobs. I estimate -- and this is just my sense, knowing how the RGGI program is going to be running in New Jersey -- that it's going to be something like $5 billion a year when the Federal government comes up with a national cap and trade program that's going to be available. A nice chunk of that would come to New Jersey.

I think we need to sit tight and stop asking ratepayers to pay for the whole green technology future. I think there's other ways that we can build that future. Utilities should play a role – and a major role. The Federal government and other pots of money should also come into play here. I think we're doing a lot with the ratepayers help, and we're going to do a little more with the Governor's call on the utilities to come in with efficiency programs. And I would caution you that there's a limit to how much we can go to the ratepayers to ask them to fund this future and that there's other ways to do it.

I guess the last thing I really want to touch on is that some of my other colleagues in the environmental community really want to speak today. So I hope they have the opportunity to speak. But in summary, you know, I think it's important to understand that we need to hold the utilities accountable for how they're spending ratepayers dollars, and we need to hold them accountable for how they're putting in pipes and wires -- and whether it's helpful to the future that we're trying to build, or whether it's helpful to their own bottom line, or to New York or other states within our grid.

I think those questions the Board has to be able to closely examine, and this bill really pulls some of that authority away from the Board. Thank you.

SENATOR SMITH: Gentleman to your right.

S T E V E N S. G O L D B E R G, Esq.: Chairman Lesniak, Chairman Smith, members of the Committee. My name is Steven Goldberg. I'm an attorney with Fox Rothschild. It's my privilege to represent the New Jersey Large Energy Users Coalition.

The Coalition is compromised of some of the state's largest businesses, which are also the state's largest consumers of electricity and natural gas. One thing that distinguishes our group from the other business organizations that have joined with us in opposition to this bill is that historically our group has litigated utility rate cases and regulatory proceedings before the Board of Public Utilities.

And based on that experience, I just had a couple of quick observations about existing law; and I wanted to respond in part to questions raised by Senator Kyrillos. I join in the statements by Commissioner Asselta, and Stefanie Brand, and others in defense of the existing laws, because they assure that utility rates are just and reasonable, that utility rates are prudent, and most importantly that stakeholders such as the constituency that I represent have an adequate due process, opportunity to be heard in matters f great importance like utility ratemaking.

This is not to suggest that my group is rooted in the past. Quite frankly, we employ the 21st century energy efficiency measures that are the goal of this bill and that have been ecognized as such in the Governor's Energy Master Plan and at the Board of Public Utilities. So we are forward looking, but we are also guided by what we have seen in the past.

And in the past, by way of reference, the last PSE&G rate case involved a total of about $50 million. What we're seeing now in the numbers that we are hearing-- We shouldn't lose track of the fact that billions of dollars -- these are mind boggling numbers, and they certainly require more prudency review, not less; not hurry up rules, but prudent rules to make sure that these investments are looked at very carefully; and, again, that everyone's right to due process, which is of constitutional dimension, is preserved here.

Senator Kyrillos asked about what the effect of formula-based rates would be, and I'll just respond quickly to that. Ralph said accurately that you can't say for sure that they're going to go up or down. But one thing that they do, which represents a seismic shift from utility rate regulation as it currently exists, is to guarantee a utility a return. Under current law they have an opportunity to make a case to recover their cost. This will guarantee them annual returns.

I won't get into the nuances. They're very complicated, very boring, and I wouldn't dream of doing that to you. But a practical example of a problem from stabilized rates, decoupled rates -- however you want to refer to them. Griffin Pipe company is a member of my coalition. Some of you may know they announced this week that they are suspending indefinitely their manufacturing operation in Florence. It will involve the loss of 400 jobs. It's very unfortunate. It was caused in large measure by the high cost of doing business in New Jersey, and electricity costs were certainly part of that. This company is not going bankrupt. Their facilities in other states remain ongoing.

4 The reason I mentioned them is that under a stabilized rate regime, where the rates are guarantee to be over here, the loss of load represented by Griffin Pipe, which would bring the rate down -- that would be made up for in stabilized rates. It's a very good deal to get, especially on an economy like this where your profits will be guaranteed. And it's one of the more pernicious things that have to do with this. I won't get involved in a long discussion about it.

The question about whether stabilized rates could increase cost – well, on the Federal level, they did. Subject to check, PSE&G'S transmission rates went up either $35 million or $65 million. I don't recall. The bigger problem here is that what this bill authorizes is spending that doesn't appear to be reined in terribly well. And when you're spending money here, this isn't the (indiscernible) deal. The State isn't contributing to this. If we're lucky we'll get significant funds from the Federal government. I'm optimistic that that will happen.

