



# Elizabethtown Gas™

An AGL Resources Company

300 Conneli Drive, Suite 3000  
Berkeley Heights, NJ 07922

908 289 5000 phone  
www.elizabethtowngas.com

March 16, 2012

**VIA ELECTRONIC MAIL (M.Winka@bpu.state.nj.us)**

Michael Winka  
Director Office of Clean Energy NJBPU  
POB 350 - 44 S Clinton Ave  
Trenton, NJ 08625-0350

Dear Mr. Winka:

By this letter, Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas (“Elizabethtown” or “Company”) responds to the questions identified as “For the Utilities” in your March 1, 2012 electronic mail (“March 1 E-mail”). By separate letter being submitted this same day by Public Service Electric & Gas on behalf of the seven electric and/or natural gas investor owned utilities (IOUs), including Elizabethtown, the IOUs are providing joint responses to the “General Questions” reflected in your March 1 E-mail.

As reflected in your March 1 e-mail, Board staff will be developing a rule to implement a Commercial and Industrial (“C&I”) customer Societal Benefits Charge (“SBC”) credit program as it relates to Office of Clean Energy (“OCE”) programs pursuant to legislation enacted on January 17, 2012 and has requested responses to the “General Questions” and those set forth below in order to facilitate that process.<sup>1</sup> Elizabethtown appreciates the opportunity to provide input on this process and responds to the “For the Utilities” questions as follows:

- Please explain how the utilities track SBC information currently, whether this would change with the implementation of the new credit, and if so, how.

**Response:**

In general, SBC billing information is tracked through the Company’s billing and record-keeping systems. The IOUs are requesting that OCE implement and manage the Credit Program to minimize the impact on utility billing and record-keeping systems.

The extent to which the Company is required to participate in the implementation and management of the Credit Program may impact how SBC information is tracked.

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<sup>1</sup> A2528.

- What changes, if any, need to be made to utility billing systems to accommodate implementation of this law? Please provide the estimated cost of any systems or changes to systems needed to implement this law.

**Response:**

Again, the IOUs are requesting that OCE implement and manage the Credit Program to minimize the impact on utility billing and record-keeping systems. The extent to which the Company is required to participate in the implementation and management of the Credit Program will impact the costs associated with billing and record-keeping systems. Computer programming changes can be very costly and it is difficult at this time to estimate with specificity what those costs could be. The Company submits that it be afforded the opportunity to recover through rates the cost of any required changes to their billing and record-keeping systems, regardless of who manages and implements the SBC Credit Program.

- Please provide a list of the SBC charge paid by the top 25 C&I customers who pay the highest SBC, without listing the C&I customer's name. Since the names of the customers are not being provided we are requesting that the utilities, to the extent possible, match their gas list with the corresponding electric list to see if a large gas customer is also a large electric customer.

**Response:**

See attached.

- Also provide the total SBC collected in the last CY from C&I customers.

**Response:**


The following chart reflects the total SBC revenues attributable to C&I customers broken down by the individual SBC rate components for the 12 months ending December 2011:

<u>12 Months ending</u> <u>December 2011</u>	<u>CEP</u> <u>(OCE)*</u>	<u>RAC</u>	<u>USF-P</u>	<u>Lifeline</u>	<u>Total</u>
C&I	<u>\$4,916,462</u>	<u>(\$633,006)</u>	<u>\$3,619,223</u>	<u>\$1,336,880</u>	<u>\$9,239,559</u>

\*This does not include revenues attributable to C&I customers for Company administered programs that are collected through the Company's Regional Greenhouse Gas Initiative Rider rate, which Elizabethtown has recently requested be changed to the Energy Efficiency Program Rider rate. For the 12 months ending December 2011, revenues attributable to C&I customers for Company administered EEPs amounted to \$360,090. The attachment included with this letter in response to the previous questions does not include costs collected for EEPs. The Company will supplement its response next week to include this information.

Please contact the undersigned at (908) 771-8220 or Thomas Kaufmann at (908) 771-8225 if you have questions or require further information.

Yours truly,

/s/ Mary Patricia Keefe   
Mary Patricia Keefe, Esq.  
Vice President, Regulatory Affairs

Elizabethtown Gas  
TOP 25 Customers - SBC Impact  
12 Months Ending January, 2012

Customer ID	Rate	Therms	SBC Contribution
Customer 1	ITS-LVD-Special Contract		(1)
Customer 2	FTS-Special Contract		(1)
Customer 3	ITS-LVD	8,295,326	\$330,915
Customer 4	ITS-LVD Special Contract		(1)
Customer 5	ITS-LVD	4,957,698	\$197,771
Customer 6	ITS-LVD	4,384,739	\$174,915
Customer 7	FTS	4,146,027	\$165,392
Customer 8	ITS-LVD	2,831,879	\$112,968
Customer 10	FTS	2,362,631	\$94,249
Customer 11	ITS-LVD	2,290,264	\$91,362
Customer 12	ITS-LVD	2,281,801	\$91,025
Customer 13	FTS	2,191,249	\$87,413
Customer 14	FTS	2,108,427	\$84,108
Customer 15	FTS	2,080,025	\$82,975
Customer 16	FTS	2,009,159	\$80,149
Customer 17	FTS	1,847,346	\$73,694
Customer 18	FTS	1,799,973	\$71,805
Customer 19	FTS	1,762,983	\$70,328
Customer 20	FTS	1,599,150	\$63,793
Customer 21	ITS-LVD	1,318,853	\$52,611
Customer 22	ITS-LVD	1,308,924	\$52,215
Customer 23	FTS	1,291,290	\$51,512
Customer 24	FTS	1,219,033	\$48,630
Customer 25	ITS-LVD	1,134,577	\$45,261
Total		53,221,354	\$2,123,091
(1) Aggregation of Customers 1, 2 and 4 which are served under confidential special contracts		55,396,020	\$2,209,841
Total		108,617,374	\$4,332,932



VIA ELECTRONIC MAIL ONLY ([publiccomments@njcleanenergy.com](mailto:publiccomments@njcleanenergy.com))

March 16, 2012

Michael Winka  
New Jersey Board of Public Utilities  
44 South Clinton Avenue  
9<sup>th</sup> Floor  
P.O. Box 350  
Trenton, NJ 08625-0350

Re: March 1, 2012 E-mail request for responses on questions regarding A2528

Dear Mr. Winka:

In an effort to provide consistent and responsive comments to the questions posed in the March 1, 2012 e-mail, the seven electric and natural gas investor-owned utilities are providing jointly submitted comments for the six General Questions through Public Service Electric & Gas Company. Through this letter, New Jersey Natural Gas ("NJNG") is providing its specific responses to the four Utility questions. Please note that the information responsive to questions three and four regarding the top 25 NJNG customers' payments into the SBC and the total SBC collections for commercial and industrial (C&I) customers in the last calendar year was provided under cover of an e-mail dated March 9, 2012 directed to Michael Ambrosio. Copies are also attached hereto.

**NJNG Responses to Utility Questions**

- 1. Please explain how the utilities track SBC information currently, whether this would change with the implementation of the new credit, and, if so, how.**

Response: With the exception of NJCEP, NJNG currently tracks both expenses and recoveries for the other approved SBC cost categories since those amounts are subject to routine

company specific rate filings in which BPU Staff and Rate Counsel conduct a thorough review before approval of the costs and recovery is granted by the Board. Those expenses and recoveries are unique to each utility based on their programs, customer base, and agreements made in prior cases. On the other hand, the majority of NJCEP costs are not within the utilities' control, are not subject to the same discovery process during the annual ratesetting process and have been mandated by the Board following the Comprehensive Resource Analysis proceedings to determine the NJCEP budgets.

As noted in the joint response filed by the seven utilities, determinations must be made as to how the credit will be determined and issued. Any future impact on the current system used at NJNG can't be accurately established at this point. However, it is definite that there will be an impact from any future program change on the current tracking methodology.

- 2. What changes, if any, need to be made to utility billing systems to accommodate implementation of this law? Please provide the estimated cost of any systems or changes needed to implement this law.**

Response: It is not possible to identify future changes necessary to the NJNG billing and customer information system without having more details available concerning the process. However, there is little doubt that changes will need to be made with associated costs that will need to be addressed. If the proposed methodology addressed in the joint response is adopted, it is reasonable to assume that the implementation costs should be less than if NJNG and each utility must make system changes and address on-going administration.

- 3. Please provide a list of the SBC charge paid by the top 25 C&I customers who pay the highest SBC, without listing the C&I customer's name. Since the names of the customers are not being provided, we are requesting that the utilities, to the extent possible, match their gas list with the corresponding electric list to see if a large gas customer is also a large electric customer.**

Response: The list of the top 25 C&I customers is being provided with this letter but the companies are not able to compare lists without disclosing confidential customer information.

- 4. Also provide the total SBC collected in the last calendar year from C&I customers.**

Response: That information is attached.

NJNG appreciates having the opportunity to participate in the Board's process regarding the implementation of recent legislation. Please do not hesitate to reach out if you need anything else or have any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "Tracey Thayer". The signature is fluid and cursive, with a prominent initial "T".

Tracey Thayer  
Director, Regulatory Affairs Counsel

Attachments

cc: Marybeth Brenner, BPU  
Eleana Lihan, BPU  
Mona Mosser, BPU  
Diana Zukas, TRC  
Alice Bator, BPU  
Elizabeth Teng, BPU  
Kristina Miller, BPU  
John Garvey, BPU  
Babette Tenzer, DAG

Total Therms 1st Year	Reference	NAICS Code	Code Name	Pre-tax Current rates						
				Therms From 3/15/11 to 2/13/12	NJCEP	RAC	USF	Lifeline	Total SBC	
12,170,240	Customer 1	311920	Coffee/Tea Mfg	12,170,240	\$ 231,235	\$ 368,798	\$ 162,128	\$ 58,417	\$ 810,538	
2,118,776	Customer 2	622110	Hospital	2,118,776	\$ 40,257	\$ 64,199	\$ 26,485	\$ 10,170	\$ 141,110	
2,110,308	Customer 3	311421	Fruit/Veg Canning	2,110,308	\$ 40,096	\$ 63,942	\$ 26,379	\$ 10,129	\$ 140,547	
1,684,810	Customer 4	511110	Newspaper Publishers	1,684,810	\$ 32,011	\$ 51,050	\$ 21,080	\$ 8,087	\$ 112,208	
1,423,572	Customer 5	622110	Hospital	1,423,572	\$ 27,048	\$ 43,134	\$ 17,795	\$ 6,833	\$ 94,810	
1,338,857	Customer 6	331512	Steel Investment Foundries	1,338,857	\$ 25,400	\$ 40,507	\$ 16,711	\$ 6,417	\$ 89,035	
1,332,024	Customer 7	Other	Crushed and Broken Stone Mining and Quarrying	1,332,024	\$ 25,308	\$ 40,360	\$ 16,650	\$ 6,394	\$ 88,713	
1,234,999	Customer 8	622110	Hospital	1,234,999	\$ 23,465	\$ 37,420	\$ 15,437	\$ 5,928	\$ 82,251	
1,216,568	Customer 9	332111	Iron/Steel Forging	1,216,568	\$ 23,115	\$ 36,862	\$ 15,207	\$ 5,840	\$ 81,023	
1,061,753	Customer 10	928110	National Security	1,061,753	\$ 20,173	\$ 32,171	\$ 13,272	\$ 5,096	\$ 70,713	
1,048,898	Customer 11	423320	Construction Materials Wholesalers	1,048,898	\$ 19,929	\$ 31,782	\$ 13,111	\$ 5,035	\$ 69,857	
1,031,694	Customer 12	622110	Hospital	1,031,694	\$ 19,602	\$ 31,260	\$ 12,896	\$ 4,952	\$ 68,711	
982,875	Customer 13	622110	Hospital	982,875	\$ 18,675	\$ 29,781	\$ 12,288	\$ 4,718	\$ 65,459	
645,685	Customer 14	622110	Hospital	645,685	\$ 12,268	\$ 19,564	\$ 8,071	\$ 3,099	\$ 43,003	
642,870	Customer 15	622110	Hospital	642,870	\$ 12,215	\$ 19,479	\$ 8,036	\$ 3,086	\$ 42,815	
561,583	Customer 16	928110	National Security	561,583	\$ 10,670	\$ 17,016	\$ 7,020	\$ 2,686	\$ 37,401	
529,744	Customer 17	331512	Steel Investment Foundries	529,744	\$ 10,065	\$ 16,051	\$ 6,622	\$ 2,543	\$ 35,281	
515,939	Customer 18	622110	Hospital	515,939	\$ 9,803	\$ 15,633	\$ 6,449	\$ 2,477	\$ 34,362	
514,673	Customer 19	511110	Newspaper Publishers	514,673	\$ 9,779	\$ 15,595	\$ 6,433	\$ 2,470	\$ 34,277	
495,174	Customer 20	325199	All Other Basic Organic Chemical Manufacturing	495,174	\$ 9,408	\$ 15,004	\$ 6,190	\$ 2,377	\$ 32,979	
483,419	Customer 21	622110	Hospital	483,419	\$ 9,375	\$ 14,951	\$ 6,188	\$ 2,368	\$ 32,862	
466,812	Customer 22	812331	Linens Supply	466,812	\$ 8,869	\$ 14,144	\$ 5,835	\$ 2,241	\$ 31,090	
439,104	Customer 23	322222	Coated/Laminated Paper Manufacturing	439,104	\$ 8,343	\$ 13,305	\$ 5,489	\$ 2,108	\$ 29,244	
434,181	Customer 24	311812	Commercial Bakery	434,181	\$ 8,249	\$ 13,156	\$ 5,427	\$ 2,084	\$ 28,916	
428,591	Customer 25	622110	Hospital	428,591	\$ 8,143	\$ 12,986	\$ 5,357	\$ 2,057	\$ 28,544	
34,921,147				34,921,147	\$ 663,502	\$ 1,058,111	\$ 436,514	\$ 167,622	\$ 2,325,748	



Reference	Including SUT Current rates					Pre-tax Rates prior to 11/1/11					Includin Rates prior				
	Therms From 3/15/11 to 2/13/12	NJCEP	RAC	USF	Lifeline	Total SBC	Therms From 3/15/11 to 2/13/12	NJCEP	RAC	USF	Lifeline	Total SBC	Therms From 3/15/11 to 2/13/12	NJCEP	RAC
Customer 1	12,170,240	\$ 247,056	\$ 394,316	\$ 163,081	\$ 62,068	\$ 866,521	12,170,240	\$ 231,235	\$ 388,798	\$ 161,854	\$ 59,634	\$ 821,491	12,170,240	\$ 247,056	\$ 394,316
Customer 2	2,118,776	\$ 43,011	\$ 68,648	\$ 28,392	\$ 10,806	\$ 150,857	2,118,776	\$ 40,257	\$ 64,199	\$ 28,180	\$ 10,392	\$ 143,017	2,118,776	\$ 43,011	\$ 68,648
Customer 3	2,110,308	\$ 42,839	\$ 68,374	\$ 28,278	\$ 10,763	\$ 150,254	2,110,308	\$ 40,096	\$ 63,942	\$ 28,067	\$ 10,341	\$ 142,446	2,110,308	\$ 42,839	\$ 68,374
Customer 4	1,684,810	\$ 34,202	\$ 54,588	\$ 22,576	\$ 8,593	\$ 119,958	1,684,810	\$ 32,011	\$ 51,050	\$ 22,408	\$ 8,286	\$ 113,725	1,684,810	\$ 34,202	\$ 54,588
Customer 5	1,423,572	\$ 28,899	\$ 46,124	\$ 18,076	\$ 7,260	\$ 101,358	1,423,572	\$ 27,048	\$ 43,134	\$ 18,934	\$ 6,976	\$ 96,091	1,423,572	\$ 28,899	\$ 46,124
Customer 6	1,336,857	\$ 27,138	\$ 43,314	\$ 17,914	\$ 6,818	\$ 95,184	1,336,857	\$ 25,400	\$ 40,507	\$ 17,780	\$ 6,551	\$ 90,238	1,336,857	\$ 27,138	\$ 43,314
Customer 7	1,332,024	\$ 27,040	\$ 43,158	\$ 17,849	\$ 6,793	\$ 94,840	1,332,024	\$ 25,308	\$ 40,360	\$ 17,716	\$ 6,527	\$ 89,912	1,332,024	\$ 27,040	\$ 43,158
Customer 8	1,234,999	\$ 25,070	\$ 40,014	\$ 16,549	\$ 6,296	\$ 87,932	1,234,999	\$ 23,465	\$ 37,420	\$ 16,425	\$ 6,051	\$ 83,362	1,234,999	\$ 25,070	\$ 40,014
Customer 9	1,216,568	\$ 24,696	\$ 39,417	\$ 16,302	\$ 6,204	\$ 86,620	1,216,568	\$ 23,115	\$ 36,862	\$ 16,180	\$ 5,951	\$ 82,118	1,216,568	\$ 24,696	\$ 39,417
Customer 10	1,061,753	\$ 21,554	\$ 34,401	\$ 14,227	\$ 5,415	\$ 75,997	1,061,753	\$ 20,173	\$ 32,171	\$ 14,121	\$ 5,203	\$ 71,668	1,061,753	\$ 21,554	\$ 34,401
Customer 11	1,048,898	\$ 21,293	\$ 33,984	\$ 14,055	\$ 5,349	\$ 74,682	1,048,898	\$ 19,929	\$ 31,782	\$ 13,950	\$ 5,140	\$ 70,801	1,048,898	\$ 21,293	\$ 33,984
Customer 12	1,031,694	\$ 20,943	\$ 33,427	\$ 13,825	\$ 5,262	\$ 73,457	1,031,694	\$ 19,602	\$ 31,260	\$ 13,722	\$ 5,055	\$ 69,539	1,031,694	\$ 20,943	\$ 33,427
Customer 13	982,875	\$ 19,952	\$ 31,845	\$ 13,171	\$ 5,013	\$ 69,981	982,875	\$ 18,675	\$ 29,781	\$ 13,072	\$ 4,816	\$ 66,344	982,875	\$ 19,952	\$ 31,845
Customer 14	645,685	\$ 13,107	\$ 20,920	\$ 8,652	\$ 3,293	\$ 45,973	645,685	\$ 12,268	\$ 19,564	\$ 8,568	\$ 3,154	\$ 43,584	645,685	\$ 13,107	\$ 20,920
Customer 15	642,870	\$ 13,050	\$ 20,829	\$ 8,614	\$ 3,279	\$ 45,772	642,870	\$ 12,215	\$ 19,479	\$ 8,500	\$ 3,150	\$ 43,394	642,870	\$ 13,050	\$ 20,829
Customer 16	561,583	\$ 11,400	\$ 18,195	\$ 7,525	\$ 2,864	\$ 39,985	561,583	\$ 10,670	\$ 17,016	\$ 7,469	\$ 2,752	\$ 37,907	561,583	\$ 11,400	\$ 18,195
Customer 17	529,744	\$ 10,754	\$ 17,164	\$ 7,099	\$ 2,702	\$ 37,718	529,744	\$ 10,055	\$ 16,051	\$ 7,046	\$ 2,598	\$ 36,758	529,744	\$ 10,754	\$ 17,164
Customer 18	515,939	\$ 10,474	\$ 16,716	\$ 6,914	\$ 2,631	\$ 36,735	515,939	\$ 9,803	\$ 15,633	\$ 6,862	\$ 2,528	\$ 34,826	515,939	\$ 10,474	\$ 16,716
Customer 19	514,673	\$ 10,448	\$ 16,675	\$ 6,897	\$ 2,625	\$ 36,645	514,673	\$ 9,779	\$ 15,595	\$ 6,845	\$ 2,522	\$ 34,740	514,673	\$ 10,448	\$ 16,675
Customer 20	495,174	\$ 10,052	\$ 16,044	\$ 6,635	\$ 2,525	\$ 35,256	495,174	\$ 9,408	\$ 15,004	\$ 6,586	\$ 2,426	\$ 33,424	495,174	\$ 10,052	\$ 16,044
Customer 21	493,419	\$ 10,016	\$ 15,987	\$ 6,512	\$ 2,516	\$ 35,131	493,419	\$ 9,375	\$ 14,951	\$ 6,562	\$ 2,418	\$ 33,306	493,419	\$ 10,016	\$ 15,987
Customer 22	466,812	\$ 9,476	\$ 15,125	\$ 6,255	\$ 2,381	\$ 33,237	466,812	\$ 8,869	\$ 14,144	\$ 6,209	\$ 2,287	\$ 31,510	466,812	\$ 9,476	\$ 15,125
Customer 23	439,104	\$ 8,914	\$ 14,227	\$ 5,894	\$ 2,239	\$ 31,264	439,104	\$ 8,343	\$ 13,305	\$ 5,840	\$ 2,152	\$ 29,640	439,104	\$ 8,914	\$ 14,227
Customer 24	434,181	\$ 8,814	\$ 14,067	\$ 5,818	\$ 2,214	\$ 30,914	434,181	\$ 8,248	\$ 13,156	\$ 5,775	\$ 2,127	\$ 29,307	434,181	\$ 8,814	\$ 14,067
Customer 25	428,591	\$ 8,700	\$ 13,886	\$ 5,743	\$ 2,166	\$ 30,516	428,591	\$ 8,143	\$ 12,986	\$ 5,700	\$ 2,100	\$ 28,930	428,591	\$ 8,700	\$ 13,886
	34,921,147	\$ 708,899	\$ 1,131,445	\$ 467,943	\$ 178,088	\$ 2,486,386	34,921,147	\$ 663,502	\$ 1,058,111	\$ 464,451	\$ 171,114	\$ 2,357,177	34,921,147	\$ 708,899	\$ 1,131,445

9 SUT to 11/1/11				
Reference	USF	Lifetime	Total SEC	
Customer 1	\$ 172,817	\$ 63,285	\$ 877,474	
Customer 2	\$ 30,087	\$ 11,018	\$ 152,764	
Customer 3	\$ 29,966	\$ 10,974	\$ 152,153	
Customer 4	\$ 23,924	\$ 8,761	\$ 121,475	
Customer 5	\$ 20,215	\$ 7,403	\$ 102,640	
Customer 6	\$ 18,983	\$ 6,952	\$ 96,387	
Customer 7	\$ 18,915	\$ 6,527	\$ 96,039	
Customer 8	\$ 17,537	\$ 6,422	\$ 89,043	
Customer 9	\$ 17,275	\$ 6,326	\$ 87,715	
Customer 10	\$ 15,077	\$ 5,521	\$ 76,552	
Customer 11	\$ 14,894	\$ 5,454	\$ 75,826	
Customer 12	\$ 14,650	\$ 5,365	\$ 74,385	
Customer 13	\$ 13,957	\$ 5,111	\$ 70,865	
Customer 14	\$ 9,169	\$ 3,358	\$ 46,554	
Customer 15	\$ 9,129	\$ 3,343	\$ 46,351	
Customer 16	\$ 7,974	\$ 2,820	\$ 40,490	
Customer 17	\$ 7,522	\$ 2,755	\$ 38,195	
Customer 18	\$ 7,326	\$ 2,683	\$ 37,199	
Customer 19	\$ 7,308	\$ 2,676	\$ 37,108	
Customer 20	\$ 7,061	\$ 2,575	\$ 35,702	
Customer 21	\$ 7,007	\$ 2,566	\$ 35,576	
Customer 22	\$ 6,629	\$ 2,427	\$ 33,657	
Customer 23	\$ 6,285	\$ 2,283	\$ 31,659	
Customer 24	\$ 6,165	\$ 2,258	\$ 31,304	
Customer 25	\$ 6,096	\$ 2,229	\$ 30,901	
	\$ 485,880	\$ 181,590	\$ 2,517,815	

**NJNG**  
**CY2011 SBC Revenues, including SUT**  
**(\$million)**

	RAC	NJCEP	USF	Lifeline	Total
General Service Small (GSS)	\$0.994	\$0.623	\$0.433	\$0.167	\$2.217
General Service Large (GSL)	\$4.261	\$2.641	\$1.863	\$0.702	\$9.467
Firm Transportation (FT)	\$0.307	\$0.192	\$0.120	\$0.048	\$0.667
Distributed Generation (DG)	\$0.081	\$0.050	\$0.035	\$0.013	\$0.179
Interruptible Transportation	<u>\$1.042</u>	<u>\$0.653</u>	<u>\$0.452</u>	<u>\$0.167</u>	<u>\$2.314</u>
Total	\$6.685	\$4.159	\$2.903	\$1.097	\$14.844



March 16, 2012

***VIA ELECTRONIC MAIL***

Michael Winka, Director  
Office of Clean Energy  
Board of Public Utilities  
44 South Clinton Avenue  
P.O. Box 350  
Trenton, New Jersey 08625-0350

**Re: SBC Law Providing for C&I Credits  
Response to General Questions**

Dear Mr. Winka

Thank you for this opportunity to provide input to assist the Board in drafting a straw rule proposal.

In an effort to efficiently address your questions issued on March 1, 2012, the seven electric and/or natural gas investor owned utilities (IOUs) have agreed to jointly respond to the “General Questions”.<sup>1</sup> The joint responses to those questions are set forth below. However, due to the specific nature of the questions “For the Utilities,” each utility is responding to those questions separately.

To facilitate the implementation of the recently-enacted statute (the Act) and to provide a common interface to all New Jersey commercial and industrial (C&I) customers, the seven IOUs request that the Office of Clean Energy (“OCE”) or an entity under contract with the OCE manage and implement the C&I SBC Credit Program rather than requiring each utility to undertake these efforts.<sup>2</sup> Since this program is a statewide initiative, the OCE is the most suitable entity to implement and administer the program. This is consistent with other statewide programs already under its purview, as directed by the BPU. Additionally, it eliminates duplicative efforts by the IOUs, simplifies implementation, and creates a “single point of entry” for C&I customers that have different gas and electric distribution providers.

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<sup>1</sup> PSE&G is submitting these responses to the General Questions on behalf of itself and of Jersey Central Power & Light Company, Atlantic City Electric Company, Rockland Electric Company, New Jersey Natural Gas Company, South Jersey Gas Company, and Pivotal Utility Holdings, Inc., d/b/a/ Elizabethtown Gas Company.

<sup>2</sup> Implementation of the SBC credits mandated under the Act within the billing and record-keeping system of PSE&G and, presumably, within the billing system of each of the IOUs would be an extremely complex and costly endeavor.

This approach would not only be far more cost-efficient and straightforward than imposing significant and costly changes on each of the utility's billing and record-keeping systems; it would be entirely consistent with the plain language of the statute. See Act, section 1.b. ("[t]he amount of the credit . . . shall be equal to [a] portion of the costs incurred . . . for . . . energy efficiency purposes, that would be eligible for incentives under programs that the board shall have determined to fund by the [SBC]"; section 1.c. ("[t]he amount of the credit to be allowed . . . shall be determined by the board") (emphasis added). Further, it is consistent with the spirit of the legislation by providing the C&I customer with the flexibility to consolidate the value of contributions to the SBC across service territories, which further encourages energy efficiency investments. Finally, the IOUs should have the opportunity to recover through rates the cost of any required changes to their billing and record-keeping systems, regardless of who manages and implements the credit program.

General Questions (on behalf of all IOUs)

- **Should C&I customers be able to access the SBC credit as well as SBC funded Clean Energy energy efficiency rebate programs at the same time in the same year?**

**Response:** No. Any C&I customers who take part in this SBC Credit Program and thereby reduce their contribution to Clean Energy programs through the SBC should be ineligible for SBC-funded energy efficiency programs.

- **If they can only access the credit or rebate one at a time should there be some time limit for accessing either the credit or the Clean Energy incentives? As an example: If the C&I ratepayer received an energy efficient rebate last year should that be deducted from the credit? Is there a timeframe for this look back? Can the C&I ratepayer apply for a Clean Energy rebate the next year following the year in which a credit was sought? Is there a timeframe for when the customer can apply for a NJCEP rebate after receiving the credit?**

**Response:** If a C&I customer received a rebate in the previous calendar year, the customer should be able to apply for the credit in the following calendar year as long as no portion of the credit relates to investments in the same energy efficiency project for which the customer received the rebate. If the customer is carrying an SBC credit forward, it should not be eligible for Clean Energy program participation in the carry-forward years, unless the customer elects to forego an appropriate portion of the credit based on the benefits received from its Clean Energy program participation. If the

customer is not carrying any credit forward, it would be eligible for Clean Energy program benefits in the future.

- **How should the Board determine which energy efficiency products and services for C&I ratepayers should qualify for the credit?**

**Response:** The C&I customer credit should be limited to the same set of energy efficiency products and/or services that are allowed under the various OCE funded programs for which those customers are eligible. Under no circumstances should a credit be allowed for any equipment using a fuel source that does not contribute to the SBC.

- **Should the array of Clean Energy programs and current structure under the SBC change or stay the same with the introduction of the C&I ratepayer opportunity to receive credit?**

**Response:** The IOUs believe that the set of efficiency products and services offered through the OCE programs and those available for the new C&I Credit Program should be the same. Whether the set of existing efficiency products and services currently offered under the OCE programs should be modified is a decision best made by the OCE staff and the current C&I Market Manager or any future Program Administrator(s), subject to BPU approval. Although there is no need to change the OCE programs, the budget for those programs should be adjusted so there is no net increase to the Clean Energy program funding requirements.

