

April 12, 2013

VIA ELECTRONIC MAIL

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

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

Dear Director Ackerman:

On behalf of the seven investor-owned energy utility companies that are members of the New Jersey Utilities Association (“NJUA”),¹ these comments are provided in response to the Board of Public Utilities (“Board”)’ December 20, 2012 Order (“December 2012 Order”) in the above referenced docket and in response to the March 21, 2013 notice issued by the Office of Clean Energy (“OCE”). It also serves as a follow up to the discussion at the April 2, 2013 stakeholder meeting on this matter. Individual member companies of NJUA may also provide additional comments. A copy of this filing has been provided in electronic form to OCE@bpu.state.nj.us, and to Kristi Izzo, Board Secretary.

Following the April 2, 2013 meeting, Board Staff requested comments on the following issues:

- Exploring the costs and feasibility of various options for credit issuance other than a reimbursement check;
- The need for and feasibility of the Utilities undertaking modifications to their computer billing systems for credit administration;
- One item Board staff would like comments on is whether the utilities are in a better position or not to manage the SBC credit program in whole or in part. This may include the full application process to just tracking the SBC Credit on the customer’s bill.

¹ The companies represented through this letter include Atlantic City Electric Company, Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas, Jersey Central Power and Light, New Jersey Natural Gas Company, Public Service Electric & Gas Company, South Jersey Gas Company and Rockland Electric Company (the “Companies”).

NJUA fully supports the Board's December 2012 Order and agrees with the Board's finding (pp. 28-29) that, after "overwhelming input, suggestions and ideas Staff received from the public and stakeholders," program administration should not be performed by the Companies. As the Companies explained in prior comments submitted on March 16 and October 26, 2012, and the Board has concluded in the December 2012 Order, assigning these functions to the Companies will result in higher administrative costs and will weaken Staff's ability to effectively monitor the aggregate impact of the value of the remaining credits or to consider impacts on the overall New Jersey Clean Energy Program budgeting process.

The Companies are able to provide the annual amount of SBC contributions collected from eligible C&I participants for each relevant calendar year on an annual basis. However, the Board has already properly determined that issuance and tracking of payments to customers should be conducted by the OCE or an entity under contract with the OCE. As indicated in the Companies' prior comments, administration of the SBC credits mandated under NJS 48:3-60.3 (the "Statute") within the individual billing and record-keeping system of each of the Companies would be an extremely complex and costly endeavor. None of the Companies presently have billing systems designed to issue prospective credits. Moreover, in reliance on the December 2012 Order, none of the Companies has estimated the cost of such system design changes, let alone commenced their implementation. As the Companies noted previously:

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

In fact, the OCE has implemented a system to issue checks to customers in its current rebate program. In addition to the efficiencies provided by a centralized system, NJUA also notes that the Statute requires that the "amount of the credit ... in any calendar year for each ... ratepayer ... shall be determined by the Board." Thus, requiring the Companies to track credits is an unnecessary and costly duplication of what the Board already must do to comply with the Statute. Additionally, the structure currently envisioned in the December 2012 Order also provides a cleaner audit trail for OCE to track credits provided and improves the ability of customers to perform energy benchmarking by having a distinct stream for credits instead of blurring savings with on-going billing.

Lastly, each utility will incur and likely seek recovery of associated costs if they are administering this program and providing these credits. The total of those costs would be significantly higher in this circumstance than the costs under a single state-wide administration. In sum, both efficient, least cost administration and the provisions of the December 2012 Order support moving forward as the Board has already directed to develop a Board-centralized system of calculating and providing credits.

Thank you very much for this opportunity to provide comments.