But any dollar that is spent by PSE&G, or any other utility that opts for these rates, will be paid back; and they'll be paid back with interest. And when you're talking about billions of dollars and a utility going to the capital markets buying at 7 or 8 percent, earning a return of whatever dimension --I don't know right now -- on top of that, you're talking about the citizens of this state investing their own money -- billions of dollars -- with significant return on top of that for these investments.

And it's for that reason that we really do need to be cautious about how we do this. We're certainly not backward looking. And to the extent that there needs to be change, we would certainly participate in this process.

We just want to participate in this process. Thank you very much.

SENATOR SMITH: Thank you.

Phyllis.

MS. SALOWE-KAYE: First of all, I do want to acknowledge the strange bedfellows that sit here together. And we would love to have a picture to put up on our website, because it would really show that we all agree on one thing -- and that is the people that we represent would not benefit from this.

SENATOR LESNIAK: Makes me think that this is a pretty good bill.

MS. SALOWE-KAYE: Would not benefit from this. We also commend Senator Lesniak -- first of all, I want to thank both Senator Lesniak, and Senator Smith, and the Committee for letting us testify. But we want to commend Senator Lesniak's intent to encourage and support the modernization of our energy infrastructure, develop energy and efficiency programs, and create jo

However, we do oppose this bill. Not because we oppose a green recovery, but because the bill doesn't provide an equitable, transparent vehicle to achieve these goals. And it sacrifices the interest of consumers of every income level, and small commercial and industrial employers, for those of utility companies and their shareholders.

While the consequences might be unintended, if enacted this bill will hurt our communities, destroy good jobs, and place an even greater burden on our state's already stressed families and businesses. This is a deregulation bill that will put ratepayers at the mercy of unregulated monopolies.

I do want to mention, in response to some of the previous speakers, that this bill does not -- there's nothing in this bill that requires that one job be created. There's nothing in this bill that speaks to the direct benefit of ratepayers, and there's no protection for ratepayers who could see very significant rate increases.

On green jobs, we should be looking to other alternatives like tax credits, loan guarantees. The President has proposed some wonderful things. We have a new EPA person, and we now have a former Citizen Action employee in the White House as the energy czar -- Carol Browner. So we feel we have some really good people there who could come up with a progressive way -- a much more progressive way to look at this problem and do what I think are the intentions of the sponsors.

My final comment would be that this is really the wrong time to be doing something that's going to guarantee a profit to PSE&G. There is no other industry that is guaranteed a profit from their customer today. And that's -- think about Ford Motor Company, Goldman Sachs, Hoffmann-La Roche. Nobody is guaranteed this. PSE&G and the other utilities are allowed to operate as monopolies and in exchange for that -- because we really have no choice of our energy provider -- and in exchange for this their rates are regulated and based on cost associated with delivering the goods, plus the opportunity to return a reasonable rate for shareholders.

Regulation replaces the market, and while shareholders assume the risk of the initial investments, they are virtually assured cost recovery as long as their investments are reasonable and prudent. This bill would turn this compact on its head and give shareholders the best of both worlds: a guarantee – a guaranteed return; and it would also transfer all the risks to the ratepayers. Their investments would no longer be subject to any review for reasonableness and prudence. The utilities would become virtually unregulated monopolies.

Now, nobody could say that New Jersey Citizen Action is the best friend to the BPU, or thinks that they're the number one greatest organization. However-- We couldn't be accused of saying that. We do think that they are able-- By getting rid of them, we really are throwing the baby out with the bathwater. And we don't think this is the answer to encouraging utility investment, and energy efficient programs, and the infrastructure. We think that they have the ability to adjust and to do exactly what I think is the intent of the sponsors.

Thank you.

SENATOR SMITH: Thank you.

Mr. Chairman, if I might mention that, unfortunately, I have to be back in New Brunswick at five o'clock. The other bill that's on this agenda, S1537, I understand will be successful in being released.

SENATOR LESNIAK: That's been released by a 5-0 vote.

SENATOR SMITH: All right. But in any case, I want to offer to John Hutchison and the Republican members that if they would like to be co-prime sponsors on S1537, they are invited to do so. And, likewise, the same with our Democratic members who'd like to be co-prime sponsors. We can do that at the committee level. This is the bill that the Governor talked about in the emergency session -- one of the bills that's going to generate a lot of green jobs in New Jersey.