- **The Act also requires that the amount of the credit “shall be determined by the board.” What process should the Board use to review and approve any requests for a credit?**

**Response:** All applications for an SBC credit should be made to the OCE through the current C&I Market Manager or any future Program Administrator(s) performing service for the OCE. This would provide efficiency of scale in order to minimize costs and also ensure that the review and approval process is consistent throughout the seven utility service territories. It would also eliminate confusion when a C&I customer is applying

for an energy efficiency investment that reduces both electricity and gas usage when the customer is served by separate gas and electric utilities. The C&I customer's application for the credit for a proposed project should include the appropriate information needed to evaluate the project, including the previous calendar year actual usage, to estimate the SBC payment and allowable credit.

Once the C&I customer's application has been reviewed and approved by the Program Administrator(s), the application can then go to the Board for approval. The OCE would determine the eligible C&I programs and customers and establish the measurement and verification protocols necessary to implement the credit. Once the expenditures are verified and complete, the C&I Program Administrator(s) would submit a request for each C&I participants' account information. On an annual basis, each utility would report how much the customer has been billed for the Clean Energy Program Component of the SBC in the previous calendar year. In addition, the customer's account would be verified to be in good standing, which will confirm that the SBC funds have been paid by the customer. This list would be communicated to the OCE's C&I Program Administrator(s), who would then be responsible for issuing appropriate refunds from the Clean Energy Program funds to C&I Credit Program participants. Establishing a refund process on an annual basis should be the least disruptive approach for NJCEP budgeting.

- **The Act states that the C&I ratepayer “shall be allowed a credit against the societal benefits charge.” The SBC funds a number of societal programs in addition to the Clean Energy funds for energy efficiency. These other programs have nothing to do with energy efficiency, and the Board may have little discretion in funding them. To the extent that some of the other SBC programs, like the Universal Service Fund, Lifeline, nuclear decommissioning and manufactured gas plant remediation costs are nondiscretionary, how should the funding of these nondiscretionary programs be achieved if there is a reduction in the total SBC from the energy efficiency SBC credit? Please explain.**

**Response:** The magnitude of the credit available under the Act should be limited to that portion of the SBC attributable to the OCE's programs, that is, the Clean Energy Programs' portion of each utility's electric and/or gas SBC. That way, the funding of other SBC programs such as those mentioned above should not be impacted. Since this

new credit option is not at all related to the underlying cost structure of any of the other clauses with the SBC, any effort to adjust funding for those would translate into an unauthorized price increase for all other customers. As such, it is clear that the value of the credit should be isolated to NJCEP funds, where the value of those credits at least relates to the underlying objective of that clause.

Thank you very much for your consideration.

Very truly yours,

*Original Signed by  
Matthew M. Weissman*

C Attached Service List



**BPU**

Alice Bator, Bureau Chief  
Board of Public Utilities  
Division of Energy  
44 South Clinton Avenue, 9th Floor  
P.O. Box 359  
Trenton, NJ 08625-0350  
PHONE: (609) 943-5805  
FAX: ( ) - -  
alice.bator@bpu.state.nj.us

MaryBeth Brenner  
Board of Public Utilities  
44 South Clinton Avenue, 9th Flr.  
P.O. Box 350  
Trenton, NJ 08625-0350  
PHONE: ( ) - -  
FAX: ( ) - -  
marybeth.brenner@bpu.state.nj.us

John Garvey  
Board of Public Utilities  
44 South Clinton Avenue  
P.O. Box 350  
Trenton, NJ 08625-0350  
PHONE: ( ) - -  
FAX: ( ) - -  
john.garvey@bpu.state.nj.us

Eleana Lihan  
Board of Public Utilities  
Division of Energy  
44 South Clinton Avenue, 9th Flr.  
P.O. Box 350  
Trenton, NJ 08625-0350  
PHONE: (609) 777-3253  
FAX: ( ) - -  
eleana.lihan@bpu.state.nj.us

Kristina Miller  
Board of Public Utilities  
44 South Clinton Avenue, 9th Flr.  
P.O. Box 350  
Trenton, NJ 08625-0350  
PHONE: ( ) - -  
FAX: ( ) - -  
kristina.miller@bpu.state.nj.us

Elizabeth Teng  
Board of Public Utilities  
44 South Clinton Avenue, 9th Flr.  
P.O. Box 350  
Trenton, NJ 08625-0350  
PHONE: (609) 292-0091  
FAX: ( ) - -  
elizabeth.teng@bpu.State.nj.us

Michael Winka, Director  
Board of Public Utilities  
44 South Clinton Avenue, 9th Flr.  
P.O. Box 350  
Trenton, NJ 08625-0350  
PHONE: (609) 777-3312  
FAX: ( ) - -  
m.winka@bpu.state.nj.us

**DAG**

Babette Tenzer, DAG  
NJ Dept. of Law & Public Safety  
Division of Law  
124 Halsey Street, 5th Flr.  
PO Box 45029  
Newark, NJ 07101  
PHONE: (973) 648-7811  
FAX: (973) 648-3555  
babette.tenzer@dol.lps.state.nj.us

**AGL/ELIZABETHTOWN**

Deborah M. Franco  
Cullen and Dykman LLP  
Garden City Center  
100 Quentin Roosevelt Blvd.  
Garden City, NY 11530-4850  
PHONE: (516) 357-3878  
FAX: (516) 357-3792  
dfranco@cullldyk.com

Mary Patricia Keefe  
Elizabethtown Gas  
300 Connell Drive  
Suite 3000  
Berkeley Heights, NJ 07922  
PHONE: (908) 771-8220  
FAX: (908) 771-8217  
mkeefe@aglresources.com

**ATLANTIC CITY ELECTRIC CO.**

Greg Marquis  
Pepco Holdings, Inc.  
701 Ninth Street NW  
Washington, DC 20068-0001  
PHONE: (202) 872-2297  
FAX: (202) 872-2270  
grmarquis@pepco.com

Amir Mohseni  
5100 Harding Highway  
Mays Landing, NJ 08330  
PHONE: ( ) - -  
FAX: ( ) - -  
amir.mohseni@pepcoholdings.com

Philip J. Passanante, Assistant General  
Counsel  
Atlantic City Electric Co. - 89KS42  
800 King Street, 5th Floor  
PO Box 231  
Wilmington, DE 19899-0231  
PHONE: (302) 429-3105  
FAX: (302) 429-3801  
philip.passanante@pepcoholdings.com

Roger E. Pedersen, Manager, NJ -  
Regulatory Affairs  
Atlantic City Electric Co. - 63ML38  
5100 Harding Highway  
Mays Landing, NJ 08330  
PHONE: (609) 625-5820  
FAX: (609) 625-5838  
roger.pedersen@pepcoholdings.com

**JCP&L**

Sally J. Cheong, Manager - Tariff  
Activity, Rates NJ  
Jersey Central Power & Light Co.  
300 Madison Ave.  
Morristown, NJ 07962  
PHONE: (973) 401-8699  
FAX: (973) 644-4243  
scheong@firstenergycorp.com

Kevin Connelly  
First Energy  
300 Madison Avenue  
Morristown, NJ 07960  
PHONE: (973) 401-8708  
FAX: (973) 644-4243  
kconnelly@firstenergycorp.com

Gregory Eisenstark (JCP&L), Esq.  
Morgan, Lewis & Bockius, LLP  
89 Headquarters Plaza, Suite 1419  
Morristown, NJ 07960  
PHONE: (973) 993-3134  
FAX: (877) 432-9652  
geisenstark@morganlewis.com

**NJ NATURAL GAS CO.**

Mark R. Sperduto, Vice President  
Regulatory Affairs  
New Jersey Natural Gas  
1415 Wyckoff Road, T08C  
Wall, NJ 07719  
PHONE: (732) 938-1214  
FAX: (732) 938-2620  
msperduto@njresources.com

Tracey Thayer, Esq., Director, Regulatory  
Affairs Counsel  
New Jersey Natural Gas Company  
1415 Wyckoff Road  
P.O. Box 1464  
Wall, NJ 07719  
PHONE: (732) 919-8025  
FAX: (732) 938-2620  
TThayer@NJNG.com

**ROCKLAND**

John L. Carley, Esq.  
Consolidated Edison Co. of NY  
Law Dept., Room 1815-S  
4 Irving Place  
New York, NY 10003  
PHONE: (212) 460-2097  
FAX: (212) 677-5850  
carleyj@coned.com

Margaret Comes, Sr Staff Attorney  
Consolidated Edison Co. of NY  
Law Dept, Room 1815-S  
4 Irving Place  
New York, NY 10003  
PHONE: (212) 460-3013  
FAX: (212) 677-5850  
comesm@coned.com

**SO. JERSEY GAS**

Ira G. Megdal, Esq.  
Cozen O'Connor  
457 Haddonfield Road, Suite 300  
Libertyview  
Cherry Hill, NJ 08002  
PHONE: (856) 910-5019  
FAX: (877) 259-7984  
imegdal@cozen.com

John F. Stanzola, Director, Regu  
Affairs  
South Jersey Gas Co.  
1 South Jersey Plaza  
PO Box 6000  
Folsom, NJ 08037  
PHONE: (609) 561-9000, X416  
FAX: (609) 561-6955  
jstanzola@sjindustries.com

**PSE&G**

Connie E. Lembo  
PSEG Services Corporation  
80 Park Plaza, T-05  
Newark, NJ 07102  
PHONE: (973) 430-6273  
FAX: (973) 430-5983  
constance.lembo@pseg.com

Matthew M. Weissman, Esq.  
Public Service Electric & Gas Co  
80 Park Plaza  
P.O. Box 570-T5G  
Newark, NJ 07101  
PHONE: (973) 430-7052  
FAX: (973) 430-5983  
matthew.weissman@pseg.com

**For the Utilities - JCP&L**

- Please explain how the utilities track SBC information currently, whether this would change with the implementation of the new credit, and if so, how.

Response. JCP&L currently bills SBC components by customer account based on the kWh usage for the billing period. Total revenues of all SBC components are reported monthly. It would be difficult to anticipate what would change without knowing the specifics of the implementation of the new credit.

- What changes, if any, need to be made to utility billing systems to accommodate implementation of this law? Please provide the estimated cost of any systems or changes to systems needed to implement this law.

Response. JCP&L would not be able to identify what billing system changes may be required without knowing the specifics of the implementation of the new credit. However, past experience in billing system changes suggests that this could be a significant and costly undertaking.

- Please provide a list of the SBC charge paid by the top 25 C&I customers who pay the highest SBC, without listing the C&I customer's name. Since the names of the customers are not being provided we are requesting that the utilities, to the extent possible, match their gas list with the corresponding electric list to see if a large gas customer is also a large electric customer.

Response. Please see attached JCP&L's top 25 C&I customers with the highest cumulative billed SBC in the last 12 months.

- Also provide the total SBC collected in the last CY from C&I customers.

Response. Please see attached JCP&L's SBC billed revenues for C&I customers for 2011.

JCP&L Top 25 C&I Customers with Highest SBC Charges \*

Rank	kWh	Total SBC Billed	DSF Component in Total SBC Billed
1	185,600,844	\$1,222,849.52	\$472,925.35
2	120,576,924	\$791,279.87	\$312,353.24
3	114,333,108	\$750,400.99	\$303,646.09
4	89,794,752	\$586,748.39	\$236,916.86
5	68,902,276	\$452,902.81	\$186,587.14
6	64,427,040	\$421,495.73	\$165,776.32
7	60,981,108	\$400,064.67	\$164,153.38
8	57,836,998	\$381,307.86	\$156,079.20
9	53,782,728	\$353,096.04	\$143,567.86
10	51,903,171	\$338,837.71	\$134,184.46
11	50,638,493	\$332,259.67	\$134,136.37
12	36,268,972	\$237,436.03	\$95,958.89
13	37,626,792	\$231,645.28	\$91,751.15
14	34,100,644	\$224,732.20	\$86,884.58
15	32,395,584	\$212,964.87	\$86,480.74
16	32,385,118	\$212,602.84	\$85,606.07
17	31,245,250	\$204,806.71	\$81,067.74
18	30,809,932	\$201,475.32	\$81,433.32
19	29,594,666	\$194,770.44	\$79,485.41
20	29,550,380	\$194,181.07	\$77,788.54
21	29,181,756	\$191,914.77	\$78,497.30
22	31,565,004	\$191,815.19	\$77,573.42
23	29,031,452	\$190,337.14	\$77,248.48
24	29,952,526	\$182,469.49	\$72,516.34
25	29,676,157	\$182,170.47	\$73,683.55

\* Based on billed revenues from March 2011 through February 2012

**JCP&L SBC Billed Revenues for C&I Customers - Year 2011**

**Societal Benefits Charge - Components:**

Remediation Adjustment Clause	\$	417,759
Uncollectable Accounts Charge	\$	4,722,640
Universal Service Fund	\$	23,080,821
Lifeline Charge	\$	7,306,574
Consumer Education Program Costs	\$	1,801,684
Demand Side Factor	\$	27,447,372
Nuclear Decommissioning Costs	\$	6,436,178
<b>Total Societal Benefits Charge</b>	<b>\$</b>	<b>71,213,029</b>



Rockland Electric Company

**Margaret Comes**  
Senior Attorney  
Law Department

March 16, 2012

Michael Winka  
Director, Clean Energy Program  
New Jersey Board of Public Utilities  
44 South Clinton Avenue  
9th Floor  
Post Office Box 350  
Trenton, NJ 08625-0350

RE: Societal Benefits Charge Law  
Responses to Board Staff Questions of March 1, 2012

Dear Mr. Winka:

On March 1, 2012, Board Staff transmitted a series of questions to stakeholders concerning implementation of a new statute concerning Societal Benefits Charge credits.

Attached please find responses of Rockland Electric Company to the Utility Specific Questions in Board Staff's March 1, 2012 request.

With regard to the General Questions in the March 1, 2012 request, Rockland Electric Company is joining in a response with the other New Jersey investor owned utilities ("Joint Response"). The Joint Response is being transmitted to Board Staff separately by Public Service Electric and Gas Company.

Very truly yours,

  
MARGARET COMES

Attachments  
c: email list

**Rockland Electric Company  
Response to Societal Benefits Charge Law Request for Comments  
Utility Specific Questions**

- **Please explain how the utilities track SBC information currently, whether this would change with the implementation of the new credit, and if so, how.**

Currently, the Company does not have access to, and therefore cannot track, information regarding individual customer participation in NJ Clean Energy Programs. Accordingly, the Company favors a process wherein, eligible C&I customers would submit applications to the NJ Clean Energy Program Administrator. The Administrator would compile customer and project information, review the project technical qualifications, conduct any necessary pre-inspections, contact the utility(s) in order to determine total SBC payments by the customer, and subtract any previous rebates from this amount. Assuming all other qualifications are met, the Administrator then would initiate an approval recommendation to the Board for the remaining allowable incentive.

RECO does not currently track SBC amounts billed to individual customers. Changes to RECO's billing system would be required in order to enable it to provide that information.

- **What changes, if any, need to be made to utility billing systems to accommodate implementation of this law? Please provide the estimated cost of any systems or changes to systems needed to implement this law.**

It is not possible to estimate the costs of billing system changes needed to implement the law until the specific method of implementation, including the details of utility company involvement, is determined by the Board.

- **Please provide a list of the SBC charge paid by the top 25 C&I customers who pay the highest SBC, without listing the C&I customer's name. Since the names of the customers are not being provided we are requesting that the utilities, to the extent possible, match their gas list with the corresponding electric list to see if a large gas customer is also a large electric customer.**

Please see the attached, which details the SBC charges paid by component by the 25 top C&I customers for calendar year 2011.

- **Also provide the total SBC collected in the last CY from C&I customers.**

Please see the attached, which details the total SBC collections by component from C&I customers for calendar year 2011.

**Rockland Electric Company**  
**SBC Law - Response to Request for Comments**  
**Utility Specific Questions**

**SBC Amounts Paid by Top 25 C&I Customers for CY 2011 (Excluding SUT)**

<u>Customer</u>	<u>DSM/Clean Energy Revenue</u>	<u>USF Revenue</u>	<u>Lifeline Revenue</u>	<u>Total SBC Paid</u>
1	\$112,375	\$74,262	\$23,145	\$209,782
2	82,121	54,176	16,911	153,208
3	69,037	45,453	14,214	128,704
4	63,372	41,742	13,049	118,163
5	60,741	40,009	12,507	113,257
6	54,675	35,907	11,255	101,838
7	49,168	32,364	10,123	91,655
8	34,558	22,756	7,115	64,429
9	25,224	16,587	5,193	47,004
10	25,051	16,574	5,160	46,785
11	25,007	16,449	5,148	46,604
12	24,089	15,857	4,960	44,905
13	13,109	8,631	2,699	24,439
14	12,875	8,466	2,651	23,992
15	12,721	8,336	2,618	23,676
16	12,357	8,108	2,544	23,008
17	12,287	8,084	2,530	22,900
18	12,275	8,103	2,528	22,907
19	11,610	7,661	2,391	21,663
20	11,471	7,523	2,361	21,354
21	11,206	7,398	2,308	20,912
22	11,180	7,389	2,303	20,873
23	11,034	7,304	2,273	20,610
24	10,882	7,184	2,241	20,307
25	<u>10,692</u>	<u>7,070</u>	<u>2,202</u>	<u>19,964</u>
	\$779,118	\$513,393	\$160,428	\$1,452,939



Rockland Electric Company  
SBC Law - Response to Request for Comments  
Utility Specific Questions  
SBC Amounts Paid by C&I Customers for CY 2011 (Excluding SUT)

<u>DSM/Clean Energy Revenue</u>	<u>USF Revenue</u>	<u>Lifeline Revenue</u>	<u>Total SBC Paid</u>
\$2,712,100	\$1,786,365	\$558,430	\$5,056,895



A PENNSYLVANIA PROFESSIONAL CORPORATION

LIBERTYVIEW 457 HADDONFIELD ROAD SUITE 300 CHERRY HILL, NJ 08002  
856.910.5000 1.800.989.0499 856.910.5075 FAX www.cozen.com

THOMAS McKAY, III  
ATTORNEY RESPONSIBLE  
FOR NJ PRACTICE

**Daniel J. Bitonti**  
Direct Phone 856-910-5009  
dbitonti@cozen.com

March 16, 2012

**VIA E-MAIL (MICHAEL.WINKA@BPU.STATE.NJ.US)**

Michael Winka, Director  
Office of Clean Energy  
Board of Public Utilities  
44 South Clinton Avenue  
P.O. Box 350  
Trenton, NJ 08625-0350

***Re: Rule Proposal to Implement Societal Benefits Clause ("SBC") Credits  
South Jersey Gas Company Responses to Utility Specific Questions***

Dear Mr. Winka:

We write on behalf of South Jersey Gas Company ("South Jersey" or the "Company"). Thank you for the opportunity to provide input and assist the Board of Public Utilities ("BPU") in creating the procedures for the proper and efficient implementation of the societal benefits clause ("SBC") credits mandated under the recently-enacted statute (the "Act"). As interested parties, the State's investor owned utilities combined efforts and submitted joint comments in response to the six (6) general questions. These comments were submitted under separate cover by Public Service Electric & Gas Company.

In addition, South Jersey offers the following responses to the four (4) utility-specific questions posed by the BPU:

- **Please explain how the utilities track SBC information currently, whether this would change with the implementation of the new credit, and if so, how.**

Within South Jersey's customer billing system, the various rate components of the SBC are maintained separately, as are all other Company rate components. Monthly reports are generated from the billing system that provide a breakdown, by rate component, of

the amounts billed and associated volumes. At this time it is unclear how the credit would be administered. If the credit is required to be administered by South Jersey, it will be necessary for the Company to implement significant changes to and investments in our billing and tracking mechanism.

- **What changes, if any, need to be made to utility billing systems to accommodate implementation of this law? Please provide the estimated cost of any systems or changes to systems needed to implement this law.**

Implementation of the credit provision applicable to customer specific accounts would require extensive programming changes as well as significant manual adjustments for specific customer accounts. The specific programming cost and actual feasibility of such a change are impossible to estimate without defined parameters, such as 1) which customer classes are eligible, 2) the manner in which the credit would be applied (i.e. volumetric or flat fee) and 3) the time frame for which the credit is applicable. Despite the inability to estimate at present, we expect the cost to be significant.

- **Please provide a list of the SBC charge paid by the top 25 C&I customers who pay the highest SBC, without listing the C&I customer's name. Since the names of the customers are not being provided we are requesting that the utilities, to the extent possible, match their gas list with the corresponding electric list to see if a large gas customer is also a large electric customer.**

Please see attached.

- **Provide the total SBC collected in the last calendar year from C&I customers.**

Total amounts billed by South Jersey:

RAC \$4.9 million

CLEP \$4.1 million

USF \$5.3 million

Total - \$14.3 million

Michael Winka, Director  
March 16, 2012  
Page 3

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Thank you for the opportunity to provide these comments. Should you have any questions or require additional information please contact me at your convenience.

Very truly yours,

COZEN O'CONNOR, PC



BY: DANIEL J. BITONTI

DJB/lbs  
cc: Service List (*via email*)

# SJG's Top 25 Customers 1/1/2011-12/31/2011 Who Paid the Highest SBC

	<u>Total</u>
1	\$1,973,152
2	\$580,479
3	\$558,628
4	\$479,066
5	\$471,156
6	\$342,151
7	\$335,800
8	\$289,156
9	\$232,007
10	\$193,200
11	\$181,301
12	\$166,906
13	\$150,512
14	\$148,553
15	\$147,854
16	\$136,176
17	\$127,435
18	\$107,976
19	\$101,600
20	\$88,705
21	\$81,535
22	\$80,459
23	\$73,700
24	\$73,358
25	\$71,459
	\$7,192,324



March 16, 2012

***VIA ELECTRONIC MAIL***

Michael Winka, Director  
Office of Clean Energy  
Board of Public Utilities  
44 South Clinton Avenue  
P.O. Box 350  
Trenton, New Jersey 08625-0350

**RE: SBC Law Providing for C&I Credits -- Utility-Specific Questions**

Dear Mr. Winka

Thank you for this opportunity to provide input to assist the Board in drafting a straw rule proposal. The seven electric and/or natural gas investor-owned utilities are jointly responding to your "General Questions" in a separate letter of today's date that I am forwarding to you together with this letter. The purpose of this letter is to respond to your utility-specific questions, on behalf of Public Service Electric and Gas Company ("PSE&G") only.

**For the Utilities (on behalf of PSE&G)**

- **Please explain how the utilities track SBC information currently, whether this would change with the implementation of the new credit, and if so, how.**

**Response.** PSE&G tracks all components of the electric and gas SBC using deferred accounting. Each month costs/expenditures are matched against revenues, resulting in an over/(under) recovery. Interest is calculated on the cumulative over/(under) recovery balance. When rate filings are made with the BPU, any underrecovery is recovered and any overrecovery is returned with interest. While PSE&G does track kWh and therms, and bills the total SBC, at a customer level, it does not bill the SBC components at a customer level. It is not possible to identify how PSE&G's tracking of SBC information would change given the short time frame to respond and current uncertainties regarding details of the law's implementation.

- **What changes, if any, need to be made to utility billing systems to accommodate implementation of this law? Please provide the estimated cost of any systems or changes to systems needed to implement this law.**

**Response.** It is not possible to identify with certainty the numerous changes to PSE&G's billing system that would need to be made in order to accommodate implementation of this law through that billing system, given the short time frame to respond and uncertainties regarding details of the law's implementation. An alternative and much less expensive approach to implementing the law, that would not involve modifying the utilities' billing systems, is described in the IOU's joint response to the General Questions submitted herewith.

In any event, implementing the law through PSE&G's billing system would involve, at the very least, unbundling the individual components of the SBC (which would involve bill print changes and changes to statistical and financial reporting modules), as well as development of a means to track each C&I customers' investments in energy efficiency products and services as well as the cumulative value of their credit based on their usage. Further complications would arise in connection with the treatment of claimed energy efficiency investments that reduce both electric and gas usage where the C&I customer receives electric and gas service from different utilities. In addition, implementing the statute through the utilities' billing systems would require upfront and ongoing verification of the customers' investments.

Like the changes themselves, the estimated cost of implementing the required changes cannot be determined with any certainty given the short time frame to respond and without specific details of how the law will be implemented. However, any implementation that would involve modifying PSE&G's billing system would probably cost at least \$1 million or more, not considering the verification activities noted above.

- **Please provide a list of the SBC charge paid by the top 25 C&I customers who pay the highest SBC, without listing the C&I customer's name. Since the names of the customers are not being provided we are requesting that the utilities, to the extent possible, match their gas list with the corresponding electric list to see if a large gas customer is also a large electric customer.**

**Response.** Please see the attached Table 1 and Table 2 showing the SBC components and total SBC charge paid by PSE&G's top 25 C&I customers. Please note that there is no overlap between electric and gas top 25 customers.

- **Also provide the total SBC collected in the last CY from C&I customers.**

**Response.** Please see the attached Table 3, which provides estimated C&I contributions to the SBC program components based on rates currently in effect and consumption for the 12-month period beginning March 1, 2011 and ending February 29, 2012.

Thank you very much for your consideration.

