



STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CLEAN ENERGY

IN THE MATTER OF THE IMPLEMENTATION OF)
A2528/S2344 (N.J.S.A. 48:3-60.3) AND THE SBC) ORDER
CREDIT PROGRAM)
DOCKET NO. EO12100940

Parties of Record:

- Stephanie A. Brand, Esq.**, Director, New Jersey Division of Rate Counsel
- Andrew D. Hendry**, President and CEO of New Jersey Utilities Association
- Sara Bluhm**, New Jersey Business and Industry Association
- Steven S. Goldenberg, Esq.**
- Public Service Electric and Gas**
- Jersey Central Power and Light**
- Atlantic City Electric Company**
- Rockland Electric Company**
- New Jersey Natural Gas Company**
- South Jersey Gas Company**
- Pivotal Holdings, Inc., d/b/a/ Elizabethtown Gas Company**
- New Jersey Large Energy Users Coalition**
- Novartis Pharmaceuticals Corporation**
- Gerdau Long Steel North America**
- Chemistry Council of New Jersey**
- Comverge, Inc.**
- Port Authority of New York and New Jersey**
- NAIOP NJ**
- Phillips 66 Bayway Refinery**

BY THE BOARD:

This Order memorializes action taken by the Board of Public Utilities ("Board") at its December 19, 2012 public meeting, where the Board considered proposals related to its implementation of N.J.S.A. 48:3-60.3 by January 1, 2013, as required by the law.

BACKGROUND AND PROCEDURAL HISTORY

On January 17, 2012, L. 2007, c. 340 (codified at N.J.S.A. 48:3-60.3) ("Act"), was signed into law and became effective immediately. Under the Act, on and after January 1 next following the

date of enactment, commercial or industrial ("C&I" or "C or I") ratepayers are entitled to a credit against their annual Societal Benefits Charge ("SBC").

The SBC was implemented at the time of electric deregulation pursuant to the Electric Discount and Energy Competition Act ("EDECA"), N.J.S.A. 48:3-49 et seq. and constitutes a per unit charge imposed by an electric or gas public utility at a level determined by the Board in accordance with N.J.S.A. 48:3-60. See N.J.A.C. 14:8-1.2. By law, each energy utility may collect Board approved costs such as those associated with gas plant remediation, nuclear plant decommissioning, social programs such as the Universal Service Fund ("USF") and Lifeline, and programs under N.J.S.A. 48:3-60(a)(3), now referred to as the Clean Energy Programs ("CEP"), through the imposition of a non-bypassable SBC charge imposed on electric and gas public utility customers. N.J.S.A. 48:3-60. The total amount of the SBC paid by each C or I ratepayer constitutes its SBC liability and a portion of those remittances funds each of the accounts listed above.

N.J.S.A. 48:3-60.3 allows C&I ratepayers a credit based on their investments in qualifying energy efficiency ("EE") measures. This credit may be used to offset the C or I ratepayer's SBC liability. N.J.S.A. 48:3-60.3(a). The amount of the credit authorized under N.J.S.A. 48:3-60.3(a):

shall be equal to one-half of that portion of the costs incurred by the commercial or industrial ratepayer during the preceding calendar year for the purchase and installation of products and services that are intended for energy efficiency purposes, that would be eligible for incentives under programs that the board shall have determined to fund by the societal benefits charge pursuant to paragraph (3) of subsection a. of section 12 of P.L. 1999, c.23 (C.48:3-60).

[N.J.S.A. 48:3-60.3(b).]

The amount of the credit to be allowed against the SBC in any calendar year for each C or I ratepayer is to be determined by the Board. N.J.S.A. 48:3-60.3(c). The maximum amount of the credit that may be applied in any year cannot exceed 100 percent of the C or I ratepayer's SBC liability that would otherwise be due in each calendar year. N.J.S.A. 48:3-60.3(d). If the amount of the credit allowed against the SBC exceeds 100 percent of the C or I ratepayer's SBC obligation for the calendar year due to the limitations of subsections b. and d., the C or I ratepayer can carry over the balance of the allowable credit and apply it against its annual SBC liability for up to ten years following the initial year in which the credit was first applied to the C or I ratepayer's SBC liability. N.J.S.A. 48:3-60.3(e). A C or I ratepayer, upon request, is entitled to receive written notice from the utility indicating the amount of SBC the utility collected from the C or I ratepayer for a particular calendar year. N.J.S.A. 48:3-60.3(f).

Shortly after the Act was passed, Board Staff ("Staff") convened a stakeholder process to develop recommendations for administration of the SBC Credit. The process was informed by Staff's analysis of the CEP currently in place as well as the input from the seven electric and gas investor owned utilities and other public stakeholders.

On March 1, 2012, Staff submitted several questions to stakeholders concerning the Act and procedural methods for administering the credit. Those questions are summarized below. On March 16, 2012, Staff received responses to its questions from Public Service Electric and Gas, Jersey Central Power and Light, Atlantic City Electric Company, Rockland Electric Company,

New Jersey Natural Gas Company, South Jersey Gas Company, Pivotal Holdings, Inc., d/b/a/ Elizabethtown Gas Company (collectively referred to as "the Utilities"), New Jersey Large Energy Users Coalition ("NJLEUC") and the New Jersey Division of Rate Counsel ("Rate Counsel").

Based on the Act, input from stakeholders, its concern with carrying out the goals of the State's Energy Master Plan and its attempt to create a fair, workable, and fiscally responsible means of administering the SBC Credit, Staff created and circulated on October 4, 2012, a straw proposal outlining proposed terms for the SBC Credit Program ("Straw Proposal #1").

A stakeholder conference took place on October 24, 2012 to discuss Straw Proposal #1. The conference was well attended and Staff explained the proposed program using a slide presentation and provided ample opportunity for stakeholders to ask questions and to voice their concerns.

Based on discussions at the stakeholder meeting, the requirements of the Act and other submitted comments, Staff made modifications to Straw Proposal #1 which it released to the public on November 29, 2012 ("Straw Proposal #2"). Straw Proposal #2 was posted on the Office of Clean Energy ("OCE") website as a red-lined version of Straw Proposal #1, allowing for easy identification of the modifications. Staff also included an introductory page to Straw Proposal #2, which identified the significant changes in that Proposal. Staff then extended the comment period to December 7, 2012, to allow stakeholders and interested members of the public time to review and comment on Straw Proposal #2 and additional time to comments on Straw Proposal #1.

A public hearing on both Proposals took place on December 3, 2012 in Trenton, New Jersey.¹ All five Board Commissioners appeared and President Hanna presided.

The following persons testified at the December 3, 2012 hearing: Farley Hunter, of Novartis Pharmaceuticals Corporation and Steven S. Goldenberg, Esq., on behalf of NJLEUC; Andrew D. Hendry, President and Chief Executive Officer of New Jersey Utilities Association ("NJUA") on its behalf; Anne-Marie Peracchio on behalf of New Jersey Natural Gas; Marty Rothfelder and Steve Swetz on behalf of Public Service Electric and Gas; Sara Bluhm on behalf of the New Jersey Business and Industry Association ("NJBIA"); and Paul E. Flanagan, Esq., on behalf of the Rate Counsel.

In addition, written comments were received from the Utilities, NJLEUC, Rate Counsel, Gerdau Long Steel North America, NJBIA, Chemistry Council of New Jersey ("CCNJ"), Comverge, Inc. ("Comverge"), Port Authority of New York and New Jersey ("PANYNJ"), NAIOP NJ, Phillips 66 Bayway Refinery, and NJUA.

A. Straw Proposal #1

Staff drafted Straw Proposal #1 with the goal of implementing the Act through the SBC Credit Program and fostering self-investment in EE projects by providing financial support to all C&I ratepayers² in the State of New Jersey. Under Straw Proposal #1, C&I ratepayers that satisfy the program's eligibility and program requirements to invest in self-directed EE projects may be

¹ The original public hearing on November 5, 2012, was postponed due to Hurricane Sandy.

² A C&I ratepayer is defined in Board Staff's straw proposal as a customer serviced by a non-residential utility tariff.

eligible for the SBC Credit ("credit" or "credits.") Credits are limited to EE products and/or services that are already eligible for incentives under the CEP during the calendar year in which the construction is performed. The maximum credit per entity would be 50 percent of eligible project costs, with an annual cap of 100 percent of annual SBC contributions per utility account. The credit could be carried over for up to ten additional calendar years if the credit exceeded the cap in any given year. In accordance with the Act, the program would be launched on January 1, 2013, and would continue indefinitely.

The SBC Credit Program would rely on the same network of Program Partners ("Partners") used under the Pay for Performance ("P4P") program. Partners would provide technical services to SBC Credit Program participants and would be required to strictly follow program policy. Entities wishing to be certified as Partners would need to complete the appropriate training as provided by the C&I Market Manager or future Program Administrator (collectively, "Administrator"). Certain entities that have their own in-house professional engineering expertise could become a Partner for their own facility and their staff would be oriented through a fast-track process. That option would be geared toward larger customers and request for that treatment would be evaluated on a case-by-case basis by the Administrator. All other SBC Credit Program requirements would remain applicable.

The SBC Credit Program would be available to all C&I ratepayers who contributed to the SBC in the past calendar year and were current on their current SBC liabilities. A C or I ratepayer who met those standards would be considered as being "in good standing" with its utility. A C&I ratepayer in good standing would be required to work with an approved Partner to develop a Draft EE Plan ("DEEP") and Final EE Plan ("FEEP"). The submitted plans would require a package of energy conservation measures ("ECMs") that would achieve an Energy Reduction Target ("ERT") of at least 15 percent of total building source energy consumption. Projects that could not identify improvements that met the minimum ERT, would be referred to the appropriate SmartStart Buildings Program.

In addition, customers whose annual energy consumption is heavily weighted to manufacturing and process loads could request a custom savings threshold which would be subject to review and approval on a case-by-case basis. Projects eligible for a custom savings threshold would require:

- 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; or
- Manufacturing and/or process-related loads, including data center consumption that consume 50 percent or more of total facility energy consumption.

Projects that met those qualifications would need to meet a custom measure ERT of no less than four percent of total building source energy consumption. The Administrator in collaboration with the OCE would reserve the right to consider an alternative minimum threshold savings requirement in those instances. In addition, the project would require a comprehensive mix of measures (e.g. lighting could not make up more than 50 percent of the total projected savings) and all other SBC Credit Program rules would still apply.

The SBC Credit Program would offer a maximum credit per entity of 50 percent of total project costs as identified in the FEEP. Yearly credits could not exceed 100 percent of a participant's SBC contributions but could be carried over for up to ten additional calendar years if the credit

were to exceed the ratepayer's annual SBC contribution. There would be no minimum credit. Credits would be reserved by the Administrator upon DEEP approval and committed upon FEED approval and Board approval, when required. Credits would be issued and tracked by the Utilities upon project completion and verification that all program requirements had been met.

Eligible Entities interested in applying to participate in the SBC Credit Program would require an Enrollment Letter and DEEP in that order and the credit would be reserved upon approval of the DEEP.

Eligible Entities would need to submit no more than two pages (excluding attachments) detailing the following information:

- Number of buildings/sites and list of all associated utility and third-party supplier accounts in the previous calendar year;
- Total usage and number of location or premise IDs as provided by utility; and
- Utility account numbers and authorization for the utility to provide the information needed to calculate the SBC credit.

An Eligible Entity who is approved for enrollment ("Qualifying Entities") would then submit a DEEP for credit reservation. Credits would be reserved based on the date the completed DEEP was approved. The Eligible Entity would need to submit the DEEP to the Administrator for review within 90 days from the date of the approved Enrollment Letter. However, the Eligible Entity could choose to submit a FEED in lieu of a DEEP. The DEEP would require the following information:

- Executive Summary
 - Energy use by source from previous 12 months (kWh, kW, MMBtu);
 - Total site energy use from previous 12 months (kBtu/sqft);
 - Projected annual energy savings by source (kWh, kW, MMBtu, and %);
 - Projected annual total site energy savings (kBtu/sqft and %);
 - Total estimated project cost; and
 - Total estimated annual energy cost savings.
- Site Overview
- Utilities Overview
- Table of Energy Conservation Measures ("ECMs")

A table of ECMs to be implemented in the next 12 months would need to include: (1) a general description of equipment being replaced/augmented; (2) an anticipated implementation schedule; and (3) estimated construction start and end dates for each measure in addition to the following information for each measure:

 - Estimated installed cost;
 - Estimated annual energy savings by source (kWh, kW, MMBtu);
 - Estimated annual O&M savings;
 - Estimated annual energy cost savings; and
 - Estimated simple payback or IRR % (total of all measures).