If you'd like to be co-prime, you're invited to do so. Just let Gene Lapore and John Hutchison know.

Thank you.

SENATOR LESNIAK: Thank you, Senator.

Thank you. Thank you ladies and gentlemen.

We still have quite a few people who we have not given an opportunity to say anything. We are running out of time. So we'll call folks up, and if you just want to register your opposition or your position in favor that would be welcomed as well.

But this is interesting. Moretta Short from NOW. NOW is against the bill? Wow. Okay.

Marcia Marley from BlueWare New Jersey, against the bill.

Matt Shapiro, New Jersey Tenants Organization, against the bill. You want to say a few words or you just-- Okay, go ahead. That's good. I like that.

I still want to know why the National Organization For Women's is against--

MATT SHAPIRO: Well, as a card-carrying member of the National Organization for Women, I think it's very good that they oppose this bill.

But on behalf of the New Jersey Tenants Organization, we don't particularly like the idea of our utility rates having basically no controls whatsoever. The national economy has been put into ruins because of the deregulation of the banking and -- well, the money industry; and we don't think the same thing should happen to the utility industry. They're a monopoly and they will do what they want to do if they're allowed to do it.

SENATOR LESNIAK: Matt, you know, this proposal doesn't take away controls. It's just --

MR. SHAPIRO: It automates that.

SENATOR LESNIAK: Come on.

MR. SHAPIRO: I mean no disrespect to you, Senator Lesniak. I really think you're a great person, but I don't think this bill is going to end up helping small people.

SENATOR LESNIAK: I understand that opinion. I understand.

Thank you very much.

Lewis Hurd, Universal Improvement Authority, Elizabeth, New Jersey, opposed to the bill. Whoa, Lewis. Okay, James-- Elizabeth, New Jersey -- used to work for me. Lewis are you here? All right.

James Harris, president of the NJ Montclair Branch? No, president of New Jersey NAACP, against. And Dick Barber as well.

Jeff Tittel, you want to say one word? Okay.

I'm not having any luck with Jeff today. You didn't check a box.

JEFF TITTEL: I just wanted -- because I think you got it backwards. And the thing is this, that—

Let me just make two quick points, and we can talk more in detail. That it's not PSE&G that's investing, it's the ratepayers that are going to be the investors. Therefore, they should see the profits from this. One of the problems that we have -- and we support the idea of decoupling. We think that putting the rate base into helping to pay for smart grid, green energy is a good thing. Energy efficiency is a good thing.

But there's two things that need to happen. When the companies make money off of those investments, that money should go help the ratepayers. The other thing is that people who conserve or use less electricity shouldn't see their rates go up because they're now conserving. And what we would rather see is restructuring how we do business so that people who waste energy, who don't invest in efficiency, who don't want green technologies -- that rate should go up to help pay for the people that are actually doing the right thing.

Thank you.

SENATOR LESNIAK: Thank you, Jeff.

Jeff Pringle, do you want to say a few words, or just echo-- Dave Pringle, do you want to echo Jeff, stand by his remarks?

Hal Bozarth, opposed, Chemical Industry -- your call. Okay, very good. Wise man. Wise man.

Christopher Stark, New Jersey Gasoline, Convenience, Automotive Association, opposed. Kathleen Madaras, Fuel Merchants Association, opposed. Doug Johnston, AARP, opposed.

You want to say a few words or you're fine? Cool.

And now Steve-- Tough last name, Steve. Do you have a few words to say?

Okay.

STEVEN G. ASPLUNDH: Thank you. My name is Steven Asplundh. I'm with the Asplundh Tree Expert Company. I'm not a politician.

I'm not a lobbyist. I'm a tree trimmer. And it's pretty interesting from my perspective. Our family company has worked in the State of New Jersey for over 80 years. PSE&G was one of our first companies, and we've worked for them ever since. Our employees live in this state. We pay taxes in this state. Our families are going to the schools.

I know job creation is very important. I'm worried about job preservation. I'm not very familiar with how bills work and all the legislation, but from all the comments that have been made today, it sounds to me as if there's a very good process in place to help protect the ratepayers. It sounds like the bill has some -- or the proposal has some flexibility to work through it.

It's a matter of immediacy. We are laying crews off, laying men off, women off, they're looking at going to other states where there is work available. We don't want anyone being unprotected h else. I think this is an issue of timing. If there's anything we can do to help work together to improve the timing—

And ultimately, if we can borrow money cheaper, have it reflected in the rates -- let the ratepayers experience that decrease in cost.