Very truly yours,

*Original Signed by  
Matthew M. Weissman*

C Attached Service List



**BPU**

Alice Bator, Bureau Chief  
Board of Public Utilities  
Division of Energy  
44 South Clinton Avenue, 9th Floor  
P.O. Box 359  
Trenton, NJ 08625-0350  
PHONE: (609) 943-5805  
FAX: ( ) - -  
alice.bator@bpu.state.nj.us

MaryBeth Brenner  
Board of Public Utilities  
44 South Clinton Avenue, 9th Flr.  
P.O. Box 350  
Trenton, NJ 08625-0350  
PHONE: ( ) - -  
FAX: ( ) - -  
marybeth.brenner@bpu.state.nj.us

John Garvey  
Board of Public Utilities  
44 South Clinton Avenue  
P.O. Box 350  
Trenton, NJ 08625-0350  
PHONE: ( ) - -  
FAX: ( ) - -  
john.garvey@bpu.state.nj.us

Eleana Lihan  
Board of Public Utilities  
Division of Energy  
44 South Clinton Avenue, 9th Flr.  
P.O. Box 350  
Trenton, NJ 08625-0350  
PHONE: (609) 777-3253  
FAX: ( ) - -  
eleana.lihan@bpu.state.nj.us

Kristina Miller  
Board of Public Utilities  
44 South Clinton Avenue, 9th Flr.  
P.O. Box 350  
Trenton, NJ 08625-0350  
PHONE: ( ) - -  
FAX: ( ) - -  
kristina.miller@bpu.state.nj.us

Elizabeth Teng  
Board of Public Utilities  
44 South Clinton Avenue, 9th Flr.  
P.O. Box 350  
Trenton, NJ 08625-0350  
PHONE: (609) 292-0091  
FAX: ( ) - -  
elizabeth.teng@bpu.state.nj.us

Michael Winka, Director  
Board of Public Utilities  
44 South Clinton Avenue, 9th Flr.  
P.O. Box 350  
Trenton, NJ 08625-0350  
PHONE: (609) 777-3312  
FAX: ( ) - -  
m.winka@bpu.state.nj.us

**DAG**

Babette Tenzer, DAG  
NJ Dept. of Law & Public Safety  
Division of Law  
124 Halsey Street, 5th Flr.  
PO Box 45029  
Newark, NJ 07101  
PHONE: (973) 648-7811  
FAX: (973) 648-3555  
babette.tenzer@dol.lps.state.nj.us

**AGL/ELIZABETHTOWN**

Deborah M. Franco  
Cullen and Dykman LLP  
Garden City Center  
100 Quentin Roosevelt Blvd.  
Garden City, NY 11530-4850  
PHONE: (516) 357-3878  
FAX: (516) 357-3792  
dfranco@cullldyk.com

Mary Patricia Keefe  
Elizabethtown Gas  
300 Connell Drive  
Suite 3000  
Berkeley Heights, NJ 07922  
PHONE: (908) 771-8220  
FAX: (908) 771-8217  
mkeefe@aglresources.com

**ATLANTIC CITY ELECTRIC CO.**

Greg Marquis  
Pepco Holdings, Inc.  
701 Ninth Street NW  
Washington, DC 20068-0001  
PHONE: (202) 872-2297  
FAX: (202) 872-2270  
grmarquis@pepco.com

Amir Mohseni  
5100 Harding Highway  
Mays Landing, NJ 08330  
PHONE: ( ) - -  
FAX: ( ) - -  
amir.mohseni@pepcoholdings.com

Philip J. Passanante, Assistant General Counsel  
Atlantic City Electric Co. - 89KS42  
800 King Street, 5th Floor  
PO Box 231  
Wilmington, DE 19899-0231  
PHONE: (302) 429-3105  
FAX: (302) 429-3801  
philip.passanante@pepcoholdings.com

Roger E. Pedersen, Manager, NJ -  
Regulatory Affairs  
Atlantic City Electric Co. - 63ML38  
5100 Harding Highway  
Mays Landing, NJ 08330  
PHONE: (609) 625-5820  
FAX: (609) 625-5838  
roger.pedersen@pepcoholdings.com

**JCP&L**

Sally J. Cheong, Manager - Tariff Activity, Rates NJ  
Jersey Central Power & Light Co.  
300 Madison Ave.  
Morristown, NJ 07962  
PHONE: (973) 401-8699  
FAX: (973) 644-4243  
scheong@firstenergycorp.com

Kevin Connelly  
First Energy  
300 Madison Avenue  
Morristown, NJ 07960  
PHONE: (973) 401-8708  
FAX: (973) 644-4243  
kconnelly@firstenergycorp.com

Gregory Eisenstark (JCP&L), Esq.  
Morgan, Lewis & Bockius, LLP  
89 Headquarters Plaza, Suite 1419  
Morristown, NJ 07960  
PHONE: (973) 993-3134  
FAX: (877) 432-9652  
geisenstark@morganlewis.com

**NJ NATURAL GAS CO.**

Mark R. Sperduto, Vice President  
Regulatory Affairs  
New Jersey Natural Gas  
1415 Wyckoff Road, T08C  
Wall, NJ 07719  
PHONE: (732) 938-1214  
FAX: (732) 938-2620  
msperduto@njresources.com

Tracey Thayer, Esq., Director, Regulatory Affairs Counsel  
New Jersey Natural Gas Company  
1415 Wyckoff Road  
P.O. Box 1464  
Wall, NJ 07719  
PHONE: (732) 919-8025  
FAX: (732) 938-2620  
TThayer@NJNG.com

**ROCKLAND**

John L. Carley, Esq.  
Consolidated Edison Co. of NY  
Law Dept., Room 1815-S  
4 Irving Place  
New York, NY 10003  
PHONE: (212) 460-2097  
FAX: (212) 677-5850  
carleyj@coned.com

Margaret Comes, Sr Staff Attorney  
Consolidated Edison Co. of NY  
Law Dept, Room 1815-S  
4 Irving Place  
New York, NY 10003  
PHONE: (212) 460-3013  
FAX: (212) 677-5850  
comesm@coned.com

**SO. JERSEY GAS**

Ira G. Megdal, Esq.  
Cozen O'Connor  
457 Haddonfield Road, Suite 300  
Libertyview  
Cherry Hill, NJ 08002  
PHONE: (856) 910-5019  
FAX: (877) 259-7984  
imegdal@cozen.com

John F. Stanziola, Director, Regu Affairs  
South Jersey Gas Co.  
1 South Jersey Plaza  
PO Box 6000  
Folsom, NJ 08037  
PHONE: (609) 561-9000, X416  
FAX: (609) 561-6955  
jstanziola@sindustries.com

**PSEG**

Connie E. Lembo  
PSEG Services Corporation  
80 Park Plaza, T-05  
Newark, NJ 07102  
PHONE: (973) 430-6273  
FAX: (973) 430-5983  
constance.lembo@pseg.com

Matthew M. Weissman, Esq.  
Public Service Electric & Gas Co  
80 Park Plaza  
P.O. Box 570-T5G  
Newark, NJ 07101  
PHONE: (973) 430-7052  
FAX: (973) 430-5983  
matthew.weissman@pseg.com

TABLE 1

PSE&G GAS - SBC Components (w/o SUT) - Top 25 C&I Customers						
Customer	Social Programs	Energy Efficiency and Renewables Programs	Manufactured Gas Plant Remediation	USF - Permanent	USF Lifeline	Total
Company 1	\$ -	\$ 311,808.330	\$ 143,284.684	\$ 170,625.755	\$ 65,520.290	\$ 691,239.058
Company 2	\$ -	\$ 245,620.957	\$ 112,869.727	\$ 134,407.125	\$ 51,612.336	\$ 544,510.145
Company 3	\$ -	\$ 180,917.870	\$ 83,136.842	\$ 99,000.717	\$ 38,016.275	\$ 401,071.705
Company 4	\$ -	\$ 165,656.351	\$ 76,123.745	\$ 90,649.406	\$ 34,809.372	\$ 367,238.874
Company 5	\$ -	\$ 154,940.363	\$ 71,199.448	\$ 84,785.472	\$ 32,557.621	\$ 343,482.904
Company 6	\$ -	\$ 122,075.466	\$ 56,097.105	\$ 66,801.354	\$ 25,651.720	\$ 270,625.645
Company 7	\$ -	\$ 98,506.484	\$ 45,266.496	\$ 53,904.087	\$ 20,699.169	\$ 218,376.236
Company 8	\$ -	\$ 94,396.286	\$ 43,377.745	\$ 51,654.931	\$ 19,835.493	\$ 209,264.455
Company 9	\$ -	\$ 89,964.967	\$ 41,341.429	\$ 49,230.053	\$ 18,904.340	\$ 199,440.789
Company 10	\$ -	\$ 87,306.760	\$ 40,119.908	\$ 47,775.446	\$ 18,345.771	\$ 193,547.885
Company 11	\$ -	\$ 84,939.595	\$ 39,032.129	\$ 46,480.101	\$ 17,848.359	\$ 188,300.184
Company 12	\$ -	\$ 83,670.551	\$ 38,448.968	\$ 45,785.662	\$ 17,581.694	\$ 185,486.875
Company 13	\$ -	\$ 76,837.018	\$ 35,308.768	\$ 42,046.260	\$ 16,145.764	\$ 170,337.810
Company 14	\$ -	\$ 74,698.648	\$ 34,326.126	\$ 40,876.115	\$ 15,696.428	\$ 165,597.318
Company 15	\$ -	\$ 67,388.614	\$ 30,966.960	\$ 36,875.965	\$ 14,160.371	\$ 149,391.910
Company 16	\$ -	\$ 66,303.968	\$ 30,468.535	\$ 36,282.432	\$ 13,932.454	\$ 146,987.390
Company 17	\$ -	\$ 64,917.023	\$ 29,831.195	\$ 35,523.477	\$ 13,641.015	\$ 143,912.710
Company 18	\$ -	\$ 64,692.284	\$ 29,727.921	\$ 35,400.497	\$ 13,593.791	\$ 143,414.492
Company 19	\$ -	\$ 63,557.141	\$ 29,206.291	\$ 34,779.331	\$ 13,355.263	\$ 140,898.027
Company 20	\$ -	\$ 54,561.688	\$ 25,072.628	\$ 29,856.897	\$ 11,465.049	\$ 120,956.262
Company 21	\$ -	\$ 53,044.247	\$ 24,375.321	\$ 29,026.533	\$ 11,146.189	\$ 117,592.289
Company 22	\$ -	\$ 52,652.552	\$ 24,195.326	\$ 28,812.192	\$ 11,063.882	\$ 116,723.952
Company 23	\$ -	\$ 52,195.186	\$ 23,985.154	\$ 28,561.915	\$ 10,967.775	\$ 115,710.029
Company 24	\$ -	\$ 50,963.603	\$ 23,419.207	\$ 27,887.976	\$ 10,708.983	\$ 112,979.768
Company 25	\$ -	\$ 47,908.211	\$ 22,015.169	\$ 26,216.024	\$ 10,066.953	\$ 106,206.357
	\$ -	\$ 2,509,524.163	\$ 1,153,196.828	\$ 1,373,245.723	\$ 527,326.358	\$ 5,563,293.072

**TABLE 2**

PSE&G Electric - SBC Components (w/o SUT) Top 25 C&I Customers						
Customers	Social Programs (Including Loss Factor)	Energy Efficiency and Renewables Programs (Including Loss Factor)	Manufactured Gas Plant Remediation (Including Loss Factors)	USF	Lifeline	Total
Company 1	\$ 421,635.54	\$ 696,818.03	\$ 127,796.61	\$ 559,459.99	\$ 147,619.08	\$ 1,953,329.26
Company 2	\$ 312,915.49	\$ 517,074.84	\$ 94,876.12	\$ 421,495.94	\$ 111,215.89	\$ 1,457,578.29
Company 3	\$ 288,955.22	\$ 477,543.24	\$ 87,581.56	\$ 383,409.05	\$ 101,166.29	\$ 1,338,655.36
Company 4	\$ 257,289.41	\$ 425,210.59	\$ 77,983.74	\$ 341,392.31	\$ 90,079.75	\$ 1,191,955.80
Company 5	\$ 187,560.67	\$ 309,973.06	\$ 56,849.14	\$ 248,870.60	\$ 65,666.98	\$ 868,920.46
Company 6	\$ 169,560.87	\$ 280,225.60	\$ 51,393.45	\$ 224,987.02	\$ 59,365.06	\$ 785,532.01
Company 7	\$ 160,620.76	\$ 265,450.68	\$ 48,683.73	\$ 213,124.56	\$ 56,235.03	\$ 744,114.75
Company 8	\$ 152,286.56	\$ 251,677.13	\$ 46,157.65	\$ 202,066.08	\$ 53,317.14	\$ 705,504.57
Company 9	\$ 139,878.76	\$ 231,171.31	\$ 42,396.88	\$ 185,602.40	\$ 48,973.04	\$ 648,022.39
Company 10	\$ 142,169.73	\$ 234,957.49	\$ 43,091.27	\$ 188,642.24	\$ 49,775.13	\$ 658,635.85
Company 11	\$ 134,486.97	\$ 222,260.55	\$ 40,762.64	\$ 178,448.15	\$ 47,085.32	\$ 623,043.63
Company 12	\$ 125,033.71	\$ 206,721.50	\$ 37,936.13	\$ 162,226.00	\$ 42,804.94	\$ 574,722.29
Company 13	\$ 130,057.82	\$ 214,940.69	\$ 39,420.18	\$ 172,571.19	\$ 45,534.62	\$ 602,524.51
Company 14	\$ 115,564.19	\$ 190,987.73	\$ 35,027.20	\$ 153,339.88	\$ 40,460.25	\$ 535,379.25
Company 15	\$ 121,749.09	\$ 201,209.23	\$ 36,901.83	\$ 161,546.50	\$ 42,625.65	\$ 564,032.29
Company 16	\$ 115,942.88	\$ 191,613.56	\$ 35,141.98	\$ 153,842.35	\$ 40,592.83	\$ 537,133.61
Company 17	\$ 113,386.57	\$ 187,388.86	\$ 34,367.17	\$ 150,450.43	\$ 39,697.84	\$ 525,290.87
Company 18	\$ 111,222.84	\$ 183,812.97	\$ 33,711.35	\$ 147,579.42	\$ 38,940.30	\$ 515,266.89
Company 19	\$ 103,181.01	\$ 170,522.61	\$ 31,273.89	\$ 136,908.88	\$ 36,124.77	\$ 478,011.16
Company 20	\$ 106,248.92	\$ 175,592.80	\$ 32,203.77	\$ 140,979.62	\$ 37,198.88	\$ 492,223.98
Company 21	\$ 103,085.45	\$ 170,234.84	\$ 31,213.34	\$ 130,227.48	\$ 34,361.82	\$ 469,122.93
Company 22	\$ 104,114.89	\$ 172,065.98	\$ 31,556.95	\$ 138,148.02	\$ 36,451.73	\$ 482,337.56
Company 23	\$ 101,817.72	\$ 168,269.55	\$ 30,860.68	\$ 135,099.95	\$ 35,647.47	\$ 471,695.37
Company 24	\$ 100,652.31	\$ 166,343.54	\$ 30,507.45	\$ 133,553.60	\$ 35,239.44	\$ 466,296.34
Company 25	\$ 100,236.83	\$ 165,656.89	\$ 30,381.52	\$ 133,002.30	\$ 35,093.98	\$ 464,371.51
	\$ 3,919,654.23	\$ 6,477,723.28	\$ 1,188,076.22	\$ 5,196,973.96	\$ 1,371,273.25	\$ 18,153,700.94

**TABLE 3**

Estimated Gas SBC Components (w/o SUT) - March 2011 to February 2012					
Social Programs	Energy Efficiency and Renewables Programs	Manufactured Gas Plant Remediation	USF - Permanent	USF Lifeline	Total
\$ -	\$ 27,057,958.67	\$ 12,433,891.88	\$ 14,806,482.66	\$ 5,685,689.34	\$ 1,244,502,635.29

C&I Customers

Estimated Electric SBC Components (w/o SUT) - March 2011 to February 2012					
Social Programs (including Loss Factor)	Energy Efficiency and Renewables Programs (including Loss Factor)	Manufactured Gas Plant Remediation (including Loss Factors)	USF	Lifeline	Total
\$ 52,475,376.35	\$ 86,696,774.56	\$ 15,901,060.03	\$ 68,616,559.62	\$ 18,105,161.42	\$ 241,794,931.97

Note: Dollars are based on current SBC Rates



State of New Jersey  
DIVISION OF RATE COUNSEL  
31 CLINTON STREET, 11<sup>TH</sup> FL  
P. O. BOX 46005  
NEWARK, NEW JERSEY 07101

CHRIS CHRISTIE  
*Governor*

KIM GUADAGNO  
*Lt. Governor*

STEFANIE A. BRAND  
*Director*

March 16, 2012

**By Overnight Delivery Service**

Honorable Kristi Izzo, Secretary  
New Jersey Board of Public Utilities  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
P.O. Box 350  
Trenton, NJ 08625-0350

**Re: General Questions Posed by Board Staff Regarding the  
Implementation of an Act Permitting Credits Against the  
Societal Benefits Charge (P.L. 2011, c.216; A2528/S2344)**

Dear Secretary Izzo:

Please accept for filing an original and ten copies of Comments submitted on behalf of the New Jersey Division of Rate Counsel ("Rate Counsel") concerning the above-referenced matter. Rate Counsel reserves its right to submit further comments as additional information and data are provided over the course of this proceeding. Enclosed is one additional copy. Please date stamp the copy as "filed" and return to us in the enclosed self-addressed, stamped envelope.

Honorable Kristi Izzo, Secretary  
March 16, 2012  
Page 2

Thank you for your consideration and attention to this matter.

Respectfully submitted,

STEFANIE A. BRAND  
Director, Division of Rate Counsel

By: /s/ Kurt S. Lewandowski, Esq.  
Kurt S. Lewandowski, Esq.  
Assistant Deputy Rate Counsel

c: [publiccomments@njcleanenergy.com](mailto:publiccomments@njcleanenergy.com)  
[OCE@bpu.state.nj.us](mailto:OCE@bpu.state.nj.us)  
Alice Bator, BPU  
Mary Beth Brenner, BPU  
John Garvey, BPU  
Eleana Lihan, BPU  
Kristina Miller, BPU  
Elizabeth Teng, BPU  
Mike Winka, BPU  
Babette Tenzer, DAG  
Diane Zukas, TRC

**The Division of Rate Counsel's Responses to the  
General Questions Posed by Board Staff Regarding the  
Implementation of an Act Permitting Credits Against  
the Societal Benefits Charge  
(P.L. 2011, c. 216; A2528/S2344 )**

**March 16, 2012**

**Q1. Should C&I ratepayers be able to access the SBC credit as well as SBC funded Clean Energy energy efficiency rebate programs at the same time in the same year?**

No. For equity reasons and to minimize impacts on CEP budgets, eligible customers should not be able to access the SBC credit and also receive CEP EE rebates in the same year.

**Q2. If they can only access the credit or rebate one at a time should there be some time limit for accessing either the credit or the Clean Energy incentives? As an example: If the C&I ratepayer received an energy efficient rebate last year should that be deducted from the credit? Is there a timeframe for this look back? Can the C&I ratepayer apply for a Clean Energy rebate the next year following the year in which a credit was sought? Is there a timeframe for when the customer can apply for a NJCEP rebate after receiving the credit?**

The amount and timing of SBC credits should be linked to SBC collections for each C&I customer. For example, if a customer receives an incentive (including rebates and financing) through the CEP in one year, and that customer applies for SBC credits in the following year, the amount of the SBC credit should be reduced by the amount of the CEP incentive.

**Q3. How should the Board determine which energy efficiency products and services for C&I ratepayers should qualify for the credit?**

Eligible SBC credit applicants should be required to submit an energy efficiency plan (“EEP”). The EE measures and services included in an EEP should be considered both individually and collectively. Furthermore, all EE measures and services should conform to the New Jersey CEP EE Protocols for minimum performance, by type of measure and how the savings are measured. The EEPs should be evaluated using the following criteria:

1. The measures outlined in the EEPs should be designed to reasonably lead to reductions in total building source energy consumption of at least 25%. Alternately, C&I customers seeking SBC credits may request a custom energy savings threshold, as defined in the Pay for Performance program description. This would be determined on a case-by-case basis and subject to approval by CEP administrators, for projects that involve:
  - A manufacturing facility, including such industries as plastics and packaging, chemicals, petrochemicals, metals, paper and pulp, transportation, biotechnology, pharmaceutical, food and beverage, mining and mineral processing, general manufacturing, equipment manufacturers and data centers.
  - Manufacturing and/or process-related loads, including data center consumption, consume 50% or more of total facility energy consumption.
  - Projects meeting the above criteria will have annual energy savings of 100,000 kWh, 350,000 MMBTU or 4% of total building source energy consumption, whichever is greater.
2. The EEPs should demonstrate cost-effectiveness using the same methodology employed by CEP administrators in evaluating applications for Pay for Performance.
3. The EEPs should take a whole-building approach. Energy audits should consider all cost-effective measures at site(s) for which SBC credits are sought to avoid cream skimming (i.e., only investing in the most cost-effective cost energy efficiency measures but leaving other cost-effective opportunities undone) and lost opportunities (i.e., investments that are not made at the time it is most cost-effective to do so).
4. Credits should not be allowed for investments made prior to enactment of A2528.

These criteria are intended to ensure that the savings and system benefits (including avoided capacity and energy investments, avoided transmission and distribution investments, reductions in the overall price of electricity system-wide, and emissions



reductions) from the EE measures underlying the SBC credits are comparable to the savings and system benefits of the foregone EE opportunities that would otherwise be provided by the CEP.

**Q4. Should the array of Clean Energy programs and current structure under the SBC change or stay the same with the introduction of the C&I ratepayer opportunity to receive credit?**

The Board should initiate a formal proceeding to determine what changes should be made to the CEP and SBC structure to align these programs with the SBC credit program.

**Q5. The Act also requires that the amount of the credit “shall be determined by the board.” What process should the Board use to review and approve any requests for a credit?**

The SBC credit provided to an eligible applicant should be determined on a case-by-case basis. The Board should initiate a proceeding to determine the SBC credit, with an opportunity for Rate Counsel and other interested parties to intervene, propound discovery, and submit comments, as well as provide for evidentiary hearings in contested matters. The Board should also develop minimum filing requirements. For example, eligible SBC credit applicants should be required to submit an EEP that provides the following information, in addition to sufficient information to evaluate the criteria listed in the response to Question 3

- (1) a description of the proposed EE measures, which must conform to the methodology for calculating efficiencies set forth in the New Jersey CEP EE Protocols for the type of measures and how the savings are measured;
- (2) a calculation of energy savings per EE measure of at least 25% or meeting a custom energy savings threshold, described in the response to Question 3, above;

- (3) for the purpose of demonstrating the cost-effectiveness of each EE measure, cost data and annual and lifetime energy savings (kWh or therms), as well as capacity savings (kW);
- (4) a construction/measure implementation timeline; and
- (5) a measurement and verification plan for the proposed EE measures.

Regarding item (4), a timeframe should be established for eligible customers to spend SBC credits on EE investments, in order to account for planned outages or downtime. As is done in several other states, a time frame (e.g., two or three years) within which eligible customers would be required to implement measures funded by their SBC credit should be established -- after which unused SBC credits should be made available to fund the CEP -- to ensure that EE investments are made in a timely manner and thus have benefits comparable to supply-side resources. A mechanism may need to be established to recoup funds from SBC-credit recipients if savings were claimed erroneously or EEP savings failed to materialize.<sup>1</sup>

Regarding item (5), measurement and verification is a critical component of effective “self-direct” programs that allow customers to divert all or a portion of their societal benefits charges into internal EE investments.<sup>2</sup>

**Q6. The Act states that the C&I ratepayer “shall be allowed a credit against the societal benefits charge.” The SBC funds a number of societal programs in addition to the Clean Energy funds for energy efficiency. These other programs have nothing to do with energy efficiency, and the Board may have little discretion in funding them. To the extent that some of the other SBC programs, like the Universal Service Fund, Lifeline, nuclear decommissioning and manufactured gas plant remediation costs are nondiscretionary, how should the funding of these nondiscretionary programs be achieved if there is a reduction in the total SBC from the energy efficiency SBC credit? Please explain.**

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<sup>1</sup> Chittum, Anna. 2011. Follow The Leaders: Improving Large Customer Self-Direct Programs. Washington DC: ACEEE

<sup>2</sup> Ibid.

The Act empowers the Board to set the amount of the SBC credit in any calendar year for each customer. N.J.S.A. 48:3-60.3(c). The Board should interpret this language to allow SBC credits only from the clean energy portion of the SBC, as defined by N.J.S.A. 48:3-60(a)(3). The statute governing SBC collections which provides for a non-bypassable charge also mandates funding social programs, nuclear decommissioning, gas plant remediation, and public education activities, as well as the USF. See N.J.S.A. 48:3-60(a)(1), (2), (4) and (5); N.J.S.A. 48:3-60(b). The Board must ensure that the SBC has sufficient funds to support these mandated activities, consistent with its duty under the Act to set the SBC credit in any calendar year.

Two factors may also operate to ensure that the SBC fund is sufficient to support the other SBC activities mandated by law, without unduly burdening residential, small commercial, and other C&I customers. First, the Act defines eligible EE measures with reference to the EE programs funded pursuant to N.J.S.A. 48:3-60(a)(3). Specifically, the amount of the SBC credit is limited to one half of the portion of the costs incurred for eligible EE measures, as defined by the type of measures that would otherwise be eligible for incentives under the EE programs funded pursuant to N.J.S.A. 48:3-60(a)(3). Since applicants would experience a cash outflow to fund their portion of the cost of the EE measure, the fifty percent limitation should operate to stem depletion of the SBC fund to support SBC credits granted pursuant to N.J.S.A. 48:3-60.3(c).

Another factor which would mitigate against the depletion of the SBC fund would be the imposition of a 25% energy savings threshold for EE measures supported by SBC credits. The higher threshold would be applicable to EE projects supported by the SBC credit, in order to compensate for less CEP oversight of self-directed EE projects. This

threshold would limit projects supported by SBC credits to only those projects with substantial energy savings.



A PHI Company

**Philip J. Passanante**  
Associate General Counsel

92DC42  
500 N. Wakefield Drive  
Newark, DE 19702

P.O. Box 6066  
Newark, DE 19714-6066

302.429.3105 – Telephone  
302.429.3801 – Facsimile  
philip.passanante@pepcoholdings.com

March 16, 2012

**VIA ELECTRONIC MAIL**

[publiccomments@njcleanenergy.com](mailto:publiccomments@njcleanenergy.com)

Michael Winka  
Director  
Office of Clean Energy  
State of New Jersey  
Board of Public Utilities  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
P.O. Box 350  
Trenton, New Jersey 08625-0350

**RE: SBC Law Providing for C&I Credits  
Atlantic City Electric Company's Responses to Utility-Specific Questions**

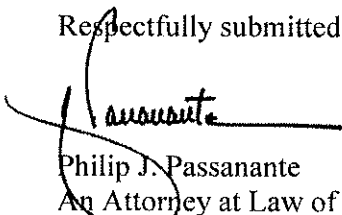
Dear Mr. Winka:

On March 1, 2012, Board Staff transmitted a series of questions to stakeholders concerning implementation of A2528/S2344. Attached are Atlantic City Electric Company's ("ACE") responses to the utility-specific questions that were included as part of that communication.

With respect to the General Questions, ACE has joined the response filed by the other investor-owned utilities. That response is being filed by Public Service Electric and Gas Company under separate cover.

Feel free to contact the undersigned with any questions.

Respectfully submitted,

 /jpr  
Philip J. Passanante  
An Attorney at Law of the  
State of New Jersey

### Atlantic City Electric Company Specific Responses

- **Please explain how the utilities track SBC information currently, whether this would change with the implementation of the new credit, and if so, how.**

**Response:** For the purpose of this response, the discussion is limited to the Clean Energy (“CE”) portion of the SBC. ACE’s role in tracking the CE information is restricted to billing its customers for the Clean Energy surcharge (rate x kWh) and its subsequent collection of these pass-through funds. Any amounts collected for the Clean Energy program surcharge are forwarded to the Office of Clean Energy Program for the State’s financial backing of the Clean Energy program(s).

- **What changes, if any, need to be made to utility billing systems to accommodate implementation of this law? Please provide the estimated cost of any systems or changes to systems needed to implement this law.**

**Response:** A feasibility study must be conducted to determine the compatibility of ACE’s current billing system before any firm projections can be made. Based on the information provided to date, it is expected that the cost to evaluate and implement any modification to the billing system to accommodate the implementation of this law could run in the millions of dollars and become time and resource bound.

- **Please provide a list of the SBC charge paid by the top 25 C&I customers who pay the highest SBC, without listing the C&I customer’s name. Since the names of the customers are not being provided we are requesting that the utilities, to the extent possible, match their gas list with the corresponding electric list to see if a large gas customer is also a large electric customer.**

**Response:** See Attachment SBC- 1.

- **Also provide the total SBC collected in the last CY from C&I customers.**

**Response:** See Attachment SBC- 2.

# Attachment SBC-1

**MARCH 16, 2012**

Atlantic City Electric Company's Responses to Board Staff's Question "For the Utilities"  
- Top 25 C&I Societal Benefit Charge Issued March 1, 2012

Atlantic City Electric Company Annualized 2011 Top 25 SBC C&I Customer Data			Current Societal Benefit Charge \$kW Hour			
			\$0.000757	\$0.001632	\$0.002567	\$0.000677
Customer name	Total kWh	Total SBC Dollars	Clean Energy Program	Uncollectible Accounts	Universal Service Fund	Lifeline
ACE Customer 01	77,867,580	\$438,628.08	\$58,945.76	\$127,079.89	\$199,886.08	\$52,716.35
ACE Customer 02	73,618,223	\$414,691.45	\$55,728.99	\$120,144.94	\$188,977.98	\$49,839.54
ACE Customer 03	73,568,324	\$414,410.37	\$55,691.22	\$120,063.50	\$188,849.89	\$49,805.76
ACE Customer 04	73,037,243	\$411,418.78	\$55,289.19	\$119,196.78	\$187,486.60	\$49,446.21
ACE Customer 05	63,694,754	\$358,792.55	\$48,216.93	\$103,949.84	\$163,504.43	\$43,121.35
ACE Customer 06	53,296,766	\$300,220.68	\$40,345.65	\$86,980.32	\$136,812.80	\$36,081.91
ACE Customer 07	52,261,800	\$294,390.72	\$39,562.18	\$85,291.26	\$134,156.04	\$35,381.24
ACE Customer 08	50,880,952	\$286,612.39	\$38,516.88	\$83,037.71	\$130,611.40	\$34,446.40
ACE Customer 09	48,143,039	\$271,189.74	\$36,444.28	\$78,569.44	\$123,583.18	\$32,592.84
ACE Customer 10	47,822,789	\$269,385.77	\$36,201.85	\$78,046.79	\$122,761.10	\$32,376.03
ACE Customer 11	47,639,747	\$268,354.70	\$36,063.29	\$77,748.07	\$122,291.23	\$32,252.11
ACE Customer 12	44,450,541	\$250,389.90	\$33,649.06	\$72,543.28	\$114,104.54	\$30,093.02
ACE Customer 13	43,418,596	\$244,576.96	\$32,867.88	\$70,859.15	\$111,455.54	\$29,394.39
ACE Customer 14	42,998,330	\$242,209.59	\$32,549.74	\$70,173.27	\$110,376.71	\$29,109.87
ACE Customer 15	42,053,600	\$236,887.94	\$31,834.58	\$68,631.48	\$107,951.59	\$28,470.29
ACE Customer 16	41,681,945	\$234,794.39	\$31,553.23	\$68,024.93	\$106,997.55	\$28,218.68
ACE Customer 17	38,712,870	\$218,069.59	\$29,305.64	\$63,179.40	\$99,375.94	\$26,208.61
ACE Customer 18	33,767,049	\$190,209.78	\$25,561.66	\$55,107.82	\$86,680.01	\$22,860.29
ACE Customer 19	33,680,613	\$189,722.89	\$25,496.22	\$54,966.76	\$86,458.13	\$22,801.78
ACE Customer 20	30,319,548	\$170,790.01	\$22,951.90	\$49,481.50	\$77,830.28	\$20,526.33
ACE Customer 21	28,250,714	\$159,136.27	\$21,385.79	\$46,105.17	\$72,519.58	\$19,125.73
ACE Customer 22	23,970,122	\$135,023.69	\$18,145.38	\$39,119.24	\$61,531.30	\$16,227.77
ACE Customer 23	22,785,556	\$128,351.04	\$17,248.67	\$37,186.03	\$58,490.52	\$15,425.82
ACE Customer 24	22,709,727	\$127,923.89	\$17,191.26	\$37,062.27	\$58,295.87	\$15,374.49
ACE Customer 25	21,828,665	\$122,960.87	\$16,524.30	\$35,624.38	\$56,034.18	\$14,778.01