- **ERT**
A set minimum ERT would be required for all projects and would be based on an approved whole-building energy simulation. The achievement of the ERT would be verified using post-retrofit billing data and the EPA Portfolio Manager methodology. For building types that were not addressed by EPA's Benchmarking Tool, an alternative approach based on the Leadership in Energy and Environmental Design Existing Building ("LEED") method would be followed. The 15 percent minimum ERT would be based on source energy, consistent with the EPA's Portfolio Manager benchmarking software. Savings projections would be calculated using calibrated energy simulation. The approach would involve the following steps: (1) Develop a whole building energy simulation using approved simulation tools (the list of approved tools would be based on the software requirements outlined in ASHRAE 90.1 2004 Section 11 or Appendix G, or as approved by the Administrator; (2) Calibrate simulation to match pre-retrofit utility bills; (3) Model proposed improvements to obtain projected energy savings; and (4) Calculate percent energy reduction to demonstrate achievement of the ERT.

Qualifying Entities would be required to submit a FEEP to the Administrator for credit commitment no later than one hundred and twenty (120) days from the date of the credit reservation. The following information would need to be included in the FEEP:

- **Final Executive Summary**
Existing energy use by source from previous 12 months (kWh, kW, MMBtu);
Existing total site energy use from previous 12 months (kBtu/sqft);
Calculated annual energy savings by source (kWh, kW, MMBtu, and %);
Calculated annual total site energy savings (kBtu/sqft and %);
Total project cost (note - prevailing wage rates required); and
Total calculated annual energy cost savings.
- **Table of ECMs**
A table of ECMs to be implemented in the next 12 months would need to be included. Credits would only be available for ECMs approved in the FEEP. ECM descriptions would have to include: (1) a detailed description of equipment being replaced/augmented; (2) a detailed description of recommended measures (including quantities, EER, AFUE, etc.); (3) A basis for calculating energy savings and O&M savings (including all assumptions); and (4) a basis for calculating installed cost (including all assumptions). Each measure would also require the following information:
Estimated installed cost;
Estimated annual energy savings by source (kWh, kW, MMBtu);
Estimated annual O&M savings (\$);
Estimated annual energy cost savings (\$); and
Estimated simple payback or IRR % (total of all measures).
- **Measurement and Verification ("M&V")**
The participant would have to include a description of pre/post measurement and verification ("M&V") to be implemented, which would have to be in accordance with IPMVP Option A or B, or other method pre-approved by Administrator. The participant would be referred to P4P requirements for further details on that requirement.

- Appendices
 - Professional Engineer Certification to verify all FEEP documents are accurate;
 - Utility bills and/or summaries;
 - Supporting calculations; and
 - Specification sheets
- ERT
 - A set minimum ERT would be required of all projects would be based on an approved whole-building energy simulation, as explained above.

Once the work defined in the FEEP has been completed, the Qualifying Entity would have to submit proof of construction completion for all measures. Proof of construction completion would include, but not be limited to: (1) invoices for material/labor including as-built report; (2) work orders; (3) certification of compliance with prevailing wage; and (4) valid tax clearance certificate. All work would require completion within 12 months of FEEP approval. Extensions would be granted 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 indicating percentage complete, updated project schedules, etc.). If the ECMs were not completed within the specified timeframe, the credit commitment could be forfeited. Differences between the FEEP and the as-built project would require documentation and would require submission of a revised FEEP for review. In the event the scope of work, savings, and/or cost estimates did not match as-built documentation, a credit true-up would occur. The true-up calculation would under no circumstance exceed the original credit commitment provided. The Administrator would 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.

Each ECM would be required to demonstrate a simple payback of eight years or less, or total ECM work scope must have an internal rate of return of 10 percent or greater (prior to credit). All ECMs would be required to meet Minimum Performance Standards, which could be fulfilled during the Professional Engineer review, and would be the more stringent of: (1) 2011 Pay for Performance Guidelines-Appendix B (Attached in Appendix); (2) ASHRAE 90.1-2007; or (3) Local code.

Credits would be limited to EE products and/or services that were already eligible for incentives under the CEP during the calendar year in which the construction was performed. Renewable energy and maintenance energy saving projects would not be eligible for credits. ECMs already installed or under construction would not be considered for credits and could not be included in the DEEP or FEEP.

Federal grants or incentives would be allowed and other state or utility incentives would be allowed as long as they did not originate from CEP funds. CEP loan funds however, would be allowed. The total of federal, state, utility, and credit funding could not exceed 100% of the total project costs. In addition, projects with funds currently committed under other CEP funded programs would be excluded from DEEP/FEEP scope and their monetary value would be deducted from the credit.

Upon receipt of the DEEP and FEEP, the Administrator would have 60 days to review each submittal and provide comments to participant. The participant would then have 15 business days to respond to the comments. The Administrator would present FEEPs to the Board for approval and credit commitment as required by the Board.

The Administrator could conduct up to three site inspections, including a pre-inspection, an inspection at 50 percent completion, and an inspection at 100 percent completion. A pre-inspection would be scheduled within 15 days of FEEP submittal, granted sufficient data had been provided. Participants would need to provide access to the project site and notification upon reaching specific percent completions. The Administrator would identify measures requiring inspection at 50 percent completion when the FEEP was submitted.

The Administrator would provide the following services under the SBC Credit Program:

- Program design and management;
- Review of all DEEPs;
- Review of all FEEPs;
- Technical assistance;
- Updates of data tracking tools; and
- Three quality control inspections for each project, if needed.

A New Jersey electric or gas utility would be required to disclose to the Administrator in writing the amount of SBC contributions collected by the utility from a participant for each calendar year specified in the request, and a confirmation of whether the account were in good standing. Once the Administrator confirmed project completion in accordance with all program requirements, the Administrator would calculate the final amount of the credit. The Administrator would then direct the appropriate utility or utilities to issue the credit at the end of the next calendar year (in an amount not more than 100 percent of the participant's SBC payments made during that year) and to continue such credit up to ten additional years if required, until the credit was exhausted. The utilities would be allowed to recover costs associated with carrying out these duties in its annual SBC rate filings.

All EE plans would be reviewed upon receipt to verify adherence to eligibility requirements. Each applicant's eligibility information would be verified, along with all technical information in support of EE measure qualification and credit calculation. Applicant supplied information and Administrator performed credit calculations would be entered into the database. Pre and/or post-inspections would be conducted as required. Ongoing evaluation services would be provided by the OCE through its external evaluation vendor.

B. Straw Proposal #2

On November 29, 2012, Board Staff circulated Straw Proposal #2, which included the following substantive changes to Straw Proposal #1: (1) lowered the credit from 100 percent of annual SBC contributions to 50 percent; (2) required the Administrator to issue and track credits instead of the Utilities; and (3) modified the ERT to allow savings of 100,000 kWh in annual electric savings, 350,000¹ MMBtu of annual natural gas savings, or the previously required 15 percent of total building source energy consumption. It also removed the eligibility limitations requiring a comprehensive mix of measures but retained language requiring a "package of EE measures."

¹ At the December 3, 2012 public hearing, Staff noted that the standard of 350,000 MMBtu reflected in Straw Proposal #2 is an error and the correct figure should reflect 350 MMBtu. That error is corrected in Appendix A.

C. Summary of Comments

Stakeholder Responses to Board Staff's March 1, 2012 Questions

1. On March 1, 2012, the Utilities, NJLEUC and Rate Counsel responded to questions concerning implementation of the Act. The questions and responses to numbers one through six are summarized below:⁴

Question 1: Should C&I ratepayers be able to access the SBC credit as well as SBC funded CE EE rebate programs at the same time in the same year?

Responses:

Utilities: Any C&I customer who takes part in the SBC Credit Program, thus reducing their contribution to CE programs, should be ineligible for SBC funded EE programs.

Rate Counsel: For equity and budgeting purposes, C&I ratepayers should not be able to access SBC credits and other CE EE rebates in the same year.

NJLEUC: A C or I ratepayer should be allowed to access both incentives in the same year, consistent with the legislative intent of providing an additional rather than an alternative incentive to encourage business to invest in EE products and services. The Board's authority to determine the credit under subsection c. of the Act does not imply that a C or I ratepayer should have to forego other available sources of financial support to get the credit. Like other CE programs that allow pancaking of benefits, the SBC credit should be viewed as an additional funding source to further market penetration, energy savings and economic development.

Question 2. If the C or I ratepayer could only access the credit or rebate one at a time should there be some time limit for accessing either the credit or the CE incentives? As an example, if the C&I ratepayer received an EE rebate last year should that be deducted from the credit? Is there a timeframe for this look back? Can the C or I ratepayer apply for a CE 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 CE rebate after receiving the credit?

Responses

Utilities: A C&I ratepayer who receives a rebate in the previous year should be allowed to apply for the credit in the following calendar year, provided that no portion of the credit related to investment in the same EE projects for which the customer received the rebate. If a C&I ratepayer carries a portion of the SBC credit forward, it should be required to forgo an appropriate portion of the credit in subsequent years based on that benefit.

Rate Counsel: The amount and timing of SBC credits should be linked to SBC collections for each C&I ratepayer. If a C&I ratepayer receives a CE incentive or financing in one year, and applies for an SBC credit in the following year, the amount of the credit should be reduced by the amount of the CEP incentive.

⁴ The Utilities responded individually to four additional questions concerning each utility's internal computer billing systems and processes. Those questions and responses were considered by the Board and are a part of this record although they are not reproduced here.

NJLEUC: The C&I ratepayers should not be limited to applying for one incentive. Businesses that lack investment capital need unrestricted access to the full menu of CEP. Such a limitation would also hamper early responders, who would essentially be penalized for their early efforts.

Question 3. How should the Board determine which EE products or services should qualify for the credit?

Responses

Utilities: The same set of EE products and services offered through the OCE programs should be available in the SBC Credit Program.

Rate Counsel: C&I ratepayers should submit an EE plan with all proposed prospective measures and services only. CEP administrators should assess each EE proposed measures individually and collectively; in conformance with the NJ CEP EE Protocols for minimum performance. Each measure should be designed to reduce total building source energy consumption by at least 25 percent and demonstrate cost effectiveness using the same methodology employed under P4P. Alternatively, a C or I ratepayer could request a custom energy savings threshold as provided for in the P4P program description. Cases where a customer energy savings threshold is sought must involve manufacturing, chemicals, petrochemicals, metals, paper and pulp, transportation, biotechnology, pharmaceutical, food and beverage, mining and mineral processing, general manufacturing, equipment manufacturing and data centers, where the manufacturing and/or process related loaders consume 50 percent or more of total facility energy consumption. Projects that meet the custom energy savings threshold would have to meet the greater of annual energy savings of 100,000 kWh, 350 MMBTU or four percent of total building source energy consumption, whichever is greater.

NJLEUC: The SBC credit should support the same products and services currently allowed under C&I programs in addition to custom measures under current guidelines. The qualification guidelines should also remain the same since the SBC Credit merely creates an additional funding source for C&I investments in the same EE related services supported by other CE programs.

Question 4. Should the array of CE programs and current structure under the SBC change or stay the same with the introduction of the C&I ratepayer opportunity to receive credit?

Responses

Utilities: The same set of EE products and services offered through the OCE programs should be available in the SBC Credit Program. It would be up to the C&I Market Manager to determine whether products and services under current OCE programs should be modified.

Rate Counsel: A formal proceeding should be initiated to determine what changes should be made to the CEP and SBC structure to align them with the SBC Credit Program.

NJLEUC: The current CEP and the programs' structure should not be affected by implementation of the Act.

Question 5. 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?

Responses

Utilities: For purposes of cost and logistical efficiency, SBC Credit applications should be made to and reviewed by the C&I Market Manager before Board consideration for approval. The OCE would establish M&V protocols, review the ratepayer's account information for SBC payment delinquency and communicate this information to the C&I Market Manager who would arrange for credit distribution as appropriate.

Rate Counsel: The Board should assess each application individually through an evidentiary hearing and opportunity for intervention by others. There should be minimum-filing requirements including a detailed EEP, M&V, a timeline for completing the measure and for spending the credits, and a recoupment process if projects don't meet expected EE savings.

NJLEUC: The determination of the credit should be addressed first by the Market Manager delegated responsibility for the C&I programs. The C or I ratepayer should propose a justifiable credit from which the Manager makes an initial credit recommendation to the Board. Rate Counsel and the applicant should be afforded a time to file comments to the Board where appropriate, prior to a decision.

Question 6. The Act states that the C&I ratepayer shall be allowed a credit against the SBC. The SBC funds a number of societal programs in addition to the CE funds for energy efficiency. These other programs have nothing to do with EE, and the Board may have little discretion in funding them. To the extent that some of the other SBC programs, like the USF, 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 EE SBC credit? Please explain.

Responses

Utilities: The magnitude of the credit should be limited to that portion of the ratepayer's SBC liability attributable to CEP in order to avoid impact to the funding of other SBC programs, particularly since the value of the credit at least relates to the underlying objective of "CE."