If I can just say -- if whatever happens the process can go faster. We're not just going down the normal pace here, we're in a tough spot, we're laying people off.

And I think all the comments that have been made are terrific, but I don't want to sensationalize anything. I think your process works. It sounds like everyone's proposing flexibility, to work together to make this thing happen. Hopefully it just happens soon.

Thank you.

SENATOR LESNIAK: Thank you, Steve. I think you hit the nail right on the head.

We're going to get everyone together and get this investment going one way or the other, but we have to get it going. This economy in this state, in this country is in bad shape and we have to give people jobs. And I'm sure all the good people in this room are going to work together in that direction.

Anyone else have anything to say? You know, if not, have a happy holiday, Merry Christmas.

Meeting is adjourned.

(MEETING CONCLUDED)

APPENDIX

S-2428

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

December 11, 2008

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

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

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

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

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

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

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

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

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

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

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

<u>How Rates are Set Today</u>

First, let me give a simplified overview of how we set utility rates today.

PSE&G earns a regulated rate of return on our capital investments – like gas mains, electric distribution lines, utility poles and transformers.

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

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

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

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

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

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

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

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

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

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

Finally, traditional rate making does not adjust to changing economic circumstances. This is incredibly relevant today.

PSE&G's last electric base rate case was in 2003.

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

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

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

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

Formula Rates

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

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

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

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

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

This would address many of the problems I just described.

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

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

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

And most importantly, the formula would adapt to changing economic circumstances, and provide timely and predictable reimbursement for investments.

This would allow utilities to access affordable capital and create thousands of traditional and green jobs – ranging from engineers to design new infrastructure to skilled craftsman to install solar panels.

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

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

Formula rates are not a form of deregulation.

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

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

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

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

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

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

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

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

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

Conclusion

I am here today because PSE&G is committed to investing in New Jersey, creating jobs and helping the State meet its Energy Master Plan goals.

It would be all too easy for us to stay conservative, scale back investments and weather this economic storm.

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

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

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

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

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

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

New Jersey needs to modernize its regulatory system.

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

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

Thank you for your time and I'd be happy to answer any questions.

OBAMA
BIDEN

BARACK OBAMA AND JOE BIDEN: NEW ENERGY FOR AMERICA

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

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

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

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

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

- Provide short-term relief to American families facing pain at the pump
- Help create five million new jobs by strategically investing $150 billion over the next ten years to catalyze private efforts to build a clean energy future.
- Within 10 years save more oil than we currently import from the Middle East and Venezuela combined
- Put 1 million Plug-In Hybrid cars – cars that can get up to 150 miles per gallon – on the road by 2015, cars that we will work to make sure are built here in America
- Ensure 10 percent of our electricity comes from renewable sources by 2012, and 25 percent by 2025
- Implement an economy-wide cap-and-trade program to reduce greenhouse gas emissions 80 percent by 2050

6X

SHORT-TERM SOLUTIONS: IMMEDIATE RELIEF FROM PAIN AT THE PUMP

Barack Obama and Joe Biden recognize that skyrocketing energy costs are taking a heavy toll on American families. To address the squeeze on Americans, they are calling for an: emergency energy rebate; an aggressive plan to crack down on speculators; and a swap of oil from the Strategic Petroleum Reserve to help provide immediate relief from soaring energy prices.

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

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

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

MID- TO LONG- TERM SOLUTIONS: NEW ENERGY FOR AMERICA

Our nation is confronted by two major energy challenges –our dependence on foreign oil and global climate change – both of which stem from our current dependence on fossil fuels for energy. Barack Obama and Joe Biden believe we have a moral, environmental, economic, and security imperative to address our dependence on foreign oil and tackle climate change in a serious, sustainable manner.

Tackle Climate Change

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

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

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

<u>Invest in Our Secure Energy Future and Create 5 Million New Jobs</u>

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

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

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

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

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

Make our Cars, Trucks and SUV's Fuel Efficient

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

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

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

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

This measure will strengthen the U.S. manufacturing sector and help ensure that American workers will build the high-demand cars of the future.

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

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

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

Promote the Supply of Domestic Energy

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

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

- ***Promote the Responsible Domestic Production of Oil and Natural Gas.*** Barack Obama and Joe Biden will set up a process for early identification of any infrastructure obstacles/shortages or possible federal permitting process delays to drilling in:

    - Bakken Shale in Montana and North Dakota which could have as much as 4 billion recoverable barrels of oil according to the U.S. Geological Survey.