# Attachment SBC-2

**ATLANTIC CITY ELECTRIC COMPANY**  
 Schedule of Billed SBC (C&I Customers)  
 (Excludes Sales & Use Tax)

	Sales (kWh)												Total FY 2011
	Jan-11	Feb-11	Mar-11	Apr-11	May-11	Jun-11	Jul-11	Aug-11	Sep-11	Oct-11	Nov-11	Dec-11	
Commercial	357,759,757	330,160,449	319,813,237	308,927,086	334,331,987	375,427,102	434,420,530	442,334,628	409,396,837	351,184,978	310,053,952	319,766,336	4,293,576,879
Industrial	79,341,783	74,462,039	76,177,962	69,675,986	75,813,595	80,115,564	93,938,547	76,725,070	75,093,617	75,363,903	67,078,238	68,592,953	912,379,657
	Applicable Rates												
	Jan-11	Feb-11	Mar-11	Apr-11	May-11	Jun-11	Jul-11	Aug-11	Sep-11	Oct-11	Nov-11	Dec-11	
Universal Service Fund	\$ 0.0020520	\$ 0.0020520	\$ 0.0020520	\$ 0.0020520	\$ 0.0020520	\$ 0.0020520	\$ 0.0020520	\$ 0.0020520	\$ 0.0020520	\$ 0.0020520	\$ 0.0020520	\$ 0.0020520	\$ 0.0025670
Life Line	\$ 0.0006640	\$ 0.0006640	\$ 0.0006640	\$ 0.0006640	\$ 0.0006640	\$ 0.0006640	\$ 0.0006640	\$ 0.0006640	\$ 0.0006640	\$ 0.0006640	\$ 0.0006770	\$ 0.0006770	\$ 0.0006770
Clean Energy	\$ 0.0007570	\$ 0.0007570	\$ 0.0007570	\$ 0.0007570	\$ 0.0007570	\$ 0.0007570	\$ 0.0007570	\$ 0.0007570	\$ 0.0007570	\$ 0.0007570	\$ 0.0007570	\$ 0.0007570	\$ 0.0007570
Uncollectible	\$ 0.0016320	\$ 0.0016320	\$ 0.0016320	\$ 0.0016320	\$ 0.0016320	\$ 0.0016320	\$ 0.0016320	\$ 0.0016320	\$ 0.0016320	\$ 0.0016320	\$ 0.0016320	\$ 0.0016320	\$ 0.0016320
	SBC Amount												
	Jan-11	Feb-11	Mar-11	Apr-11	May-11	Jun-11	Jul-11	Aug-11	Sep-11	Oct-11	Nov-11	Dec-11	Total FY 2011
Universal Service Fund	\$ 896,932.36	\$ 830,283.55	\$ 812,573.94	\$ 776,893.50	\$ 841,618.73	\$ 934,774.37	\$ 1,084,192.83	\$ 1,065,110.50	\$ 994,174.41	\$ 875,278.30	\$ 968,038.33	\$ 996,918.29	\$ 11,076,850.92
Life Line	\$ 290,235.42	\$ 268,669.33	\$ 262,938.16	\$ 251,392.44	\$ 272,336.67	\$ 302,480.60	\$ 350,830.43	\$ 344,655.64	\$ 321,701.66	\$ 283,228.46	\$ 255,318.49	\$ 262,919.24	\$ 3,466,706.53
Clean Energy	\$ 330,885.87	\$ 306,299.22	\$ 299,765.34	\$ 286,602.53	\$ 310,480.21	\$ 344,846.10	\$ 399,967.82	\$ 392,928.19	\$ 366,759.27	\$ 322,897.50	\$ 285,489.07	\$ 293,987.98	\$ 3,940,909.10
Uncollectible	\$ 713,349.71	\$ 660,343.90	\$ 646,257.64	\$ 617,880.21	\$ 669,357.59	\$ 743,446.28	\$ 862,282.01	\$ 847,105.43	\$ 790,688.42	\$ 696,127.77	\$ 615,479.73	\$ 633,802.36	\$ 8,496,121.07
Total Amount of Billed SBC	\$ 2,231,403.36	\$ 2,065,597.80	\$ 2,021,535.07	\$ 1,932,768.68	\$ 2,093,793.20	\$ 2,325,547.35	\$ 2,697,273.09	\$ 2,649,795.76	\$ 2,473,323.77	\$ 2,177,532.04	\$ 2,124,385.63	\$ 2,187,627.87	\$ 26,980,587.62



A PENNSYLVANIA PROFESSIONAL CORPORATION

LIBERTYVIEW 457 HADDONFIELD ROAD SUITE 300 CHERRY HILL, NJ 08002  
856.910.5000 1.800.989.0499 856.910.5075 FAX www.cozen.com

THOMAS McKAY, III  
ATTORNEY RESPONSIBLE  
FOR NJ PRACTICE

**Daniel J. Bitonti**  
Direct Phone 856-910-5009  
dbitonti@cozen.com

March 16, 2012

**VIA E-MAIL (MICHAEL.WINKA@BPU.STATE.NJ.US)**

Michael Winka, Director  
Office of Clean Energy  
Board of Public Utilities  
44 South Clinton Avenue  
P.O. Box 350  
Trenton, NJ 08625-0350

***Re: Rule Proposal to Implement Societal Benefits Clause ("SBC") Credits  
South Jersey Gas Company Responses to Utility Specific Questions***

Dear Mr. Winka:

We write on behalf of South Jersey Gas Company ("South Jersey" or the "Company"). Thank you for the opportunity to provide input and assist the Board of Public Utilities ("BPU") in creating the procedures for the proper and efficient implementation of the societal benefits clause ("SBC") credits mandated under the recently-enacted statute (the "Act"). As interested parties, the State's investor owned utilities combined efforts and submitted joint comments in response to the six (6) general questions. These comments were submitted under separate cover by Public Service Electric & Gas Company.

In addition, South Jersey offers the following responses to the four (4) utility-specific questions posed by the BPU:

- **Please explain how the utilities track SBC information currently, whether this would change with the implementation of the new credit, and if so, how.**

Within South Jersey's customer billing system, the various rate components of the SBC are maintained separately, as are all other Company rate components. Monthly reports are generated from the billing system that provide a breakdown, by rate component, of

the amounts billed and associated volumes. At this time it is unclear how the credit would be administered. If the credit is required to be administered by South Jersey, it will be necessary for the Company to implement significant changes to and investments in our billing and tracking mechanism.

- **What changes, if any, need to be made to utility billing systems to accommodate implementation of this law? Please provide the estimated cost of any systems or changes to systems needed to implement this law.**

Implementation of the credit provision applicable to customer specific accounts would require extensive programming changes as well as significant manual adjustments for specific customer accounts. The specific programming cost and actual feasibility of such a change are impossible to estimate without defined parameters, such as 1) which customer classes are eligible, 2) the manner in which the credit would be applied (i.e. volumetric or flat fee) and 3) the time frame for which the credit is applicable. Despite the inability to estimate at present, we expect the cost to be significant.

- **Please provide a list of the SBC charge paid by the top 25 C&I customers who pay the highest SBC, without listing the C&I customer's name. Since the names of the customers are not being provided we are requesting that the utilities, to the extent possible, match their gas list with the corresponding electric list to see if a large gas customer is also a large electric customer.**

Please see attached.

- **Provide the total SBC collected in the last calendar year from C&I customers.**

Total amounts billed by South Jersey:

RAC \$4.9 million

CLEP \$4.1 million

USF \$5.3 million

Total - \$14.3 million

Michael Winka, Director  
March 16, 2012  
Page 3

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Thank you for the opportunity to provide these comments. Should you have any questions or require additional information please contact me at your convenience.

Very truly yours,

COZEN O'CONNOR, PC



BY: DANIEL J. BITONTI

DJB/lbs  
cc: Service List (*via email*)

SJG's Top 25 Customers 1/1/2011-12/31/2011 Who Paid the Highest SBC

	<u>Total</u>
1	\$1,973,152
2	\$580,479
3	\$558,628
4	\$479,066
5	\$471,156
6	\$342,151
7	\$335,800
8	\$289,156
9	\$232,007
10	\$193,200
11	\$181,301
12	\$166,906
13	\$150,512
14	\$148,553
15	\$147,854
16	\$136,176
17	\$127,435
18	\$107,976
19	\$101,600
20	\$88,705
21	\$81,535
22	\$80,459
23	\$73,700
24	\$73,358
25	\$71,459
	\$7,192,324



March 20, 2012

**VIA ELECTRONIC MAIL**

Michael Winka, Director  
Office of Clean Energy  
Board of Public Utilities  
44 South Clinton Avenue  
P.O. Box 350  
Trenton, New Jersey 08625-0350

**RE: SBC Law Providing for C&I Credits -- Utility-Specific Questions**

Dear Mr. Winka

Thank you for this opportunity to provide input to assist the Board in drafting a straw rule proposal. The seven electric and/or natural gas investor-owned utilities are jointly responding to your "General Questions" in a separate letter of today's date that I am forwarding to you together with this letter. The purpose of this letter is to respond to your utility-specific questions, on behalf of Public Service Electric and Gas Company ("PSE&G") only.

For the Utilities (on behalf of PSE&G)

- **Please explain how the utilities track SBC information currently, whether this would change with the implementation of the new credit, and if so, how.**

**Response.** PSE&G tracks all components of the electric and gas SBC using deferred accounting. Each month costs/expenditures are matched against revenues, resulting in an over/(under) recovery. Interest is calculated on the cumulative over/(under) recovery balance. When rate filings are made with the BPU, any underrecovery is recovered and any overrecovery is returned with interest. While PSE&G does track kWh and therms, and bills the total SBC, at a customer level, it does not bill the SBC components at a customer level. It is not possible to identify how PSE&G's tracking of SBC information would change given the short time frame to respond and current uncertainties regarding details of the law's implementation.

- **What changes, if any, need to be made to utility billing systems to accommodate implementation of this law? Please provide the estimated cost of any systems or changes to systems needed to implement this law.**

**Response.** It is not possible to identify with certainty the numerous changes to PSE&G's billing system that would need to be made in order to accommodate implementation of this law through that billing system, given the short time frame to respond and uncertainties regarding details of the law's implementation. An alternative and much less expensive approach to implementing the law, that would not involve modifying the utilities' billing systems, is described in the IOU's joint response to the General Questions submitted herewith.

In any event, implementing the law through PSE&G's billing system would involve, at the very least, unbundling the individual components of the SBC (which would involve bill print changes and changes to statistical and financial reporting modules), as well as development of a means to track each C&I customers' investments in energy efficiency products and services as well as the cumulative value of their credit based on their usage. Further complications would arise in connection with the treatment of claimed energy efficiency investments that reduce both electric and gas usage where the C&I customer receives electric and gas service from different utilities. In addition, implementing the statute through the utilities' billing systems would require upfront and ongoing verification of the customers' investments.

Like the changes themselves, the estimated cost of implementing the required changes cannot be determined with any certainty given the short time frame to respond and without specific details of how the law will be implemented. However, any implementation that would involve modifying PSE&G's billing system would probably cost at least \$1 million or more, not considering the verification activities noted above.



- **Please provide a list of the SBC charge paid by the top 25 C&I customers who pay the highest SBC, without listing the C&I customer's name. Since the names of the customers are not being provided we are requesting that the utilities, to the extent possible, match their gas list with the corresponding electric list to see if a large gas customer is also a large electric customer.**

**Response.** Please see the attached Table 1 and Table 2 showing the SBC components and total SBC charge paid by PSE&G's top 25 C&I customers based on rates currently in effect and consumption for the 12-month period beginning March 1, 2011 and ending February 29, 2012. Please note that three customers appear on both the electric and gas top 25 customers list.

- **Also provide the total SBC collected in the last CY from C&I customers.**

**Response.** Please see the attached Table 3, which provides estimated C&I contributions to the SBC program components based on rates currently in effect and consumption for the 12-month period beginning March 1, 2011 and ending February 29, 2012.

Thank you very much for your consideration.

Very truly yours,

*Original Signed by  
Matthew M. Weissman*

C Attached Service List

**BPU**

Alice Bator, Bureau Chief  
Board of Public Utilities  
Division of Energy  
44 South Clinton Avenue, 9th Floor  
P.O. Box 359  
Trenton, NJ 08625-0350  
PHONE: (609) 943-5805  
FAX: ( ) - -  
alice.bator@bpu.state.nj.us

MaryBeth Brenner  
Board of Public Utilities  
44 South Clinton Avenue, 9th Flr.  
P.O. Box 350  
Trenton, NJ 08625-0350  
PHONE: ( ) - -  
FAX: ( ) - -  
marybeth.brenner@bpu.state.nj.us

John Garvey  
Board of Public Utilities  
44 South Clinton Avenue  
P.O. Box 350  
Trenton, NJ 08625-0350  
PHONE: ( ) - -  
FAX: ( ) - -  
john.garvey@bpu.state.nj.us

Eleana Lihan  
Board of Public Utilities  
Division of Energy  
44 South Clinton Avenue, 9th Flr.  
P.O. Box 350  
Trenton, NJ 08625-0350  
PHONE: (609) 777-3253  
FAX: ( ) - -  
eleana.lihan@bpu.state.nj.us

Kristina Miller  
Board of Public Utilities  
44 South Clinton Avenue, 9th Flr.  
P.O. Box 350  
Trenton, NJ 08625-0350  
PHONE: ( ) - -  
FAX: ( ) - -  
kristina.miller@bpu.state.nj.us

Elizabeth Teng  
Board of Public Utilities  
44 South Clinton Avenue, 9th Flr.  
P.O. Box 350  
Trenton, NJ 08625-0350  
PHONE: (609) 292-0091  
FAX: ( ) - -  
elizabeth.teng@bpu.State.nj.us

Michael Winka, Director  
Board of Public Utilities  
44 South Clinton Avenue, 9th Flr.  
P.O. Box 350  
Trenton, NJ 08625-0350  
PHONE: (609) 777-3312  
FAX: ( ) - -  
m.winka@bpu.state.nj.us

**DAG**

Babette Tenzer, DAG  
NJ Dept. of Law & Public Safety  
Division of Law  
124 Halsey Street, 5th Flr.  
PO Box 45029  
Newark, NJ 07101  
PHONE: (973) 648-7811  
FAX: (973) 648-3555  
babette.tenzer@dof.lps.state.nj.us

**AGL/ELIZABETHTOWN**

Deborah M. Franco  
Cullen and Dykman LLP  
Garden City Center  
100 Quentin Roosevelt Blvd.  
Garden City, NY 11530-4850  
PHONE: (516) 357-3878  
FAX: (516) 357-3792  
dfranco@culldyk.com

Mary Patricia Keefe  
Elizabethtown Gas  
300 Connell Drive  
Suite 3000  
Berkeley Heights, NJ 07922  
PHONE: (908) 771-8220  
FAX: (908) 771-8217  
mkeefe@aglresources.com

**ATLANTIC CITY ELECTRIC CO.**

Greg Marquis  
Pepco Holdings, Inc.  
701 Ninth Street NW  
Washington, DC 20068-0001  
PHONE: (202) 872-2297  
FAX: (202) 872-2270  
grmarquis@pepco.com

Amir Mohseni  
5100 Harding Highway  
Mays Landing, NJ 08330  
PHONE: ( ) - -  
FAX: ( ) - -  
amir.mohseni@pepcoholdings.com

Philip J. Passanante, Assistant General  
Counsel  
Atlantic City Electric Co. - 89KS42  
800 King Street, 5th Floor  
PO Box 231  
Wilmington, DE 19899-0231  
PHONE: (302) 429-3105  
FAX: (302) 429-3801  
philip.passanante@pepcoholdings.com

Roger E. Pedersen, Manager, NJ -  
Regulatory Affairs  
Atlantic City Electric Co. - 63ML38  
5100 Harding Highway  
Mays Landing, NJ 08330  
PHONE: (609) 625-5820  
FAX: (609) 625-5838  
roger.pedersen@pepcoholdings.com

**JCP&L**

Sally J. Cheong, Manager - Tariff  
Activity, Rates NJ  
Jersey Central Power & Light Co.  
300 Madison Ave.  
Morristown, NJ 07962  
PHONE: (973) 401-8699  
FAX: (973) 644-4243  
scheong@firstenergycorp.com

Kevin Connelly  
First Energy  
300 Madison Avenue  
Morristown, NJ 07960  
PHONE: (973) 401-8708  
FAX: (973) 644-4243  
kconnelly@firstenergycorp.com

Gregory Eisenstark (JCP&L), Esq.  
Morgan, Lewis & Bockius, LLP  
89 Headquarters Plaza, Suite 1419  
Morristown, NJ 07960  
PHONE: (973) 993-3134  
FAX: (877) 432-9652  
geisenstark@morganlewis.com

**NJ NATURAL GAS CO.**

Mark R. Sperduto, Vice President  
Regulatory Affairs  
New Jersey Natural Gas  
1415 Wyckoff Road, T08C  
Wall, NJ 07719  
PHONE: (732) 938-1214  
FAX: (732) 938-2620  
msperduto@njresources.com

Tracey Thayer, Esq., Director, Regulatory  
Affairs Counsel  
New Jersey Natural Gas Company  
1415 Wyckoff Road  
P.O. Box 1464  
Wall, NJ 07719  
PHONE: (732) 919-8025  
FAX: (732) 938-2620  
TThayer@NJNG.com

**ROCKLAND**

John L. Carley, Esq.  
Consolidated Edison Co. of NY  
Law Dept., Room 1815-S  
4 Irving Place  
New York, NY 10003  
PHONE: (212) 460-2097  
FAX: (212) 677-5850  
carleyj@coned.com

Margaret Comes, Sr Staff Attorney  
Consolidated Edison Co. of NY  
Law Dept, Room 1815-S  
4 Irving Place  
New York, NY 10003  
PHONE: (212) 460-3013  
FAX: (212) 677-5850  
comesm@coned.com

**SO. JERSEY GAS**

Ira G. Megdal, Esq.  
Cozen O'Connor  
457 Haddonfield Road, Suite 300  
Libertyview  
Cherry Hill, NJ 08002  
PHONE: (856) 910-5019  
FAX: (877) 259-7984  
imegdal@cozen.com

John F. Stanzola, Director, Regu  
Affairs  
South Jersey Gas Co.  
1 South Jersey Plaza  
PO Box 6000  
Folsom, NJ 08037  
PHONE: (609) 561-9000, X416  
FAX: (609) 561-6955  
jstanzola@sjindustries.com

**PSE&G**

Connie E. Lembo  
PSEG Services Corporation  
80 Park Plaza, T-05  
Newark, NJ 07102  
PHONE: (973) 430-6273  
FAX: (973) 430-5983  
constance.lembo@pseg.com

Matthew M. Weissman, Esq.  
Public Service Electric & Gas Co  
80 Park Plaza  
P.O. Box 570-T5G  
Newark, NJ 07101  
PHONE: (973) 430-7052  
FAX: (973) 430-5983  
matthew.weissman@pseg.com

TABLE 1

## PSE&amp;G GAS - SBC Components (w/o SUT) - Top 25 C&amp;I Customers

Customer	Social Programs	Energy Efficiency and Renewables Programs	Manufactured Gas Plant Remediation	USF - Permanent	USF Lifeline	Total
Company 1	\$ -	\$ 311,808.330	\$ 143,284.684	\$ 170,625.755	\$ 65,520.290	\$ 691,239.058
Company 2	\$ -	\$ 245,620.957	\$ 112,869.727	\$ 134,407.125	\$ 51,612.336	\$ 544,510.145
Company 3	\$ -	\$ 180,917.870	\$ 83,136.842	\$ 99,000.717	\$ 38,016.275	\$ 401,071.705
Company 4	\$ -	\$ 165,656.351	\$ 76,123.745	\$ 90,649.406	\$ 34,809.372	\$ 367,238.874
Company 5	\$ -	\$ 154,940.363	\$ 71,199.448	\$ 84,785.472	\$ 32,557.621	\$ 343,482.904
Company 6	\$ -	\$ 122,075.466	\$ 56,097.105	\$ 66,801.354	\$ 25,651.720	\$ 270,625.645
Company 7	\$ -	\$ 98,506.484	\$ 45,266.496	\$ 53,904.087	\$ 20,699.169	\$ 218,376.236
Company 8	\$ -	\$ 94,396.286	\$ 43,377.745	\$ 51,654.931	\$ 19,835.493	\$ 209,264.455
Company 9	\$ -	\$ 89,964.967	\$ 41,341.429	\$ 49,230.053	\$ 18,904.340	\$ 199,440.789
Company 10	\$ -	\$ 87,306.760	\$ 40,119.908	\$ 47,775.446	\$ 18,345.771	\$ 193,547.885
Company 11	\$ -	\$ 84,939.595	\$ 39,032.129	\$ 46,480.101	\$ 17,848.359	\$ 188,300.184
Company 12	\$ -	\$ 83,670.551	\$ 38,448.968	\$ 45,785.662	\$ 17,581.694	\$ 185,486.875
Company 13	\$ -	\$ 76,837.018	\$ 35,308.768	\$ 42,046.260	\$ 16,145.764	\$ 170,337.810
Company 14	\$ -	\$ 74,698.648	\$ 34,326.126	\$ 40,876.115	\$ 15,696.428	\$ 165,597.318
Company 15	\$ -	\$ 67,388.614	\$ 30,966.960	\$ 36,875.965	\$ 14,160.371	\$ 149,391.910
Company 16	\$ -	\$ 66,303.968	\$ 30,468.535	\$ 36,282.432	\$ 13,932.454	\$ 146,987.390
Company 17	\$ -	\$ 64,917.023	\$ 29,831.195	\$ 35,523.477	\$ 13,641.015	\$ 143,912.710
Company 18	\$ -	\$ 64,692.284	\$ 29,727.921	\$ 35,400.497	\$ 13,593.791	\$ 143,414.492
Company 19	\$ -	\$ 63,557.141	\$ 29,206.291	\$ 34,779.331	\$ 13,355.263	\$ 140,898.027
Company 20	\$ -	\$ 54,561.688	\$ 25,072.628	\$ 29,856.897	\$ 11,465.049	\$ 120,956.262
Company 21	\$ -	\$ 53,044.247	\$ 24,375.321	\$ 29,026.533	\$ 11,146.189	\$ 117,592.289
Company 22	\$ -	\$ 52,652.552	\$ 24,195.326	\$ 28,812.192	\$ 11,063.882	\$ 116,723.952
Company 23	\$ -	\$ 52,195.186	\$ 23,985.154	\$ 28,561.915	\$ 10,967.775	\$ 115,710.029
Company 24	\$ -	\$ 50,963.603	\$ 23,419.207	\$ 27,887.976	\$ 10,708.983	\$ 112,979.768
Company 25	\$ -	\$ 47,908.211	\$ 22,015.169	\$ 26,216.024	\$ 10,066.953	\$ 106,206.357
	\$ -	\$ 2,509,524.163	\$ 1,153,196.828	\$ 1,373,245.723	\$ 527,326.358	\$ 5,563,293.072

**TABLE 2**

PSE&G Electric - SBC Components (w/o SUT) Top 25 C&I Customers						
Customers	Social Programs (Including Loss Factor)	Energy Efficiency and Renewables Programs (Including Loss Factor)	Manufactured Gas Plant Remediation (Including Loss Factors)	USF	Lifeline	Total
Company 1	\$ 421,635.54	\$ 696,818.03	\$ 127,796.61	\$ 559,459.99	\$ 147,619.08	\$ 1,953,329.26
Company 2	\$ 312,915.49	\$ 517,074.84	\$ 94,876.12	\$ 421,495.94	\$ 111,215.89	\$ 1,457,578.29
Company 3	\$ 288,955.22	\$ 477,543.24	\$ 87,581.56	\$ 383,409.05	\$ 101,166.29	\$ 1,338,656.36
Company 4	\$ 257,289.41	\$ 425,210.59	\$ 77,983.74	\$ 341,392.31	\$ 90,079.75	\$ 1,191,955.80
Company 5	\$ 187,560.67	\$ 309,973.06	\$ 56,849.14	\$ 248,870.60	\$ 65,666.98	\$ 868,920.46
Company 6	\$ 169,560.87	\$ 280,225.60	\$ 51,393.45	\$ 224,987.02	\$ 59,365.06	\$ 785,532.01
Company 7	\$ 160,620.76	\$ 265,450.68	\$ 48,683.73	\$ 213,124.56	\$ 56,235.03	\$ 744,114.75
Company 8	\$ 152,286.56	\$ 251,677.13	\$ 46,157.65	\$ 202,066.08	\$ 53,317.14	\$ 705,504.57
Company 9	\$ 139,878.76	\$ 231,171.31	\$ 42,396.88	\$ 185,602.40	\$ 48,973.04	\$ 648,022.39
Company 10	\$ 142,169.73	\$ 234,957.49	\$ 43,091.27	\$ 188,642.24	\$ 49,775.13	\$ 658,635.85
Company 11	\$ 134,486.97	\$ 222,260.55	\$ 40,762.64	\$ 178,448.15	\$ 47,085.32	\$ 623,043.63
Company 12	\$ 125,033.71	\$ 206,721.50	\$ 37,936.13	\$ 162,226.00	\$ 42,804.94	\$ 574,722.29
Company 13	\$ 130,057.82	\$ 214,940.69	\$ 39,420.18	\$ 172,571.19	\$ 45,534.62	\$ 602,524.51
Company 14	\$ 115,564.19	\$ 190,987.73	\$ 35,027.20	\$ 153,339.88	\$ 40,460.25	\$ 535,379.25
Company 15	\$ 121,749.09	\$ 201,209.23	\$ 36,901.83	\$ 161,546.50	\$ 42,625.65	\$ 564,032.29
Company 16	\$ 115,942.88	\$ 191,613.56	\$ 35,141.98	\$ 153,842.35	\$ 40,592.83	\$ 537,133.61
Company 17	\$ 113,386.57	\$ 187,388.86	\$ 34,367.17	\$ 150,450.43	\$ 39,697.84	\$ 525,290.87
Company 18	\$ 111,222.84	\$ 183,812.97	\$ 33,711.35	\$ 147,579.42	\$ 38,940.30	\$ 515,266.89
Company 19	\$ 103,181.01	\$ 170,522.61	\$ 31,273.89	\$ 136,908.88	\$ 36,124.77	\$ 478,011.16
Company 20	\$ 106,248.92	\$ 175,592.80	\$ 32,203.77	\$ 140,979.62	\$ 37,198.88	\$ 492,223.98
Company 21	\$ 103,085.45	\$ 170,234.84	\$ 31,213.34	\$ 130,227.48	\$ 34,361.82	\$ 469,122.93
Company 22	\$ 104,114.89	\$ 172,065.98	\$ 31,556.95	\$ 138,148.02	\$ 36,451.73	\$ 482,337.56
Company 23	\$ 101,817.72	\$ 168,269.55	\$ 30,860.68	\$ 135,099.95	\$ 35,647.47	\$ 471,695.37
Company 24	\$ 100,652.31	\$ 166,343.54	\$ 30,507.45	\$ 133,553.60	\$ 35,239.44	\$ 466,296.34
Company 25	\$ 100,236.83	\$ 165,656.89	\$ 30,381.52	\$ 133,002.30	\$ 35,093.98	\$ 464,371.51
	\$ 3,919,654.23	\$ 6,477,723.28	\$ 1,188,076.22	\$ 5,196,973.96	\$ 1,371,273.25	\$ 18,153,700.94

**TABLE 3**

Estimated Gas SBC Components (w/o SUT) - March 2011 to February 2012					
Social Programs	Energy Efficiency and Renewables Programs	Manufactured Gas Plant Remediation	USF - Permanent	USF Lifeline	Total
\$ -	\$ 27,057,958.67	\$ 12,433,891.88	\$ 14,806,482.66	\$ 5,685,689.34	\$ 59,984,022.55

C&I Customers

Estimated Electric SBC Components (w/o SUT) - March 2011 to February 2012					
Social Programs (Including Loss Factor)	Energy Efficiency and Renewables Programs (Including Loss Factor)	Manufactured Gas Plant Remediation (Including Loss Factors)	USF	Lifeline	Total
\$ 52,475,376.35	\$ 86,696,774.56	\$ 15,901,060.03	\$ 68,616,559.62	\$ 18,105,161.42	\$ 241,794,931.97

C&I Customers

Note: Dollars are based on current SBC Rates



October 26, 2012

***VIA ELECTRONIC MAIL***

Elizabeth Ackerman, Director  
Div. of Econ Development and Energy Policy  
Board of Public Utilities  
44 South Clinton Avenue, 7<sup>th</sup> Floor  
P.O. Box 350  
Trenton, New Jersey 08625-0350

**Re: I/M/O The Implementation Of A2528/S2344  
(N.J.S.A. 48:3-60.3) And The SBC Credit Program  
BPU Docket No. EO12100940**

**Early IOU Comments On Staff's Straw Proposal**

Dear Ms Ackerman:

Thank you for this opportunity to provide comments on the straw proposal distributed on or about October 4, 2012 by the Staff of the New Jersey Board of Public Utilities ("Board") regarding implementation of the Societal Benefits Charge ("SBC") Credit Program pursuant to N.J.S.A. 48:3-60.3. The utilities responded to the policy questions that Staff issued last Spring and actively participated in the discussion at the informal conference held on October 24, 2012. In an effort to efficiently provide input, the seven electric and/or natural gas investor owned utilities ("IOUs") have agreed to submit these initial comments jointly.<sup>1</sup> The IOUs note that comments are not due until November 9, 2012 in this matter, and that they may jointly or individually provide additional comments in this matter at a later date.

**Magnitude of the Credit**

In its questions issued on March 1, 2012, Staff recognized that "the SBC funds a number of societal programs in addition to the Clean Energy funds for energy efficiency," and that these other programs, including Universal Service, Lifeline, nuclear decommissioning and manufactured gas plant remediation, "have nothing to do with energy efficiency, and the Board may have little discretion in funding them." Therefore, Staff asked how the funding of these nondiscretionary programs should be achieved if there is a reduction in the total SBC from the energy efficiency SBC credit.

