State of New Jersey
DEPARTMENT OF THE PUBLIC ADVOCATE
DIVISION OF RATE COUNSEL
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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

STEFANIE A. BRAND
Acting Public Advocate
Director – Rate Counsel

March 26, 2010

Via Hand Delivery and Electronic Mail
Honorable Kristi Izzo, Secretary
New Jersey Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Re: In the Matter of Comprehensive Energy Efficiency and Renewable Energy Resource Analysis for 2009-2010: 2010 Programs and Budgets: Compliance Filings – Revisions to Previously Approved Budget
BPU Docket No.: EO07030203

Dear Secretary Izzo:

Enclosed please find an original and ten copies of comments submitted on behalf of the Department of the Public Advocate, Division of Rate Counsel, in connection with the above-captioned matters. Copies of the comments are being provided to all parties by electronic mail and 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 to our courier.

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Thank you for your consideration and assistance.

Respectfully submitted,

STEFANIE A. BRAND
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In the Matter of Comprehensive Energy Efficiency and Renewable Energy Resource Analysis for 2009-2010: 2010 Programs and Budgets: Compliance Filings – Revisions to Previously Approved Budget BPU Docket No. EO07030203

Comments of the New Jersey Department of the Public Advocate, Division of Rate Counsel

March 25, 2010

Introduction

The Division of Rate Counsel ("Rate Counsel") would like to thank the Board for the opportunity to present our comments on the "Straw Proposal" for modifications to the 2010 Clean Energy Program ("CEP") Budget submitted to stakeholders for comment by the Office of Clean Energy ("OCE") on March 18, 2010. Rate Counsel generally supports the Straw Proposal as it relates to the energy efficiency ("EE") and renewable energy ("RE") program funding levels for 2010. However, Rate Counsel believes that there may be additional opportunities to find more synergies and reduce overall funding levels that ultimately can be translated into bill reductions for ratepayers during these difficult economic times.

Rate Counsel has long supported what are now called Clean Energy Programs. These programs, funded by ratepayers, can help ratepayers use energy more efficiently and productively, thus reducing conventional energy requirements in part by measures to improve the efficiency of heating, cooling, and lighting as well as by measures to support new ways to produce power.

Benefits to the State's economy as a whole and to the environment have been documented. On the cost side, Rate Counsel has always been concerned that clean energy programs be designed to yield benefits that are proportionate to the ratepayers' investment in them, and also that the overall level of ratepayer funding be sustainable. After all, in any given year most ratepayers cannot participate directly in clean energy programs, so for them the benefits consist of the opportunity to participate at some future time, plus broad economic and environmental benefits that accrue. Nevertheless, Rate Counsel believes that most ratepayers accept modest charges to support clean energy programs, taking a broad view of the need for them.

Finally, Rate Counsel's comments are based upon our observations at this time and we reserve our right to continue our analysis and provide additional comments, as appropriate, on items addressed, or not addressed, herein.

I. Overall Budget and Funding

With respect to the proposed revisions, Rate Counsel would like to begin with the "bottom line" of the "Revised 2010 Funding Levels" table included in the Straw Proposal circulated for this hearing. The Straw Proposal proposes a total CEP budget of $257 million. To be clear, the proposed 2010 budget of $257 million is over and above funds reserved for committed expenses, which amount to approximately $202 million.[1]

What Rate Counsel would like to compare that $257 million to is the amount of new funding coming in through the Societal Benefits Charges ("SBC") to support the CEP for 2010. That amount, set in the Board's September 2008 "CRA Order," is $269

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[1] *Straw Proposal*, p. 2

million.[2] Although $158 million has been lost from the total available CEP funding due to the state's fiscal crisis, the Straw Proposal budget is still $12 million less than the SBC funds projected to be collected this year to support the CEP. The $158 million was largely money that was not either spent or committed for CEP activities in earlier budget years. In a word, the $158 million went unused and represents a mismatch between SBC funding levels and actual spending on budgeted CEP activity, either underspending by the OCE or SBC over-collections from ratepayers.

Rate Counsel submits that SBC charges collected from ratepayers should be set at a level sufficient to fund reasonable CEP budgets, no more and no less. The CEP budget should be sufficient to support reasonable, effective EE and RE programs and should represent an accurate projection of CEP spending over the course of the budget year. In order to inform the development of future CEP budgets, individual CEP programs should be subject to constant evaluation. Such program evaluation would help ensure that CEP funds are targeted to support successful programs which help attain our State's energy savings and RE goals. Similarly, an effort should be made to modify CEP sub-program budgets to reflect actual program activity, so that funds collected from ratepayers would not otherwise go unspent, providing such CEP programs are shown to be effective. In addition, more accurate budgeting would work to eliminate the mismatch between amounts collected through the SBC and actual CEP program spending.

In formulating future budgets, care must also be taken to reflect recently implemented utility EE and RE programs. For example, Public Service Electric & Gas Company's EE programs, implemented since the most recent CRA Order, have total

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[2] *Order Establishing 2009-2012 Funding Level*, BPU Dkt. No. EO07030203, 9/30/08, p. 28.

budgets exceeding $235 million, and other utilities have significant new EE and RE programs as well. Hence, it is possible that the CEP might even underspend the revised 2010 budget set forth in the Straw Proposal.

Notwithstanding better accuracy in budget projections or other measures, CEP over-collection might occur. Rate Counsel respectfully submits that should there be over-recovery of proposed 2010 CEP budgets amounts, for EE or RE programs or any aspect of the CEP, then new SBC funding from ratepayers in 2011 should be reduced by the amount of any carry-over.

