

**In the Matter of Comprehensive Energy Efficiency  
and Renewable Energy Resource Analysis  
for 2009-2012 Clean Energy Program:  
2011 Programs and Budgets: Compliance Filings  
Proposed Modifications to Previously Approved 2011 Budget  
BPU Docket Nos. EO07030203 and EO10110865**

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

**May 10, 2011**

**Introduction**

The Division of Rate Counsel (“Rate Counsel”) would like to thank the Board of Public Utilities (“BPU” or “Board”) for the opportunity to present our comments on the proposed modifications to the 2011 Clean Energy Program (“CEP”) Budget submitted to stakeholders for comment by the Office of Clean Energy (“OCE”) in a notice issued May 3, 2011 (the “May 3 Notice”). OCE has requested comments on two issues (1) whether to allow OCE to use ratepayer funds to continue certain American Recovery and Reinvestment Act (“ARRA”) programs after ARRA funds are exhausted; and (2) whether \$5 million should be re-allocated from the Renewable Energy Program budget to the Comfort Partners low-income weatherization program.

Rate Counsel opposes the first proposal, as it would involve significant changes in the manner in which OCE is authorized to expend ratepayer funds. The proposal does not merely transfer funds between programs; it would provide ratepayer funding for programs that meet ARRA criteria but do not meet CEP program criteria. Rate Counsel maintains that CEP funds should only be used for ARRA projects that do meet CEP program criteria. Changing CEP program eligibility criteria is inappropriate absent a process that provides clear notice and a meaningful opportunity for public comment on the proposed changes. Rate Counsel also believes the proposed changes are ill-advised for other reasons, which are set forth below.

Rate Counsel does not oppose OCE's second proposal, as it would redirect funds that are not needed for Renewable Energy programs to maintain the Comfort Partners program, which provides much needed assistance to the State's most vulnerable ratepayers. OCE and the State's energy utilities should, however, continue to pursue efforts to coordinate the Comfort Partners program with the federally funded Weatherization Assistance Program administered by the New Jersey Department of Community Affairs ("DCA").

### **Use of CEP Funds to "Backstop" ARRA-Funded Programs**

OCE is seeking authorization to use unspecified amounts of ratepayer funds collected through the Societal Benefits Charge ("SBC") to "backstop" programs created and funded under the ARRA. For all three programs, OCE's proposal would result in substantial changes in previously established criteria for expending ratepayer funds.

First, OCE proposes to expand the use of ratepayer funds under the NJCEP "Direct Install" Program. May 3 Notice, p. 2-3. The "Direct Install" program is available to small to mid-sized commercial and industrial facilities, including those owned by local government entities, with a peak electric demand not exceeding 100 kW. The Direct Install program pays up to 60% of the costs of qualifying energy efficiency upgrades installed by participating contractors, subject to a \$50,000 cap on incentives for each project. See Direct Install Program description, available at <http://www.njcleanenergy.com/di>. The benefits of this program for local government entities have been enhanced as result of the implementation of two ARRA-funded programs. Local government units can now receive 100% of the costs for up to \$125,000 in energy efficiency measures using funds available from two ARRA grants, the State Energy Program ("SEP") grant and the Energy Efficiency and Conservation Block Grant ("EECBG"). See May 3 Notice, p. 2. Further, the 100kW cap on project size is being waived for local government units

participating in the ARRA-funded program. See Direct Install Program description. OCE is proposing to continue providing the enhanced benefits to local government units using ratepayer funds after the available ARRA funds are exhausted. The May 3 Notice does not specify how long OCE proposes to continue providing the enhanced benefits to local government units, nor does it present any estimate of the amount of ratepayer money it would expect to expend for this purpose.

Second, OCE proposes to use funds allocated to the CEP Residential Heating Ventilating and Air Conditioning (“HVAC”) and Energy Efficient Products programs to fund rebates that are currently being funded under the ARRA State Energy Appliance Rebate Program. May 3 Notice, p. 3. The May 3 Notice states that OCE is “targeting May 31, 2011” as a cut-off date for applications under this program. OCE is proposing to use ratepayer funds to pay for any rebates applied for on or before May 31, 2011 for which there is insufficient ARRA funding. With the implementation of the ARRA Program, eligibility for HVAC and Energy Efficient Products funding has been expanded to municipal and co-operative electric, oil, and propane customers that would not otherwise be eligible for these programs. See Program Description at <http://www.njcleanenergy.com/arra>. Although the May 3 Notice does not state this specifically, OCE appears to be proposing to use ratepayer funds to pay rebates to municipal and co-operative electric, oil and propane customers that would qualify for ARRA-funded rebates, but would not otherwise qualify for rebates under CEP program criteria that limit rebates to electric and gas utility customers.