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<sup>1</sup> PSE&G is submitting these comments on behalf of itself and of Jersey Central Power & Light Company, Atlantic City Electric Company, Rockland Electric Company, New Jersey Natural Gas Company, South Jersey Gas Company, and Pivotal Holdings, Inc., d/b/a/ Elizabethtown Gas Company.

In our March 16, 2012 response, the IOUs stated that the magnitude of the credit available should be limited to that portion of the SBC attributable to the Clean Energy Programs' portion of each utility's electric and/or gas SBC, so that the funding of other SBC programs would not be impacted. Since this new credit option is not at all related to the underlying cost structure of any of the other clauses with the SBC, the IOUs noted, any effort to adjust funding for those would translate into an unauthorized price increase for all other customers. The New Jersey Division of Rate Counsel ("Rate Counsel") similarly noted that the Board should interpret N.J.S.A. 48:3-60.3 "to allow SBC credits only from the clean energy portion of the SBC, as defined by N.J.S.A. 48:3-60(a)(3)." See letter dated March 16, 2012 from Rate Counsel to the Board.

For the reasons previously stated, the IOUs strongly encourage reconsideration of the language in the straw proposal providing that the "maximum credit per entity" may be "up to 100% of the annual SBC contributions per utility account." As the Rate Counsel has noted, the statute expressly empowers the Board to determine the amount of the credit to be allowed in any calendar year for each ratepayer. See N.J.S.A. 48:3-60.3(1.c.). While the language of N.J.S.A. 48:3-60.3(1.d.) might *permit* the Board to allow a credit up to 100% of the ratepayer's total SBC liability, there is nothing in the statute *requiring* that outcome, and the Board plainly has discretion to determine that the value of the credit should be isolated to New Jersey Clean Energy Program ("NJCEP") funds.

The express language of the statute supports this logical interpretation. As Rate Counsel has pointed out, the statute defines eligible energy efficiency measures as "the type . . . that would otherwise be eligible for incentives under the EE programs funded pursuant to N.J.S.A. 48:3-60(a)(3)" (see N.J.S.A. 48:3-60.3(1.b.) – that is, the clean energy portion of the SBC. It is clear that the value of the credit should be isolated to the energy efficiency portion of the SBC, where the value of those credits at least relates to the underlying objective of the clause.

Beyond this core legal argument, implementation of the legislation as currently reflected in the straw proposal could prove detrimental to NJCEP's efforts to meet the energy efficiency needs of the residential and low income market and the continued administrative support for renewable energy NJCEP Programs. Granting commercial customers credits that are more than double the value of their NJCEP contributions, and allowing them to carry those credits for an additional ten year period, would undermine the Board's and the utility's ability to develop longer term budgets and program goals for other important state programs funded through the SBC.<sup>2</sup>

### Issuance of Credits

The IOUs also strongly encourage reconsideration of the language of the straw proposal providing that "credits will be issued and tracked by the utilities" upon project completion and verification that all program requirements are met. The IOUs believe that assigning these

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<sup>2</sup> Since the percentage of the NJCEP charge in relation to the full SBC charge varies by each utility, the utilities are using an approximation here to make the point.

functions to the utilities will result in higher administrative costs and will also weaken Staff's ability to effectively monitor the aggregate impact of the value of the remaining credits, or to consider impacts on the NJCEP budgeting process.

While the IOUs do not object to providing written or electronic notice of the amount of SBC contributions collected from eligible C&I participants for each relevant calendar year and confirming whether the account is in good standing, the issuance and tracking of payments to customers should be conducted by the Office of Clean Energy ("OCE") or an entity under contract with the OCE, presumably the new Program Administrator. As indicated in our March 16, 2012 comments, implementation of the SBC credits mandated under the Act within the billing and record-keeping system of PSE&G and, presumably, within the billing system of each of the IOUs, would be an extremely complex and costly endeavor. None of the IOUs presently have any billing arrangements to prospectively issue credits for up to an 11 year period. As we noted previously,

[s]ince this program is a statewide initiative, the OCE is the most suitable entity to implement and administer the program. This is consistent with other statewide programs already under its purview, as directed by the BPU. Additionally, it eliminates duplicative efforts by the IOUs, simplifies implementation, and creates a "single point of entry" for C&I customers that have different gas and electric distribution providers.

Administering the program through the Board would be far more cost-efficient and straightforward than imposing significant and costly changes on each of the seven utility's billing and record-keeping systems and would be entirely consistent with the plain language of the statute.

In addition to the efficiencies provided by a centralized system, the IOUs also note that the statute requires that the "amount of the credit ... in any calendar year for each ... ratepayer ... shall be determined by the Board." To comply with this language and determine the amount of such credits for each customer, the Board (presumably OCE or its contractor) must track the credits for a customer from year to year. Thus, requiring the utilities to each develop and administer their own system to track credits is unquestionably an unnecessary and potentially costly duplication of what the Board already must do to comply with the statute. In addition, the OCE already has a system in place to issue checks to customers via their current programs that provide rebates to customers.

Lastly, as the straw proposal recognizes, the utilities will be compensated for the costs associated with this program. The cost for each utility to set up separate mechanisms to issue these credits would likely be significantly higher than the costs under a single state-wide administration. The IOUs further note that the statutory language requires a "credit against the societal benefits charge." A credit is defined by dictionaries in common use as "a sum of money due to a



person”<sup>3</sup> and as “an amount of money that you have a right to.”<sup>4</sup> Thus, the statutory language “credit against the societal benefits charge” in no way prevents the Board or its agent from issuing checks from one efficient centralized system.

In sum, both efficient least cost administration and the provisions of the statute support Board development of a centralized system of calculating and providing credits, and do not support the IOUs providing or tracking credits.

#### Comments on the Savings Analysis Process

The IOUs support the straw proposal’s requirement that potential projects must be subject to the same rigorous energy savings analysis, documentation, and review processes as the OCE’s and the IOU’s energy efficiency programs. Given the potential for these credits to be a substantial value for many projects, the IOUs believe that strong controls are critical to ensuring public confidence that the credits are generating significant EE savings. A documented and rigorous protocol to determine energy savings is vital to confirm the efficacy of energy efficiency programs and avoid wasting ratepayer funding or, in this case, harming ratepayers by forcing them to absorb greater SBC costs as a result of a C&I customer EE initiative that does not actually produce the benefits initially represented.

#### Customers Receiving SBC Rebates

While the overview presented at the October 24<sup>th</sup> stakeholder meeting addressed the limitation of a customer participating in this credit program in the same calendar year that they received an NJCEP incentive, the IOUs note that the straw proposal appears to be silent regarding customers’ eligibility for the SBC credit at the same time and in the same calendar year that they have received SBC funded Clean Energy energy efficiency rebates. The IOUs request that the proposal be modified to adopt the reasonable restrictions previously proposed. Further, those restrictions may need additional consideration before they can actually be implemented. For example, what constitutes participation in an NJCEP program for a particular year, especially as the Board contemplates a shift to more financing based programs (e.g., would participation in a financing program preclude participation only in the initial year of the financing or for the full term of participation in any NJCEP financing program?).

In our March 16, 2012 comments, the IOUs explained that any C&I customers who take part in the SBC Credit Program and thereby reduce their contribution to Clean Energy programs through the SBC should be ineligible for SBC-funded energy efficiency programs. If a C&I customer received a rebate in the previous calendar year, the customer should be able to apply for the credit in the following calendar year as long as no portion of the credit relates to investments in the same energy efficiency project for which the customer received the rebate. If

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<sup>3</sup> <http://dictionary.reference.com/browse/credit?s=b>.

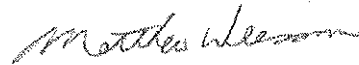
<sup>4</sup> [http://www.macmillandictionary.com/dictionary/british/credit#credit\\_14](http://www.macmillandictionary.com/dictionary/british/credit#credit_14).

the customer is carrying an SBC credit forward, it should not be eligible for Clean Energy program participation in any of the carry-forward years, unless the customer elects to forego an appropriate portion of the credit based on the benefits received from its Clean Energy program participation. If the customer is not carrying any credit forward, it could be eligible for Clean Energy program benefits in the future.

Additionally, it is critical to provide further clarity regarding the intended definition of an "entity" for each element of the proposal. Entity could be interpreted as customer, account, or even a meter or other item at that level. At the October 24<sup>th</sup> meeting OCE indicated that the intention was not to permit customers to aggregate usage across accounts. To implement that intention, it is important to clearly establish the definition of eligible entities to set proper expectations for customers and supporting trade allies. A clear definition is also critical to ensuring that the implementation is consistent across utility territories. The IOUs suggest that the Board may even determine that it would be appropriate to establish different criteria. As an example, if the Board determines that participation is at an account level, it would also need to determine whether the review of whether a customer is in "good standing" with the utility is only limited to collection status on that particular account or on all of that customer's accounts.

Thank you very much for your consideration.

Very truly yours,



C Attached Service List

**BPU**

Elizabeth Ackerman, Director  
Board of Public Utilities  
Div. of Econ Development & Energy  
Policy  
44 South Clinton Avenue, 7th Floor  
P.O. Box 350  
Trenton, NJ 08625-0350  
PHONE: (609) 777-3253  
FAX: (609) 777-3253  
elizabeth.ackerman@bpu.state.nj.us

Alice Bator, Bureau Chief  
Board of Public Utilities  
Division of Energy  
44 South Clinton Avenue, 9th Floor  
P.O. Box 350  
Trenton, NJ 08625-0350  
PHONE: (609) 943-5805  
FAX: (609) 943-5805  
alice.bator@bpu.state.nj.us

MaryBeth Brenner  
Board of Public Utilities  
44 South Clinton Avenue, 9th Flr.  
P.O. Box 350  
Trenton, NJ 08625-0350  
PHONE: (609) 777-3253  
FAX: (609) 777-3253  
marybeth.brenner@bpu.state.nj.us

John Garvey  
Board of Public Utilities  
44 South Clinton Avenue  
P.O. Box 350  
Trenton, NJ 08625-0350  
PHONE: (609) 777-3253  
FAX: (609) 777-3253  
john.garvey@bpu.state.nj.us

Kristi Izzo, Secretary  
Board of Public Utilities  
44 South Clinton Avenue, 9th Flr.  
P.O. Box 350  
Trenton, NJ 08625-0350  
PHONE: (609) 292-1599  
FAX: (609) 292-1599  
kristi.izzo@bpu.state.nj.us

Eleana Lihan  
Board of Public Utilities  
Division of Energy  
44 South Clinton Avenue, 9th Flr.  
P.O. Box 350  
Trenton, NJ 08625-0350  
PHONE: (609) 777-3253  
FAX: (609) 777-3253  
eleana.lihan@bpu.state.nj.us

Kristina Miller  
Board of Public Utilities  
44 South Clinton Avenue, 9th Flr.  
P.O. Box 350  
Trenton, NJ 08625-0350  
PHONE: (609) 777-3253  
FAX: (609) 777-3253  
kristina.miller@bpu.state.nj.us

Elizabeth Teng  
Board of Public Utilities  
44 South Clinton Avenue, 9th Flr.  
P.O. Box 350  
Trenton, NJ 08625-0350  
PHONE: (609) 292-0091  
FAX: (609) 292-0091  
elizabeth.teng@bpu.state.nj.us

Michael Winka, Director  
Board of Public Utilities  
44 South Clinton Avenue, 9th Flr.  
P.O. Box 350  
Trenton, NJ 08625-0350  
PHONE: (609) 777-3312  
FAX: (609) 777-3312  
m.winka@bpu.state.nj.us

**DAG**

Babette Tenzer, DAG  
NJ Dept. of Law & Public Safety  
Division of Law  
124 Halsey Street, 5th Flr.  
PO Box 45029  
Newark, NJ 07101  
PHONE: (973) 648-7811  
FAX: (973) 648-3555  
babette.tenzer@doj.lps.state.nj.us

**AGL/ELIZABETHTOWN**

Deborah M. Franco  
Cullen and Dykman LLP  
Garden City Center  
100 Quentin Roosevelt Blvd.  
Garden City, NY 11530-4850  
PHONE: (516) 357-3878  
FAX: (516) 357-3792  
dfranco@culldyk.com

Mary Patricia Keefe  
Elizabethtown Gas  
300 Connell Drive  
Suite 3000  
Berkeley Heights, NJ 07922  
PHONE: (908) 771-8220  
FAX: (908) 771-8217  
mkeefe@aglresources.com

**ATLANTIC CITY ELECTRIC CO.**

Greg Marquis  
Pepco Holdings, Inc.  
701 Ninth Street NW  
Washington, DC 20068-0001  
PHONE: (202) 872-2297  
FAX: (202) 872-2270  
gmarquis@pepco.com

Amir Mohseni  
5100 Harding Highway  
Mays Landing, NJ 08330  
PHONE: (856) 825-1111  
FAX: (856) 825-1111  
amir.mohseni@pepcoholdings.com

Philip J. Passanante, Assistant General  
Counsel  
Atlantic City Electric Co. - 89KS42  
800 King Street, 5th Floor  
PO Box 231  
Wilmington, DE 19899-0231  
PHONE: (302) 429-3105  
FAX: (302) 429-3801  
philip.passanante@pepcoholdings.com

Roger E. Pedersen, Manager, NJ -  
Regulatory Affairs  
Atlantic City Electric Co. - 63ML38  
5100 Harding Highway  
Mays Landing, NJ 08330  
PHONE: (609) 625-5820  
FAX: (609) 625-5838  
roger.pedersen@pepcoholdings.com

**JCP&I**

Sally J. Cheong, Manager - Tariff  
Activity, Rates NJ  
First Energy  
300 Madison Ave.  
PO Box 191  
Morristown, NJ 07962-1911  
PHONE: (973) 401-8699  
FAX: (973) 644-4243  
scheong@firstenergycorp.com

Kevin Connelly  
First Energy  
300 Madison Avenue  
PO Box 1911  
Morristown, NJ 07962  
PHONE: (973) 401-8708  
FAX: (973) 644-4243  
kconnelly@firstenergycorp.com

Gregory Eisenstark (JCP&L), Esq.  
Morgan, Lewis & Bockius, LLP  
89 Headquarters Plaza, Suite 1419  
Morristown, NJ 07960  
PHONE: (973) 993-3134  
FAX: (877) 432-9652  
geisenstark@morganlewis.com

**NJ NATURAL GAS CO.**

Mark R. Sperduto, Vice President  
Regulatory Affairs  
New Jersey Natural Gas  
1415 Wyckoff Road, T08C  
Wall, NJ 07719  
PHONE: (732) 938-1214  
FAX: (732) 938-2620  
msperduto@njresources.com

Tracey Thayer, Esq., Director, Regulatory  
Affairs Counsel  
New Jersey Natural Gas Company  
1415 Wyckoff Road  
P.O. Box 1464  
Wall, NJ 07719  
PHONE: (732) 919-8025  
FAX: (732) 938-2620  
TThayer@NJNG.com

**ROCKLAND**

John L. Carley, Esq.  
Consolidated Edison Co. of NY  
Law Dept., Room 1815-S  
4 Irving Place  
New York, NY 10003  
PHONE: (212) 460-2097  
FAX: (212) 677-5850  
carleyj@coned.com

Margaret Comes, Sr Staff Attorney  
Consolidated Edison Co. of NY  
Law Dept, Room 1815-S  
4 Irving Place  
New York, NY 10003  
PHONE: (212) 460-3013  
FAX: (212) 677-5850  
comesm@coned.com

**SO. JERSEY GAS**

Ira G. Megdal, Esq.  
Cozen O'Connor  
457 Haddonfield Road, Suite 300  
Libertyview  
Cherry Hill, NJ 08002  
PHONE: (856) 910-5019  
FAX: (877) 259-7984  
imegdal@cozen.com

John F. Stanzola, Director, Regu  
Affairs  
South Jersey Gas Co.  
1 South Jersey Plaza  
PO Box 6000  
Folsom, NJ 08037  
PHONE: (609) 561-9000, X416  
FAX: (609) 561-6955  
jstanzola@sindustries.com

**PSE&G**

Connie E. Lembo  
PSEG Services Corporation  
80 Park Plaza, T-05  
Newark, NJ 07102  
PHONE: (973) 430-6273  
FAX: (973) 430-5983  
constance.lembo@pseg.com

Matthew M. Weissman, Esq.  
Public Service Electric & Gas Co  
80 Park Plaza, T-5  
Newark, NJ 07101  
PHONE: (973) 430-7052  
FAX: (973) 430-5983  
matthew.weissman@pseg.com

New Jersey Board of Public Utilities  
Societal Benefits Charge (SBC) Credit Program Straw proposal  
Comments of Dave Forsyth  
Regional Energy Manager, Gerdau

November 20, 2012

**Introduction**

Gerdau is delighted that the State of New Jersey has enacted A2528/S2344 allowing commercial and industrial ratepayers to obtain Board approval to receive a credit against the Societal Benefits Charge. Gerdau firmly supports the concept that a secure energy future must be reliable, safe, efficient, affordable and sustainable. Gerdau remains very concerned about the affordability of electricity and natural gas for its steelmaking operations in Sayreville, which are exposed to global competition.

Gerdau operates a steel minimill in Sayreville that could employ 350 employees at peak capacity, but is currently employing just over 200 people. It is important to note that Gerdau has shut down steelmaking operations in neighboring Perth Amboy, in part due to the high cost of electricity and natural gas in New Jersey. Unfortunately, that shut-down resulted in hundreds of employees losing well-paying jobs. The continued operations of the Sayreville Mill, which still pays high energy costs, despite being energy-efficient, remain challenged.

Companies like Gerdau are highly motivated to operate as energy-efficiently as possible due to both global competition and the major role that energy costs play in their operations. The State's energy strategy should support and facilitate the objective of affordable energy for manufacturing operations, and recognize that the State's energy policy directly impacts manufacturers' ability to compete, employ and contribute to the economy.

Gerdau has invested heavily in energy efficiency and manufacturing process improvements since 2002 – spending over \$44 million to improve energy efficiency at the Sayreville Mill during this period. These initiatives have resulted in the Sayreville Mill being in the top quartile of the Gerdau North American fleet in terms of electricity and natural gas usage efficiency. And the Sayreville Mill has achieved this result despite running at reduced capacity.

Any future expenditures on capital projects at the Sayreville Mill will depend on the individual returns on investment and will certainly be subject to competition among the other 20 mills in the Gerdau Long Steel North America group. The increasing burden of the Societal Benefits Charge obscures the Sayreville Mill's relative strength in energy efficiency.

Gerdau currently pays over \$1 million dollars each year at its Sayreville Mill for the Societal Benefits Charge. These charges are not connected to the underlying costs of energy supply or delivery. Also, these charges are levied on a kilowatt-hour or therm basis, which disproportionately impacts high-volume electricity and natural gas users, like Gerdau. The level of the Societal Benefits Charge and the way in which it is assessed impedes the Sayreville Mill's global competitiveness.

Gerdau appreciates the opportunity to review "the SBC Credit Program Straw Proposal" ("Straw Proposal") in detail, before it becomes more formal or permanent. Gerdau also appreciates the Board Staff's efforts to implement A2528/S2344 in a timely manner and in orderly fashion. However, Gerdau is very concerned that the Straw Proposal will establish program barriers that jeopardize the ability of large, energy-intensive industrial users of electric

power and natural gas to qualify for participation. Accordingly, Gerdau offers the following comments, to identify the barriers it perceives and to suggest alternative means of accomplishing the Board Staff's objectives.

### **The Custom Savings Threshold Criteria Should Be Refined**

The Sayreville Mill falls into the category of customers whose annual energy consumption is heavily weighted to manufacturing and whose total facility energy consumption is comprised of more than 50% of process loads. In fact, the amount of energy consumed at the Sayreville Mill that is manufacturing or process-related is well in excess of 50%.

### **A 4% Threshold Is Unduly Burdensome For Energy-Intensive Manufacturers**

As indicated earlier in this document, Gerdau has been investing heavily in energy efficient equipment at the Sayreville Mill and, as a result, the Sayreville Mill ranks in the 1<sup>st</sup> quartile for energy efficiency of all Gerdau North American plants. As a result of these substantial investments, the opportunities for large amounts of additional energy efficiency are limited. However, there are significant savings still available that, in terms of total kilowatt-hour or dekatherm reductions, will likely far exceed the level of reductions achieved by other customers that would qualify under the proposed rules. For example, with potential total electricity consumption of approximately 350 million kilowatt-hours per year, even a 1% reduction in the Sayreville Mill's energy consumption would save 3.5 million kilowatt-hours.

The continuing sluggish state of the economy compounds the problems presented by a percentage threshold. Some industrial consumers in New Jersey have not reached full production

since the downturn and ensuing slow economy. In these economic circumstances, a percentage threshold (like the 4% threshold in the Straw Proposal) increases the energy consumption that must be reduced by the energy efficiency plan in order to achieve the required energy savings. For example, a large user that consumes 300 million kilowatt-hours per year would be required to save at least 4%, or 12 million kilowatt-hours annually (which, to put things into perspective, is the equivalent of the entire annual consumption of **1410** households in New Jersey) to be eligible for credits against their Societal Benefits Charge liability. If the plant is currently only running 50% of the time due to economic slowdown, that same customer would be required to implement projects that would reduce its current energy consumption by 8%. In this example, a customer that consumed 300 million kilowatt-hours last year, but is only consuming 150 million kilowatt-hour this years, would need to reduce its energy consumption by 12 million kilowatt-hours, which is 4% of last year's consumption but a whopping 8% of this year's consumption. A tall order indeed. In a more robust economy, larger capital expenditures are more common but, in downturns, companies need to have the opportunity to invest smaller amounts of capital and qualify for credits based on lower amounts of demonstrated energy savings. A percentage threshold works exactly opposite its intended objective of enabling energy efficiency expenditures when economic for customers to do so.

Gerdau recommends that eligibility to participate should be based on a minimum size threshold or minimum energy savings, not on a percentage of a customer's usage. The experience of large energy users in the Large Energy Users Pilot Program ("LEUPP") may prove instructive. Many large users were not participating in existing programs offered by the Office of Clean Energy ("OCE") for varying reasons, including funding levels and administrative overhead. The BPU recognized that these large users were different from other C&I customers.

Gerdau and other large energy users met many times with OCE and the Program Administrator to develop the LEUPP rules that were eventually implemented. A lot of discussion between those companies and OCE staff formed the basis for the rules that were structured to motivate the largest users in the State to participate in the program.

While Gerdau is not proposing at this time any specific numerical thresholds for the SBC Credit Program, Gerdau does recommend that the Board direct the OCE to continue meeting with large users on a regular basis to infuse some basic concepts from the Large Energy Users Pilot Program into this SBC Credit Program.

#### The "Alternative Minimum Threshold Savings Requirement" Must Be Clarified

The Straw Proposal includes, on page 2, some language that is unclear and could lead to unintended consequences. The language is as follows:

The Administrator, in collaboration with the Office of Clean Energy ("OCE"), reserves the right to consider alternative minimum threshold savings requirement in these types of situations.

This sentence, when read in context with the rest of the description of the custom savings threshold criteria is unclear. Does it propose to allow customers to propose customer-specific alternatives to the default threshold criteria? For example, if Board Staff adopts threshold criteria (notwithstanding Gerdau's concerns), can a customer still apply for a credit if it does not meet the threshold criteria? Or does the sentence propose to allow the Administrator, in collaboration with OCE, to recalibrate the default thresholds at any time and for any reason (e.g., increasing a proposed default threshold to 6% or 8% or 12%)? Given the inherent ambiguity of this sentence, and in light of Gerdau's alternative proposal to establish an OCE-large user dialogue, Gerdau



recommends that this sentence be deleted from the Straw Proposal. If any established thresholds are determined not to be meeting their intended purposes, that issue should be the subject of the OCE-large user dialogue.

#### The "Mix of Measures" Requirement Should Be Eliminated

Additionally, those consumers that fall under the umbrella of a "process related" or "manufacturing" load will be required to submit an Energy Reduction Plan ("ERP") that, according to the Straw Proposal, would need to include a "comprehensive mix of measures (e.g. lighting cannot make up more than 50% of the total projected savings)." This element of the Straw Proposal is objectionable for several reasons. First, the Proposal does not define what may constitute a "comprehensive mix of measures." Must the project consist of two different elements, three different elements, or many more? Also, what constitutes an individual "measure" that could be included in the "mix"? Second, it appears the Proposal would eliminate any Societal Benefits Charge opportunities for a single measure that could produce significant savings. For example, if a technology improvement was introduced that could, standing alone, reduce a consumer's electricity consumption by 5% the investment in the new technology would not enable the consumer to obtain a Societal Benefits Charge credit. Third, the "mix of measures" requirement appears not to apply to customers that submit plans with ERTs of at least 15% of total building source energy consumption. Finally, the new law does not provide footing for a "mix of measures" requirement – there is no mention in the new law that customers must assemble a portfolio of energy efficiency projects in order to qualify for a Societal Benefits Charge credit. It is not apparent what objective Board Staff is attempting to achieve by imposing

a "mix of measures" requirement or by limiting the amount of lighting-related projects that may qualify.

If Board Staff identifies its concern or its objective, Gerdau would consider submitting alternative proposals to address the concern or accomplish the objective. In the absence of such information, however, Gerdau must simply oppose the "mix of measures" requirement and request that it be deleted from the Straw Proposal.

#### **Clean Energy Program ("CEP") – Supported EE Products**

The Straw Proposal restricts consumers to implement CEP-supported EE products. Not included in this list of products is support for the implementation of EE that have received Superior Energy Performance ("SEP") certification (Industrial Measurement and Verification Protocol) or comply with Energy Management Standard - ISO 50001, a globally accepted standard for managing energy, including all aspects of procurement and use. Both SEP and ISO 50001 are certification programs that provide industrial facilities with a roadmap for achieving continual improvement in energy efficiency while maintaining competitiveness. These programs provide a transparent, globally accepted system for verifying energy performance improvements and management practices. Both of these initiatives have been endorsed by the U.S. Department of Energy, Advanced Manufacturing Office. Gerdau recommends these two initiatives be added to the list of "supported EE products."

#### **Allocation Of SBC Credit Among Electric and Natural Gas Utilities**

The allocation of the SBC credit among a customer's electric and natural gas utilities must be clarified. The Straw Proposal includes only the following, on page 5, to address this issue:

The Administrator will review the final application and prepare a recommendation for the OCE regarding any proposed credit, including any split between electric and gas SBC credits for measures that save both gas and electric.

This language seems to suggest that a customer that invests in project that is geared primarily toward electricity savings could not apply the credit to the SBC in both its electricity and natural gas bills. This language also seems to suggest that there may be some attempt to categorize an energy efficiency project as electricity or natural gas or both, and allocate the SBC credits accordingly. Gerdau's concern is that any such attempt at allocation will cause unnecessary complications, confusion, and delay. Just as one example, if a project saves 5 million kWhs of electricity and 2000 MMBtus of natural gas, how does OCE propose to develop dollar equivalents for those energy savings in order to allocate the SBC credit (which is stated in dollars) between the electric utility and the natural gas utility.

Gerdau recommends a simpler, more straightforward approach. The credit should apply to the SBCs for the utility on which the customer spends the most, and any remaining credit should apply to the SBCs for the other utility. For example, the Sayreville Mill spends more on SBC and electricity delivery charges through Jersey Central Power and Light Company ("JCPL") than it does on SBC and natural gas distribution charges through Public Service Electric and Gas Company ("PSEG"). If the Sayreville Mill were to complete an energy efficiency project that generated \$500,000 in SBC credits, those credits would apply to the Sayreville Mill's SBC charges from JCPL until they were zero for the year, and any remaining credit would apply to the Sayreville Mill's SBC charges from PSEG. If any amount remained after both utilities' SBC

charges were reduced to zero, the remaining amount would carry over into next year. This approach is supported by the language in A2528/S2344, which states only that the credit in any one year "shall not exceed 100 percent of the commercial or industrial ratepayer's liability for such charge." By referencing only the customer's total SBC "liability", and by not including any language to suggest that energy efficiency projects must be categorized as electricity-related or natural gas-related, A2528/S2344 provides a firm basis for implementing Gerdau's proposal on this issue and improves the payback of the efficiency project(s).

### **The Timing Of The SBC Credit**

The Straw Proposal, on page 6, proposes that "the Administrator will direct the appropriate utility or utilities to issue the credit at the end of the next calendar year (capped at 100% of its SBC payments made during that year) . . . " Rather than delaying the payment of the credit for up to 12 months, and providing it (apparently) in a lump-sum payment or credit to the customer, the amount of the SBC credit should begin offsetting the customer's SBC charges as soon as the credit is approved. For example, if the Sayreville Mill's energy efficiency project were completed and approved by OCE in June 2013, the SBC credit generated by the project should begin reducing the Sayreville Mill's SBC charges in July 2013. There is certainly no need to make the Sayreville Mill wait until December 2014 (in this example) to receive its approved and verified SBC credit. The sluggish economy makes this cash flow issue even more important.

### **Conclusion**

Again, Gerdau appreciates the opportunity to submit these Comments, and respectfully urges Board Staff to adopt the recommendations herein as it proceeds with timely implementation of A2528/S2344. Thank you.