In summary, as a general matter, the best form of reallocation of "carry-over" program dollars is to credit those back to ratepayers. Thus, one over-arching recommendation that Rate Counsel has for this budget process is that the Board adopt a CEP true-up process that takes year-end excess dollars representing unspent funds collected from ratepayers, and credit those amounts to ratepayers through a reduction in the SBC.

II. Specific Budget Modifications - Energy Efficiency

The task going forward is to continue to try to deliver the suite of CEP programs as aggressively and cost-effectively as possible. Ideally, every dollar of the $257 million productively would be applied – spent or committed – before the year is out. Perhaps with the modified program budgets and program refinements proposed by OCE, this goal can be accomplished.

By and large, the changes recommended by the OCE appear to be reasonable realignments of budgets given the total amount we have to work with. Nevertheless, Rate Counsel has a number of comments on the specific changes recommended by OCE.

A. Home Performance with Energy Star

The one program for which the budget would actually be increased in the Straw Proposal is the Home Performance with Energy Star program. A great deal of managerial and regulatory effort has gone into shaping this program. There are challenges to delivering a program that in the end will prove cost-effective. But there is, finally, momentum in the market toward participation in this program. In this circumstance, it makes sense to try to meet the demand for the program, while trimming the incentives it offers. This is apparently what the budget and program revisions proposed by OCE try to do.

B. OCE Oversight Budget - Program Evaluation

One of the items trimmed in the Straw Proposal's "OCE Oversight Budget" is "Program Evaluation", which would be reduced from \$2.9 million to \$1.8 million.[3] Rate Counsel strongly objects to any reduction in this budget. Rate Counsel recently participated, with other parties, in a process that crafted a strong Evaluation Plan for the CEP. The last evaluation provided much useful information about how CEP programs were faring in the field and provided suggestions to improve them. Rate Counsel submits that the proposed evaluation studies provides documented feedback on how clean energy programs are performing in the field and provide information that can be used to improve their operation over time.

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[3] Straw Proposal, p. 11.

There has already been a delay in preparing the first 2010 RFP called for in the Evaluation Plan. What is needed is to not reduce the budget, but redouble efforts to get planned evaluation activities underway. Rate Counsel recommends that instead of this adjustment, OCE be directed to trim a further $1.1 million from other line items, preferably in the Oversight Budget.

III. Specific Budget Modifications - Renewable Energy

The remaining portion of our comments is dedicated to offering recommendations and observations about the individual elements of OCE's RE budget straw proposal.

A. Renewable Energy Incentive Program ("REIP")

Rate Counsel supports OCE's REIP recommendations since the proposals effectively return the incentive proposal back to a two-tiered structure that will reduce overall incentive payments on a declining block-basis. Rate Counsel has not had sufficient time to study the incentive payment level proposals, and reserves the right to make future comments on these levels after further analysis is conducted. Rate Counsel also supports OCE's proposal to fund wind and biomass at $4.5 million, but would urge the Board to reject OCE's proposal to incorporate a "technology-based" soft cap. The program should be funded on a first-come, first-served basis irrespective of technology.

B. Consumer On-Site Renewable Energy ("CORE") Program

Rate Counsel observes that the now-closed CORE program has experienced a relatively large number of modifications and carry-overs during the past several years. Program carry-overs, for instance, represent 84 percent of the 2010 CORE budget amount. Further, OCE's proposed budget reductions of $15.2 million represent 31 percent of the CORE 2010 budget carry-over. These budget reductions themselves are based upon continued program participation uncertainty in what OCE describes as cancelled and scrubbed projects. Given this high scrub rate and program participation uncertainty, Rate Counsel questions the accuracy of the program commitments listed for the 2010 budget and notes that there may be additional opportunities for further budget cuts associated with the CORE program.

If the Board were to assume a moderate 25 percent scrub rate for projects that have been defined by OCE as "committed," then an additional budget reduction of $17.8 million is possible. More conservatively, if the Board were to assume a 25 percent scrub rate on the net carry-over projects (the net amount is $24.4 million and is derived from a $39.5 million in 2010 carry-over less the $15.2 million in budget reductions/already scrubbed projects), then an additional $6.1 million in budget reductions may be possible.

C. Other State Agency Programs

Rate Counsel has raised concerns about many of the RE programs, paid for by ratepayer dollars, but managed by other state agencies. These concerns did not involve questions about the various state agencies' ability or appropriateness to manage and administer the respective programs, but rather with the need, the funding levels, and/or prioritization of the programs themselves. These concerns become particularly acute in the current budget environment when tough choices regarding RE development must be made.

Rate Counsel has no specific recommendations on additional reductions on state agency RE programs supported by ratepayer dollars. However, we would call to the Board's attention that these state agency programs are supported at a relatively high opportunity cost by: (1) diverting limited funding away from basic RE support and (2) diverting money away from households during challenging economic times. While special studies, renewable project grants, green venture capital, and innovation funds all have certain degrees of merit; they all have difficult to measure outcomes, and at best, outcomes that are attained in the long run, if ever. Diverting funds away from real-world, current period, "in the ground" project installation may not be the best use of ratepayer funds in the current budget environment. If renewable installations fail to materialize today, particularly at this critical juncture in renewable market development, supporting future technologies, manufacturing capabilities and studies may become immaterial.

Conclusion

In summary, except as noted above, Rate Counsel generally supports the Straw Proposal as it relates to the CEP funding levels for 2010. However, Rate Counsel believes that there may be additional opportunities to find more synergies and reduce overall funding levels that ultimately can be translated into bill reductions for ratepayers during these difficult economic times. Furthermore, care should be exercised to ensure that program evaluation activities are supported by sufficient funding to ensure that ratepayer funds for CEP programs are spent effectively.