Rate Counsel: The Board, which is empowered under the Act to set the amount of the credit, should limit the credit to the CE portion of the SBC. This, along with establishing a 25 percent ERT and ratepayer contribution to the EE measure, will help to prevent depletion of the SBC fund.

NJLEUC: While NJLEUC members have never sought to avoid their SBC obligations the Board should consider adjusting the level of the SBC to allow customers to pay different SBC rates.

D. Comments in Response to The Straw Proposals

Straw Proposals #1 and #2 summarized above were posted on the BPU and NJCEP web sites and circulated to the public stakeholder group on or about October 4, 2012 and November 29, 2012, respectively. The Board held a public hearing on December 3, 2012, in Trenton, New Jersey, to solicit comments from interested stakeholders and members of the public regarding the Straw Proposals. The Board also accepted written comments on the both proposals through December 7, 2012.

The following paragraphs provide a synopsis of each stakeholder's comments followed by a topical summary of the issues addressed by the stakeholders. The summary is organized by major topics, and while the comments are summarized, the Board emphasizes that it has considered all comments in their entireties in reaching its decisions in this Order.

On October 26, 2012, the Utilities submitted comments concerning Straw Proposal #1. The Utilities expressed that the magnitude of the credit should be limited to that portion of the SBC attributable to the CEP so that the funding of other SBC programs would not be impacted or result in unauthorized price increases for all other customers. The Utilities ask that the Board interpret N.J.S.A. 48:3-60.3 to allow payment of the SBC credits from the CE portion of the SBC only as defined by N.J.S.A. 48:3-60(a)(3). The Utilities believe that the express language of the statute supports this interpretation. The Utilities interpret that the statute defines eligible EE measures as "the type . . . that would otherwise be eligible for incentives under the energy efficiency 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 CE portion of the SBC. Based on that interpretation, the Utilities submit that the value of the credit should be isolated to the CE portion of the SBC, where the value of those credits at least relates to the underlying objective of the clause. The Utilities also suggest that while N.J.S.A. 48:3-60.3(d) expressly empowers the Board to permit a maximum credit up to 100 percent of the ratepayer's total SBC liability, there is nothing the statute requiring that outcome. Upon that basis, the Utilities believe that the Board could isolate the value of the credits to the CE SBC funding. The Utilities believe that allowing a C or I ratepayer to collect a credit in the amount allowed under Straw Proposal #1, would hamper the Board's ability to meet the needs of residential and low income ratepayers and long-term budget and program goals. It would enable a C or I ratepayer to receive credit that more than doubles the value of its CE contribution while also allowing a carry forward for an additional ten years. Administratively, the Utilities stress that the Act supports administration of the program by the OCE rather than by the Utilities. The Utilities believe that their administration of the program would require complex and costly changes to each utility's existing billing system for which each utility would be entitled to cost recoupment. Administration by the OCE would cut down on redundancy of tasks and the costs that the Utilities would otherwise incur. Finally, while the Utilities support rigorous M&V controls, they request clarification about the pancaking of benefits restrictions, the definition of "entity" and the application of "good standing."

The Board also received written comments on Straw Proposal #1 from Gerdau Long Steel North America ("Gerdau") through its Regional Energy Manager, Dave Forsyth. Mr. Forsyth explained that Gerdau operates a steel mini-mill in Sayreville, New Jersey that employs 200 people and spends over \$1M annually in SBC charges. Gerdau's high annual SBC liability is tied to its disproportionately high usage of electricity and gas and its total facility energy consumption comprises more than 50 percent of process loads. Gerdau has invested heavily in energy efficiency and manufacturing improvements since 2002, which has 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. Gerdau is concerned that Straw Proposal #1 presents barriers to participation for several large energy users whose annual energy consumption is heavily weighted to manufacturing. For instance, as a result of being an early responder in implementing energy efficiency projects, the Proposal's alternative four percent threshold would be hard to meet. A user who consumes 300 million kWh per year for instance, would be required to save 12 million kilowatt-hours annually or the equivalent of the entire annual consumption of 1,410 households in New Jersey. In a soft economy, businesses need to invest smaller amounts of capital and qualify for credits based on lowered amounts of demonstrated energy savings (and to recover any credits or incentive for the project in a more timely fashion

than represented under the Proposal). Instead, Gerdau believes eligibility to participate should be based on a minimum size threshold or minimum energy savings. Gerdau applauds the Large Energy Users Pilot Program ("NJLEUP") for recognizing the varied needs of large C&I ratepayers and having program requirements that motivate large energy users. Gerdau also asks for clarification about the meaning and intended application of the "alternative minimum threshold requirement" outlined on page two of Straw Proposal #1 and suggests that the language be deleted. Gerdau also objected to the "comprehensive mix of measures" required under the Proposal, finding it ambiguous, not required under the Act and preventing participation in the SBC Credit Program for a single EE measure that could produce significant savings. Gerdau also requests that the Board expand the applicable EE measures that qualify for a credit to include those that have received Superior Energy Performance certification or which comply with Energy Management Standard – ISO 50001, a globally accepted standard for managing energy. Finally, to the extent that Gerdau interprets the language on page five of the Proposal to suggest that credits would be assigned against a ratepayer's gas or electricity SBC, depending on the source nature of the measure, Gerdau submits that this would cause unnecessary complications, confusion and delay. Instead, Gerdau suggests applying the credits against the utility on which the customer spends the most with any spillover credit being applied against the SBC liability of the secondary utility.

Phillips 66 Bayway Refinery also submitted comments to Straw Proposal #1 through its Energy Coordinator, Dave Lucas. Phillips 66 requested that for purposes of the meeting the minimum energy reduction threshold, the Board allow the ratepayer to use the cost of energy basis which is the higher of the prior year or the average of the prior three years. Mr. Lucas explained that achieving the required rate of return under the program for the initial year would be difficult due to depressed natural gas prices in 2012.

Concerning Straw Proposal #1, NJLEUC requested that the Board allow a ratepayer with multiple utility accounts to aggregate them for purposes of the credit. NJLEUC also asked that the Board eliminate the requirement that C&I ratepayers use Program Partners, eliminate the DEEP and ERT requirements, issue the credit by check or credit to the ratepayer's utility bill, and adopt other alternatives to the M&V process.

NJUA filed comments on December 3, 2012 concerning Straw Proposal #2. While NJUA expressed its content with the revision which provide for centralized administration of the program through the Board, it believes that the credit amount should be limited to the proportion of the SBC attributable to the CE portion of each C or I ratepayer's electric and/or gas SBC contribution, so that the funding of other SBC programs would not become the basis for the credit. In that regard, NJUA is in agreement with the change in Straw Proposal #2 which limits the amount of the credit which can be applied annually to 50 percent of a C or I ratepayer's SBC liability for that calendar year. Finally, NJUA asks that the Board determine a C or I ratepayer's SBC contribution prior to the application of the energy sales tax, which would be reflect its true contribution. To determine the amount of the credit using the contribution amount inclusive of taxes would allow the C or I ratepayer to receive a credit against the sales tax in addition to its SBC contribution.

NAIOP NJ filed comments on December 3, 2012 suggesting the following changes to the proposed program:

- Create more reasonable ERT and EE goals so that small and medium-sized ratepayers would qualify;
- Ensure that a simplified application process is adopted to encourage participation; and
- Shorten the twelve month credit issuance period.

NJBIA filed comments on December 3, 2012 in response to the Proposals. NJBIA indicates that it was involved in developing this legislation and the Legislature intended for a C or I ratepayer to apply the credit against 100 percent of its annual SBC liability, not 50 percent as revised in Straw Proposal #2. NJBIA also requested tiered program eligibility requirements to allow smaller C&I ratepayer projects to proceed without the restrictions of prevailing wage. Finally, NJBIA requests that the Board amend the understanding of what it means to be a ratepayer in "good standing" and require only that the C or I ratepayer has paid the SBC. NJBIA asks for this modification in light of businesses that may be cash strapped due to the financial impact of Hurricane Sandy.

Rate Counsel filed formal comments on December 7, 2012 to Straw Proposal #2. First, Rate Counsel asserts that the nature of the administrative action envisioned by the proposal requires that rules be promulgated in accordance with the Administrative Procedures Act 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 objects to the Proposal's expansion of the ERT to allow a threshold other than 15 percent, which it believes could lead to a flood of applications and requests either adoption of the 15 percent ERT (attributable to a primary source, i.e. electric or gas, with a calculation of projected lifetime energy savings) or further consideration and comment on that issue. Rate Counsel recommends establishing a budget for funding of the program tied to a percentage of the total CE budget and insists that the Board has the authority under the Act to do so. The Board could further use the P4P program budget as an offset for the SBC credit, by setting the SBC credit budget to half of the P4P budget, for example. Rate Counsel suggests that this approach would avoid expending the entire CEP budget, reducing funding for other SBC funded components or subjecting all ratepayer's to an increase in the SBC charge. Concerning the amount of the credit allowed, Rate Counsel believes that while reducing the amount of the credit to be applied annually to 50 percent is a start, it should be further limited to 50 percent of the CE portion of the C or I ratepayer's annual SBC contribution attributable to the specific fuel type to which the EE measure applies. Rate Counsel suggests adjusting the criteria periodically based on program responsiveness. Rate Counsel believes that C&I ratepayers should not be allowed to cover 100 percent of the total project cost by allowing the application of state, federal, utility and credit fund for an EE project. Total incentives should not pay 100 percent 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 important emerging measures in order to promote public benefits.

Additionally, RC recommends:

- aggregated energy savings targets for the SBC Credit program overall;
- that the Board continue to offer a variety of incentive programs for C&I ratepayers;
- investigating cost effective means of credit issuance that will reduce the financial impact to the utilities and a rulemaking to determine the timeframe for credit issuance (i.e. periodic or lump sum);

- determination through rulemaking whether to retain some portion of the credit to cover program administration costs;
- providing a definition of “source energy”, “participant” and “eligible entity”;
- amending the proposals to specifically indicate that source energy applies to electric or gas only;
- simplification of the application process including more flexible construction guidelines, and
- a financial mechanism to offset the prolonged credit payment schedule.

CCNJ filed comments on December 5, 2012. While CCNJ fully supports the spirit and intent of the SBC credit, it supports a credit against a C or I ratepayer's annual SBC liability of 100 percent as permitted under Straw Proposal #1. CCNJ finds the reduction to 50 percent too limiting, especially in light of historic surpluses in the CE budget being redirected to the general budget with no negative financial impact to other SBC funded programs. Ideally, rather than underutilizing funds intended for the SBC program, CCNJ recommends adopting the 100 percent cap to prevent a surplus from occurring.

Comverge filed comments on December 4, 2012 in response to Straw Proposal #2. Comverge develops and deploys load control and price responsive systems and provides hardware and software solution that enable peak period reductions in electricity demand. While Comverge agrees with the revisions providing for centralized program administration, Comverge believes that other provisions in Straw Proposal #2 are contrary to the Act's intent. For instance, Comverge objects to the reduction in the amount of credits applied annually to 50 percent of SBC contributions and recommends a more cost benefit analysis based methodology. Comverge believes the initial 100 percent annual cap against SBC contributions would reduce rates and further the goals of the Energy Master Plan. Comverge also objects to the expansion of the ERT requirements under Straw Proposal #2, believing that it will prevent participation by some C&I ratepayers in contravention of the Act and further limit early access to funds. Similarly, Comverge finds that the Proposal's exclusive reliance on P4P's whole building methodology creates an overly complex program that will benefit only a small number of companies and will not stimulate the purchase and installation of products or services that are intended for EE purposes as the Act requires. Comverge recommends modifying the proposal to allow the expansion of credit worthy measures beyond just EE (such as demand response and other measures that reduce peak load) and reducing the ERT requirements so that more C&I ratepayers could participate in the credit program. Comverge emphasizes that the CE budget has had a surplus in prior years.