Respectfully submitted,

Gerdau Long Steel North America

By: /s/ Dave Forsyth

Dave Forsyth  
Regional Energy Manager

November 20, 2012

**Deborah Petrisko**

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**From:** Lucas, David M. (P66) [david.m.lucas@p66.com]  
**Sent:** Friday, October 26, 2012 7:15 AM  
**To:** 'publiccomments@njcleanenergy.com'  
**Subject:** NEW SBC CREDIT LAW

To Whom it May Concern,

Phillips 66 is excited about the possibility of receiving greater credits with the proposed program. As you may know the Bayway Refinery pays about \$4MM/year in SBC and our potential credit is therefore pretty significant. I am writing to you to ask that the BPU consider making the cost of energy basis the higher of the "prior year" or "average of the prior three years". If the program were to use the "prior year" as the cost of energy, which is what is used in the current rebate program, then achieving the 10% rate of return threshold will be difficult due to the depressed natural gas price in 2012. In fact a large project we had planned to submit would not qualify due to this and the total cost of projects achieving a 10% rate of return for 2013 would be less than we submitted this year when the program limited the credit to \$1MM. If we were to use an average of the last two or three years energy cost then we would be able to make better use of the program.

Aside from this modification we have no additional comments regarding the proposed program. We appreciate the Board accepting comments on the program and look forward to your response.

Sincerely,

Dave Lucas  
Energy Coordinator  
Phillips 66 Bayway Refinery  
(O) 908-523-5057  
(M) 908-202-1582

December 3, 2012

TO: President Hanna, Commissioners Asselta, Fiordaliso, Fox and Holden  
FR: Sara Bluhm, Vice President Energy, Environment & Federal Affairs  
RE: SBC Credit Program Straw Proposal

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On behalf of the 21,000 members of the New Jersey Business & Industry Association (NJBIA), I appreciate the opportunity to share our comments with you on the Societal Benefit Charge (SBC) Credit Program, NJSA 48:3-60.3. As you are aware, commercial and industrial (C&I) ratepayers consume 65 percent of the electricity in the state and have a vested interest in energy policy. New Jersey historically has had high electric prices. Currently, 27 percent of the electric bill is from government imposed taxes and surcharges. This does not include changes to our renewables policy such as forthcoming OREC's, changes in SREC's, or utility efficiency programs approved by BPU. NJBIA has been working to reduce the cost of business in New Jersey and to chip away at the government imposed charges on ratepayers.

This legislation was born out of that idea to reduce the cost of energy. It was first conceived by Senator Karrow (when she was in the Assembly, but left before the bill was passed) to help the businesses in her district increase their energy efficiency, while utilizing their own taxes. Staff and Commissioners from the BPU were involved as we developed legislation based on a tax increment financing method to achieve this goal. It was based on the premise of using 100 percent of the SBC. Throughout the years, this legislation was debated and discussed, until it was ultimately signed by Governor Christie. NJBIA applauded the Governor for taking the step to give business another tool to help lower energy costs. After all, the first goal of the Christie 2011 Energy Master Plan is to **Drive Down the Cost of Electricity for All Customers**.

“New Jersey’s electricity prices are among the highest in the nation. For New Jersey’s economy to grow electricity costs must be comparable to costs throughout the region; ideally these costs should be much closer to U.S. averages.”

By allowing business to utilize its own SBC, the BPU can help achieve this goal. Since the straw proposal sets out a multiyear process there should be adequate time and resources to set aside money for a specific project.

NJBIA believes the credit should be 100 percent of SBC, not the reduced 50 percent as laid out in the revised staff proposal. Since its inception the Clean Energy Program has failed to utilize all of its money for energy efficiency projects and should have adequate resources to cover projects at 100 percent. Additionally, there needs to be a tiered approach to the program to allow smaller C&I projects to proceed without the restrictions of prevailing wage. Current law allows for an exemption from prevailing wage for projects under \$14,000. Incorporated into the program design should be a small project exemption.

Another area that needs to be further reviewed is the qualification that customers are in good standing with their utility bills. This is an example of holding business to a higher standard than residential customers. Superstorm Sandy wreaked havoc on our small business community. As the state looks to rebuild, we should be encouraging energy efficient rebuilding and helping businesses which are strapped for cash. Recognizing that some of these companies may have fallen behind in their utility bills or have lost mail, we should not penalize them from participation. If a customer has paid the societal benefits charge then they should be eligible. Additionally, the BPU should work with Treasury to waive any fees associated with tax clearance certificates for impacted companies.

NJBIA looks forward to working with the Board to lower the cost of energy for business and achieving the goals of the Christie Energy Master Plan.



# NAIOP

COMMERCIAL REAL ESTATE  
DEVELOPMENT ASSOCIATION  
NEW JERSEY CHAPTER

December 3, 2013

The Honorable Kristi Izzo  
Secretary to the Board  
NJ Board of Public Utilities  
PO Box 350  
Trenton, NJ 08625-0350

RE: Comments on the SBC Credit Program

Dear Secretary Izzo:

On behalf of the 615 members of NAIOP NJ, the commercial real estate development association representing close to 300 million square feet of office and industrial space in New Jersey, I appreciate the opportunity to comment on the Board of Public Utilities (BPU) implementation of the new Societal Benefits Charges (SBC) Credit Program.

According to the US Department of Energy Buildings Energy Data Book (most recent edition 2010), commercial buildings represent nearly one-fifth of US energy consumption, with office, retail and educational facilities representing about half of commercial sector energy consumption. The top three end uses in the commercial sector are lighting, space heating and space cooling, which represent close to half of commercial site energy consumption. Assuming an average cost of \$.014 per kWh for office (183,285,833 square feet in NJ) and \$.05 per kWh for industrial (606,568,834 square feet in NJ) the amount spent by our industry on energy is nearly \$33 million annually.

NAIOP supports the goals of the Societal Benefits Credit Program law to incentivize commercial and industrial energy users to invest in building improvements that will increase energy efficiency and reduce energy consumption. Over the past three years, we have been dismayed to see the SBC funds NOT being used for their intended purpose, as hundreds of millions of dollars have been diverted in order to fill state budget gaps. Our members, and others, have paid the SBC and support the program under the premise that these funds should be used to support and enhance energy efficiency and renewable energy investments. To strip the program of the funds we have paid violates the spirit (if not the letter) of the underlying rationale upon which the self-funding program was created.

In implementing the SBC Credit Program, we encourage the BPU to ensure that all commercial and industrial ratepayers, not just large energy users, will benefit. Owners of commercial and industrial buildings pay over 60% of the money collected through the Societal Benefits Charges, but many (particularly in the office sector) do not benefit from or participate in the programs those charges fund due to a lack of

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awareness, high capital costs of participation and/or eligibility hurdles. The focus should be on incentivizing the greatest number of building owners/managers to invest in technology to reduce energy consumption. Toward that end, we suggest the following:

- In evaluating thresholds and energy efficiency goals to qualify programs to be eligible for applying for SBC credits, the BPU should set more reasonable standards so that smaller and medium-sized energy users qualify.
- The BPU should make every effort to ensure that the application process and submittal requirements are as simple as possible so as not to discourage participation.
- Once all criteria are satisfied, credits for completed projects should be issued as soon as possible; twelve months is an excessively long period.

New Jersey's Clean Energy Program has achieved laudable success, resulting in the second-highest number of solar installations in the nation, second only to California. By focusing on improving the energy efficiency of our existing (and aging) building stock, New Jersey can become the kind of leader in energy efficiency that it has in solar installations.

Minimal new construction can be expected for the foreseeable future, so much more can be gained in the short term by achieving even small increases in efficiency in existing buildings. Permitting commercial and industrial owners to recoup the SBC charges they pay into the system and invest those funds in retrofits, modernization and upgrades will achieve greater energy efficiency throughout the commercial and industrial sector; create good jobs right here in New Jersey; and support the realignment of state policies and programs consistent with the goals of the new State Strategic Plan and the Energy Master Plan. However, setting unrealistic standards to qualify for SBC credit, and continually allowing the program funds to be swept into the general fund, will defeat the purpose of the SBC Credit Program and diminish New Jersey's ability to achieve greater energy efficiency with our existing buildings.

Please feel free to contact me with any questions or concerns. We would be pleased to work with the BPU in establishing program parameters that will ensure that the greatest number of buildings can be made more energy efficient.

Sincerely,



Michael G. McGuinness  
Chief Executive Officer

December 5, 2012

VIA ELECTRONIC MAIL ONLY (publiccomments@njcleanenergy.com)

Michael Winka  
New Jersey Board of Public Utilities  
44 South Clinton Avenue  
9th Floor  
P.O. Box 350  
Trenton, NJ 08540-0350

Re: Comments on The SBC Credit Program (Straw Proposal #2)

Dear Mr. Winka:

The Port Authority of New York and New Jersey ("Port Authority") hereby submits comments regarding the Straw Proposal #2 for The SBC Credit Program ("Straw Proposal") presented for public comment by the New Jersey Board of Public Utilities ("BPU").

Under the Target Markets and Eligibility, the BPU's Straw Proposal states that:

- The submitted plans must include a package of energy efficiency ("EE") measures that achieve an Energy Reduction Target ("ERT") of at least 15% of total building source energy consumption, 100,000 kWh in annual electric savings, or 350,000 MMBtu of annual natural gas savings.

We are requesting clarification to the ERT in regards to the relationship between the 15% of total building source consumption and the 100,000 kWh / 350,000 MMBtu minimum requirement. Is the 100,000 kWh or 350,000 MMBtu a minimum metric to the 15% of total building consumption? Meaning does the plan require a 15% total building reduction with a minimum of 100,000 kWh or 350,000 MMBtu?

Under the Program Incentives, the BPU's Straw Proposal states that:

- The maximum credit per entity will be 50% of eligible project costs, with an annual cap of 50% of annual SBC contributions per utility account.

- The credit can be carried over for up to ten additional years if the initial credit exceeds 50% of the ratepayer's annual SBC contributions.
- Credits will be committed upon approval of the FEEP.

The Port Authority requests additional clarification of the ten-year carryover of the credit and the process by which the credits are secured. For the basis of our questions, we assume that an entity with a project that is eligible to receive a maximum incentive of \$2 million that has a maximum 50% SBC contribution of \$500,000 annually. Under this scenario:

- Is the carryover of the credit exhausted once the maximum credit of 50% of the eligible project cost is reached? In this case, at \$500,000 per year the credit would reach the \$2 million incentive cap in four years.
- Is the maximum incentive amount of \$2 million committed upon approval of the FEEP or just the first year maximum of \$500,000?
- If the program is no longer funded in Year 3 for example, will the entity lose the remaining carryover of the credit to satisfy the \$2 million incentive amount?

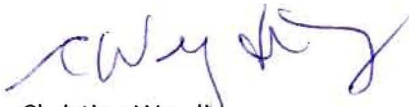
Next, also under Program Incentives, the BPU's Straw Proposal further states:

- Incentives are provided per utility account only. If the customer has multiple accounts associated with a facility, then separate applications must be submitted for the equipment tied to those respective accounts.

We would recommend for entities such as the Port Authority where there are multiple campus-style facilities that a "Master" application be considered for improved process efficiency and tracking. The Master application would encompass a per-building structure within each campus whereby the entity can then develop a Final Energy Efficiency Plan based on a campus rather than account-by-account.

Thank you for the opportunity to submit these comments on The SBC Credit Program.

Sincerely,



Christine Weydig  
Deputy Director for Energy, Office of Environmental and Energy Programs

**State of New Jersey  
Board of Public Utilities**

The SBC Credit Program	)	Docket No. EO12100940
	)	December 4, 2012

**Comverge, Inc.**  
**Written Comments on the Proposed SBC Credit Program #2 Straw Proposal**

In response to the Request for Written Comments issued November 29, 2012 in this docket, Comverge, Inc. (“Comverge”) respectfully submits these Comments to the November 29, 2012 Proposed SBC Credit Program #2 Straw Proposal.

As an initial matter, Comverge wishes to thank the New Jersey Board of Public Utilities for requesting comments on the SBC Credit Program Straw Proposal, as implementation of the Act can best be advanced by involving all stakeholders. Our comments in this docket reflects our desire to ensure that the Act is implemented in a manner consistent with the intent of the Act; allowing companies to take credits in the near term to install efficiency measures while reducing the costs of electric rates in State of New Jersey.

## **I. INTRODUCTION**

Comverge is the market leader in the development and deployment of load control and price responsive systems with over 6 million load control devices installed in direct load control programs, and is a leading Curtailment Services Provider (CSP) not only in PJM, but nationally. Internationally, Comverge is the market operator for ESKOM in South Africa. Comverge provides both hardware and software solutions that enable peak period reductions in electricity demand. Nationally, Comverge's proprietary technology and intellectual property comprising load control cycling strategies and processes alleviate transmission and distribution constraints and are often used as an alternative to peak-load generation resources to increase system capacity. Comverge products and services are fully integrated into utility resource plans, and through pay-for-performance turn-key services, such as its Virtual Peak Capacity™ (VPC™) program, Comverge takes the performance risk by delivering specific (MW) reductions for energy efficiency and peak-load reduction. Comverge provides intelligent management services whereby we make our utility and Commercial & Industrial partners operate more efficiently while utilizing energy more cost effectively.

Comverge has reviewed the Straw Plan and the revision published on November 29, 2012, and believes strongly that proposal as written is contrary to the act's intent and will not stimulate the purchase and installation of products or services that are intended for energy efficiency purposes as the Act-decreed program is designed. The Straw proposal mentions that ratepayers will be referred to other programs but seems to rely solely on the whole building methodology as detailed in the Pay for Performance Program to receive credits. Moreover the Whole Building methodology is burdensome and is overly complex and only benefits a small number of companies and Program Partner contractors, thereby making the access to the credit extremely unlikely. Threshold levels of 100,000 kWh in annual electric Savings, or 350,000

MMBtu of annual gas savings further limit early access to the funds, and is contrary to the Act, which allowed all C&I customers the ability to access credits. Furthermore we believe that as constructed, credits could be provided which could have the unintended consequences of having ratepayers pay for measures and services that do not advance the goal of lowering overall rates. As the *raison d'être* for the societal benefit charge is to provide funds to spur energy efficiency and reduce the cost of energy for the rate payers of New Jersey, Comverge believes that there are ways to spur investment by the business community that allows C&I customers to take credits early to fund projects that can benefit all members of the society. As such we recommend that the program be modified to allow C&I ratepayers greater flexibility in the measures that they can deploy and for which they can receive credit. For example, customers could seek to target energy reductions during system peak periods, which would benefit all the ratepayers in NJ as it would reduce the amount of energy purchased at peak, lowering the market price of this high-cost peak power.

Comverge notes that the Straw Proposal does implement the Act's limitation on allowing C&I customers to take only 50% of the previous year's costs, but notes that the act says they can receive up to 100% of in subsequent years as credits. Comverge believes that reducing the annual credit to 50% of annual contributions will result in the State foregoing opportunities to reduce costs for all NJ ratepayers that otherwise would have been captured through a more holistic cost benefit analysis methodology. Moreover viewing energy savings through an investment methodology, ensuring that we are fast tracking projects that can take advantage of other funding sources such as the PJM market, will spur more investment as desired by the Act. Furthermore since the Straw Proposal focuses on EE projects solely, we are missing an opportunity to target the peak while enabling the full implementation of the goals of the State Master Energy Plan in terms of increasing Demand Response and CHP projects. Demand Response Projects including

process loads, and other targeted projects which may receive additional funding from the PJM market as a result of recent regulatory changes, were not only neglected by the straw proposal, but were substantially weakened in the subsequent redraft.

Moreover we believe that the reduction of funding for projects is neither in the interest of the State's ratepayers nor the intent of the Act. While Comverge notes the importance of ensuring that projects do not receive more subsidies than necessary to spur investment, there may be times, particularly when funding measures will be able to remunerated by the PJM market, that a 100% credit of the SBC charge, as well other credits and grants will not have the State supplanting a business's investment, but rather have the State making a prudent business decision to further the goals of the Energy Master plan while providing the NJ community a real tangible benefit of reducing rates. Comverge knows that by directly targeting the reduction of rates by lowering peak energy consumption, the State will be able to reduce the need for purchasing power when prices are at their highest while allowing our businesses and generation companies to sell energy and benefit from the surrounding PJM market. For example in summer 2012, the volatility in the NY electricity market was high and the clearing prices for the electricity were also high. This was largely due to poor infrastructure and plant outages which lead to near-brown out conditions in NYC. If New Jersey had better invested in peak shaving measures previously, we could have taken advantage of this opportunity and become a net exporter during these times. In short the Credit and the Clean Energy Fund (CEF) should be looking for investments that allow our State to be a net exporter to the market during peak related events.

Therefore, Comverge suggests that the SBC Credit Program should be designed to allow the CEF to provide early incentives for all C&I ratepayers to further all the goals of the State Energy Master plan by allowing for a more flexible and expansive approach. By allowing



targeted measures that have as their aim the reduction of peak load while furthering controls and energy efficient measures that reduce rates, the State can gain employment and reduce high cost peak load in the short term, while reducing electric rates in the long term. Because the program funding is complex and the aim should be to spend all SBC funds to further the State's goals we agree that the Program Administrator needs to be responsible for managing the credit process.

## **II. DISCUSSION**

### **A. Focusing on a Whole Building approach creates an overly complex methodology which may contravene the intent of the SBC Credit Act**

As created, the CEF was to help ratepayers by providing a subsidy to help fund projects that would have a societal benefit, making businesses and residences more energy efficient while supporting the growth of green industry and also reducing costs. Comverge embraces the notion of the CEF, recognizing that the government can effectively marshal resources that foster the aims of the State by providing access to funds to ratepayers allowing them to install energy conservation measures that ratepayers otherwise would not have been able to afford in one year, while providing another entity the opportunity to gain such benefits in a subsequent time period. Proper program design fosters education, widespread awareness and participation, ensuring that the most appropriate and beneficial measures are adopted. Poor program design conversely can create barriers that minimize participation or have customers receive subsidies as rebates without a corresponding educational foundation that adequately explains why one product deserves State beneficence while another does not. In C&I programs poor design can have a small group of contractors or ratepayers receive entitlements, while the vast majority of small contractors remain ignorant of the benefit of energy efficient adoption and design for their customers. Creating overly complex programs makes participation unlikely or even impossible.

As in previous years the CEF funds have been collected but not be fully utilized, the Act endeavored to allow C&I customers, who traditionally were not receiving benefits proportionally to their contribution, the ability to invest in the near term while experiencing a corresponding reduction in rates in the future. The Straw Proposal recommends that the mechanism to receive the credit be the Pay for Performance program. Utilizing this year's program as a proxy to figure out how many entities would receive a credit, the *August 2012 NJ Clean Energy Program Monthly Report of Progress Toward Goals* on page 13, we see that year to date (YTD), the Pay for Performance program had 31 participants, and the goal for the year was 50. Meanwhile, 18 projects were completed and apparently, only three entities have completed the M&V requirement, which would enable a 25% final Pay for Performance payment. From a financial perspective the Pay for Performance budget calls for \$60.6 million to support the program, while the committed amount is \$31million but based on the current YTD expenditures of \$3.8 million and the approved M&V plans, actual distributions will be a fraction of the \$60.6 million and are likely less than \$10 Million dollars. Based on above information, with the addition of a Professional Engineer Certification, Site overview and Utility Overviews, it seems likely that very few entities will ever receive this credit. Hardly the boon to C&I investment that they legislature envisioned. The Program needs to be simplified.

**B. Replace the Whole Building with a targeted measure approach allowing not just large but rather all C&I customers the ability to take the credit to invest in EE measures.**

Comverge believes that the plan should allow for reductions in any electrical or gas source as envisioned by the State Energy Plan and as furthered in the straw proposal, but we note the reduction thresholds cited in the Straw proposal of 100,000 kWh in annual electric Savings, or 350,000 MMBtu of annual gas savings are considerable, creating another barrier for entities

seeking to gain a credit to fund an EE investment and unnecessarily favoring large C&I ratepayers. Comverge believes that there is much to gain by allowing for targeted approaches allowing the maximum number of contractors, engineers, ESCOs and consultants the ability to be trained and tasked to take incremental investments that can provide known and verifiable savings, which has worked in other jurisdictions. For example Comverge was the program contractor/administrator for the Demand Program in New York City on behalf of Con Edison which promoted targeted efficiencies based on actual reductions. Decisions were made by many business owners, renters, and landlords to reduce their energy consumption and associated costs. That program was also designed to target Peak Load in constrained areas. These programs were very popular and achieved wide market participation, both by large entities like New York's Time Square as well as small single proprietor shops. This approach should be reviewed against the restrictive whole-building approach described in the straw plan. The NY program resulted in the completion of over 6000 projects and quite significantly, resulted in a peak load reduction of 31 MW's utilizing just energy efficiency and control measures.

Of particular interests are measures that can enable program participants to provide NJ relief against the peak. For example building management measures including lighting controls, energy management systems, variable speed motors and drives, chillers, load shedding ballasts for lighting and thermal storage to name a few, can provide incremental efficiency gains along while dramatically lowering customers seasonal demand, and contributing to the greater good by lowering overall peak load. This obviously more inclusive methodology allows more C&I customers to partake in the credits as envisioned under the Act, inspiring entities to act now, stimulating the economy, providing jobs and training to contractors and increasing projects that will be undertaken, spurring economic growth for the State. If a customer can provide a peak

reduction along with their energy efficiency upgrade, they should be eligible to take the SBC credit.

Comverge appreciates that opening the door to all comers and actively seeking broader participation could have the CEF utilize all its funds in a given year. Comverge respectfully notes that the budget has never been fully utilized, and that such a problem would indeed, welcomed. Comverge believes that prioritization of projects can be made, like all businesses do by selecting projects for funding that are most closely aligned with the Master Plan.

### **C. Focus on reducing Peak Load**

Comverge agrees that reductions in electricity or natural gas as envisioned by the Straw Plan and the State Energy Plan is extremely important, but notes the goal must be subservient to providing funding for projects at the peak. A whole building methodology focused on just EE could support a nighttime process driven load entity to save 15% or more of their load, which can have the unintended consequence of lowering base load payments, without impacting the high cost peak. Reviewing PSE&G hourly LMP rates from July 2011 through July 2012 shows some interesting data. The lowest 2000 hours which is unsurprisingly mostly at night was \$21.39/mWh, while the top 200 hours were \$150.72/mWh, and the top 10 hours were a staggering \$320.95/mWh. In other words, assuming an average flat utility rate of \$.09/kWh, in this example, the fund is paying someone to remove low cost base load, rather than pursuing uneconomic peak load. On a weighted-basis, this would result in a slight uptick in the utility rate for everyone. This is equivalent to a homeowner placing insulation in the walls, before addressing the problem that they do not have any doors or windows.

It must be the policy of the Clean Energy program to pursue EE projects that lower the cost at the peak. Projects that can lower afternoon and early evening consumption especially in

the top hours of late May through August should be supported no matter how small as long as their avoided LMP costs is positive. For example building controls on hotels that sense occupancy in hotel rooms and shut off non utilized lights and HVAC systems may not lower load by 15%, but will lower peak usage. Such targeted use of funds will benefit all NJ ratepayers, as it will reduce rates.

**D. The Straw proposal needs to address the Energy Master Plans goals, particularly with Demand Response**

Comverge believes that rather than removing process loads from credit consideration, the Department should continue to provide leadership to help address capacity concerns at the very peak and to lower electrical costs for the ratepayers of New Jersey by supporting measures that support Demand Response (DR) as envisioned in the State's Master Energy Plan. It may make sense for the good of all rate payers for the State to take 100% investment in projects immediately that will allow Customers to take themselves partially or totally off the grid, at times of high power cost. The SBC credit could be a lump sum payment to alleviate grid constraints.

Furthermore properly developed DR projects have the added benefit of being able to receive some incremental funding directly from the PJM market for providing Energy and Ancillary services. For example C&I customers that can interrupt a process load, or have a generator that can be converted from diesel to Natural gas or Diesel Generators that can become environmentally acceptable by utilizing SCR scrubbers can become part of the market, thereby helping to reduce rates. Property owners, whose corporate tenants may pay the bills, may require funding at greater rate than their credit allowance. The State, through its Program Administrator should review these projects for reductions of peak costs, and evaluate appropriateness of pursuing a targeted energy efficiency, controls or energy management measure.

**E. Evaluation Criterion**

Comverge believes that the Department should support providing forward SBCs to customers as long as they are providing societal benefits in accordance to the State's Energy Master Plan. The desire should be to ensure that the SBC is utilized every year so that we reduce our rates by lowering our energy consumption. As businesses do not fund projects based on a first in first out methodology, the Market Manager should create a score card that evaluates projects for the ability to help the State to lower costs for all rate payers, and the ability of the project to meet the goals of the Initial 2011 Energy Master plan as outlined below:

1. Reduce Energy Consumption by 20% by 2020 including electric usage by 20K GWh and natural gas heating by 110 t Btus; (It should be noted that the BPU recently acknowledged a 17.5% reduction in energy down from the previous guideline of 20% by 2020;)
2. Produce 22.5% of electricity demand through renewable resources by 2020 and strive to achieve 30% renewable by 2020 including 3,000 MW of offshore wind, 1800 MW of solar, and 900 MW of biofuels/biomass;
3. 5,700 MW of demand response (DR) – 20% reduction; and
4. 1,500 MW of combined heat and power (CHP)
5. Achieve 1990 GHG emission levels by 2020; and
6. 80% reduction in 2006 GHG emission levels by 2050.

Peak Shaving, Demand Response, Demand limiting, direct load control and providing support to enable customers to participate in curtailable rate structures, ancillary and reserve services should all be encouraged and made available to C&I rate classifications. The Department will be providing incentives for continued infrastructure benefits that can be cost justified based on

current PJM market programs. In the event that funding tightens due to success of providing forward credits, projects can be ranked according to their societal benefit. C&I customers therefore would have the choice of waiting for their number to be called, or figuring out another methodology for pursuing their projects.

### **III. CONCLUSION**

Comverge appreciates that the Department issued the Straw Plan to solicit comment and focus discussion among the participants. Comverge looks forward to participating in this discussion to a conclusion that produces incentives that will help New Jersey achieve the goals set out by the Act and the State Energy Master Plan.

Respectfully submitted,

Comverge, Inc.

By 

Frank J. Evans  
Comverge, Inc  
25A Vreeland Road  
Florham Park, NJ 07932  
(973) 434-7144 (tele.)

[fevans@comverge.com](mailto:fevans@comverge.com)



December 5, 2012

**VIA ELECTRONIC MAIL**

Kristi Izzo  
Secretary  
New Jersey Board of Public Utilities  
44 South Clinton Avenue  
P.O. Box 350  
Trenton, New Jersey 08625

**RE: COMMENTS ON THE IMPLEMENTATION OF A2528/S2344 (N.J.S.A. 48:3-60.3) AND THE SBC CREDIT PROGRAM. DOCKET NO. EO12100940**

Dear Secretary Izzo:

On behalf of the nearly 70 member companies of the Chemistry Council of New Jersey (CCNJ), I thank you for the opportunity to comment on Board's implementation plan for A2528/S2344 and SBC Credit Program.

The business of chemistry in New Jersey contributes \$27 billion to the state's economy and directly employs more than 50,000 individuals. Since 2000, the high cost of energy in New Jersey has been a contributing factor to the loss of nearly 50,000 chemistry sector jobs to our neighboring states and across the world. In fact, New Jersey's electricity rates for the industrial sector ranks as the eighth highest in the nation, 59% above the national average. As such, New Jersey's energy policies, including clean energy, are critical to the ultimate success of the state's manufacturing sector and the economy as a whole.

The state's high electricity rates coupled with 21-27% in added surcharges on ratepayer bills, that include the Societal Benefits Charge (SBC) and sales & use tax, continue to put manufacturers at a competitive disadvantage.

For CCNJ members, energy can account for up to 85% of total production costs. As an advocate for the business of chemistry, the CCNJ is focused on doing what it can to advocate for lower energy rates for our member companies. For this reason, we fully support the spirit and intent of the SBC Credit for commercial and industrial users against the SBC payments to help pay for approved energy efficiency products or services.

As you well know, the CCNJ encourages the promotion of energy efficiency in New Jersey. We are an industry that has been regularly engaged in this practice with much success. Many of our member companies produce innovative, energy-saving materials for the construction market. The return on investment in this area is well-established. To put it simply, the state's investment in energy efficiency is a sensible use of limited program dollars. Particularly, funding models that recognize the tremendous contributions that large energy users have made in supporting clean energy programs are in the best interests of the state. For every dollar invested in an energy efficiency program, it returns \$11.00 in savings for the commercial and industrial payer. This is one of the many reasons why CCNJ supported the SBC Credit Program in the Legislature, and particularly the credit of 100% of annual SBC contributions.





In the Straw #2 proposal for the SBC Credit program, the BPU has lowered the credit from 100% of annual SBC contributions to 50%. This drastic reduction has come at a surprise to us, since the Clean Energy Program has had historic surpluses year after year while still fully funding programs that help the poor and elderly keep the lights on at home.