    - Unconventional natural gas supplies in the Barnett Shale formation in Texas and the Fayetteville Shale in Arkansas.

- National Petroleum Reserve-Alaska (NPR-A) which comprises 23.5 million acres of federal land set aside by President Harding to secure the nation's petroleum reserves for national security purposes.

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

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

<u>Diversify Our Energy Sources</u>

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

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

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

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

Commitment to Efficiency to Reduce Energy Use and Lower Costs

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

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

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

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

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

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

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

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

- ***Build More Livable and Sustainable Communities.*** Over the long term, we know that the amount of fuel we will use is directly related to our land use decisions and development patterns. For the last 100 years, our communities have been organized around the principle of cheap gasoline. Barack Obama and Joe Biden believe that we must devote substantial resources to repairing our roads and bridges. They also believe that we must devote significantly more attention to investments that will make it easier for us to walk, bicycle and access other transportation alternatives. They are committed to reforming the federal transportation funding and leveling employer incentives for driving and public transit.

State of New Jersey
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

Senate Economic Growth Committee
Thursday, December 11, 2008

Good afternoon Chairman Lesniak and honorable members of the Senate Economic Growth Committee. For the record my name is Nicholas Asselta, and I am a Commissioner with the New Jersey Board of Public Utilities. Thank you for the opportunity to testify in regards to S2428: which authorizes electric or gas public utilities to implement formula based rates.

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

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

Specifically, the BPU already has the authority to ensure that utilities can make additional capital investments with certainty, while simultaneously allowing utilities to regain the cost of these investments. The utilities can recover those costs and earn a return proportionate with the current increased cost of capital. The BPU has historically done this in cases in which the affected utilities did not have sufficient cash 14X flow to meet the cost of constructing major facilities. In doing so, it has relied on its authority under N.J.S.A. 48:2-23 (attachment) to require utilities to provide safe, adequate, and proper service, and its authority under N.J.S.A. 48:2-27 to require extensions of existing utility facilities when the financial condition of the utility so warrants.

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

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

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

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

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

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

-END-

Board of Public Utilites Testimony Attachment

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

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

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

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

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

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

The board may, after hearing, upon notice, by order in writing, require any public utility to establish, construct, maintain and operate any reasonable extension of its existing facilities where, in the judgment of the board, the extension is reasonable and practicable and will furnish sufficient business to justify the construction and maintenance of the same and when the financial condition of the public utility reasonably warrants the original expenditure required in making and operating the extension.

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JON S. CORZINE
Governor

RONALD K. CHEN
Public Advocate

STEFANIE A. BRAND
Director

Remarks of Stefanie A. Brand
Director of the N.J. Division of Rate Counsel
Regarding Senate Bill S2428
Presented at the Senate Economic Growth Committee and Senate Environment Committee Public Hearing
December 11, 2008

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

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

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

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

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

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

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

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

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

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

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

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

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

Not only will the utility's spending be unchecked, but their profit will be tied not to their level of service, or whether they operate an efficient system, but to how much they spend. Thus, this bill actually provides an incentive for the utilities to overspend. If they do buy gold-plated infrastructure, their profits will be calculated off of the higher investment cost. The bill therefore creates a disincentive for the utilities to operate efficiently.

3. The Regulatory Changes in the Bill will not Create Jobs, and May Result in Job Losses

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Thank you for the opportunity to testify. I am happy to answer any questions you may have.

NJCC
THE STATE CHAMBER

NEW JERSEY STATE CHAMBER OF COMMERCE
Testimony Before the Senate Economic Growth Committee
And the
Senate Environment Committee
December 11, 2008

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

Presented by: Jim Leonard, Senior Vice President Government Relations

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

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

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

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

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

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

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

Thank you for your time, and I would be happy to take any questions from members of either Committee.

S-2428

Princeton HealthCare System

Redefining Care.

Pam Hersh, Vice President for Government and Community Affairs

Testimony at legislative hearing before the Senate Economic Growth Committee and the Senate Environment Committee.

RATE RECOVERY LEGISLATION

December 11, 2008

University Medical Center at Princeton

Princeton House Behavioral Health

Princeton Rehabilitation Services

Merwick Care Center

Princeton HomeCare Services

University Medical Center at Princeton Surgical Center

Princeton Fitness & Wellness Center

Princeton HealthCare System Foundation

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

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

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

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

However, achieving the very important next level of our green vision – including environmental control systems, energy-saving mechanical systems, water saving devices, solar shades, light pollution reduction features, light colored roof – would cost us another $10 million. The implementation of such features may be impossible without some fiscal help.