NJLEUC filed formal comments addressing the proposals on December 7, 2012 and provided written statements for presentation at the December 3, 2012 public hearing. At the outset, NJLEUC disapproves of the change which caps the amount of the SBC credit that can be applied annually from 100 to 50 percent as well as the change in ERT standards to allow thresholds of 100,000 kWh or 350 MMBtu, finding both changes arbitrary. NJLEUC suggests thresholds consistent with the Custom Measures program and recommends using post-installation M&V. Although an amendment to the Act which would allow a C or I ratepayer to apply the credit up to 100% of its CE SBC contribution is one possible solution, NJLEUC requests that the Board establish credits based on a “tiered approach.” NJLEUC explained that the law does not require that each ratepayer be treated identically concerning the imposition of the SBC charge nor does the law require that every C&I ratepayer receive the same SBC credit

if they are not similarly situated.² NJLEUC explains that a "tiered approach" would allow the Board to distinguish between dissimilarly situated C&I ratepayers based on relevant factors such as 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 EE 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. NJLEUC submits that a tiered approach would also give the Board additional control over the magnitude and number of credits awarded, thereby assuring the availability of sufficient funding for annual OCE program budgets and the Board's social welfare programs. Next, NJLEUC objects to the proposal's preclusive effect on other incentives. Specifically, NJLEUC objects to the proposals' requirements that a C&I ratepayer who maximizes the SBC credit is ineligible for any other CEP incentive; and that a C&I ratepayer who is awarded a partial SBC credit in any year must offset the value of that credit against any other incentives it receives that year, to prevent total incentive recovery from exceeding 50 percent of the ratepayer's SBC liability for that year. NJLEUC submits that those limitations are inconsistent with the spirit of the Act, the express limitations of the Act and canons of statutory construction. NJLEUC states that no other CE program ties or caps a C or I ratepayer's incentive to the amount it contributes to the SBC and that ratepayers typically pancake incentives in an amount which exceeds their SBC contributions. NJLEUC also objects to the proposals' eligibility and M&V requirements as being onerous and discouraging and the credit payment delay process as excessive. NJLEUC suggests that M&V requirements be left to the C&I ratepayer and that credit be paid upon project completion and post-installation verification.

PANYNJ filed comments in response to Straw Proposal #2 on December 5, 2002. PANYNJ recommends that ratepayers with multiple facilities/multiple accounts be permitted to submit a consolidated SBC credit application for all proposed improvements. PANYNJ also requests clarification concerning the following:

- whether the new ERT standards of 100,000 kWh or 350 MMBtu comprise a minimum metric under the 15 percent total building ERT or if they are alternative thresholds;
- whether in instances where the credit exceeds 50 percent of the ratepayer's SBC liability for the first year, the entire credit is approved under the FEEP or only the amount applied against the first year's SNC liability; and
- whether in instances where the credit exceeds 50 percent of the ratepayer's SBC liability for the first year, and the program is subsequently discontinued before the ratepayer has exhausted its credit, the ratepayer forfeit the remaining credit.

Staff recognizes that these comments are indicative of the wide range of opinions, responses and recommendations regarding Staff's proposal. Generally, Staff recognizes that an Order implementing the Act is only the first step in getting the SBC Credit Program underway and staff looks forward to the initiation of a rulemaking proceeding as soon as possible to ensure that further consideration is given to each nuance of the program and stakeholder and public

² In support of this position, NJLEUC relies on I/M/O a Generic Proceeding to Consider Prospective Standards for Gas Distribution Utility Rate Discounts and Associated Contract Terms and Conditions, Docket Nos. GR10100761 and ER10100762, where NJLEUC submits that the Board observed that nothing in EDECA circumscribes the Board's authority to adjust the level of the SBC in appropriate circumstances, permitting customers to pay differing SBC charges.

concern. While Staff is satisfied with the extensive due process and dialogue that has transpired during the Straw Proposal process, and its consideration of all comments in drafting Straw Proposal #1 and consideration of additional comments in drafting Straw Proposal #2, Staff looks forward to continuing the transparency and open dialogue in the context of a rulemaking proceeding and recommends that the Board immediately order the commencement of the rulemaking process.

E. Topical Summary of Comments

Rulemaking for Implementation of Program Standards

1. Rate Counsel submits that the Straw Proposals bear the characteristics of administrative agency action that must be promulgated in accordance with the rulemaking procedures of the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq.

Response: Staff agrees with Rate Counsel in favor of rules to implement the Act and has been directed by the Board to commence a rulemaking proceeding as soon as possible. The Straw Proposal process was not meant to supplant rulemaking but rather, to supplement the rulemaking function while implementing the Act within the time required by law. The Board is mandated by law to allow C&I ratepayers to obtain a credit against their SBC charge on and after January 1, 2013, based on qualifying purchases made during the previous year. Without some form of requirements in place, that mandate could not be met. Moreover, the myriad of stakeholder comments and viewpoints is indicative of the complex nature of the Act and the nuances and implications of implementation. Those comments illustrate how many different interpretations there are about fundamental issues of credit entitlement such as the amount of the credit, the amount of the credit that can be applied annually, whether a ratepayer can receive a credit when annual incentives exceed their annual contribution to the SBC fund and the financial implication that interpretation could have on other programs funded by the SBC, to state a few. Other issues crucial to implementation involve the extended nature of the credit which can be applied for up to eleven years although budgeting forecasting is limited to just one. Likewise, the complication of tracking the credit against a C or I ratepayer's utility account for up to eleven years, as credits rise and fall, is a complex endeavor. There are potential tax implications, eligibility issues, M&V requirements and enrollment concerns, all of which required and will continue to require extensive stakeholder and public discussion and Staff evaluation. The Straw Proposal process allowed for extensive due process through notice, a public hearing, substantial stakeholder input and Staff's consideration of comments which led to the creation of Straw Proposal #2. Despite those efforts and the substantial due process that was given, Staff is in favor of a rulemaking concerning administration of the SBC Credit Program.

Amount of the Credit and How it is to be Applied

2. There were several comments concerning the amount of the credit allowed under N.J.S.A. 48:3-60.3(b). The Utilities, Rate Counsel and NJUA submit that the magnitude of the credit available under the Act should be isolated to NJCEP funds, where the value of those credits at least relates to the underlying objective of the Act.

Staff Response: Staff can find no basis in the Act for an interpretation which would limit the amount of the SBC credit to the CE portion of the C or I ratepayer's SBC liability. N.J.S.A. 48:3-60.3 makes no reference to limiting recovery to the CE portion of the ratepayer's SBC liability. In N.J.S.A. 48:3-60.3(a), the Legislature provided that a C or I ratepayer shall be allowed a credit against the SBC, and it does not differentiate between the various types of costs which

are funded by the charge. EDECA provides for an "SBC" as a charge imposed by an electric or gas public utility, at a level determined by the Board, pursuant to, and in accordance with, N.J.S.A. 48:3-60, which sets out a breakdown of the authorized costs to be collected through the SBC. See N.J.S.A. 48:3-51 (defining "SBC"). Because the Legislature enacted N.J.S.A. 48:3-60 and is presumed to be aware of its own enactments (see Macedo v. Dello Russo, 178 N.J. 340, 346 (2004)), it could have limited the SBC credit recovery under N.J.S.A. 48:3-60.3 to only one portion of the SBC collected under N.J.S.A. 48:3-60, if that were its intent. See Fair Share Hous. Center, Inc. v. N.J. State League of Municipalities, 207 N.J. 489, 502 (2011) (Legislature is presumed to be familiar with laws it has already enacted when choosing particular language for inclusion in a new statute). Accordingly, Staff recommends that the Board allow a C or I ratepayer to receive a credit against the SBC as provided in N.J.S.A. 48:3-60.3(a). Based on the above, Staff recommends that the Board allow eligible C&I ratepayers to receive a credit equal to one half of that portion of the costs incurred during the preceding calendar year for the purchase and installation of products or services that are intended for EE purposes and that would be eligible for incentives under programs that the Board shall have determined to fund by the SBC.

3. Staff received stakeholder comments concerning the amount of the credit that could be applied annually against a C or I ratepayer's SBC liability in a calendar year. Specifically, NJBIA, CCNJ, Comverge and NJLEUC submit that a C or I ratepayer should be allowed to apply its credit against 100 percent of its annual SBC liability. NJUA submits that a C or I should be able to apply the credit against 50 percent of its annual SBC liability. Rate Counsel proposes limiting each C or I ratepayer's credits on an annual basis to 50 percent of a percentage equal to the CE portion of the annual SBC charges attributable to the specific fuel type at issue in the ratepayer's utility service territory. PANYNJ seeks clarification whether a C or I ratepayer, whose credit exceeds 50 percent of the ratepayer's SBC liability for the first year, is approved for the entire credit at the time it is authorized by the Program Administrator or only the amount applied against the first year's SBC liability. PANYNJ also asks whether a C or I ratepayer whose credit exceeds 50 percent of the ratepayer's SBC liability for the first year, must forfeit the balance of the credit to be carried over if the program is discontinued before credit exhaustion has been reached.

Staff's Response: In Straw Proposal #1, Staff recommended that the ratepayer be allowed to apply the credit against 100 percent of its annual SBC contribution. Based on comments received from stakeholders, Staff's reassessment of the Act, its balancing the interests of commercial and industrial customers and all other ratepayers against the Board's obligation to use SBC funding for several other programs, Staff recommends that the C or I ratepayer be allowed to apply the credit against 50 percent of its annual SBC liability as modified in Straw Proposal #2.

In considering the comments received, Staff is persuaded by the Utilities and Rate Counsel that N.J.S.A. 48:3-60.3(c) affords the Board authority to determine the amount of the credit which can be applied annually against a ratepayer's SBC contributions, provided that the Board complies with N.J.S.A. 48:3-60.3(d), which requires that the amount "not exceed 100 percent" of the C&I ratepayers total annual SBC contributions.

Moreover, this interpretation would provide the Board with the necessary assurance that other programs funded by the SBC would not be detrimentally impacted by the issuance of credits. Staff notes that most of the programs funded by the SBC are nondiscretionary, and therefore any over-depletion of SBC revenues as a result of the SBC Credit Program would result in either the reallocation of revenue meant for other SBC funded programs or a reduction in

funding of some of the SBC funded programs. Moreover, since some of the SBC funded programs are non-discretionary, a depletion of funding from those programs as a result of SBC credit payouts to C or I ratepayers, could result in the need for the Board to increase the rate that each ratepayer is charged for the SBC, in contravention of the State's goal as set forth in the Energy Master Plan to reduce the cost of energy in New Jersey.

Allowing a C or I ratepayer to take a 100 percent credit against its entire SBC annual contribution for up to eleven years, would invariably reduce the SBC fund in every case. This would make it difficult for the Board to develop longer term budgets and program goals for other important State programs funded through the SBC.

Staff recognizes that in certain instances, this interpretation could reduce the amount of the credit to be applied to a level which would make it uneconomical to perform any EE improvements let alone participate in the SBC Credit Program. Staff prefers an inclusionary rather than exclusionary process and recommends that the Board adopt the language in Straw Proposal #2 which allows a C or I ratepayer to apply the credit against 50 percent of its annual SBC liability. Finally, in response to PANYNJ, upon approval of the final paperwork by the Administrator confirming that the project was completed and meets all program requirements, and calculation of the final amount of the credit, the Administrator is authorized to begin issuing the credit at the end of the next twelve monthly billing cycle and each applicable year thereafter. Also, the SBC Credit Program would be an on-demand program and therefore, not subject to budget restrictions and cancellation.

4. Staff received comments both in support of and in opposition to the Straw Proposals' requirement that in any year in which a CE incentive is received, any SBC credit committed to the C or I ratepayer would be reduced by the amount of the credit. Essentially, the aggregate amount of the SBC credit and other CE incentives could not in that year exceed 50 percent of the C or I ratepayer's SBC contributions made during the calendar year. While Rate Counsel and the Utilities are in support of this limitation, NJLEUC, NJBIA, CCNJ, and Comverge oppose it. In addition, PANYNJ recommends that ratepayers with multiple facilities/multiple accounts be permitted to submit a consolidated SBC credit application for all proposed improvements.

Staff Response: Staff agrees with Rate Counsel and the Utilities that a C or I customer who participates in the SBC Credit Program, and thereby reduces its contribution to the CE fund in an amount that in many instances could actually exceed its actual CE contribution, should not be eligible for CE participation unless the customer elects to forego an appropriate portion of the credit based on the benefits received from its CEP participation. For example, if a C or I ratepayer receives a CE incentive in the same year that the customer receives an SBC credit, the amount of the SBC credit would be reduced by the amount of the CE incentive.

The rationale is clear. The SBC Program is uniquely generous in that it allows a C or I ratepayer to take a credit against its entire SBC contribution rather than just the portion attributable to CE. But that generosity could prove fatal to other programs that are funded through the SBC. In its December 7, 2012 comments, Rate Counsel stressed the fact that SBC contributions fund more than just CE. Ratepayers rely on that funding for social programs, nuclear decommissioning, gas plant remediation, public education activities and the USF. N.J.S.A. 48:3-60(a)(3). The Utilities agreed. In their October 26, 2012 comments, the Utilities warn that granting credits that are more than double the value of the C&I ratepayers CE contributions, and allowing them to carry those credits for an additional ten year period, would undermine the Board's and the Utilities' ability to develop longer term budgets and program

goals for other important state programs funded through the SBC. The Utilities recommended that any C or I ratepayer who takes part in the SBC Credit Program and thereby reduces its contribution to the CEP through the SBC should be ineligible for SBC-funded EE programs. If a C or I ratepayer received a rebate in the previous calendar year, the C or I ratepayer 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 EE project for which the C or I ratepayer received the rebate. If the C or I ratepayer is carrying an SBC credit forward, it should not be eligible for CE program participation in any of the carry-forward years, unless the C or I ratepayer elects to forego an appropriate portion of the credit based on the benefits received from its CE program participation.