While CCNJ appreciates the BPU's concern about being able to fund social programs and the universal fund with the full implementation of this new SBC Credit Program, we feel that lowering the credit to 50% of the annual SBC contribution in a particular year would be too limiting. The lower credit, because of the limitations, may result in less industrial ratepayers taking advantage of it and thus resulting in the surpluses realized in past years. These surpluses have been redirected to the State's general operating fund. The CCNJ would not like to see a scenario where surplus funds are again re-appropriated. If the SBC funds are not fully utilized for their intended use and not fully utilized by the SBC Credit program, then such funds should be returned to ratepayers. Since history has taught us that this does not happen, then by increasing the credit to 100% or a percentage much higher than the proposed 50% the BPU would prevent such a surplus.

In the last 12 years about \$2.5 billion has been collected by the SBC. Currently, commercial and industrial ratepayers pay the majority of the SBC, approximately 65%. Despite paying a disproportionate amount of the SBC, industrial ratepayers have been limited in what programs they could benefit from that are funded by the SBC. This new SBC Credit Program will change this fact.

We certainly support the use of SBC funds to help the less fortunate keep their lights on and believe this can be done without increasing the SBC tax or limiting the SBC Program credit to 50%.

Again, I thank you for the opportunity to submit comments on this important issue and look forward to discussing further implementation of this program with the BPU if warranted.

Sincerely,

A handwritten signature in black ink that reads "Hal Bozarth". The signature is written in a cursive, flowing style.

Hal Bozarth  
Executive Director



Fox Rothschild LLP  
ATTORNEYS AT LAW

Mail: P.O. Box 5231, Princeton, NJ 08543-5231

Princeton Pike Corporate Center  
997 Lenox Drive, Building 3  
Lawrenceville, NJ 08648-2311  
Tel 609.896.3600 Fax 609.896.1469  
www.foxrothschild.com

Steven S. Goldenberg  
Direct Dial: (609) 896-4586  
Email Address: SGoldenberg@FoxRothschild.com

December 7, 2012

Kristi Izzo, Secretary  
Board of Public Utilities  
44 South Clinton Avenue  
P.O. Box 350  
Trenton, NJ 08625-0350

Re: Comments of the New Jersey Large Energy Users Coalition  
regarding the SBC Credit Program Straw Proposals

Dear Secretary Izzo:

Please accept this letter memorandum as the Comments of the New Jersey Large Energy Users Coalition ("NJLEUC") regarding staff's Societal Benefits Charge ("SBC") Credit Program Straw Proposal, Versions 1 and 2 ("Straw Proposal") that was issued in connection with the implementation of the new SBC Law, N.J.S.A. 48:3-60.3 ("SBC Law"). The SBC Law authorizes commercial and industrial ("C&I") customers to claim a credit against current SBC obligations based upon the customers' prior expenditures for energy efficiency products and services.

NJLEUC incorporates by reference our March, 2012 Comments responding to staff's questions regarding the implementation of the SBC credit, our redlined markup of the Version 1 proposal, and our testimony at the December 3, 2012 Legislative hearing.

Background.

Two primary goals of the Administration's Energy Master Plan ("EMP") are to "drive down the cost of energy for all customers" and "reward energy efficiency and energy conservation and reduce peak demand"; the latter goal providing the means to "lower energy bills and collective energy rates". (EMP, p.1). The EMP properly recognizes that "electric energy costs have a significant effect on the economic well being of commercial and industrial ("C&I") customers. High electricity prices discourage new manufacturing and commercial entry, and may

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cause electricity-intensive industries to relocate. Against the backdrop of the recent recession, businesses hesitate to expand in part due to high electricity prices.” (EMP at 14).

Since it was established in 1999, the SBC has come to represent a significant contributor to the State’s high electric and natural gas costs. The SBC has grown exponentially from a modest fee primarily used to fund the Universal Service Fund and certain social and remediation programs to also become the primary funding source for the expansive Office of Clean Energy (“OCE”) energy efficiency and renewables programs. Today, the SBC is a significant non-bypassable charge that is assessed on the monthly bills of both electric and natural gas customers. The Straw Proposal notes that the SBC is currently assessed to residential electric customers at the rate of \$0.667/kWh. Because the SBC is assessed on a usage basis, a number of large energy users, including NJLEUC members, have annual SBC obligations of a million dollars or more.

For many years, the State’s large businesses contributed significant SBC revenues to support OCE programs that in many instances were specifically designed to benefit other classes of customers and that provided no direct benefit to large businesses. During these years, large businesses typically paid SBC charges that greatly exceeded the benefits they received from participation in the OCE programs for which they were eligible. At the same time, customers that made only minimal SBC contributions received OCE program awards that significantly exceeded their SBC contributions, including significant six and seven figure awards under the Direct Install and Pay For Performance programs. These significant awards were made possible, in part, by the surplus funding contributed by large energy users.

Against this backdrop, the policies embodied in the EMP, the SBC Law, and new programs sponsored by the OCE that are specifically designed to benefit the State’s large businesses herald a welcome change in the State’s energy policies vis-a-vis the business community. Programs like the Large Energy Users Pilot Program and the EDA CHP Grant Program have provided significant opportunities for C&I customers to obtain various forms of financial assistance to support energy efficiency, combined heat and power (“CHP”) and other energy-related projects. The financial assistance made available by these programs has supported the efforts of participating businesses to become more energy efficient and reduce energy costs, thereby enhancing their competitiveness and fostering their ability to make capital investments that spur economic development and job creation. Moreover, as we continue to underscore, the EMP acknowledges the investments in C&I energy efficiency projects make sense, as these projects consistently provide “the biggest bang for the buck” in terms of the efficiencies achieved such projects.

The fact that the State’s energy policies now provide new or enhanced benefits to large users should therefore be viewed as a matter of fairness, representing long-overdue support for the business community, rather than as a reason for concern. The Board should not hesitate to encourage further energy efficiency investments by C&I customers. The SBC Law has the



potential to provide needed energy cost relief to eligible customers while fostering economic development and energy efficiency. It may be that future amendments to the SBC Law might be advisable to clarify and better define its terms and intended scope of relief. However, if properly implemented, the SBC Law could provide a workable mechanism to realize the EMP's energy cost reduction and enhanced energy efficiency goals without jeopardizing the continued funding of the OCE and societal welfare programs.

As will be addressed below, the SBC Law may be implemented using a "tiered" approach that would properly afford disparate credit treatment to C&I customers that are not similarly situated with each other under appropriate criteria established by the Board. This tiered approach would reduce the funding risk to the social welfare programs associated with significant C&I participation in the SBC credit program, while at the same time provide eligible C&I customers appropriate levels of individually tailored financial relief as contemplated by the SBC Law. The Legislature clearly viewed the SBC Law as a vehicle to provide additional financial support for the business community, and the Board should assure that the implementation of the law accomplishes the Legislature's purpose. For the reasons set forth below, we urge the Board to modify the Straw Proposal in the manner suggested.

I) A Tiered Approach To The SBC Credit May Be Adopted Consistent With EDECA, Which Does Not Require The SBC To Be Assessed Equally Against All Customers

The SBC was established pursuant to Section 12 of the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-60(a) ("EDECA"), which provides, in pertinent part, that "the board shall permit each electric public utility and gas public utility to recover some or all of the following costs through a societal benefits charge that shall be collected as a non-bypassable charge imposed on all electric public utility customers and gas public utilities as appropriate...". With the exception of the longstanding exemption provided to on-site generation facilities, N.J.S.A. 48:3-77, and the recent exemption provided for natural gas delivery service or a commodity that is used to generate electricity sold for re-sale, N.J.S.A. 48:3-60.1, the SBC has been recognized to be a non-bypassable charge that must be paid by all customers of the State's electric and natural gas utilities.

However, while EDECA makes clear that the SBC must be paid by all non-generation utility customers, it does not follow that all customers must pay the same SBC rate. The Board recently included a Finding in its August 18, 2011 Order in In the Matter of a Generic Proceeding to Consider Prospective Standards for Gas Distribution Utility Rate Discounts and Associated Contract Terms and Conditions, Docket Nos. GR10100761 and ER 10100762, that EDECA did not circumscribe the Board's authority to adjust the level of the SBC in appropriate circumstances, and to permit certain customers to pay discounted SBC charges:



The literal interpretation of the (Section 12) language states that the Board must determine the specific costs that are recoverable under the SBC for that electric or gas utility (“some or all of the following costs”), and secondly, must allow these charges to be recovered through a “non-bypassable charge”. Nothing in the statute directly addresses the allocation of these non-bypassable charges, and the fact that the SBC is a non-bypassable charge does not in and of itself circumscribe the authority of the Board to adjust the SBC in appropriate circumstances. All customers not otherwise exempt would be paying the SBC, just at different levels...

Therefore, the Board **HEREBY AFFIRMS** that the relevant statutes discussed herein provide the Board with sufficient authority to approve Discount Agreements whether because there is a threat of physical bypass or because other factors warrant this special treatment provided that the resulting rates are just and reasonable...

The Board **HEREBY AFFIRMS** that it has the necessary authority to approve SBC and RGGI discounts in appropriate circumstances.

(August 18, 2011 Order at pp. 23 and 24), (emphasis supplied).

Similarly, an earlier Opinion Letter issued by the Office of Legislative Services on May 27, 2010 at the request of Senator Bob Smith analyzed the language of Section 12 and its Legislative history and also concluded that utility customers may be charged the SBC at “dissimilar rates”:

Without any explicit limitation provided for in the statute, it appears that the board may allow dissimilar SBC rates for different customers. Although N.J.S.A. 48:3-60 does not establish a set of criteria for charging particular customers a given SBC rate, information obtained from the board indicates that the rate for a particular customer is tied to that customer’s energy usage. Moreover, the board has stated that it is not aware of any distinction between commercial and residential customers...

In summary, you are advised that EDECA specifically provides that “all” customers of an electric or gas public utility are subject to an SBC. However, it appears that the board is authorized to allow different energy customers to be charged an SBC at dissimilar rates...

Legal Opinion of Thomas R. Churchelow, Associate Counsel, New Jersey State Legislature, Office of Legislative Services, dated May 27, 2010, at pages 4 and 7 (attached), (emphasis supplied).



If the underlying SBC charge may appropriately be assessed at “dissimilar rates” to different customers, it follows that a credit based upon a “variable” SBC also need not be uniformly applied to all C&I customers, particularly those that are not similarly situated with each other. The SBC Law adopts this view with regard to the establishment of a credit for each C&I customer:

*c. The amount of the credit to be applied under this section in any calendar year against the societal benefits charge for each commercial and industrial customer that is subject to such charge pursuant to section 12 of P.L. 1999, c.23 (C.48:3-60) shall be determined by the board.*

*d. The maximum amount of the credit to be applied under this section against the societal benefits charge imposed pursuant to section 12 of P.L. 1999, c.23 (C.48:3-60) shall not exceed 100 percent of the commercial or industrial ratepayer’s liability for such charge that would otherwise be due in each calendar year. (emphasis supplied).*

Accordingly, there should be no question that EDECA, the SBC Law and Board precedent permit the Board to award different SBC credits to C&I customers that are not similarly situated with each other. The highlighted references above make clear that the SBC Law contemplates that credits against the SBC are to be determined for each C&I ratepayer on a case-by-case basis,

The Board may appropriately distinguish between C&I customers on the basis of factors it deems relevant including, among others, the size of the customer’s contribution to the SBC, the customer’s total electric and/or natural gas usage, the nature of the customer’s business and facilities, the benefits received by the customer from participation in other OCE programs, the customer’s investments in energy efficiency measures and reductions in energy usage achieved, and the customer’s ability to aggregate utility accounts to facilitate bookkeeping and maximize the benefit of the credit. The markup of the first SBC Straw that was previously submitted by NJLEUC demonstrates why such factors are relevant and how individual SBC credits may appropriately be determined based upon these distinctions.

The establishment of “dissimilar” SBC credits in this manner would enable the Board to adopt a “tiered” approach that would reduce the financial risks associated with significant SBC credit program participation and give the Board additional control over size and number of credits awarded, thereby assuring the availability of sufficient funding for annual OCE program budgets and the Board’s social welfare programs. On this latter point, NJLEUC reiterates that its members have not sought, and do not seek, to avoid their obligations to support the Board’s low income programs, consistent with existing law. We also observe, however, that the purpose of the SBC Law—e.g. to provide relief to C&I customers from the high cost of energy—is an



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appropriate one, and that the relief provided is needed to support the viability of the State's business community, particularly in this challenging economic environment.

II). The Proposed SBC Credit Must Not Be The Exclusive Incentive Made Available To C&I Customers.

In its current form, the Straw Proposal would preclude C&I customers that receive the maximum SBC credit available to the customer from receiving any other incentives that originate from CEP funds, other than loan-based funds. Moreover, in any year in which a customer receives a partial SBC credit, the amount of other CEP incentives available to the customer pursuant to other CEP programs would be reduced by the amount of the credit, so that the aggregate amount of the credit and other CEP incentives would not exceed 50% of the customer's SBC contribution for the calendar year. NJLEUC submits that this limitation is an unnecessary and unwarranted restriction that is not mandated by, and is inconsistent with, the SBC Law as well as the Board's approach to all other CEP programs.

As noted in the Assembly Telecommunications and Utilities Committee Statement to A2528, the bill that ultimately became the SBC Law, the credit to be applied against the liability of a business for payment of the SBC is "intended to encourage businesses to purchase and install energy savings products and services by allowing the businesses to claim a credit against the societal benefits charge". Similarly, the Senate Environment and Energy Committee Statement indicated that the bill was intended to establish a "credit to be applied against the liability of a commercial or industrial ratepayer for payment of the societal benefits charge". The only limitation expressly placed upon the credit was that the credit "would be equal to one-half of the costs incurred by a commercial or industrial ratepayer for the purchase and installation of certain energy efficiency products or services during the preceding calendar year, provided that the amount of the credit to be allowed would be determined by the board and would not exceed a business' total liability for the societal benefits charge in a calendar year".

No further limitation on the nature or use of the credit is set forth in the SBC Law or the Committee Statements and, in accordance with the rules of statutory construction, none should be implied. While the SBC Law provides that "the amount of the credit to be allowed under this section...shall be determined by the board", there is no indication that the credit should otherwise be limited in any fashion or that a C&I customer would have to forego other available sources of CEP financial support to avail itself of the SBC credit. Rather, the expressed intent of the law is to encourage businesses to become more energy efficient, to enable the facilities to consume less energy and ultimately decrease the customers' SBC obligation. This approach is completely consistent with the EMP's efforts to establish new ways to provide capital for energy efficiency programs that can eliminate the need for cost incurrence through the SBC. (EMP, p.119).

The SBC credit was clearly intended by the Legislature to benefit the business community by providing an additional financial incentive for energy efficiency projects, not



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merely an alternative, limited funding option to be made available on an “either/or” basis. Given the Legislative intent regarding the SBC Law and the clearly articulated energy efficiency and other goals of the EMP, there is no legal or policy basis to limit the funding available to C&I customers to merely an SBC credit.

The Legislature’s intended approach to the SBC credit is consistent with the OCE’s overall approach to all OCE-sponsored programs, which is to provide program-specific incentives in amounts deemed sufficient to encourage customers to pursue energy efficiency projects. None of the OCE programs tie—let alone cap—a participating customer’s incentives to the amount that the customer contributes to the SBC. In fact, it is typically the case that customers receive program incentives, sometimes from multiple programs, that far exceed the customers’ SBC contributions. The Smart Start Buildings and Pay For Performance programs are typical of current CEP programs that award significant incentives to customers—up to 70% of project costs for 400kW customers-- without any consideration given to the customer’s SBC contribution. The programs are designed in this manner because it was considered necessary to “achieve market transformation” (e.g. to make energy efficiency a standard business practice) and to stimulate C&I investment in energy efficiency. Thus, the OCE and market managers have routinely permitted C&I customers to “pancake” the benefits available under multiple programs to enhance the quality and breadth of their energy projects and to increase the likelihood that such projects will be pursued.

As a further example, CHP development has historically been hampered by high capital costs and burdensome permitting requirements. In the post Hurricane Sandy environment, the need for increased CHP development for reliability purposes has never been more apparent. Several programs have been developed to provide the multiple financial incentives that will be required to successfully spur development of CHP projects. These programs include the OCE CHP program (providing up to a \$1 million grant), utility programs such as PSE&G’s Carbon Abatement Program (providing up to a \$1 million matching grant to hospitals), the Pay for Performance Program (providing up to an additional \$1.25 million grant to CHP or fuel cell projects), and the EDA Large CHP Solicitation (providing \$1 million+ grants for eligible CHP projects). CHP incentives were also made available pursuant to the Large Energy Users Pilot Program, which would provide up to a \$1 million grant to an eligible entity.

To the extent that the SBC credit would provide the last needed layer of financing to enable a CHP or other worthy project to proceed, use of the credit should be encouraged. The insufficiency of prior incentives to stimulate CHP projects—now desperately needed in the wake of Hurricane Sandy--represents a significant lost opportunity to the State, given the many benefits that are derived from CHP plants, including reliability, reduced energy costs and job creation. In short, CHP is a good investment and significant State incentives are required if such plants are to be developed. If an approach were to be adopted by the Board that prohibited the pancaking of program benefits, the resulting incentive would not be sufficient to foster cogeneration development. The same approach should be used for the SBC credit in order to assure that the EMP’s energy efficiency and other goals are achieved.





As a practical matter, the benefits payable from the SBC credit program on a stand-alone basis would be modest at best, and pale in comparison with other OCE programs. Under the Straw Proposal, a business that has an SBC exposure of \$500,000 for the current year and that invested \$250,000 in energy efficiency upgrades in the prior year would only be eligible to receive a \$125,000 credit against its current SBC obligation. Even if the customer made a million dollar investment in the prior year, its credit could not exceed 50% of its current SBC exposure, so that the maximum credit allowed for the current year would be \$250,000. The same customer, if eligible, could receive *significantly* more incentives under other OCE programs, incentives that would be provided on an equal basis with other C&I customers that pay far less in SBC charges. Even with the 10 year carry forward provision, a rational customer would never opt to use the SBC credit in an “either/or” situation, as considerably more incentives would likely be available to the customer each year under other OCE programs. It is unlikely that this situation—in which a rational customer would likely choose not to pursue the SBC credit—is what the Legislature had in mind when it enacted the SBC Law.

### III). The SBC Credit Program Should Incorporate Light-Handed Regulation And Eliminate Burdensome Guidelines And Procedures

In its current form, the Straw Proposal contains detailed provisions regarding program eligibility, application requirements, measurement and verification protocols and lengthy award timelines. Certain of these requirements present barriers to entry into the program that could render certain customers ineligible to participate in the program or subject eligible companies to needless regulation that will deter customers from pursuing worthy energy efficiency projects. It is important that the Straw Proposal not impose any unnecessary regulatory barriers that could deter C&I participation in the energy efficiency initiatives that are a cornerstone of the EMP.

For example, there continues to be a disconnect between the Straw Proposal and the requirements and circumstances of the businesses that would participate in the program. While the recent amendments to the eligibility criteria resolve some issues, there remain requirements that are problematic or unsuitable for particular types of customers. We urge the Board to adopt programs that are similar to the approach of the current Custom Measures program and, more generally, simplify the application and approval processes and make them more responsive to the investment timelines and parameters adopted by the managements of participating companies for similar investments. The approach should also follow the more user-friendly philosophy of the Large Energy Users Pilot Program—which we urge should be reinstated and made permanent—to avoid excessive and unnecessary regulatory hurdles, with relaxed metering and verification protocols.

Further, the payment delay adopted by the Straw Proposal is excessive and out of synch with C&I budgeting and implementation cycles. The delay of the issuance of credits to the end of the following twelve month billing cycle is inordinate and is inconsistent with the manner in which managements budget for capital projects. NJLEUC urges that credits be issued upon project completion. NJLEUC also urges that the metering and verification, payment, estimating,



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financing, auditing and other criteria should be consistent with the criteria and guidelines utilized by businesses for their own internal corporate investment decisions and establishment of incremental energy savings goals.

We urge that the monitoring and verification and cost-benefit protocols, including payback period, adopted by company managements are reasonable and sufficient to protect ratepayers and will lead to the implementation of energy efficiency measures that are fairly calculated to produce the energy savings and other benefits required to satisfy program guidelines and achieve the EMP goals.

NJLEUC appreciates the opportunity to provide these Comments and will continue to participate with the Board and staff in developing appropriate standards for the implementation of the SBC credit program.

Respectfully submitted,  
New Jersey Large Energy Users Coalition

By: \_\_\_\_\_

Steven S. Goldenberg  
Fox Rothschild LLP  
997 Lenox Drive, Building 3  
Lawrenceville, NJ 08648  
(609) 896-3600  
[sgoldenberg@foxrothschild.com](mailto:sgoldenberg@foxrothschild.com)

and

Paul F. Forshay  
Sutherland Asbill & Brennan LLP  
1275 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004  
(202) 383-0100  
[Paul.Forshay@sutherland.com](mailto:Paul.Forshay@sutherland.com)

cc: President Robert Hanna  
Commissioner Jeanne Fox  
Commissioner Joseph Fiordaliso  
Commissioner Nicholas Asselta  
Commissioner Mary-Anna Holden  
MaryBeth Brenner  
Tricia Caliguire  
Elizabeth Ackerman  
Michael Winka  
John Garvey

ASSEMBLYMAN  
JOSEPH J. ROBERTS, JR.  
*Chairman*

SENATOR  
THOMAS H. KEAN, JR.  
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SENATE

ANDREW R. CIESLA  
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ROBERT M. GORDON  
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JOSEPH M. KYRILOS, JR.  
LORETTA WEINBERG

GENERAL ASSEMBLY

PETER J. BIONDI  
JON M. BRAMNICK  
JOHN J. BURZICHELLI  
ALEX DECROCE  
ALISON LITTELL MCHOSE  
JOAN M. QUIGLEY  
BONNIE WATSON COLEMAN



## New Jersey State Legislature

OFFICE OF LEGISLATIVE SERVICES  
STATE HOUSE ANNEX  
PO BOX 068  
TRENTON NJ 08625-0068

ALBERT PORRONI  
*Executive Director*  
(609) 292-4625

LEGISLATIVE COUNSEL

ALBERT PORRONI  
*Legislative Counsel*

MARCI LEVIN HOCHMAN  
*First Assistant Legislative Counsel*  
*Ethics Counsel*

JAMES G. WILLSON  
*Assistant Legislative Counsel*

GABRIEL R. NEVILLE  
*Senior Legislative Counsel*

May 27, 2010

Honorable Bob Smith  
216 Stelton Road, Suite E-5  
Piscataway, New Jersey 08854

Dear Senator Smith:

You have requested, through Kevill Duhon of the Senate Majority Office, a legal opinion as to whether the Board of Public Utilities ("board") is authorized under the Electric Discount and Energy Competition Act of 1999 ("EDECA"), N.J.S.A. 48:3-49 et al., to allow different energy customers to be charged a "societal benefits charge" ("SBC") at dissimilar rates, or pay no SBC, and whether EDECA "grandfathers" contracts entered into prior to the enactment of EDECA between Public Service Electric and Gas ("PSE&G") and its affiliate, PSEG Power, LLC ("PSEG Power") so that PSEG Power would not be subject to an SBC.

You are advised, for the reasons stated below, that EDECA provides that "all" customers of an electric or gas public utility are subject to an SBC. However, it appears that the board is authorized to allow different energy customers to be charged an SBC at dissimilar rates. Also, you are advised, for the reasons stated below, that no provision of EDECA "grandfathers" contracts existing at the time of its passage and it does not appear that a contract, existing at the time of EDECA's enactment, could provide that a party not be subject to an SBC. Any contract entered into subsequent to EDECA's passage, including the renewal of a pre-existing contract, would be subject to its provisions.

### The SBC shall be Imposed on All Electric Utility and Gas Utility Customers

Looking to the principles of statutory construction, words and phrases usually are given their generally accepted meaning, according to the approved usage of the language. N.J.S.A. 1:1-1. "Well-established principles of statutory construction direct us [the court]

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to look first to the statute's plain language to derive its meaning, absent any specific indication of legislative intent to the contrary." Town of Morristown v. Woman's Club, 124 N.J. 605, 610 (1991) citing Kimmelman v. Henkels & McCoy, Inc., 108 N.J. 123, 128 (1987) and Mortimer v. Board of Review, 99 N.J. 393, 398 (1985). "The clearest indication of a statute's meaning is its plain language." New Jersey State League of Municipalities v. Department of Community Affairs, 310 N.J. Super. 224, 234 (App. Div. 1998) aff'd, 158 N.J. 211 (1999) citing National Waste Recycling, Inc. v. Middlesex County Improvement Authority and Waste Management of New Jersey, 150 N.J. 209, 223 (1997).

The SBC is defined, in EDECA, as a charge "...imposed by an electric public utility, at a level determined by the board, pursuant to, and in accordance with [N.J.S.A. 48:3-60]." N.J.S.A. 48:3-51. Subsection a. of N.J.S.A. 48:3-60 provides, in pertinent part, that

...the board shall permit each electric public utility and gas public utility to recover some or all of the following costs through a societal benefits charge that shall be collected as a non-bypassable charge imposed on all electric public utility customers and gas public utility customers, as appropriate...

Looking to the plain meaning of the statute, we conclude that "all" customers of a utility with an SBC included in its rates are subject to an SBC. A "customer" is defined in EDECA as "...any person that is an end user and is connected to any part of the transmission and distribution system within an electric public utility's service territory or a gas public utility's service territory within this State [New Jersey]..." N.J.S.A. 48:3-51. This definition does not categorize customers or limit the application of the N.J.S.A. 48:3-60 to any particular customer type, size, or classification. Thus, we read the statute as applying to every individual or entity receiving electric or gas service from a utility within its service territory in New Jersey.

The SBC statute provides that its provisions are implemented "as appropriate." It may be argued that "as appropriate" modifies the requirement that an SBC be collected from all customers. Such an argument may lead to the assertion that the board has discretion as to whom to apply an SBC. If the statute provided that the SBC should be "imposed on customers ... as appropriate," the argument that the board may impose the charge on certain customers, at its discretion, may be a valid one. However, we believe the correct construction of this provision is that the term "as appropriate" does not alter the plain meaning of the directive that a charge be "imposed on all customers." The statute

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provides that the SBC, as it is collected by a utility, be imposed on "all" customers and that the board shall permit this, as appropriate.

#### May Customers be Charged an SBC at Dissimilar Rates?

The question of whether different customers may be subject to an SBC at dissimilar rates implicates questions of statutory interpretation and executive agency decision-making. When considering the meaning of a statutory provision, absent any legislative intent to the contrary, courts must give effect to the language of the provision. See In re Public Serv. Elec. & Gas Company's Rate Unbundling, 167 N.J. 377, 384 citing Phillips v. Curiale, 128 N.J. 608, 617-18 (1992) and Renz v. Penn Cent. Co., 87 N.J. 437, 440 (1981). When a statute is ambiguous, however, "[w]e [the court] are . . . warranted in placing considerable weight on the construction of the statute . . . by the administrative agency charged by the statute with the responsibility of making it work." In re Pub. Serv. & Gas Co., 167 N.J. at 384 citing The Passaic Daily News v. Blair, 63 N.J. 474, 484 (1973). Because "[t]he grant of authority to an administrative agency is to be liberally construed to enable the agency to accomplish the Legislature's goals, . . . we defer to [t]he agency's interpretation . . . provided it is not plainly unreasonable." In re Public Serv. & Gas Co. 167 N.J. at 384 citing Gloucester Cty. Welfare Bd. v. State Civil Serv. Comm'n, 93 N.J. 384, 390 (1984) and Merin v. Maglaki, 126 N.J. 430, 437 (1992) (internal quotations omitted). Likewise, when reviewing an administrative agency's factual findings, our function is not to substitute our judgment for that of the agency, particularly when that judgment reflects agency expertise." In re Public Serv. & Gas Co., 167 N.J. at 384 citing Flanagan v. Department of Civil Serv., 29 N.J. 1, 12 (1959); See Close v. Kordulak Bros., 44 N.J. 589, 599 (1965) (stating that courts should afford due deference "to the agency's expertise where such expertise is a pertinent factor").

As set forth above, the SBC is imposed "at a level determined by the board." N.J.S.A. 48:3-51. The statute provides no formula or calculation to aid the board in making the determination of how much a particular customer, or customer class, must pay under the SBC requirement. If a statute is clear and unambiguous, a court will not look further because a clear and unambiguous statute is not open to construction or interpretation. State v. Butler, 89 N.J. 220, 226 (1982); Watt v. Mayor and Council of Borough of Franklin, 21 N.J. 274, 277 (1956). To determine if a contrary legislative intent exists, a court may examine if a provision's plain meaning supports a result that is consistent with the overall statutory scheme and contextual setting. Chase Manhattan Bank v. Josephson, 135 N.J. 209, 225 (1994); State v. Brown, 22 N.J. 405, 415 (1956). "The general intent of the statute controls the interpretation of its parts." New Jersey State League of Municipalities v. Department of Community Affairs, 310 N.J. Super. 234

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citing State v. Zemple, 135 N.J. 406, 422 (1994). "All rules of statutory construction are subordinate to the goal of effectuating the legislative plan as it may be gathered from the enactment when read in full light of its history, purpose, and context." Chicago Title Insurance v. Bryan, 388 N.J. Super. 550, 557 (App. Div. 2006) certif. den. 190 N.J. 254 (internal quotations omitted). Therefore, in responding to your query, we must be mindful of the purposes and powers of the Board of Public Utilities.