Finally, OCE proposes to use ratepayer money to fund rebates applied for under “EEP through CEP Non-IOU programs” that are currently funded under the AARA State Energy Program. May 3 Notice, p. 3. OCE is seeking authorization to use “NJCEP program budget”

from unspecified sources to pay for rebates applied for on or before May 31, 2011 for which there is insufficient ARRA funding. Although the Notice does not specify precisely which “EEP through CEP Non-IOU programs” it wishes to fund with ratepayer money it appears that these programs are directed to individuals and businesses that are not customers of an investor-owned utility (“IOU”) and thus would not qualify for incentives under existing ratepayer-funded CEP programs.

It is apparent from the above that OCE is not seeking merely to transfer funds within the CEP budget. It is modifying the program criteria to provide funding for projects that do not otherwise meet CEP program eligibility requirements. The CEP program criteria were established following a lengthy Comprehensive Resource Analysis process as provided in N.J.S.A. 48:3-60 (a)(3). The Board’s consideration of the 2011 programs and budgets that OCE is now seeking to modify followed an exhaustive process that included monthly stakeholder meetings, submissions by OCE’s program managers, the posting on the Board’s website of detailed programs and budgets, and public hearings and written comments on the proposed programs and budgets. See I/M/O Comprehensive Energy Efficiency and Renewable Energy Resource Analysis for the 2009-2012 Clean Energy Programs and Budgets: Compliance Filings, BPU Dkt. Nos. EO07030203 & EO10110865, Order at 4-5 (Dec. 22, 2011).

Rate Counsel respectfully submits that it would be inappropriate for the Board to consider the substantial program modifications proposed by OCE based on the notice and comment period that have been provided to date. The Board’s establishment of the criteria for ratepayer-funded CEP programs possesses many attributes of rulemaking—such criteria have broad coverage and are intended to apply uniformly to all applicants for CEP funding. The criteria apply prospectively, and are not clearly inferable from the enabling statute. Further, as

discussed above, the modifications being proposed by OCE would result in significant changes from the criteria currently in effect. See, Metromedia, Inc. v. Director, Division of Taxation, 97 N.J. 313, 331-32 (1984). Thus, consideration of changes such as those proposed by OCE implicate the Board's "basic administrative law obligation to act with transparency through the provision of prior notice and opportunity for comment." In re Provision of Basic Generation Service for the Period Beginning June 1, 2008, 205 N.J. 339, 2011 N.J. LEXIS 315, at \*14 (March 10, 2011). Such an opportunity has not been provided to date. The May 3 Notice does not clearly explain the proposed changes in previously-established program criteria, nor does it attempt to quantify the resulting cost to ratepayers. Indeed, Rate Counsel believes the acronym-laden description of the proposed modifications would be virtually unintelligible to a reader not already familiar with the existing AARA and CEP programs. Further, the May 3 Notice provided a period of only seven days for the submission of comments. This is wholly insufficient given the fundamental nature of the changes being proposed. The Board has not provided the minimum level of due process that is required for consideration of such changes, much less the comprehensive process that is contemplated under N.J.S.A. 48:3-60 (a)(3) and the many Board Orders implementing this provision for determining CEP programs and budgets.

Rate Counsel also opposes the proposed program changes for other reasons. With regard to the proposed "Direct Install" incentives for local government units, Rate Counsel opposes the use of ratepayer funds for any incentive that pays 100% of the applicant's costs. Rate Counsel has consistently maintained that incentives should be less than 100% of costs, in the interest of fairness to ratepayers, and in order 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, BPU Dkt. Nos. EO09010056 and EO09100057, Final Stipulation, par. 20 (approved by Board Order dated June 17, 2009) (provision that combined ARRA, CEP and utility-provided incentives will not fund 100% of a project's costs).

Rate Counsel opposes OCE's other two proposals because they would force electric and gas utility ratepayers to subsidize energy efficiency programs for home heating oil, propane, and municipal and co-operative electric customers who do not pay the SBC. N.J.S.A. 48:3-60 establishes the SBC as a "non-bypassable charge imposed on all electric public utility customers and gas public utility customers ...." It would be inequitable to require utility ratepayers, many of whom are already struggling to pay bills that include an ever-increasing SBC, to subsidize programs for energy users that do not contribute to the SBC.