Staff agrees with Rate Counsel and the EDCs that credits should be offset by any CEP incentives received, and, inversely, any CEP incentives received should offset SBC credits. Staff recommends that the Board adopt the aforementioned limitation by modifying the Straw Proposal #2 with the addition of the following language "Projects with funds currently committed under other CEP funded programs may be included in the FEEP scope; however the value of the incentive will be deducted from the credit. Any year, in which a credit is received, other CEP incentives shall be reduced accordingly by the amount of the credit, such that the aggregate amount of the credit and other CEP incentives does not exceed 50 percent of the Eligible Entity's SBC contributions made during that calendar year. Any year, in which a CEP incentive is received, any credit committed to the Eligible Entity shall be reduced accordingly by the amount of the credit, such that the aggregate amount of the credit and other incentives does not exceed 50 percent of the Eligible Entity's SBC contributions made during that calendar year. This paragraph is only applicable if both a CEP incentive and SBC credit is received during the same calendar year. CEP incentives alone are not subject to this paragraph, and can exceed the numerical limits above. In the event that an incentive already exceeds 50 percent of SBC contributions, and a credit is requested in the same calendar year, the credit application will be rejected but the incentive will be unaffected."

Regarding PANYNJ's question concerning multiple accounts, Board Staff notes that paragraph A. of Straw Proposal #2 has been modified to reflect that the credit applies to a utility account. Staff recommends that the Board adopt this change, as reflected in Appendix A.

Unfortunately, aggregation of accounts when the credit is tied to the SBC contribution would involve a level of complexity and require administrative involvement by the Utilities that could cause the Program's administrative costs to be disproportional to the benefits of the Program.

5. NJLEUC requested that the Board establish a tiered credit program, where the magnitude of the credit would be determined based on factors such as a customer's contribution to the SBC, the customer's total electric and/or natural gas usage, and the nature of the customer's business and facilities, to state a few. NJLEUC suggests that dissimilar C&I ratepayers can receive different percentage allocations of costs as a basis for the credit.

Staff's Response: Board Staff appreciates NJLEUC's suggestion of a tiered system approach to credits. However, implementation of a measure that complex would require comprehensive feedback from the public and from those stakeholders against whom the proposed standards would apply. A suggestion of that magnitude is best suited for consideration in the forthcoming rulemaking process, where it can be vetted accordingly. As a preliminary matter however, we caution that N.J.S.A. 48:3-60.3(b) provides that "the credit shall be equal to one-half of that portion of the costs incurred by the C or I ratepayer during the preceding calendar year..." Any recommendations for adoption of this measure would need to comply with that mandate.

6. NJUA asked that the Board determine a ratepayer's SBC contribution for purposes of determining the credit, prior to the application of energy sales tax, which would be its true contribution. To determine the amount of the credit using the contribution amount inclusive of tax would be equivalent to allowing a credit against the sales tax as well as the SBC contribution.

Staff's Response: Staff agrees with NJUA's comment and finds it consistent with the Act, which reads that the ratepayer "shall be allowed a credit against the societal benefits charge...." Staff recommends that the Board adopt that change. Staff has made that modification to Straw Proposal #2 in accordance with that recommendation, which is attached as Appendix A. Staff recommends that the mechanism for implementing that change be explored as part of the rulemaking process with substantial input from the Utilities who are responsible for collecting and remitting the taxable amount, and the input of the Division of Taxation, as necessary.

ERT Requirements

7. Comments were received concerning the requirement in Straw Proposal #1 that "the submitted plans must include a package of EE measures that achieve an ERT of at least 15 percent of total building source energy consumption" and the modification under Straw Proposal #2 that reads, "the submitted plans must include a package of EE measures that achieve an ERT of at least 15 percent of total building source energy consumption, 100,000 kWh in annual electric savings, or 350 MMBtu of annual natural gas savings." Gerdau, Comverge, NJLEUC and NAIOP object on different grounds. NAIOP suggests generally that the Board set more reasonable ERT standards so that smaller and mid-sized C&I ratepayers could participate in the program. NJLEUC challenges the modified ERT standards in Straw Proposal #2, finding them arbitrary and suggests either elimination of the ERT or adoption of thresholds consistent with Custom Measures programs. Comverge also objects to the ERT modifications in Straw Proposal #2, expressing that the new thresholds will prevent participation by some C&I ratepayers. Gerdau objects to the use of any percentage threshold and asked that eligibility be based on minimum size threshold or minimum energy savings instead. Conversely, Rate Counsel objects to the modified ERT standards, expressing a fear that the reduced thresholds would lead to overwhelming demand in the program. RC suggests instead that the Board either allow further consideration and comment on the potential effects of the alternative ERT's or just establish a clear minimum standard such as 15 percent.³ Finally, PANYNJ sought clarification whether the new ERT standards of 100,000 kWh or 350 MMBtu comprise a minimum metric under the 15 percent total building ERT or if they are alternative thresholds.

Staff's Response: The two additional ERT standards included in Straw Proposal #2, 100,000 kWh or 350 MMBtu, are alternative thresholds that stand on their own. A C or I ratepayer could meet any of the three to qualify. Staff was motivated by the initial comments of NJLEUC and Gerdau concerning the four percent custom threshold offered under Straw Proposal #1 being unduly burdensome for some C&I ratepayers and based in part on those comments, offered alternative threshold requirements as modified in Straw Proposal #2. Staff appreciated Gerdau's explanation that for early responders and for large manufacturing plants, a four percent ERT threshold could present an insurmountable obstacle as further capability for energy reduction beyond what has already been achieved is limited. Staff inserted the numerical

³ In earlier comments, Rate Counsel suggested an ERT of 25%. Nothing in the record suggests that Rate Counsel has abandoned that suggested percentage, but rather, that it is further requesting that any established ERT be limited to one minimum standard, consistent with its December 7, 2012 comments.

threshold savings alternatives (annual savings of 100,000 kWh electricity or 350 MMBtu natural gas) to offer more flexible ERT standards. These alternative threshold savings are not arbitrary and follow the same standards used in the existing Pay for Performance Program, which to date, has not experienced an unmanageable flood of applications nor resulted in fiscal crisis.

In making those modifications, Staff sought to achieve a balance between the rights of C or I ratepayers to participate in the credit program, the responsibility of the Board to make judicious decisions as stewards of public monies; the Board's duty to ensure that adequate safeguards are in place to prevent abuse, and the Board's responsibility to ensure that the monies used actually promote and achieve EE. An elimination of ERT, as suggested by NJLEUC, would fall short of meeting those goals and the Legislative intent behind the Act,⁴ while an ERT of 25%, could be prohibitive for smaller C or I ratepayers and early responders and effectively foreclose them from participation. For those reasons, Staff recommends that the Board adopt the modified ERT standards set forth in Straw Proposal #2. Nonetheless, Staff further recommends that additional consideration in the rule making proceeding be given to Rate Counsel's suggestion that there be one ERT, whether at a rate of 15%, 25% or other amount, as well as to the potential harm intuited by Rate Counsel.

8. Gerdau objects to the requirement in Straw Proposal #1 that the ERT include a comprehensive mix of measures, where for instance, lighting could not comprise more than 50 percent of the total projected savings. Gerdau argues that the language fails to define whether "comprehensive mix" is tied to a minimum number of measures and that the requirement itself eliminates the opportunity to implement a single measure that could produce significant savings. Gerdau also requests that the Board expand the applicable EE measures that qualify for a credit to include those that have received Superior Energy Performance certification or which comply with Energy Management Standard – ISO 50001, a globally accepted standard for managing energy.

Staff's Response: Staff's consideration of Gerdau's concern and its interest in making the program accessible to a large portion of C&I ratepayers by relaxing standards, prompted it to modify that language when it drafted Straw Proposal #2. Straw Proposal #2 deletes that language in its entirety so that a C or I ratepayer would be able to apply for the SBC credit based for the implementation of a single measure that meets the ERT outlined in Straw Proposal #2. But Staff believes that a remaining term, requiring that the ratepayer's ERP include a "package of EE measures," is equally confusing and should be removed. Accordingly, Staff recommends that the Board delete "package of EE measures" from the Proposal. Staff has modified Straw Proposal #2 in accordance with that suggestion, which is attached as Appendix A.

However, consistent with standards under P4P and LEUP programs, Staff believes that lighting should comprise no more than 50 percent of the projected energy savings. As such, Staff has modified Appendix A to reflect that change and recommends that the Board adopt that modification. This modification is consistent with the Act which allows a credit for measures that would be eligible for incentives under programs (such as P4P and LEUP) that the Board shall have determined to fund by the SBC. N.J.S.A. 48:3-60.3(b).

⁴ The credit is described as intending to encourage businesses to purchase and install energy saving products and services by allowing the businesses to claim a credit against the societal benefits charge. Sponsors' Statement to Assembly Bill No. 2528, at 8 (Mar. 16, 2010); Sponsors' Statement to Senate Bill No. 2344, at 8 (Oct. 14, 2010).

Finally, Staff notes that measures which meet as SEP certification (Industrial Measurement and Verification Protocol) or Energy Management Standard - ISO 50001 are eligible under the Pay for Performance Program and the SBC Credit Program as well.

Eligibility Requirements

9. Staff received a comment from NJBIA suggesting that it relax the eligibility requirements, for instance, by creating tiered eligibility requirements such as allowing an exemption from prevailing wage requirements for smaller C&I ratepayers. NJBIA submits that current law allows for an exemption from prevailing wage for projects under \$14,000.

Staff Response: Based on this comment, Staff revisited that provision in Straw Proposal #2, acknowledged its ambiguity with respect to the expectation, and modified the language concerning prevailing wage rates to reflect "as required by law." Each participant is expected to be familiar with and to comply with relevant State laws, including prevailing wage requirements. Staff recommends that each participant check with the appropriate State agency and their legal counsel to determine what are those prevailing wage requirements (or exemptions from those requirements) and to act accordingly.

10. Staff received comments from Rate Counsel, NAIOP and NJBIA requesting that the application process be simplified in order to encourage participation and so that smaller and mid-sized C&I ratepayers could have the opportunity to participate in the SBC Credit Program. For example, NJBIA asked that the "good standing" requirement be modified in light of the financial impact of Hurricane Sandy on some C or I ratepayers, so that any C or I ratepayer who has paid the SBC would be eligible rather than requiring non-delinquency of SBC remittance. NJBIA also suggests that the Board work with Treasury to waive any fees associated with tax clearance certificates for impacted companies. Finally, NJLEUC asked that the DEEP requirement be eliminated and Rate Counsel asks for a longer project construction timeline.

Staff Response: Essentially, Board Staff agrees with NJBIA's argument that smaller and medium-sized C&I ratepayers should be entitled to participate in the SBC Credit Program and in response, made several modifications to simplify the application process. First, Staff eliminated the DEEP requirement in Straw Proposal #1, leading to a significant reduction in time, expense and the need to submit certain information. In addition, by eliminating the DEEP it essentially reduces the credit eligibility process by 90 days while leaving the construction deadline the same. Furthermore, the elimination of the expense required for preparation and submission of the DEEP, could be used to offset the C or I ratepayer's financial portion of the project. However, Staff cannot eliminate all requirements, like M&V measures for instance, which provide assurance to ratepayers and to the Legislature that public monies are being spent prudently and in accordance with the Act's purpose. Consequently, Staff included similar application procedures that are already present in the P4P and LEUP and which have worked well to meet those safeguards. Regarding the "good standing" requirement, Staff is sensitive to NJBIA's concern and recommends the requirement be eliminated since no other program has such a requirement. Staff has modified Straw Proposal #2 in that regard, and recommends the Board adopt the modified language which appears in Appendix A. Finally, Staff encourages additional suggestions for streamlining the application process in the context of the rulemaking proceeding, including changes to the construction deadline and the existence of any Board authority to waive tax clearance certificate fees.

Administration of the Credit

11. In response to Straw Proposal #1, Staff received comments from Rate Counsel and the Utilities requesting that SBC Credit Program, including the issuance and tracking of credits, be carried out by the OCE rather than the Utilities.

Staff Response: Staff agrees with the Utilities and Rate Counsel that the Utilities' administration of these functions would result in higher administrative costs and could compromise Staff's ability to effectively monitor the aggregate impact of the value of the remaining credits, and to consider its impact on the CEP budgeting process. Staff is also cognizant of Governor Christie's desire to reduce energy costs in New Jersey, and its responsibility to ensure that the SBC Credit Law Program is administered in the most efficient way possible. In that regard, Board Staff accepts the Utilities claim that the implementation of the SBC Credit Program within the billing and record-keeping system of each utility could be an extremely complex and costly endeavor. However, the Utilities would still be required to provide the amount of the SBC contribution in accordance with the Act. Accordingly, Staff recommends that the Board adopt that modification in Straw Proposal #2 which places the Program's administrative responsibilities on the Program Administrator in accordance with the modified language in that Proposal.