Sincerely,



Andrew D. Hendry
President & CEO



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CHRIS CHRISTIE
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STEFANIE A. BRAND
Director

April 12, 2013

Via Overnight Delivery and Electronic Mail

Honorable Kristi Izzo, Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue, 9th Floor
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Trenton, New Jersey 08625-0350

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

Dear Secretary Izzo:

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

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

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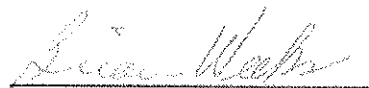
Honorable Kristi Izzo, Secretary
April 12, 2013
Page 2

Thank you for your consideration and assistance.

Respectfully submitted,

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

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

April 12, 2013

The Division of Rate Counsel ("Rate Counsel") would like to thank the Board of Public Utilities ("Board") for the opportunity to present comments in response to the Office of Clean Energy's ("OCE") hearing notice and request for comments titled "SBC Credit – Rule Process Hearing" ("hearing notice") circulated to stakeholders by email on March 27, 2013. OCE provided notice at the April 2, 2013 hearing that the original due date for comments, April 5, 2013, would be extended to April 12, 2013.

The hearing notice solicits input on procedures associated with the implementation and administration of an SBC credit program ("SBC Credit Program") pursuant to the enactment of A2528/S2344 (P.L. 2011, c. 216), now codified as N.J.S.A. 48:3-60.3 ("the SBC Credit Act" or "the Act"), which would allow Commercial and Industrial ("C&I") ratepayers to recover a portion of their costs incurred for energy efficiency projects through credits against their payments due for the Societal Benefits Charge ("SBC"). Additionally, the hearing notice invites comments on the issues reserved for consideration in a rulemaking proceeding on page 30 of the December 20, 2012 Board Order in Docket No. EO12100940 ("December 20 Order").

With these April 12th comments, Rate Counsel supplements and incorporates by reference its December 7, 2012 comments on the Implementation of A2528/S2344 and the SBC Credit Program. In addition, these comments consider the SBC Credit Program proposal as presented in Appendix A and the bulleted items on page 30 of the December 20 Order. Rate

Counsel specifically addresses the first and third bulleted items, namely, the concept of a tiered SBC Credit Program as proposed by NJLEUC to meet the parameters of the Act including the amount of the credit under N.J.S.A. 48:3-60.3(b) (“Application of SBC Tiers”) and consideration whether further modifications should be made to the Energy Reduction Threshold standards.

I. Annual Cap on SBC Credits Relative to SBC Contributions

In its December 7, 2012 comments, Rate Counsel set forth its concerns about the potential for SBC Credit Program expenses to cause disruption to the other programs funded by the SBC, including the Clean Energy Program (“CEP”), social programs, nuclear plant decommissioning, gas plant remediation, public education activities, and the Universal Service Fund. In order to protect against adverse impacts to these other SBC-funded programs, Rate Counsel expresses its support for a cap on credits relative to SBC contributions, such as the cap of 50% of annual pre-tax SBC contributions per utility account and 50% of qualifying project costs as adopted in Appendix A to the December 20 Order.¹ This cap should be implemented alongside an overall budget limit for the SBC Credit Program, as set forth in Rate Counsel’s December 7 comments.

II. Energy Reduction Thresholds

On p. 21 of the December 20 Order, the Board clarifies that it intends for C&I customers to be able to qualify for the SBC Credit Program under any of the three alternative annual energy reduction thresholds: 15%, 100,000 kWh, or 350 mmBtu. Rate Counsel recommends that the Board retain the 15% energy savings requirement for commercial and industrial buildings, but

¹ In its December 7, 2012 comments, Rate Counsel suggested a limit on SBC credits to 50% of a percentage equal to the CEP portion of the annual SBC charges attributable to the fuel type at issue. Rate Counsel notes that it continues to support that proposal for a cap on SBC credits relative to SBC contributions, which is more stringent than the cap set forth in Appendix A, i.e. an annual cap of 50% of annual pre-tax SBC contributions per utility account.

rescind the 100,000 kWh and 350 mmBtu absolute annual energy savings targets. If the Board finds that an alternative threshold is needed, Rate Counsel suggests allowing applicants to request a custom savings threshold, such as the 4% custom savings threshold currently used by the Pay for Performance (“P4P”) program, for projects that meet certain criteria.