I know it is no surprise to anyone sitting on these committees that hospitals in New Jersey are in an extremely financially fragile state. Before the recent world-wide economic meltdown, New Jersey's hospital statistics were bleak. Fifty percent of the Hospitals in New Jersey are operating at a loss; 24 hospitals have closed since 1992; five more have filed for bankruptcy in the past 24 months. Furthermore, the hospitals in New Jersey are operating with infrastructure that is on average the oldest in the nation. Layered onto these statistics has been the recent recession, further eroding the hospitals' bottom line. Our hospital still has a small positive operating margin, but embarking upon a $450 million construction project - which always was a challenge – has become a daunting challenge.

The real bottom line, however, is that we must move forward. We are integral to the health and well being of Central Jersey residents, including a substantial population of uninsured and underinsured. We can not stay in our current facility and be able to provide the level of health care needed and expected by the residents of the region. Even though we would like to build our hospital to the highest standards of sustainability/green guidelines that will make the facility more energy efficient and create a better healing environment for patients, we can not do it without help.

Our choices to spend money in one area inevitably mean deciding we are unable to spend the money someplace else. Doing millions of dollars in sustainability initiatives would mean the elimination of an operating room or a piece of life-saving equipment, such as the next generation of the cyber-knife. And that is unacceptable.

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

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

Pam Hersh

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NEW JERSEY **CITIZENACTION**

Statement of Phyllis Salowe-Kaye, Executive Director and Marilyn Carpinteyro, Legislative Political Director

In Opposition to S2428 – Formula Rates

Public Hearing before the NJ Senate Economic Growth and Environment Committees

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

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

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

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

We support using our existing basic regulatory framework to achieve the goals described in S2438. While no one could accuse Citizen Action of being the NJ Board of Public Utilities #1 fan, ***we do not believe throwing the proverbial baby out with the bathwater is the answer to encouraging utility investment in energy efficiency programs and infrastructure***. NJ's current rate making mechanisms have produced stable rates and sufficient revenues that have consistently allowed utilities to raise capital to maintain and improve the reliability of their distribution systems – and earn a handsome profit. For example, PSE&G was, once again selected as America's most reliable utility. According to PSE&G's October 23, 2008 press release announcing the award, "This is the third time that the utility, the largest in New Jersey, has received this recognition, and the seventh straight year that it has garnered the ReliabilityOne Award for the Mid-Atlantic region." We also know that their balance sheets, while perhaps not as stellar as a couple of months ago, are the envy of other industries, and they do have access to capital.. For example, less than three weeks ago on November 24, 2008 PSE&G sold $275 million in 5-year bonds. On October 31st of this year, PSE&G's parent company, the Public Service Enterprise Group, reporting to financial analysts on its 3rd quarter earnings, stated that it has a strong balance sheet and has $3.5 billion dollars of available liquidity and that its capital needs are funded from internal cash. It was also announced last week that PJM approved $1.6 billion dollars of power transmission upgrade projects, the biggest one being for Public Service Electric and Gas Co, to build a 500-kilovolt line from the Branchburg substation in Somerset County to the Roseland substation in Essex County and then continuing to the Hudson substation in Hudson County.

NJ's current regulatory structure is flexible enough to address new challenges and problems, (if they exist), with mechanisms that provides transparency and accountability, tests the cost effectiveness of planned expenditures and one that is required to balance the interests of ratepayers and shareholders. Passage of S2428 would eliminate all of these protections. Rather than expand deregulation of the energy industry, we believe the legislature and the Governor should addressed capacity problems at the BPU. The BPU, like much of state government, is a shell of its former self and through hiring freezes, cuts and layoffs does not have adequate staffing levels to conduct speedier, yet thorough review of these issues. The Board operation is funded through a ratepayer assessment, one that has not for years been used to its fullest extent. Given the existing process related complaints and the desire to be able to respond more quickly, increasing the staff at the BPU is a better and what is likely much less costly approach than eliminating regulations that are designed to protect ratepayers. It will also create good jobs.

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S2428 eliminates review by the NJ Board of Public Utilities of how utilities spend ratepayer money and whether the spending is prudent. S2428 explicitly exempts utilities that choose to use formula rates from the current statutory provisions that authorize the NJ Board of Public Utilities (BPU) set just and reasonable rates and that require public participation through a public hearing process, the opportunity for effected parties to intervene and that public notice of rate increases are issued. S2428 removes the legal requirement that utilities spend ratepayer money wisely and prudently. Under this bill a utility could build a new or duplicate substation, in the most expensive way possible and simply flip those costs into its formula rates. These costs would have to be paid by us, ratepayers/taxpayers, and the Board of Public Utilities would be powerless to rein in their spending.