12. Rate Counsel suggested that Staff explore through data collection the estimated costs and feasibility of different options for issuing the SBC credit (i.e. the issuance of a check vs. a credit to the utility account) and intervals for credit payment (i.e. monthly vs. quarterly). Rate Counsel asked that the information collected be presented and considered in the context of a formal rulemaking proceeding before Staff or the Utilities make any changes to their computer systems to accommodate the SBC Credit Program.

Staff Response: Staff agrees with Rate Counsel that as stewards of public monies, the Board has an obligation to explore the costs considerations contemplated by Rate Counsel. Staff recommends that the Board order Staff to conduct a feasibility determination as to the most cost effective and feasible means to distribute the credit and that the issue be presented as part of the rulemaking process.

13. Gerdau requested clarification concerning the allocation of the SBC Credit amount against a C or I ratepayer's electric and natural gas utilities. Gerdau believes that the language in the Proposals suggest that a C or I ratepayer that invests in projects geared primarily toward electricity savings could not apply the credit against its SBC contributions for electric and gas.

Staff Response: Staff submits that neither of the Proposals is intended to operate in this fashion. Rather, the intent of the SBC Credit Program in accordance with the Act is that the C or I Ratepayer be allowed a credit against the entire SBC, not limited to one energy type, on a per account basis. N.J.S.A. 48:3-60.3(a). Accordingly, Staff recommends the Board modify the language which reads, "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," by ending the sentence after the term "proposed credit." Staff has modified Straw Proposal #2 to reflect that change in the attached Appendix A. Staff notes that the credit is still to be applied on a per utility account basis.

14. Rate Counsel opposes the use of ratepayer funds for any incentive that pays 100% of the applicant's 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 important emerging measures needed to promote public benefits. When no standard measures exists, such as for building insulation, the incremental costs are equal to the total installed costs.

Staff Response: Board Staff notes that the provision comes directly from the Large Energy Users Pilot Program. The Act contemplates utilizing existing EE programs as a basis for the SBC Credit Program, and consequently Board Staff's straw proposals have included program rules derived from both the Large Energy Users Pilot Program and the Pay for Performance Program. Consequently, Board Staff believes that Rate Counsel's suggestion, while perhaps having some merit, should be considered in the context of the rulemaking proceeding, where the implications can be analyzed more fully by stakeholders.

15. Rate Counsel submits that the SBC Credit Program should not allow a C or I ratepayer to use any source of energy other than electricity or natural gas as the primary source for its EE project. Rate Counsel reasoned that the SBC Credit Program is funded by the SBC charge levied on electric and natural gas ratepayers.

Staff Response: Staff agrees with Rate Counsel's assessment. Staff recommends that the Board adopt modified language that makes it clear that a C or I ratepayer may only qualify for and receive a credit against its SBC for qualifying EE measures that reduce electric or gas consumption. Staff has amended the relevant language in Straw Proposal #2 in accordance with that recommendation, which now reads, "Each ECM must reduce electric or gas consumption or both."

16. Rate Counsel recommends establishing a budget for funding of the program tied to a percentage of the total CE budget to prevent exhausting the entire CEP budget or compromising other SBC funded measures.

Staff Response: Staff understands the challenge facing the Board to encourage EE projects through an even-handed, generous and worthwhile SBC credit program while also continuing to fund several other notable programs. Staff recognizes the difficulty in funding many programs with a limited source of funding and appreciates Rate Counsel's suggestions for managing that funding. Staff was moved by Rate Counsel's analysis in its December 7, 2012 comments, illustrating that if the SBC Program had been in place in 2012, based on 2011 collections from each utility's top 25 SBC contributors, the potential outlay of SBC funds to pay for SBC credits could have exceeded the entire CE fund. That conclusion is staggering. While the outcome is speculative, it highlights a key shortcoming of SBC Credit Program funding. The Board does not have the benefit of foresight and cannot speculate how many applications it will receive. Further, this program is unique in that an approved credit can encumber SBC funding for up to eleven years, which makes budgeting that much more difficult.

As such, Staff agrees that the concept of an SBC budget should be considered in the context of a rulemaking and recommends that the Board direct Staff to submit this item for consideration in the rulemaking proceeding. Staff further recommends that contemporaneous with the implementation of the Act, that the Board order Staff to compile real-time information concerning

the number of applications and magnitude of the credit sought, which could be used in assessing whether an SBC budget should be implemented.

17. Rate Counsel, NJLEUC and Gerdau oppose the timing for credit issuance which occurs at the end of the following twelve month billing cycle after project completion and inspection. NJLEUC finds the delay inordinate and inconsistent with the manner in which management budgets for capital projects. NJLUEC asks that it be issued after project completion. Rate Counsel requests that that Board implement through rules a financial mechanism to help with financial hurdles that will occur with the long credit payment schedule.

Staff Response: Staff believes that issuance of the credit in accordance with the proposals is consistent with the Act, since the expenditures tied to the credit are still linked to purchases from the prior year. N.J.S.A. 48:3-60.3(b). Furthermore, the delay applies to the first year only so it would have no impact on credit recovery in years two through eleven.

While issuance of the credit upon project completion would benefit C&I ratepayers with faster cost recovery, it is problematic for various reasons. First, verification protocols require the collection of post-installation energy consumption data and the calculation of percent reduction of source energy use (the difference between baseline and post-retrofit energy consumption). Payment upon project collection would stymie that part of the verification process. It would also prevent the Program Administrator from determining whether the project is performing as intended and if not, the amount by which the credit should be reduced. The Board is ultimately responsible for determining the amount of the credit under the Act, [see N.J.S.A. 48:3-60.3 (c)] an obligation it does not take lightly. As the Utilities pointed out, strong controls are critical to ensuring public confidence that the credits are generating significant savings. If credits were issued upon project completion as NJLEUC would like, and the Administrator later determined that the project's actual energy reduction fell short of projections, recapturing public monies to which the C or I ratepayer was not entitled would be troublesome and costly. The current credit payment schedule avoids such a sticky situation. In fact, Rate Counsel supports the use of post-retrofit data as part of the verification process, and adds that it allows collection of actual savings from the Program that can and should be incorporated into the State's strategies to meet the Energy Master Plan.

Payment under the current proposal also allows the Board if necessary, to amend the budget to allow for applications that could not otherwise be approved if the funding had been exhausted. Notwithstanding, stakeholders are free to propose credit payment timelines in the rulemaking process that are considerate of the outlined problems and Staff recommends that the Board allow that issue to be explored at that time.

Staff also appreciates Rate Counsel's idea to develop in the rulemaking process, financial mechanisms to assist C or I ratepayers who are cash strapped while waiting for the credit to issue. However, since the Act does not authorize the Board to issue amounts in excess of the determined credit, the Board has no basis for issuing additional monies. Nor is there a means of issuing a tiered credit, similar to P4P, without problems developing. Under P4P, tiered payments are based on the satisfaction of a specified act or completion of a particular measure at each stage. The Program Administrator does a "look back" to determine if the benchmark has been met before issuing the incentive at each stage. The SBC credit operates differently. The SBC Credit is based on the completion of the entire installation of qualifying products, and is not separated into stages. As a result, payment over time would not work. Staff can only speculate at this time since Rate Counsel's suggestion does not indicate the means by which a financial mechanism could be implemented. Therefore, Staff recommends that the Board allow

Rate Counsel to present examples for financial mechanisms in a ratemaking proceeding, which are authorized by the Act and within the jurisdiction of the Board to implement.

18. The Utilities and Rate Counsel requested clarification on the meaning of "entity" as used throughout the proposals, i.e. whether it refers to a customer, account, a meter, or other measure. To clarify Staff's intent, it modified the proposal by deleting "entity" when used in the singular (as compared to Eligible Entity which is defined under the Proposals) and replacing it with language specifying that the credit is intended to apply to a single utility account. That change should make it clear that a C or I ratepayer who has several utility accounts may not aggregate those accounts under the Credit Program. The modified language appears in Straw Proposal #2. Staff recommends that the Board adopt this modified language

DISCUSSIONS AND FINDINGS

Staff solicited and received substantial input on the Act, suggestions for administration of the credit, and conflicting interpretations on what the Act allows. Staff submitted questions to stakeholders, sought public input, held a stakeholder's conference and allowed extensive time for comment on its Proposals. In fact, Staff offered two proposals for review. The second was created after Staff received several comments on key issues such as administration of the credit, the amount of the credit to be applied and the ERT requirements. In addition, a public hearing was held on December 3, 2012, to solicit additional input on the Straw Proposals and written comments were accepted from the public. Both the stakeholder conference and the public hearing were well attended. There is no question that substantial due process was followed and that the public had significant notice and opportunity to comment on the Proposals.

However, this Act is complex. It allows for a credit for purchases from the previous year, while extending the period over which the credit could be collected to a maximum of eleven years. The credit tracking implications are huge. And for those C or I ratepayers who have different utility providers for gas and electric, the situation is even more complicated. Making this even more challenging is the uniqueness of the credit. Although it is a credit for the purchase of EE measures, it is not tied to the CE fund, which was established for that use. N.J.S.A. 48:3-60(a)(3). Instead, the amount of the credit is tied to the entire SBC fund, which funds far more than just CE programs. No other CE program operates this way. The financial implications to the SBC fund as a whole, and the potential depletion of funding to those other programs (as well as potential rate increases to all ratepayers as a result) are tremendous. With so much at stake, it is not surprising that the comments were so varied, ideas complex, and overall, represented strikingly dissimilar views.

The Board is pleased with the attention Staff gave to creating a proposal for the Act's implementation and also pleased with the level of stakeholder involvement and impressive variety of comments and suggestions it about the proposed Program. It is based on those efforts and level of participation that the Board is able to reach this determination.

For the following reasons, the Board **HEREBY FINDS** the process utilized in developing Staff's recommendations related to implementation of the Act was appropriate and provided stakeholders and interested members of the public notice and the opportunity to comment.

The Board has considered the extensive public stakeholder input received. Based on its review of the Act, stakeholder and public comments, Straw Proposal #1 and Straw Proposal #2, and after due consideration, the Board **HEREBY ADOPTS** Appendix A for the reasons set forth in this Order. The Board believes that Staff's recommendations as set forth in Appendix A relate

to the requirements of the Act and are reasonable. These procedures are sensible, consistent with the policies of the Board and the Act, and through their implementation will deliver significant benefits to the State by promoting the purchase of EE products and services by C&I ratepayers and lead to further reductions in the usage of electricity and natural gas.

For the reasons that follow, the Board **HEREBY ADOPTS** Appendix A attached to this Order, as "The SBC Credit Program" to take effect on January 1, 2013. The Board further **DIRECTS** Staff to initiate a rulemaking as soon as possible in accordance with the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., to consider the full breadth of issues associated with the SBC Credit Program and to further develop minimum filing requirements for SBC Credit Program applicants, including but not limited to the issues identified by Rate Counsel and Staff and as specified in this Order. Staff will report quarterly to the Board on the progress of such rulemaking.

At the outset, the Board agrees with Rate Counsel concerning the appropriateness of rulemaking under these circumstances, and has ordered Staff to take action to initiate a rulemaking proceeding as soon as possible in accordance with the Administrative Procedures Act. However, the Board is satisfied that this Order is necessary and proper at this juncture, given the need to provide sufficient standards for implementation of the Program on January 1, 2013, as mandated by the Act. Without the issuance of this Order, that mandate could not be accomplished. However, in carrying out this interim process, the Board is satisfied that Staff has met the fundamental goals of providing notice and adequate due process to stakeholders and the public. The overwhelming input, suggestions and ideas that Staff received from the public and stakeholders during this process is an indication that due process has been satisfied.

Agencies have wide latitude in improvising appropriate procedures to effectuate their jurisdiction and substantial flexibility in choosing those procedures most suitable to achieving their regulatory aims and implementing legislative policy. In re Provision of Basic Generation Service for Period Beginning June 1, 2008, 205 N.J. 339, 347 (2011); Metromedia, Inc. v. Dir. Div. of Taxation, 97 N.J. 313, 333 (1984); Crema v. N.J. Dep't of Env'tl. Prot., 94 N.J. 286, 299 (1983). Similarly, agencies possess the ability to be flexible and responsive to changing conditions. In re Pub. Serv. Elec. and Gas Co. Rate Unbundling, 167 N.J. 377, 385, cert. denied, 534 U.S. 813; 122 S. Ct. 37; 151 L. Ed. 2d 11 (2001). But "administrative agency action, and an agency's discretionary choice of the procedural mode of action, are valid only when there is compliance with the provisions of the Administrative Procedure Act (APA), N.J.S.A. 52:14B-1 to -15, and due process requirements." Basic Generation Service, *supra*, 205 N.J. at 347 (citing Nw. Covenant Med. Ctr., *supra*, 167 N.J. at 137). In this case, given the complex nature of the credit, the ever-evolving suggestions of stakeholders, and balancing the interest of all ratepayers and the Utilities, rulemaking would not have been feasible in the short time frame. But the Board feels confident that substantial due process was afforded to all interested parties such that this Order is a sufficient application of the Board's authority and a sufficient and appropriate means to implement the Act pending the adoption of rules.