#### **Re-allocation from Renewable Energy Program to Comfort Partners Program**

Rate Counsel does not oppose OCE's proposal to reallocate \$5 million from the Renewable Energy Program Budget to the low-income Comfort Partners program. May 3 Notice, p. 3-4. As noted in the May 3 Notice, the 2011 Comfort Partners budget is approximately \$25.8 million, representing approximately a 20% reduction from the 2010 budget of approximately \$32.2 million for this program. Rate Counsel opposed this reduction in its comments on OCE'S proposed 2011 CEP budgets. I/M/O Comprehensive Energy Efficiency and Renewable Energy Resource Analysis for 2010-2011: 2011 Programs and Budgets Compliance Filings, BPU Dkt. No. ER07030203, Rate Counsel Comments at 10-12 (Dec. 17, 2010). OCE states that the 2011 Comfort Partners budget was established in part based on the anticipated allocation of \$16 million in ARRA Weatherization Assistance Program funds from the DCA to the Comfort Partners program budget. According to the May 3 Notice, it now appears that the allocation of

ARRA funds will not occur. Thus, additional funding is required to avoid lay-offs of some of the employees delivering program services. Under these circumstances, Rate Counsel does not oppose the re-allocation of \$5 million to the Comfort Partners program. Rate Counsel agrees that it is important to maintain services under the Comfort Partners program, which provides weatherization services that are urgently needed by the State's low-income ratepayers.

Rate Counsel notes, however, that the May 3 Notice highlights the need for OCE and the State's energy utilities to continue to explore ways to coordinate the Comfort Partners program with the federally funded Weatherization Assistance Program. The potential benefits of such coordination were noted in a report prepared in 2004 for the Board and the Rutgers Center for Energy, Economic & Environmental Policy. That report, prepared by APPRISE, recognized that the differences between the two programs would make it challenging to completely integrate the two programs. Nonetheless, the report concluded that many benefits could be realized through some level of coordination, such as, for example, joint outreach and intake and coordinated information tracking and reporting. . NJ LIWAP and NJ Comfort Partners Comparison of Programs and Evaluation Findings—Final Report at 31-33 (June 2004) (available at <http://www.njcleanenergy.com/main/public-reports-and-library/market-analysis-protocols/market-analysis-baseline-studies/low-incom>). The Board should encourage further exploration of opportunities to coordinate the two programs.

## **Conclusion**

For all of the foregoing reasons :(1) the Board should reject OCE's proposals to modify existing program criteria for the purpose of continuing certain ARRA-funded programs using ratepayer funds, or, in alternative, limit the use of such funds to programs that otherwise meet the CEP program eligibility criteria; and (2) the Board should adopt OCE's proposal to re-allocate \$5 million in Renewable Energy Program budget to the Comfort Partners program.





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May 10, 2011

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

Ms. Kristi Izzo, Secretary  
New Jersey Board of Public Utilities  
Two Gateway Center  
Newark, NJ 07102

RE: Request for Comments regarding the May 3, 2011 Proposed Modifications to the 2011 NJCEP budget

Dear Secretary Izzo:

I write on behalf of the energy utility members of the New Jersey Utilities Association, specifically, Atlantic City Electric Company, Jersey Central Power & Light, New Jersey Natural Gas Company, Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas, Public Service Electric and Gas Company, and South Jersey Gas Company (the "Companies") in connection with the proposed modifications to New Jersey's Clean Energy Program ("NJCEP") 2011 Budgets circulated by the Office of Clean Energy ("OCE") on May 3, 2011. These comments reflect the consensus views of the above-referenced energy company members. Rockland Electric Company will be filing separate comments.

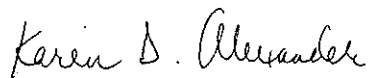
- The Companies strongly support the proposal to transfer an additional \$5 million to the Comfort Partners Program. As noted in the proposal, the Comfort Partners Program helps thousands of low income customers reduce their energy burden every year. Due to the overlap of eligibility with the Universal Service Fund ("USF") program, the Comfort Partners Program can also serve to reduce overall Societal Benefits Clause ("SBC") costs for all New Jersey residents and businesses over the longer term by driving down the overall energy burden of participating customers and, as a result, lowering their corresponding USF benefit in future years. In addition to these benefits, the Program also provides economic development benefits as it supports hundreds of jobs throughout the state. Moreover, the Comfort Partners program has been instrumental in alleviating serious health and safety issues found in the homes this program serves. As the budget may be reviewed again throughout the year, the Companies encourage the OCE to continue to look for opportunities to support this proven program.
- In regard to the proposal to "backstop" ARRA applications, the Companies recognize the unique challenges in trying to ensure that all of the ARRA funding is expended on a timely basis to bring the maximum level of benefits to the residents and businesses of New Jersey. With that in mind, the Companies can support the general concept of using NJCEP funds as a backstop for