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

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

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

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

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

NJ Citizen Action supports the creation of green jobs. We believe these must be good jobs and that they not only be green, but pink, yellow, white, black and brown. A clean energy economy must include a vision of not only a stronger environment but a stronger middle class as well. We believe these taxpayer funded job creation programs must be linked to job quality or we risk affirming day laborers installing solar panels without job security or proper training, minimum wage workers working in a clean tech manufacturing facility without healthcare or the right to organize or youth pushing brooms in green buildings without training or the opportunity for advancement. Good Green Jobs must offer benefits, including health care and pensions, paid sick leave, the right to organize, safe working conditions and job security. Green jobs that are in fact good jobs provide a real pathway out of poverty and any job creation program, whether through RGGI, a federal public works program or ratepayer funded initiative must include these provisions and so specified in an Order approving such projects.

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

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

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

At the federal level we could expand the Smart Grid Investment Matching Grant Program established in the 2007 Energy Independence and Security Act.

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

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

Thank you very much.

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New Jersey Business & Industry Association

NJBIA

December 11, 2008

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

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

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

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

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

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

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

Legislators are being asked to approve, sight unseen, expensive utility projects that will be paid for by their constituents. As the major ratepayer in this State, business cannot have our government sanction spending without knowing what we are going to get for our money.

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Meanwhile, our members are already paying some of the highest electricity rates in the country. According to the federal Energy Information Agency, our Commercial customers have the sixth highest electricity rates in the nation, and our Industrial users pay the ninth highest rates in the nation. Because New Jersey's Commercial and Industrial ratepayers account for 64 percent of the State's total electricity consumption, major rate increases would have a devastating impact on our private-sector economy.

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

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

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

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

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

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

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

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

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

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

There needs to be a plan before we dramatically change the system, raise rates and leave ratepayers in the cold.

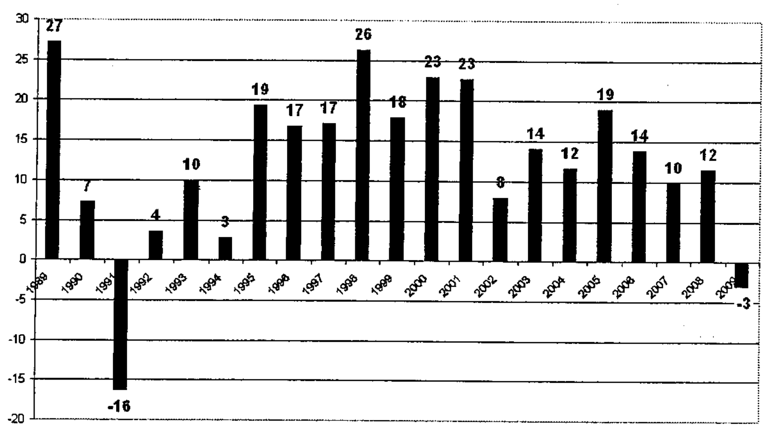
News from the New Jersey Business & Industry Association

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

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

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

Net Percentage Expecting to Expand Employment At their Company over the Next 12 Months



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

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

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

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

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

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

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

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

Table 3
Outlook by Major Industry Sector, First Half 2009

Major Sectors	Better	Worse	Net % Expecting Improvement
Construction, housing	12%	56%	-44%
Retail Trade	19	58	-39
Construction, other	24	49	-25
Manufacturing, nondurables	17	41	-24
Communications & Utilities	18	41	-23
Finance, Insurance & Real Estate	25	39	-14
Wholesale Trade	24	38	-14
Services	21	34	-13
Transportation	24	37	-13
Manufacturing, durables	28	38	-10
Healthcare	32	31	1
All Sectors Combined	22	40	-18

* Those not saying the outlook will get better or worse believe conditions will remain about the same.