Rate Counsel has several concerns with the use of 100,000 kWh and 350 mmBtu thresholds. These absolute savings requirements do not fit well for all customer sizes. For example, while the 100,000 kWh threshold is too high for small commercial customers, it is too low for large C&I customers. By way of illustration, for the top 25 large electricity users in PSE&G's service area, an annual savings of 100,000 kWh would amount to just a small fraction of a percent of the participant's load; in fact, as little as 0.06% of such a large user's annual load. **Figure 1** below presents this case for the largest and the 25th largest electricity users in PSE&G's service area.² Rate Counsel is concerned that these absolute kWh and mmBtu annual savings thresholds would allow large energy users to engage in “cream skimming,” i.e. pursuing only the lowest-cost energy efficiency measures while failing to implement other cost-effective but not lowest-cost opportunities.

² Annual consumption levels were estimated by assuming that the CEP portion of the SBC is 0.4 cents per kWh and applying that rate to the total CEP SBC amounts paid by PSE&G's 25 largest electricity-using customers as provided in PSE&G's March 16, 2012 letter to Michael Winka, BPU Office of Clean Energy, regarding the SBC Law Providing for C&I Credits – Utility-Specific Questions.

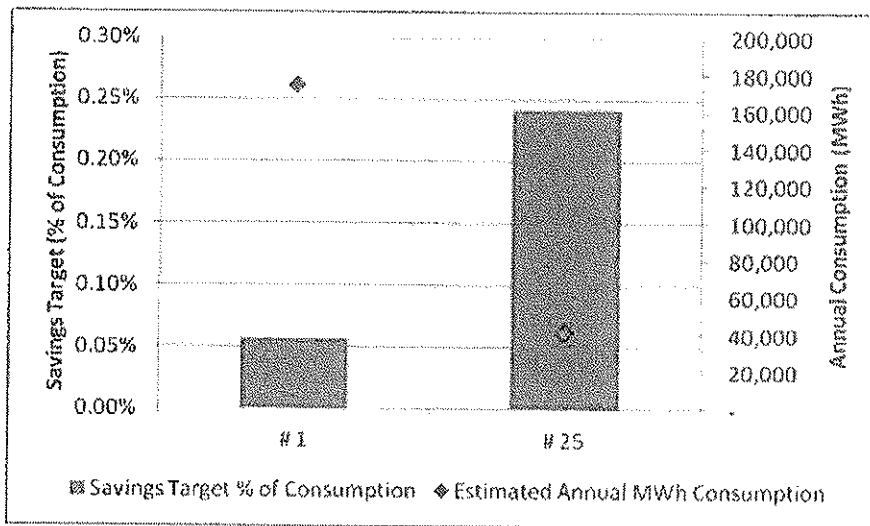


Figure 1. Savings Target as a Percent of Consumption for the Largest and the 25th Largest Energy Users in PSE&G's Service Area

Further, Rate Counsel notes that these absolute thresholds are currently available to participants of the P4P program, but the actual P4P target is 100,000 kWh, 350 mmBtu, or 4% of total building source energy consumption, *whichever is greater* (emphasis added).³ In addition, the P4P custom savings thresholds are only available to qualified projects, which must involve:

- A manufacturing facility, including such industries as plastics and packaging, chemicals, petrochemicals, metals, paper and pulp, transportation, biotechnology, pharmaceutical, food and beverage, mining and mineral processing, general manufacturing, equipment manufacturers and data centers.
- Manufacturing and/or process-related loads, including data center consumption, consume 50% or more of total facility energy consumption.

³ Source: TRC, New Jersey's Clean Energy Program 2013 Program Descriptions and Budget: Commercial & Industrial Energy Efficiency Programs Managed by TRC as C&I Market Manager, January 17, 2013, page 43.