The Board adopts the positions of Rate Counsel, the Utilities and Staff in finding that the amount of the credit which a C or I ratepayer can apply annually against its SBC liability is 50 percent. In reviewing the Act and the comments of stakeholders and Staff, the Board agrees that N.J.S.A. 48:3-60(c) affords the Board authority to determine the amount of the credit which can be applied annually against a ratepayer's SBC contributions, provided that the Board complies with N.J.S.A. 48:3-60.3(d), and does not allow an amount that exceeds 100 percent of a C or I ratepayer's total annual SBC contribution. This interpretation is consistent with the Act, allows the Board to ensure that other programs funded by the SBC will not be detrimentally impacted

by the issuance of credits in light of their non-discretionary nature, and allows the Board to create long-term budget goals.

The Board agrees with the position of Rate Counsel and the Utilities concerning the allocation of the credit when other CE incentives are received. The Act's goal of encouraging EE is met through the allowance of a credit equal to one-half of a C or I ratepayer's qualifying costs. Nothing in the Act indicates that the State's ratepayers, through their SBC contributions, should completely subsidize the EE measures of C or I ratepayers through the SBC fund, which is the source of funding for far more than just CE projects. In fact, the Legislature made that intent clear when, following the December 12, 2011 public hearing of the Senate Environment and Energy Committee, concerning Senate Bill No. 2344, a precursor to this Act, the Legislature reduced the amount of the credit from the cost of the qualifying measure to one-half of the cost. There is no basis here to oppose the Legislature's intent by allowing a C or I ratepayer to acquire a windfall through other CE incentives, that it was unable to obtain through the SBC Credit Program. Therefore, a C or I ratepayer who takes part in the SBC Credit Program, and thereby reduces its contribution to the CE fund (in an amount that in many instances could actually exceed its actual CE contribution) should not be eligible for CE participation unless the customer elects to forego an appropriate portion of the credit based on the benefits received from its CEP participation. The Board adopts the language in Appendix A concerning that provision.

While the Board finds novel the idea of a tiered credit system as suggested by NJLEUC, the concept is a complex one that would require substantial stakeholder input, Staff review and a detailed basis of how such a system would work. Furthermore, any concept would need to comply with the parameters of the Act, particularly N.J.S.A. 48:3-60.3(b), which sets the amount of the credit. Accordingly, the Board invites NJLEUC to propose a detailed, Act-compliant plan for a tiered system within the context of the rulemaking proceeding.

The Board has reviewed the comments of the Utilities and Rate Counsel concerning the problems with administration of the program by the Utilities and agrees that it should be done through the Program Manager. Accordingly, the Board adopts that revision from Straw Proposal #2 as it appears in Appendix A.

The Board has reviewed the requirement for a "comprehensive mix of measures" under Straw Proposal #1, Gerdau's comments that it is ambiguous and not required under the Act, and Staff's revisions under Straw Proposal #2, which deletes the entire sentence pertaining to the comprehensive mix. While the Board adopts Staff's modification, it agrees with Staff's assessment that further modification is needed to and therefore, adopts Staff's suggestion to delete "package of measures".

The Board also accepts Staff's recommendation to limit the projected energy savings of the measure to comprise no more than 50 percent in lighting, consistent with existing standards under P4P and LEUP, CEP which the Board has determined to fund by the SBC in accordance with N.J.S.A. 48:3-60. The Board adopts both modifications as they appear in Appendix A.

The Board notes it concurs with Staff that there were several noteworthy suggestions that involve a level of complexity that goes beyond the scope of this Order and would require comprehensive feedback from the public and stakeholders before further consideration could be given to them. Suggestions such as those are better suited for consideration in the forthcoming rulemaking process, where they can be vetted appropriately. Accordingly, the Board adopts Staff's recommendations concerning the following matters and **ORDERS** that these items be

considered during the general rulemaking proceeding contemplated by the Board and as discussed earlier in this Order:

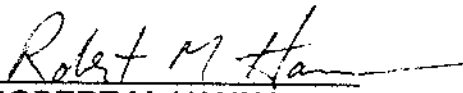
- The concept of a tiered SBC Credit Program as proposed by NJLEUC which would meet the parameters of the Act including the amount of the credit under N.J.S.A. 48:3-60.3(b);
- A determination of the credit based on pre-energy sales tax contributions. The Board agrees with Staff and the NJUA that the determination of the credit net of the energy sales tax is consistent with the Act. The Board adopts Staff's modification to that effect which appears in Appendix A;
- Consideration whether further modifications should be made to the ERT standards, including one rate as discussed by Rate Counsel. For the purpose of this Order, the Board adopts the modified ERT standards set forth in Straw Proposal #2 and which appear in Appendix A;
- Measures to simplify the application process, including but not limited to, modifying the construction and credit issuance timelines as requested by Rate Counsel and others, and waiver of the tax clearance certificate requirement and whether the Board has the authority to do so;
- The exploration through data collection of the costs and feasibility of different options for issuing the SBC credit (i.e. the issuance of a check vs. a credit to the utility account) and intervals for credit payment (i.e. monthly vs. quarterly) and the presentation of those findings in the rulemaking proceeding. The Board agrees that the need for any changes to the Utilities' computer systems should be part of the rulemaking proceeding as well;
- Consideration of an SBC Budget. The Board was moved by Rate Counsel's analysis illustrating how the SBC Credit Program could potentially deplete SBC funding in certain instances. The Board has no ability to determine how many applications it will receive, process or approve nor can it determine how much of the SBC fund will be depleted once credits are awarded. But the potential for that to occur, coupled with the Board's continual need to adequately fund other programs with SBC fund, is a sufficient basis to explore the option of implementing an SBC budget within the context of the rulemaking process;
- The concept of aggregated energy savings targets for the SBC Credit program overall; and
- Whether the Board has authority to charge applicants an administrative fee to cover program administration costs and if so, the method for doing so.


Conclusion

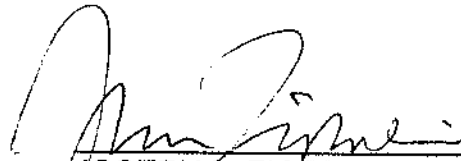
Based on the above, the Board **HEREBY ADOPTS** Staff's recommendations set forth in Appendix A and **ORDERS** the commencement of the SBC Credit Program on January 1, 2013 in accordance with Appendix A. The Board **HEREBY DIRECTS** the OCE to initiate a rulemaking proceeding as soon as possible in accordance with the Administrative Procedures Act 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. Staff will report quarterly to the Board on the progress of such rulemaking.

DATED: 12/20/12

BOARD OF PUBLIC UTILITIES
BY:


ROBERT M. HANNA
PRESIDENT


JEANNE M. FOX
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER

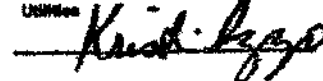

NICHOLAS ASSELTA
COMMISSIONER


MARY-ANNA HOLDEN
COMMISSIONER

ATTEST:


KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities



APPENDIX A

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

THE SBC CREDIT PROGRAM

On January 17, 2012, Governor Christie signed into law a bill ("SBC Law" or "Act") (found at N.J.S.A. 48:3-60.3) that allows commercial and industrial ("C&I") ratepayers to establish a credit against Societal Benefits Charge ("SBC") contributions for the costs of energy efficiency ("EE") products and/or services. C&I ratepayers are entitled to a credit from their annual SBC contributions under the Act equal to one-half of the costs incurred for the purchase and installation of Clean Energy Program ("CEP")-supported EE products and services in the preceding calendar year, and up to 50% of their SBC contributions for a given year, per utility account. The program will be launched on January 1, 2013, and will continue indefinitely. EE expenditures made during 2012 will be eligible to receive credits.

A. Program Description

The purpose of the SBC Credit Program is to implement the Act and to foster self-investment in EE projects by providing financial support to all C&I ratepayers in the State of New Jersey. Credits will be granted to participants that satisfy the program's eligibility and program requirements to invest in self-directed EE projects. To qualify, a C&I ratepayer must have contributed to the SBC in the past calendar year. The maximum credit per entity is 50% of eligible project costs, with an annual cap of 50% of annual pre-tax 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, per utility account. Credits will be issued upon project completion and verification that all program requirements are met.

The SBC Credit Program will rely on the same network of Program Partners that are utilized under the Pay for Performance program. Partners will provide technical services to SBC Credit Program participants. Program Partners are required to strictly follow program policy, but will work under contract to SBC Credit Program participants and act as their "energy expert" for the delivery of services. Entities wishing to be certified as Program Partners must complete the appropriate training as provided by the C&I Market Manager or future Program Administrator (collectively, "Administrator"). Certain entities who have their own in-house professional engineering expertise can become a Program Partner for their own facility. Their staff will be oriented through a fast-track process. This option is geared toward larger customers, and will be evaluated on a case-by-case basis by the Administrator. All other SBC Credit Program requirements will be applicable.

B. Target Markets and Eligibility

The SBC Credit Program is available to all C&I ratepayers who meet the following qualifications: ~~(1) must have contributed to the SBC in the past calendar year; and (2) is current on their SBC liabilities and, consequently, is in good standing with their utility.~~ A C&I ratepayer is defined as a customer serviced by a non-residential utility tariff. C&I ratepayers that comply with the two requirements above ("Eligible Entities") are required to work with an approved Program Partner to develop a Final EE Plan ("FEEP"). The submitted plans must include ~~a package of~~ 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. Projects that cannot identify EE improvements that meet the above savings will be referred to the appropriate CEP EE Program. No more than 50% of the energy savings can come from lighting.

C. Program Incentives

The program will offer a maximum credit per utility account of 50% of total project costs, as identified in the FEEP. Yearly credits are capped at 50% of a participant's SBC contributions. The credit can be carried over for up to ten additional calendar years if the credit exceeds 50% of the ratepayer's annual SBC contributions. There is no minimum credit. Credits will be committed upon approval of the FEEP by the Administrator and, if required, by the Board of Public Utilities. Credits shall be issued and tracked by the Administrator 12 billing cycles upon ~~after~~ project completion and verification that all program requirements are met. Credits shall reduce the amount of funds available under the CEP. ~~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.~~

D. Submittal Requirements for Credit Reservation

Eligible Entities interested in applying to participate in the SBC Credit Program shall submit an Enrollment Letter with the following information (limit 2 pages excluding attachments):

- a. Number of buildings/sites and list of all associated utility and third-party supplier accounts in the previous calendar year;
- b. Total usage and number of location or premise IDs as provided by utility; and
- c. Utility account numbers and authorization for the utility to provide the information needed to calculate the SBC credit; and
- d. Any incentives being received pursuant to Paragraph G(5) below.

E. Submittal Requirements for Credit Commitment

Eligible Entities shall submit a FEEP to the Administrator for credit commitment no later than one hundred and twenty (120) days from the date of the Enrollment Letter. The following information must be included in the FEEP:

1. Executive Summary

- a. Existing energy use by source from previous 12 months (kWh, kW, MMBtu);
- b. Existing total site energy use from previous 12 months (kBtu/sqft);
- c. ~~Calculated~~-Estimated annual energy savings by source (kWh, kW, MMBtu, and %);
- d. ~~Calculated~~-Estimated annual total site energy savings (kBtu/sqft and %);
- e. Total project cost (prevailing wage rates when required by law); and
- f. Total ~~calculated~~-estimated annual energy cost savings.

2. Table of Energy Conservation Measures ("ECMs")

A table of ECMs to be implemented in the next 12 months must be included. Credits shall only be available for ECMs approved in the FEEP. Each ECM must reduce electric or gas consumption or both. ECM descriptions shall include: (1) a detailed description of equipment being replaced/augmented; (2) a detailed description of

recommended measure (including quantities, EER, AFUE, etc.); (3) A basis for calculating energy savings and O&M savings (including all assumptions); and (4) a basis for calculating installed cost (including all assumptions). Moreover, the following information shall be included for each measure:

- a. Estimated installed cost;
- b. Estimated annual energy savings by source (kWh, kW, MMBtu);
- c. Estimated annual O&M savings (\$);
- d. Estimated annual energy cost savings (\$); and
- e. Estimated simple payback or IRR % (total of all measures).