Prior to the enactment of EDECA, the board had extensive jurisdiction over the rates and services of telephone, electric, gas, water, and wastewater companies. See N.J.S.A. 48:2-43. Pursuant to this statutory grant of power, as amended by EDECA, the board continues to propose regulations which, if adopted, become part of the New Jersey Administrative Code. The regulations issued by the board pursuant to its rule-making authority become binding on the utilities in the State when they are adopted.

"It is not the function of a court to presume that the Legislature intended something other than that expressed by way of the plain language." State of New Jersey v. McKeon, 385 N.J. Super. 559, 568 (App. Div. 2006) citing O'Connell v. State, 171 N.J. 484, 488 (2002). The Legislature's sweeping grant of power to the board is intended to delegate the widest range of regulatory power over the utilities and "...extends beyond the powers expressly granted by statute to include incidental powers that the agency needs to fulfill its statutory mandate." Board of Public Utilities v. Valley Road Sewerage Co., 154 N.J. 224, 235 (1998); Bergen County v. Board of Public Utility Commissioners, 137 N.J. Super. 448 (App. Div. 1975). Without any explicit limitation provided for in the statute, it appears that the board may allow dissimilar SBC rates for different customers.<sup>1</sup> Although N.J.S.A. 40:3-60 does not establish a set of criteria for charging particular customers a given SBC rate, information obtained from the board indicates that the rate for a particular customer is tied to that customer's energy usage.<sup>2</sup> Moreover, the board has stated that it is not aware of any distinction between commercial and residential customers.

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<sup>1</sup> While review of board regulations and orders did not reveal a rationale concerning application of the SBC, the board has indicated that a formula for determining the SBC rates for customers of a given utility exists. First, the board sets the budget for a particular fund. The applicable SBC rate is then calculated by the utilities based upon a number of factors including (1) the utilities' mandate to contribute to a particular fund, (2) sales volume of energy, (3) weather as it effects utility service, and (4) the price of the applicable energy producing commodities.

<sup>2</sup> According to the board, each customer pays a proportional SBC rate for every kilowatt or therm consumed by the particular customer.

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### Pre-EDECA Contract Issue

No provision exists in EDECA which explicitly "grandfathers" any contract between public utilities including, but not limited to, any contract existing between PSE&G and PSEG Power at the time of its passage. It appears that no contract, existing at the time of EDECA's enactment, could provide that a party would be exempt from paying an SBC. While there is no provision in EDECA which explicitly provides its provisions should apply to the terms of contracts existing at the time of its passage, "[g]enerally, legislation operates prospectively, unless by its terms the legislation clearly manifests that it is to be applied retroactively." South Hamilton Associates v. Mayor & Council of Morristown, 99 N.J. 437, 444 (1985) [citations omitted].

EDECA's effective date provision does require the board, retroactively to April 1, 1997, approximately two years prior to its effective date, to "...take such other anticipatory regulatory action as it deems necessary to fulfill the purposes or requirements [of EDECA]." Section 66 of P.L.1999, c.23. But there is no provision of EDECA which "clearly manifests" that it should be applied retroactively with regard to the terms of any particular contract or type of contract. Further, any contract entered into subsequent to EDECA's passage, including the renewal of a pre-existing contract, would be subject to its provisions. Nonetheless, EDECA might affect the terms of any existing contract via a regulatory action of the board as cited above, but any such regulation might be subject to challenge as a contract impairment.

Although you inquired as to the grandfathering of existing contracts, it is instructive to examine generally the impairment of contract issue. Article I, Section 10, Clause 1 of the United States Constitution states in pertinent part that "[n]o State shall . . . pass any . . . law impairing the obligation of contracts . . . ." Article IV, Section VII, paragraph 3 of the New Jersey Constitution contains a similar provision providing that "[t]he Legislature shall not pass any . . . law impairing the obligation of contracts, or depriving a party of any remedy for enforcing a contract which existed when the contract was made." These provisions "are construed and applied in the same way to provide the same protection." Matter of Fiorillo Brothers of N.J., 242 N.J. Super. 667, 680 (App. Div. 1990), cert. den. 122 N.J. 363 (1990); see also, Fidelity Union Trust Co. v. N.J. Highway Authority, 85 N.J. 277, 299-300 (1981), app. dism., 454 U.S. 804 (1981).

The United States Supreme Court has developed a three-prong test to determine whether a state law or regulation is constitutionally valid under the contract clause. The first prong seeks to determine if the state law or regulation has operated as a substantial impairment of a contractual relationship. If a court finds a substantial impairment, it will

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then apply the second prong to determine if the state has a significant and legitimate public purpose for the law or regulation. If the court finds that there is a legitimate public purpose, it will apply the third prong of the test to determine if the state's adjustment of the rights and responsibilities of the contracting parties is based upon reasonable conditions and is necessary to achieve the public purpose of the law or regulation. The level of scrutiny employed by a court in considering the legislative purpose and judgment will be determined by whether the state is a party to the impaired contract. Energy Reserves Group v. Kan. Power & Light Co., 459 U.S. 400, 410-413 (1983).

Even if a court were to find that the SBC substantially impairs a contractual relationship, it is likely the court would find the State has a significant and legitimate public purpose for the SBC. The SBC allows electric and gas public utilities to recover costs from customers for nuclear plant decommissioning, renewable energy and energy efficiency programs, remediation of manufactured gas plant sites, consumer education, and social programs to help the elderly, disabled and those suffering economic hardships. Thus, it is likely that a court would find the State's requirement concerning the imposition of an SBC serves a legitimate public purpose. Further, the statute contains no provision pertaining to the rights and responsibilities of a contracting party.

Courts are less likely to find a substantial impairment in a heavily regulated industry, such as the gas utility industry, because the reasonable expectations of contracting parties are affected if the industry in which a complaining party has entered into has been subject to past regulation. "When he purchased into an enterprise already regulated in the particular to which he now objects, he purchased subject to further legislation upon the same topic." Energy Reserves Group, 459 U.S. at 411 citing Veix v. Sixth Ward Bldg. & Loan Ass'n, 310 U.S. 32, 38 (1940). Although heavy regulation of an industry may affect the reasonable expectations of the parties to a contract, it does not necessarily eliminate the possibility of substantial contract impairment.

It is unclear, absent review of the specific terms of a particular contract, whether EDECA may affect the terms of any particular contract and whether contracting parties might have been operating with reduced expectations for the legal validity of certain contractual terms. Nevertheless, we cannot conceive that the terms of any contract existing upon the enactment of EDECA could relieve a party from its statutory obligation to pay an SBC. It is possible that a public utility might contract to absorb any costs that might be legislatively imposed upon a customer who is a party to the contract, but such a contract would not prevent the board from providing that an SBC should be imposed on that customer. Finally, EDECA would certainly control the terms of any contract entered into subsequent to its passage, including the renewal of a pre-existing contract.



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In summary, you are advised that EDECA specifically provides that "all" customers of an electric or gas public utility are subject to an SBC. However, it appears that the board is authorized to allow different energy customers to be charged an SBC at dissimilar rates. Also, you are advised that no provision of EDECA "grandfathers" contracts existing at the time of its passage and it does not appear that a contract, existing at the time of EDECA's enactment, could provide that a party not be subject to an SBC.

Very truly yours,

Albert Porroni  
Legislative Counsel

By:   
\_\_\_\_\_  
Thomas R. Churchelow  
Associate Counsel

AP:C



State of New Jersey  
DIVISION OF RATE COUNSEL  
31 CLINTON STREET, 11<sup>TH</sup> FL  
P. O. BOX 46005  
NEWARK, NEW JERSEY 07101

CHRIS CHRISTIE  
*Governor*

KIM GUADAGNO  
*Lt. Governor*

STEFANIE A. BRAND  
*Director*

December 7, 2012

**Via Overnight Delivery and Electronic Mail**

Honorable Kristi Izzo, Secretary  
New Jersey Board of Public Utilities  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
P.O. Box 350  
Trenton, New Jersey 08625-0350

**Re: In the Matter of the Implementation of A2528/S2344 N.J.S.A. 48:3-60.3 and  
the SBC Credit Program-  
BPU Docket No.: EO12100940**

Dear Secretary Izzo:

Enclosed please find an original and ten copies of comments submitted on behalf of the New Jersey Division of Rate Counsel in connection with the above-captioned matter. Copies of the comments are being provided to the Board by electronic mail and overnight delivery. Hard copies will be provided upon request to our office.

We are enclosing one additional copy of the comments. Please stamp and date the extra copy as "filed" and return it in our self-addressed stamped envelope.

Honorable Kristi Izzo, Secretary  
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Thank you for your consideration and assistance.

Respectfully submitted,

STEFANIE A. BRAND  
Director, Division of Rate Counsel

By:

  
Kurt S. Lewandowski, Esq.  
Assistant Deputy Rate Counsel

c: [publiccomments@njcleanenergy.com](mailto:publiccomments@njcleanenergy.com)  
[OCE@bpu.state.nj.us](mailto:OCE@bpu.state.nj.us)  
Michael Winka, BPU  
Mona Mosser, BPU  
Benjamin Hunter, BPU  
Anne Marie McShea, BPU  
John Garvey, BPU  
Rachel Boylan, Esq, BPU  
Marissa Slaten, DAG

**In the Matter of the Implementation of A2528/S2344 (N.J.S.A. 48:3-60.3)  
and the SBC Credit Program - A2528/S2344  
Docket No. EO12100940**

**Comments of the New Jersey  
Division of Rate Counsel**

**December 7, 2012**

**Introduction**

The Division of Rate Counsel (“Rate Counsel”) would like to thank the Board of Public Utilities (“Board”) for the opportunity to present comments on the Straw Proposals (“Straw Proposals”) circulated by the Office of Clean Energy (“OCE”) to stakeholders for comment on October 4, 2012 (“Straw 1”) and November 29, 2012 (“Straw 2”). The Straw Proposals contemplate the implementation of a SBC credit program (“SBC Credit Program”, “the Program”) pursuant to the enactment of A2528/S2344 (P.L. 2011, c. 216; “the Legislation” “the Act”, “SBC Credit Act”), now codified as N.J.S.A. 48:3-60.3, which would allow Commercial and Industrial (“C&I”) ratepayers to recover a portion of their costs incurred for energy efficiency (“EE”) projects through credits against their payments due for the Societal Benefits Charge (“SBC”).

A variety of economic and equity issues arise from the design, administration, and funding of a SBC Credit Program consistent with the Act. The SBC Credit Program could affect a wide range of stakeholders, and the level of impacts on other SBC-funded programs is potentially significant and disruptive, as discussed further in the remainder of these comments.

Rate Counsel’s comments focus on the OCE’s most recent Straw Proposal, Straw 2, and not on the portions of Straw 1 that have been modified. Rate Counsel reserves its right to submit additional comments should the Board contemplate items from the earlier Straw proposal.

## I. RULEMAKING

The Straw Proposals bear the characteristics of an administrative agency action that, in order to be valid, must be promulgated in accordance with the rulemaking procedures of the Administrative Procedure Act. See Metromedia, Inc. v. Director, Div. of Taxation, 97 N.J. 313, 328, 331-32 (1984). Among other characteristics, the revised Straw Proposal:

- (1) is intended to have wide coverage encompassing a large segment, i.e. all C&I ratepayers;
- (2) is intended to be applied generally and uniformly to all C&I ratepayers;
- (3) is designed to operate only prospectively;
- (4) prescribes a legal standard or directive that is not otherwise expressly provided by or clearly and obviously inferable from the enabling SBC Credit Program statute;
- (5) reflects a Board policy that was not previously expressed in any official and explicit agency determination, adjudication or rule; and
- (6) reflects a decision on administrative regulatory policy interpreting the SBC Credit Program Act for the first time.

For this reason Rate Counsel maintains that the Board must initiate a rulemaking proceeding to consider the full breadth of issues associated with the SBC Credit Program and to develop a set of minimum filing requirements for SBC Credit Program applicants. Rate Counsel suggests that only once the costs and other issues associated with alternative mechanisms for providing credits have been presented and considered in the context of a formal rulemaking proceeding should the OCE and the utilities make plans to implement changes to their computer/billing systems, consistent with Rate Counsel's comments in section V.A. below.

## II. SBC CREDIT PROGRAM BUDGET LIMIT

An important consideration for the creation of the Credit Program is the extent to which it would reduce funding for other programs funded by the SBC. The SBC-funded programs under the Electric Discount and Energy Competition Act (“EDECA”), N.J.S.A. 48:3-49 to -98.1, include the Clean Energy Program (“CEP”), social programs, nuclear plant decommissioning, gas plant remediation, public education activities, and the Universal Service Fund. See N.J.S.A. 48:3-60(a)(3), (1), (2), (4) and (5) and N.J.S.A. 48:3-60(b). If the Board places no limit on funding for the new SBC Credit Program, and participants are allowed credits for the Program against 100% of their SBC payments (as proposed in Straw 1) or even against 50% of their SBC payments (as proposed in Straw 2), SBC credits granted under the Program could exceed the entire CEP budget, and thus reduce the portion of the total SBC collections that the Board now allocates to the other programs funded by the SBC pursuant to the EDECA.

The utilities’ responses dated March 16, 2012 to the March 1, 2012 General Questions presented by the BPU to stakeholders illustrate the problem that a SBC credit program could cause. According to the utilities’ responses, total SBC collections from C&I customers - representing the maximum amount that SBC Credit Program participants could claim in a year under Straw 1 - totaled roughly \$424 million for a 12-month period generally corresponding to calendar year 2011.<sup>1</sup> In comparison, the entire 2011 CEP budget was \$319.5 million (including \$77 million in legislative re-appropriations).<sup>2</sup> Thus, for 2011 the total SBC credits that could

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<sup>1</sup> PSE&G’s SBC collections were reported for the period of March 1, 2011 to February 29, 2012. All other utilities reported SBC collections for calendar year 2011. Rate Counsel summed each of PSE&G’s Estimated Gas SBC Components (roughly \$60 million) for the calculation of total statewide SBC collections (\$424 million) rather than using PSE&G’s calculation of total Estimated Gas SBC collections (\$1,244.5 million, per its response to the March 1, 2012 General Questions).

<sup>2</sup> Staff Draft Straw Proposal: NJCEP 2013 through 2016 Funding Level Now the NJCEP 2014 through 2017 Funding Level Comprehensive Energy Efficiency and Renewable Energy Resource Analysis, August 21, 2012.

have been potentially claimed if Straw 1 were already in place exceeded the CEP budget by about \$104.5 million. Assuming that Straw 2 were already in place, total SBC credits from C&I customers could have totaled about \$212 million, and the CEP budget in 2011 could have been diminished by as much as two-thirds if reductions in SBC funding due to the SBC Credit Program were absorbed entirely by the CEP budget rather than by other SBC-funded programs.

If SBC Credit Program expenses overwhelm the CEP portion of the annual SBC funds, the Board could be faced with either decreasing the portion allocated to other SBC-funded programs or subjecting ratepayers to an increase in the SBC charge to cover any deficiency in the allocation to those other SBC-funded programs. With respect to the SBC-funded CEP programs, without budget limits, uncertainty about SBC Credit Program participation and expenses will complicate CEP budgeting and destabilize the Board's SBC-funded EE programs, which would erode marketplace confidence and threaten the EE infrastructure that the CEP has developed over the years. To avoid these potential outcomes, Rate Counsel recommends that the Board put in place a total budget limit for the SBC Credit Program, limited perhaps to some percentage of the Board's total CEP budget.

Based on the March 1, 2012 questions to stakeholders concerning the implementation of A2528/S2344<sup>3</sup>, the discussion of 2014 to 2017 CEP budgets during the October 9, 2012 Energy Efficiency Subcommittee meeting, and stakeholder discussions on October 24, 2012, it appears that the OCE has assumed that the Legislation does not allow the Board to set a total budget or

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<sup>3</sup> The sixth question of the March 1, 2012 General Questions to stakeholders reads as follows:

The Act states that the C&I ratepayer "shall be allowed a credit against the societal benefits charge." The SBC funds a number of societal programs in addition to the Clean Energy funds for energy efficiency. These other programs have nothing to do with energy efficiency, and the Board may have little discretion in funding them. To the extent that some of the other SBC programs, like the Universal Service Fund, Lifeline, nuclear decommissioning and manufactured gas plant remediation costs are nondiscretionary, how should the funding of these nondiscretionary programs be achieved if there is a reduction in the total SBC from the energy efficiency SBC credit?

funding limit for the SBC Credit Program. Rate Counsel maintains that the Board does indeed have the authority to implement a total budget limit. The SBC Credit Act does not limit the Board's ability to budget and proactively plan for the SBC Credit Program. Rather, the Act empowers the Board to set the amount of the SBC credit in any calendar year for each customer.

N.J.S.A. 48:3-60.3(c) also states that the "amount of the credit to be allowed under this section in any calendar year against the societal benefits charge for each commercial or industrial ratepayer that is subject to such charge pursuant to section 12 of P.L.1999, c. 23 (C.48:3-60) shall be determined by the board." (Emphasis added.) Moreover, N.J.S.A. 48:3-60.3(d) states that the "maximum amount of the credit...shall not exceed 100 percent of the commercial or industrial ratepayer's liability for such charge that would otherwise be due in each calendar year." (Emphasis added). This provision authorizes the Board to determine the amount of the credit, which may be less than 100% of the SBC charge, available to SBC Credit Program participants. Nothing in the Legislation requires the Board to set the maximum level of the credit for the SBC Credit Program as the entire amount of the participant's SBC charge. Notably, the Legislation does not contemplate how the Board should make such a determination, e.g., whether the Board should consider the amount of the credit for each customer individually or in aggregate, or whether funding decisions should be made as part of a prospective budgeting process or on a running basis. Thus, the Legislation may be reasonably interpreted as delegating to the Board authority to manage funding for the SBC Credit Program, including the amount, structure and other operant criteria.

Given the potential hazards of not implementing a budget limit for SBC credits, Rate Counsel finds that it is in ratepayers' interest for the Board to set an overall budget limit for the SBC Credit Program. Rate Counsel envisions that such a budget limit could reflect the OCE's



expectation for the number of participants in the SBC Credit Program. The Board could base the budget limit on its experience with the CEP's Pay for Performance ("P4P") program, given these programs' similarities: both promote comprehensive whole-building energy efficiency upgrades and have detailed application and monitoring and verification processes.

The total SBC Credit Program budget should be adjusted (semi-annually or quarterly) based on the initial response for the first few years. Increases in the SBC Credit Program budget could be offset by decreases in the P4P budget. For example, the SBC Credit Program budget limit could be set at 50% or less of the P4P program budget for the first year and adjusted in the following years based on the initial response. The total budget limit for the SBC Credit Program could be tied to the total budget for the P4P program given these programs' similarities.

In addition, the Board should limit each participant's SBC credits. Straw 2 places a limit on the SBC credit equivalent to 50 percent of the participant's annual SBC contribution. While the credit limit proposed in Straw 2 is a step in the right direction, Rate Counsel proposes limiting each Program participant's credits on an annual basis to 50% of a percentage equal to the CEP portion of the annual SBC charges attributable to the specific fuel type at issue, in the participant's utility service territory. For example, if 29% of a participant's natural gas SBC charge is allocated to the CEP by its gas utility, then the maximum credit available to an SBC Credit Program participant would be 14.5% of its entire SBC contribution per year for up to 10 years or until it receives a credit for up to 50% of its qualifying EE project costs. This method would fine-tune the credit to the actual SBC activity over time. Thereby, other ratepayers would not be subjected to an increase in their SBC charge to cover any deficiency in SBC funds for programs other than the CEP budget. The methodology for calculating the specific percentage limit for each utility should be determined in the context of a formal rulemaking proceeding.

### **III. ENERGY SAVINGS TARGETS AND TABULATION**

In addition to dollar limits, the Board should set total energy savings targets for the SBC Credit Program in the aggregate as well as tabulate actual savings attributable to the Program. The savings targets and tabulations of actual energy savings would assist the Board in determining the amount of the SBC credit in future years. The energy savings figures would also assist the Board in evaluating other clean energy programs and budgets.

### **IV. CONTINUATION OF THE CEP PAY FOR PERFORMANCE PROGRAM**

Since many C&I customers lack the resources, capability, and willingness to implement or manage their own EE projects, the CEP should continue to offer a variety of EE programs for C&I customers; the introduction of the SBC Credit Program should not affect this principle. To the extent that such programs are adopted in the Board's Comprehensive Resource Analysis process, the Board should continue to offer P4P programs or similar programs for C&I customers who do not elect to participate in the SBC Credit Program. However, C&I customers should be permitted to elect to participate in either the SBC Credit or P4P program, but not both.

### **V. ADDITIONAL COMMENTS AND RECOMMENDATIONS**

Rate Counsel offers the following comments and recommendations that apply to either a budgeted or non-budgeted SBC Credit Program.

#### **A. Computer System Upgrades and Administrative Costs**

Straw 2 provides that the C&I market manager or a "future Program Administrator" (collectively, the "Administrator") will oversee much of the SBC Credit Program, including

training, review of applications, site inspections, and the issuance and tracking of SBC credits, among other duties. Under Straw 1, many of these functions were assigned to the utilities.

The investments that the utilities and the OCE are contemplating to upgrade their computer systems in order to allow them to provide billing credits and administer the SBC Credit Program may be substantial. (Refer to the March 16, 2012 responses of Atlantic City Electric, Elizabethtown Gas, JCP&L, Public Service Electric and Gas, and the joint responses of the utilities submitted by PSE&G.) Rate Counsel notes that the Act does not specify that credits against SBC charges must be on the participant's utility bill. Rate Counsel thus recommends that OCE should collect data and estimate the costs of different options for accounting for the SBC Program credits. Such options should include a variety of credit payment intervals (monthly, quarterly, annually) and should include at a minimum: (1) OCE issuing checks directly to SBC Credit Program participants and (2) on-bill credits to SBC Credit Program participants by the utilities. Only once this information has been presented and considered in the context of a formal rulemaking proceeding should the OCE and the utilities make plans to implement changes to their computer/billing systems.

Utilities might also incur administrative costs in administering the Program. The cost of the computer upgrades and other administrative costs, to the extent not already recovered in base rates, should be assessed in some manner to the SBC Credit Program. Likewise, costs incurred by the OCE or the Administrator to administer the SBC Credit Program should be assessed to the SBC Credit Program participants through some yet to be determined mechanism. The determination of the cost recovery method could be part of the rulemaking proceeding.

The rulemaking proceedings should also clarify the mechanism by which SBC Program participants will receive their credit from the Administrator (e.g., an on-bill credit, reduced future

SBC contributions, periodic or lump sum reimbursements, or some other form). In any event, Rate Counsel recommends that all administrative costs of the SBC Credit Program should be borne by participants in the Program and not by other ratepayers.

### **B. Definitions of Participant and Eligible Entity**

The terms and interrelationships between a “C&I ratepayer,” an “Eligible Entity,” a “utility account” and a “participant” in Straw 2 require definition and clarification. For example, Straw 2 states that “the maximum credit per entity is 50% of eligible project costs, with an annual cap of 50% of annual SBC contributions per utility account” (emphasis added) but that “the credit can be carried over for up to ten additional years if the initial credit exceeds 50% of the ratepayer’s annual SBC contributions.” Whether the maximum credit is limited by terms of the ratepayer’s annual SBC contributions, aggregated between multiple accounts, or the annual SBC contributions associated with a single utility account will have vastly different implications for potential participants, the CEP and SBC Credit Program administrator(s), utilities, and other stakeholders. Rate Counsel recommends that these terms be clearly defined in the final rule, and that such definitions should be developed with careful consideration of the potential impacts to utility and OCE billing and administration systems and ratepayers.

### **C. Withholding to Account for Administrative Costs and CEP Benefits**

Within a rulemaking proceeding, the Board should consider whether to retain a portion of each participant’s SBC contributions to cover the costs of SBC Credit Program administration. In addition, the rulemaking should include consideration of withholding adequate credits for programs that are necessary and needed from a societal perspective, such as the low income program Comfort Partners, and to account for CEP benefits that accrue to all electric and natural

gas consumers in the state. Even when SBC Credit Program participants cannot directly participate in CEP, they will benefit from CEP's market transformation efforts (e.g., educational and training programs for consumers and trade allies, and research and development programs) as well as lower wholesale electricity prices due to lower energy consumption on aggregate. The American Council for an Energy Efficiency Economy ("ACEEE") reported that Arizona and Massachusetts require their self-direct customers to contribute 15% of their SBC charges to offset the cost of self-direct program administration.<sup>4</sup>

#### **D. Energy Reduction Target and Measures**

Straw 1 would have required Final EE Plans to include a package of measures that achieve an energy reduction target ("ERT") of at least 15% of total building source energy consumption while allowing for lower percentage thresholds for facilities with energy consumption heavily weighted by process loads. As an alternative to the 15% ERT, Straw 2 would allow ERTs of 100,000 kWh in annual electric savings or 350,000 MMBtu in annual gas savings. Rate Counsel is concerned that the specific kWh and MMBtu ERTs, as alternatives to a reduction of 15%, may introduce unintended consequences into the effects of the Program. Most importantly, these alternative thresholds could lead to a flood of applications to the SBC Credit Program by medium to large energy users because these minimum thresholds are likely to be much lower than what would be achieved with comprehensive whole building energy-saving measures that would reach 15% energy savings per building for such customers. This would allow medium to large energy users to apply for Program credit for simple energy-saving solutions, and could lead to a flood of applications, which would cause problems with funding

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<sup>4</sup> ACEEE 2011, Follow the Leaders: Improving Large Customer Self-Direct Programs, October 2011, pages 31 and 33.

for the CEP and other SBC-funded programs. Rate Counsel recommends that the Board either allow further consideration and comment on the potential effects of these alternative ERTs or simply establish a clear minimum standard such as 15%.

## **E. Application Requirements**

### **1. Primary Source of Energy Savings**

The SBC Credit Program rule should state that the primary source of energy savings must be either electricity or natural gas, rather than another energy source, because the SBC Credit Program is funded by the SBC charge levied on electric and natural gas ratepayers.

### **2. Lifetime Energy Savings**

For the projection of energy savings, Rate Counsel recommends that applicants also submit projected lifetime energy savings in MWh and Therms and capacity reduction in kW in addition to projected annual savings. This information should be provided in the Executive Summary and the main body of the Final Energy Efficiency Plan.

### **3. Definition of Source Energy**

The purpose of the Program is to reduce the “total building source energy consumption,” but Straw 2 does not define this term within the body of the Straw Proposal.

## **F. Monitoring, Verification, and Reporting**

### **1. Monitoring and Verification Protocol**

Rate Counsel supports Straw 2’s requirements for the use of the International Performance Measurement & Verification Protocols (“IPMVP”)’s Option D as well as for the

post-construction benchmarking reports to demonstrate savings each year of post-construction consumption.

## **2. Follow-up Reporting**

Rate Counsel supports Straw 2's provision that requires verification of projected energy savings using post-retrofit billing data and the EPA Portfolio Manager methodology. Actual consumption data should be useful for measurement and verification activities for this Program, and will become instrumental in modifying energy savings projections if necessary. The accuracy of the energy savings projection is important, because the savings from this Program can and should be incorporated into the State's strategies to meet the Energy Master Plan.

### **F. No funding of 100% of Project Costs**

Both Straw proposals suggest allowing the total of federal, state, utility, and credit funds for an EE project to equal up to 100% of the total project cost. Rate Counsel opposes the use of ratepayer funds for any incentive that pays 100% of the applicant's total costs, and furthermore maintains that total incentives should not pay 100% of the applicant's incremental costs of energy efficiency measures (or the additional costs of energy-efficient measures beyond the costs of standard measures) unless it is absolutely necessary to gain participation and promote efficiency for specific market segments (e.g., low-income customers in the Comfort Partners program) or measures (e.g., important emerging measures) in order to promote public benefits. When no standard measures exist, e.g., for building insulation, the incremental costs are equal to the total installed costs. Rate Counsel has consistently maintained that incentives should be less than 100% of total costs, and in general should be less than 100% of incremental costs, in the interest of fairness to ratepayers, and in order to maximize savings and minimize free riders (participants who would have adopted the EE measure even in the absence of program

incentives) as well as to assure that program participants have a stake in the successful implementation and ongoing operation of energy efficiency measures. See, e.g. I/M/O the Petition of New Jersey Natural Gas Company for Approval of Energy Efficiency Programs With an Associated Cost Recovery Mechanism, NJ BPU Dkt. Nos. EO09010056 and EO09100057 (Order dated June 17, 2009), Stipulation, ¶ 20 (provision that combined ARRA, CEP and utility-provided incentives will not fund 100% of a project's costs).

### **G. Additional Program Elements**

Program enhancements that could be considered in a rulemaking proceeding include the following:

1. Increased flexibility in the construction period, as opposed to the requirement in Straw 2 that all work must be completed within 12 months of Final Energy Efficiency Plan approval with potential extensions for a period of up to six months with satisfactory proof of project advancement (in the form of copies of permits, equipment invoices, installation invoices, etc.);
2. Implementing a financing mechanism to help with financial hurdles that will persist with a long credit payment schedule; and
3. Streamlining the application and audit processes for the SBC Credit Program, consistent with the findings of Applied Energy Group (“AEG”, the Program Coordinator for the CEP) in its June 2012 Evaluation of New Jersey’s Clean Energy Programs, while still ensuring that it results in real and verifiable energy savings.

### **CONCLUSION**

Rate Counsel respectfully submits that the Board should open a rulemaking proceeding to consider the issues set forth above.