If the Board finds that an alternative to the 15% threshold is needed for the SBC Credit Program, Rate Counsel suggests allowing applicants to request a custom savings threshold for projects that meet the criteria used to determine eligibility for the P4P custom savings threshold (as set forth above). Rate Counsel suggests that 4% is a reasonable minimum efficiency target, considering that best practices in manufacturing energy efficiency indicate that manufacturers could save 6% to 25% energy, according to the Superior Energy Performance certification pilot conducted by U.S. Department of Energy.⁴ For example, it is reported that Volvo Trucks in Virginia achieved 25.8% energy savings in 2012, and Dow Chemical Company in Texas achieved 17% energy savings in 2011.⁵

Assuming that small businesses are better served by CEP C&I programs, the SBC Credit Program should have a single savings threshold of 15% of annual electric or gas consumption except for projects that qualify for the custom savings target.

III. Application of SBC Tiers

Based on its finding that the Board can award different SBC credit amounts to different customers, NJLEUC suggested a “tiered” SBC credit program.⁶ If implemented carefully, the

⁴ <http://www.superiorenergyperformance.net/results.html>.

⁵ *Ibid.*; see also the website for the Industrial Energy Management Information Center at U.S. EPA, which provides a list of energy efficiency potential studies for various types of industrial customers including brewing, cement, chemical, food processing, forest products, petrochemical, petroleum refining, pharmaceuticals, pulp & paper, steel & iron, and textiles. The studies are available at http://www.energystar.gov/index.cfm?c=industry.bus_industry_info_center.

⁶ The relevant excerpt from NJLEUC’s comments is as follows:

The Board may appropriately distinguish between C&I customers on the basis of factors it deems relevant including, among others, the size of the customer’s contribution to the SBC, the customer’s total electric and/or natural gas usage, the nature of the customer’s business and facilities, the benefits received by the customer from participation in other OCE programs, the customer’s investments

tiers as proposed by NJLEUC could potentially avoid the scenario in which the SBC Credit Program expenses require disruption to the CEP or other SBC-funded programs. However, Rate Counsel finds it would be politically difficult and administratively burdensome to set different SBC credit amounts for different customers. For example, if a tier was based on “the nature of the customer’s business,” which types of businesses would be entitled to preferential treatment? Designing this program would likely involve a lengthy stakeholder process, and could be subject to multiple challenges. As an example of potential administrative challenges, verifying the customer’s reductions in energy usage achieved by historical investments for each facility would require significant time and effort up front, before the customer’s eligibility can be determined. Moreover, Board Staff would need to promulgate regulations that fairly and rationally distinguish between types of C&I customers’ businesses.

Instead, Rate Counsel believes that setting a single SBC credit limit, such as an annual cap of 50% of the participant’s annual SBC contributions as proposed by Staff, is simple, clear, and avoids customer confusion. It also accounts for different customer sizes and provides C&I customers with flexibility to decide the extent to which they want to invest in energy efficiency measures that qualify for credits within the 50% limit.

Rate Counsel also notes that NJLEUC’s description of how the credits would be used is very vague. For example, would the tiers be used to determine which entities can participate, the

in energy efficiency measures and reductions in energy usage achieved, and the customer’s ability to aggregate utility accounts to facilitate bookkeeping and maximize the benefit of the credit. The markup of the first SBC Straw that was previously submitted by NJLEUC demonstrates why such factors are relevant and how individual SBC credits may appropriately be determined based upon these distinctions.

Comments of the New Jersey Large Energy Users Coalition regarding the SBC Credit Program Straw Proposals, December 7, 2012, p. 5.

amount of the incentive, or both? Also, NJLEUC's proposed criteria as the basis of the tiers are unclear.

CONCLUSION

Rate Counsel respectfully requests that the Board incorporate its December 7, 2012 comments, as incorporated by reference and supplemented by these April 12th comments, into its rulemaking proceeding in this matter.