Aqua New Jersey, Inc. • Atlantic City Electric Company • Atlantic City Sewerage Company • Elizabethtown Gas • CenturyLink  
Gordon's Corner Water Company • Jersey Central Power & Light, A FirstEnergy Company • Middlesex Water Company  
New Jersey American Water • New Jersey Natural Gas. • Public Service Electric & Gas Company • Rockland Electric Company  
Shorelands Water Company • South Jersey Gas • United Water • Verizon New Jersey

ARRA funded programs. However, the Companies would like to express strong concerns for any situation that may result in NJCEP funding being made available to customers who do not contribute to the SBC funding at all or for equipment using fuel types for which no SBC assessment is collected. Natural gas and electric customers currently bear the SBC funding burden for the Clean Energy Program through their energy bills. It would therefore not be appropriate or equitable if any portion of the SBC dollars, collected through rates, are used to subsidize investments for customers not bearing that same obligation.<sup>1</sup>

The Companies appreciate the opportunity to provide comments on this Proposal.

Sincerely,



Karen D. Alexander  
President and Chief Executive Officer

cc: Michael Winka, New Jersey Board of Public Utilities  
Michael Ambrosio, Applied Energy Group, Inc.  
Mona Mosser, New Jersey Board of Public Utilities  
Rachel Boylan, New Jersey Board of Public Utilities  
Babette Tenzer, Deputy Attorney General  
Ryan Tookes, New Jersey Utilities Association

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<sup>1</sup> In fact, the New Jersey Appellate Division recently confirmed that “[t]here is no doubt that N.J.S.A. 48:3-60(a), which authorizes the imposition of a social benefits charge upon electric and gas public utility customers, contemplated that monies collected from this charge would be used for the purposes set forth in that statute.” Mid-Atlantic Solar Energy Industries Ass’n v. Christie, 418 N.J.Super. 499, 505 (App. Div. March 4, 2011). The statute does not contemplate that the monies collected would be used to benefit other than “electric public utility customers and gas public utility customers.” N.J.S.A. 48:3-60(a).



Rockland Electric Company

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May 10, 2011

**VIA Electronic Mail**

Ms. Kristi Izzo, Secretary  
New Jersey Board of Public Utilities  
Two Gateway Center  
Newark, NJ 07102

Re: Request for Comments Regarding the May 3, 2011 Proposed Modifications  
to the 2011 New Jersey Clean Energy Program ("NJCEP") Budget

Dear Secretary Izzo:

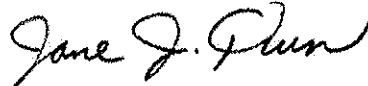
Rockland Electric Company ("RECO") submits the following comments regarding the  
May 3, 2001 Office of Clean Energy ("OCE") Proposed Modifications to the 2011 NJCEP  
Budgets:

- (1) **Allocation of NJCEP Funds to Backstop American Recovery and Reinvestment Act ("ARRA") Applications:** RECO concurs with the concerns expressed in the comments of the New Jersey Utilities Association, dated May 9, 2011, regarding the potential of NJCEP funding being made available to customers who do not contribute to the Societal Benefits Charge ("SBC") or for equipment using fuel types for which no SBC assessment is collected. Fundamental principles of equity dictate that funds which are collected from the State's electric and gas customers through their utility rates should not be used to subsidize programs or benefits for customers that do not bear this economic burden. While RECO appreciates the challenges involved in managing ARRA funding, particularly as certain programs wind down, those challenges should not be managed through subsidies provided by SBC-paying customers.
- (2) **Comfort Partners Program:** RECO's customers currently do not participate in, and do not benefit from, the Comfort Partners Program with respect to their electric service. During 2010 and through year end 2011, the Company has been providing and will continue to provide its low income customers with energy audits and the installation of energy efficiency measures at no cost through its Economic Stimulus Energy Efficiency Program. This Program, which is funded through RECO's RGGI surcharge mechanism, has been a successful one for RECO's customers. The Company has surpassed its initial program target, servicing to date 15% of its Universal Service Fund customers.

In its Comfort Partners proposal, OCE would re-allocate NJCEP funds previously allocated to programs that RECO's customers participate in, such as the Renewable Energy Incentive Program, to a program in which they do not participate. RECO does not support this re-allocation as it would deprive RECO's customers of the benefits for which they have contributed.

RECO appreciates the opportunity to provide comments on the OCE's Proposal.

Very truly yours,

A handwritten signature in black ink that reads "Jane J. Quin". The signature is written in a cursive, flowing style.

Jane J. Quin  
Director – Customer Energy Services