3. Measurement and Verification ("M&V")

Include a description of pre/post M&V to be implemented. The Post Construction Benchmarking Report will be based on the approved FEEP projected energy savings and will provide an accurate verification of savings while keeping the costs associated with M&V at a reasonable level. M&V requirements will follow the International Performance Measurement & Verification Protocol (IPMVP). Option D – Calibrated Simulation will be the required M&V approach for all projects. Options A – Partially Measured Retrofit Isolation and Option B – Retrofit Isolation, may be used as guidelines for data collection. The Post Construction Benchmarking Report must demonstrate savings each year of post construction consumption in which an SBC Credit is received. In the event the scope of work, savings, and/or cost estimates does not match as-built documentation, the amount of the credit will be adjusted proportionally.

To validate the savings and achievement of the ERT, the EPA Portfolio Manager will be used. The steps of this process are summarized below:

- a. Develop and document building energy baseline based on at least one full year of historical energy use data for the building;
- b. Document annual energy use during the post-retrofit period;
- c. Collect energy consumption data for the post-installation period; and
- d. Perform weather-normalization and calculate percent reduction of source energy use as the difference between baseline and post-retrofit energy consumption as a percentage of the baseline energy consumption (baseline – post retrofit energy consumption / baseline).

4. Appendices

- a. Professional Engineer Certification to verify all FEEP documents are accurate;
- b. Utility bills and/or summaries;
- c. Supporting calculations;
- d. Specification sheets;
- e. Site overview; and
- f. Utilities overview

5. ERT

A set minimum ERT is required of all projects and is based on an approved whole-building energy simulation. The ERT must include a package of EE measures that reduce total building source energy consumption by at least 15%; achieve 100,000 kWh in annual electric savings, or achieve 350,000 MMBtu of annual natural gas savings. No more than 50% of the energy savings can come from lighting. The achievement of the ERT is verified using post-retrofit billing data and the EPA Portfolio Manager

methodology. For building types that are not addressed by ~~the EPA's the Benchmarking Tool~~, an alternative approach as reviewed by ~~Board Staff the Administrator~~, shall be followed. The minimum energy reductions will be based on total building source energy, which is consistent with the EPA's Portfolio Manager benchmarking software. Savings projections shall be calculated using calibrated energy simulation. The approach involves the following steps: (1) Develop a whole building energy simulation using approved simulation tools (the list of approved tools are based on the software requirements outlined in ASHRAE 90.1 2004 Section 11 or Appendix G, or as approved by the Administrator; (2) Calibrate simulation to match pre-retrofit utility bills; (3) Model proposed improvements to obtain projected energy savings; and (4) Calculate percent energy reduction to demonstrate achievement of the ERT.

F. Submittal Requirements for Credit Payment

Once the work defined in the FEEP has been completed, the Eligible Entity shall submit proof of construction completion for all measures. Proof of construction completion include, but is not limited to, the following: (1) Invoices for material/labor; (2) Certification of compliance with prevailing wage as required by law; and (3) Valid tax clearance certificate. All work must be completed within 12 months of FEEP approval. Extensions may be granted 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 indicating percentage complete, updated project schedules, etc.). If ECMs are not completed within the specified timeframe, credit commitment may be forfeited. Differences between the FEEP and the as-built project must be documented and will require a revised FEEP submitted for review. In the event the scope of work, savings, and/or cost estimates do not match as-built documentation, the amount of the credit will be adjusted accordingly. The adjusted calculation shall in no circumstance exceed the original credit commitment provided initially. 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.~~

Upon approval of the final paperwork by the Administrator confirming that the project(s) was completed and meets all program requirements, and calculation of the final amount of the credit(s), the Administrator will issue the credits at the end of the next twelve (12) monthly billing cycle, and to continue such credits in subsequent years (up to ten additional calendar years) until such credits are exhausted.

G. Terms and Conditions of SBC Credit Program

1. Investment Returns

The aggregate ECM work scope identified for all ECM's in the FEEP must in total demonstrate a simple payback of 8 years or less, or must have an IRR of 10% or greater (prior to credit). Board Staff will provide the appropriate energy unit costs and inflation factors.

2. Performance Standards

All ECMs must meet Minimum Performance Standards, as defined by the Pay for Performance Guidelines – Appendix B.

3. EE Products and/or Services

Credits are limited to EE products and/or services that are already eligible for incentives under the CEP during the calendar year in which the FEEP is approved. . The following are not eligible: (1) renewable energy; and (2) maintenance energy saving

projects.

4. Pre-existing ECMs

ECMs already installed or under construction will not be considered for credits and shall not be included in the FEEP. For 2012 expenditures only, an Eligible Entity shall submit as-built documentation regarding the ECMs, and any other information as requested by the Administrator. No FEEP is required. The Administrator shall have sole discretion in approving any measure completed in 2012.

5. Other Funding

Federal grants or incentives are allowed. Other state or utility incentives are allowed so long as they are not originating from CEP funds. CEP loan funds are allowed. Total of Federal, state, utility, and credit funding shall not exceed 100% of total project costs. Projects with funds currently committed under other CEP funded programs may be included in the FEEP scope; however the value of the incentive will be deducted from the credit. Any year in which a credit is received, other CEP incentives shall be reduced accordingly by the amount of the credit, such that the aggregate amount of the credit and other CEP incentives does not exceed 50% of the Eligible Entity's SBC contributions made during that calendar year. Any year in which a CEP incentive is received, any credit committed to the Eligible Entity shall be reduced accordingly by the amount of the credit, such that the aggregate amount of the credit and other incentives does not exceed 50% of the Eligible Entity's SBC contributions made during that calendar year. This paragraph is only applicable if both a CEP incentive and SBC credit is received during the same calendar year. CEP incentives alone are not subject to this paragraph, and can exceed the numerical limits above. In the event that an incentive already exceeds 50% of SBC contributions, and a credit is requested in the same calendar year, the credit application will be rejected but the incentive will be unaffected.

6. Review Timetable

Upon receipt of the FEEP, the Administrator will have sixty (60) days to review each submittal and provide comments to participant; participant will have fifteen (15) business days to respond to comments.

7. BPU Approval

Administrator will present FEEPs to Board for approval as required by Board policy and the commitment of credit.

8. On-Site Inspections

Administrator may conduct up to three site inspections, including a pre-inspection, at 50% completion, and at 100% completion. A pre-inspection will be scheduled within 15 days of FEEP submittal, granted sufficient data is provided. Participant will need to provide access to site and notification upon reaching specific percent completions as mentioned above. Measures which require an inspection at 50% completion will be identified by Administrator upon submittal of the FEEP.

H. Program Deliverables

The Administrator will provide the following services under the SBC Credit Program:

1. Program design and management;

2. **Review of FEEPs;**
3. **Technical assistance;**
4. **Updates of data tracking tools; and**
5. **Up to three quality control inspections for each project, if reasonably required.**

I. Utility Responsibilities and Payment of SBC Credits

Under the SBC Credit Program, Eligible Entities must provide written authorization to the Administrator for the relevant utility to release SBC billing information as required to calculate the credit. The New Jersey electric or gas utility must disclose to the Administrator in a written notice the amount of ~~GEP contribution to the SBC~~ collected by the utility from a participant for the prior calendar-year and for each calendar-year specified in the request, ~~and a confirmation of whether the aggregated accounts are in good standing.~~

J. Quality Control Provisions

Documented policies and procedures provide proper guidelines to ensure consistency in the processing and quality control for all program participants. All EE plans are reviewed upon receipt to verify adherence to eligibility requirements. Applicant eligibility information is verified, along with all technical information in support of EE measure qualification and credit calculation. Applicant supplied information and Administrator performed credit calculations are entered into the database, and files are created for all documents and ongoing project correspondence. Pre and/or post inspections will be conducted as required.

K. Program Evaluation

Ongoing evaluation services will be provided by the OCE through its external evaluation vendor.

IN THE MATTER OF THE IMPLEMENTATION OF A2528/S2344 (N.J.S.A. 48:3-60.3)
AND THE SBC CREDIT PROGRAM

Docket Numbers EO12100940

SERVICE LIST

Elizabeth Ackerman, Director
Board of Public Utilities
44 South Clinton Ave, 9th FL.
P.O. Box 350
Trenton, NJ 08625-0350

Kristi Izzo, Secretary
Board of Public Utilities
44 South Clinton Ave, 9th FL.
P.O. Box 350
Trenton, NJ 08625-0350

Michael Winka
Board of Public Utilities
44 South Clinton Ave, 9th FL.
P.O. Box 350
Trenton, NJ 08625-0350

Mona Mosser
Board of Public Utilities
44 South Clinton Ave, 9th FL.
P.O. Box 350
Trenton, NJ 08625-0350

Allison E. Mitchell
Board of Public Utilities
44 South Clinton Ave, 9th FL.
P.O. Box 350
Trenton, NJ 08625-0350

Carolyn Macintosh, DAG
Division of Law
Dept. of Law & Public Safety
124 Halsey Street
P.O. Box 45029
Newark, New Jersey 07102

Stefanie Brand
Division of Rate Counsel
31 Clinton St.
P.O. Box 46005
Newark, N.J. 07101

AGL/ELIZABETHTOWN
Deborah M. Franco
Cullen and Dykman LLP
Garden City Center
100 Quentin Roosevelt Blvd.
Garden City, NY 11530-4850

Mary Patricia Keefe
Elizabethtown Gas
300 Connell Drive
Suite 3000
Berkeley Heights, NJ 07922

ATLANTIC CITY ELECTRIC
Greg Marquis
Pepco Holdings, Inc.
701 Ninth Street NW
Washington, DC 20068-0001

Amir Mohseni
5100 Harding Highway
Mays Landing, NJ 08330

Philip J. Passanante,
Atlantic City Electric 89KS42
800 King Street, 5th Floor
PO Box 231
Wilmington, DE 19899-0231

Roger E. Pedersen,
Regulatory Affairs
Atlantic City Electric 63ML38
5100 Harding Highway
Mays Landing, NJ 08330

JCP&L
Sally J. Cheong, Manager
First Energy
300 Madison Ave.
PO Box 191
Morristown, NJ 07962-1911

Kevin Connelly
First Energy
300 Madison Avenue
PO Box 1911
Morristown, NJ 07962

Gregory Eisenstark (JCP&L),
Morgan, Lewis & Bockius.
89 Headquarters Plaza, Suite
1419
Morristown, NJ 07960

NJ NATURAL GAS CO.
Mark R. Sperduto, Vice
President
Regulatory Affairs
New Jersey Natural Gas
1415 Wyckoff Road, T08C
Wall, NJ 07719

Tracey Thayer, Esq., Director
New Jersey Natural Gas
1415 Wyckoff Road
P.O. Box 1464
Wall, NJ 07719

ROCKLAND
John L. Carley, Esq.
Consolidated Edison Co
4 Irving Place
New York, NY 10003

Margaret Comes, Sr. Staff
Attorney
Consolidated Edison Law
Dept., Room 1815-S
4 Irving Place
New York, NY 10003

SO. JERSEY GAS
Ira G. Megdal, Esq.
Cozen O'Connor
457 Haddonfield Road, Suite
300 Libertyview
Cherry Hill, NJ 08002

John F. Stanzola, Director,
Regulatory Affairs
South Jersey Gas Co.
1 South Jersey Plaza
Folsom, NJ 08037

PSE&G
Connie E. Lembo
PSEG Services Corporation
80 Park Plaza, T-05
Newark, NJ 07102

Matthew M. Weissman, Esq.
Public Service Electric & Gas
80 Park Plaza, T-5
Newark, NJ 07101

Phillips 66 Bayway Refinery
Carol Ziegler
1400 South Park Avenue
Linden, NJ 07036

Andrew D. Hendry, President
and CEO of New Jersey
Utilities Association
50 West State Street, #1117
Trenton, NJ 08608

Sara Bluhm, NJBIA
102 West State Street
Trenton, NJ 08608

NJLEUC
c/o Steven S. Goldenberg
997 Lenox Drive, Building 3
Lawrenceville, NJ 08648

Novartis Pharmaceuticals
Corporation
One Health Plaza
East Hanover, NJ 07936

Gerdau Long Steel N.A.
c/o Robert A. Weishaar, Jr.
McNees Wallace & Nurick
777 North Capitol Street,
N.E. Suite 401
Washington, DC 20002-4292

Chemistry Council of New
Jersey
150 West State Street, 3rd FL.
Trenton, NJ 08608

Comverge, Inc.
25A Vreeland Road
Florham Park, NJ 07932

Port Authority of New York
and New Jersey
c/o Dominick Posillico
Office of Environmental and
Energy Programs
225 Park Avenue South -
11th Floor
New York, NY 10003

NAIOP NJ
Kathleen Keating-Iola
317 George St, Ste 220
New Brunswick NJ 08901