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

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

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

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

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

Business Outlook Trend, 2002-2009

EXPECTATIONS FOR:	2002	2003	2004	2005	2006	2007	2008	2009
US ECONOMY								
Better	25%	38%	47%	42%	21%	18%	20%	25%
Same	33%	39%	38%	43%	40%	48%	43%	33%
Worse	42%	23%	16%	16%	39%	34%	37%	42%
Net better*	**-17%**	**15%**	**32%**	**26%**	**-18%**	**-15%**	**-17%**	**-17%**
NJ ECONOMY								
Better	22%	28%	34%	31%	18%	12%	13%	15%
Same	36%	40%	41%	45%	42%	37%	38%	29%
Worse	42%	31%	26%	24%	39%	51%	49%	57%
Net better*	**-21%**	**-3%**	**8%**	**7%**	**-21%**	**-39%**	**-36%**	**-42%**
YOUR INDUSTRY								
Better	28%	36%	40%	41%	27%	24%	25%	22%
Same	39%	41%	41%	41%	41%	42%	42%	37%
Worse	33%	23%	19%	19%	32%	34%	33%	40%
Net better*	**-6%**	**13%**	**21%**	**22%**	**-5%**	**-10%**	**-7%**	**-18%**
SALES								
More	42%	50%	50%	56%	49%	43%	57%	41%
Same	27%	25%	27%	26%	26%	28%	22%	30%
Less	31%	26%	23%	18%	25%	29%	21%	29%
Net more*	**12%**	**24%**	**26%**	**38%**	**23%**	**15%**	**36%**	**12%**
PROFITS								
More	37%	42%	44%	49%	43%	37%	51%	39%
Same	27%	25%	28%	26%	25%	28%	25%	28%
Less	36%	33%	28%	26%	32%	36%	24%	33%
Net more*	**0%**	**10%**	**16%**	**23%**	**10%**	**2%**	**26%**	**5%**
PURCHASES								
More	35%	39%	40%	46%	42%	36%	42%	33%
Same	39%	37%	37%	36%	35%	37%	34%	35%
Less	26%	24%	24%	18%	23%	27%	23%	32%
Net more*	**8%**	**16%**	**16%**	**28%**	**19%**	**8%**	**19%**	**1%**
EMPLOYMENT								
Increase	21%	24%	23%	27%	24%	21%	25%	17%
Same	66%	66%	66%	66%	66%	67%	61%	64%
Decrease	13%	10%	11%	7%	10%	12%	14%	19%
Net increase*	**8%**	**14%**	**12%**	**20%**	**14%**	**10%**	**12%**	**3%**

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

Note: Changes calculated before rounding. Totals may not equal 100 percent.

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Capital Health System

Outstanding Care. Extremely Close.

Statement of Support of S2428
by Dennis Dooley
Vice President, Planning & Development
Capital Health System
December 11, 2008

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

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

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

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

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S-2428

Testimony of Steven S. Goldenberg on behalf of the New Jersey Large Energy Users Coalition

Senate Economic Growth and Environmental Committees

December 11, 2008

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I thank you for your time and consideration.

CHEMISTRY COUNCIL OF NEW JERSEY

THE CHEMISTRY COUNCIL OF NEW JERSEY OPPOSES S-2428

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

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

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

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

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

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

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

Chemistry Council of New Jersey: Committed to a Better Quality of Life Through Science
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PLUMBING-HEATING-COOLING CONTRACTORS ASSOCIATION

Plumbing-Heating-Cooling Contractors-NJ
1305 Maple Avenue, Roebling, NJ 08554

December 11, 2008

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

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

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

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

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

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

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

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

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

Kevin Dolan
President
PHCC-NJ

1933 - 2008
75th
Diamond Anniversary
Fuel Merchants
Association
of New Jersey

Fuel Merchants Association of New Jersey

December 11, 2008

TO: Senate Economic Growth Committee
Senate Environment Committee

FROM: Kat Madaras, Associate Director

RE: S-2428

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

FMA opposes S-2428.

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

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

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

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

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

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

No on S-2428.

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NEW JERSEY FOOD COUNCIL

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December 11, 2008

Dear Senate Committee members:

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

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

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

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

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

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

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

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

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

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

Sincerely,

Linda Doherty

Linda Doherty
President

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Local 472

PARENT ORGANIZATION:
LABORERS' INTERNATIONAL
UNION OF NORTH AMERICA

Heavy and General Construction Laborers' Union

AFFILIATED WITH:
NEW JERSEY STATE AFL-CIO
NEW JERSEY STATE BUILDING
AND CONSTRUCTION
TRADES COUNCIL

JOSEPH P. MADDEN BUILDING, 700 RAYMOND BOULEVARD, NEWARK, NEW JERSEY 07105
PHONE: (973) 589-5050 • FAX: (973) 589-0582

Dear Senator:

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

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

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

I respectfully ask your support of this important Legislation.

Sincerely yours,

Roger Ellis
Business Representative

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