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

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

STEFANIE A. BRAND
Director

December 3, 2010

Via Hand Delivery and Electronic Mail
Honorable Kristi Izzo, Secretary
New Jersey Board of Public Utilities
Two Gateway Center
Suite 801
Newark, NJ 07102

Re: In the Matter of Comprehensive Energy Efficiency and Renewable Energy Resource Analysis for 2010-2011: 2011 Programs and Budgets: Compliance Filings: Transitions within the Clean Energy Program
BPU Docket No.: EO07030203

Dear Secretary Izzo:

Enclosed please find an original and ten copies of comments submitted on behalf of the Division of Rate Counsel, in connection with the above-captioned matters. Copies of the comments are being provided to all parties by electronic mail and hard copies will be provided upon request to our office.

We are enclosing one additional copy of the comments. Please stamp and date the extra copy as "filed" and return it to our courier.

Thank you for your consideration and assistance.

Respectfully submitted,

Stefanie A. Brand
Director, Division of Rate Counsel

By: *Felicia Thomas-Friel, Esq.*
Felicia Thomas-Friel, Esq.
Deputy Rate Counsel

c: OCE@bpu.state.nj.us
Richard Jackson, Executive Director - BPU
Mike Winka, BPU
Benjamin Hunter, BPU
Anne Marie McShea, BPU
Mona Mosser, BPU
Renewable Energy Committee
Energy Efficiency Committee

I/M/O the Comprehensive Energy Efficiency and Renewable Energy Resource Analysis for 2010-2011: 2011 Programs and Budgets Compliance Filings: Transitions within the Clean Energy Program

BPU Docket No. EO07030203

Comments of the
New Jersey Division of Rate Counsel on the
Transitions within the Clean Energy Program

December 3, 2011

I. INTRODUCTION

The "NJCEP Transition White Paper for Stakeholder Discussion" ("Transition White Paper") dated November 4, 2010 poses a series of questions concerning the transition of the Clean Energy Program ("CEP") energy efficiency ("EE") and renewable energy ("RE") programs. It includes discussion of the key issues facing the Board in considering how to transition the CEP efforts. Rate Counsel is pleased to provide these comments addressing EE and RE program transition issues. We provide both summary comments and responses to some of the questions posed in the transition paper[1]. We also include an appendix that presents key fundamental information on other States' Energy Efficiency Utility ("EEU") Structures.

II. SUMMARY COMMENTS

[1] We have concentrated on the Transition White Paper questions which were selected for inclusion in the "Summary of Questions" document circulated by the Office of Clean Energy on November 10, 2010. That document distills material from the Transition White Paper.

The transition of the Clean Energy Programs to an alternative form of administration / management represents a critical milestone for New Jersey. Energy efficiency implementation has provided, and will continue to provide, significant net benefits to New Jersey ratepayers.[2] When designed and administered in a cost-effective manner, these programs provide critical information on EE practices and implementation, and ways to leverage customer contributions to minimize funding requirements from the societal benefits charge ("SBC").

Rate Counsel suggests that a careful approach is required to transition to a new structure to ensure the transition results in cost-effective administration and management of energy efficiency programs and minimal disruption to existing programs. Rate Counsel notes that a number of questions concerning program effectveness, design, and delivery mechanisms have been raised in the Transition White Paper. We address some of those questions in our comments; but we believe that the answers to some of the more detailed program design questions will first require a more comprehensive understanding of the net costs and benefits of the proposed 2011 CEP programs than is currently available.

We summarize our concerns and recommendations below:

1. **Create a Statewide EEU Structure**. Rate Counsel supports a transition to a statewide Energy Efficiency Utility ("EEU") structure to ensure cost-effective program administration, consistency of program availability, and equity across sectors and service territories.

---

[2] The Center for Energy, Economic and Environmental Policy ("CEEEP") 2008: Cost-Benefit Analysis of the New Jersey Clean Energy Program Energy Efficiency Programs.

a. The transition should not jeopardize the existence of an energy efficiency delivery infrastructure that has been established in New Jersey with the CEP model.

b. The EEU should be a not-for-profit, independent utility charged with design and implementation of electric, gas and other fuels energy efficiency programs. The EEU should be funded through a statewide societal benefits charge ("SBC"), using funds otherwise directed to the Office of Clean Energy ("OCE") CEP programs under the current structure.

c. The current statewide attribute of the CEP EE programs can be best maintained with an EEU, thereby avoiding diseconomies of scale and avoiding inequity across utility service territories.

d. The independence of an EEU, along with a singular goal of EE program design and delivery avoids the conflicting goals that a utility-based EE program structure would bring.

e. The EEU concept is relatively well-developed in several states across the United States. The "trade organization" delivery mechanism mentioned as an option in the Transition White Paper is undeveloped and should be rejected as a transition option.

2. **Access and Programs for the Most Needy**. Rate Counsel urges continuation of accessible energy efficiency resources for low-income sectors regardless of the transition mechanism.

a. The low-income sector has very low free ridership levels.

b. The "split incentive" hurdle is particularly acute for the low-income sector.[3]

3. **Retain EE Program Benefits**. Rate Counsel supports the development of an energy efficiency delivery mechanism that recognizes that programs and structures should evolve as conditions merit. However, the market failures that underlie the need for EE programs in the first place have not abated much over time, even though some technologies (e.g., compact fluorescent lamps) have made inroads in the marketplace. We urge deliberate consideration of the ongoing presence of these market hurdles when considering changes to the nature of some of the EE programs. These market hurdles include the fact that the EE delivery "marketplace" is more complex and fractured than the renewable energy marketplace. It is composed of the delivery of many different technologies, targeted to different end uses and different customer groups. Energy efficiency is also provided by a wide-ranging group of actors – HVAC technicians, hardware store sales clerks, professional energy consultants, and local electricians and plumbers, to name but a few. Unlike the renewable marketplace, it does not lend itself to renewable energy credit -type or solar renewable energy credit-type funding

---

[3] Split incentives exist where the financial interests of those in a position to implement energy efficiency measures are often not aligned with electricity customers who would benefit from the measures. For example, landlords and building owners make capital equipment purchases and maintain buildings, while tenants frequently pay the energy bills.

because of various conceptual and practical issues that have not yet been resolved .

4. **Develop Revolving Loan Fund Programs Where Appropriate**. Rate Counsel supports the use of revolving fund financing mechanisms where and as appropriate. Design of such programs needs to give careful attention to successful practices elsewhere. Revolving loans may work best when coupled with incentive structures. They should be "rolled out" incrementally to allow for "lessons learned" to be incorporated in successive incarnations.[4] Rate Counsel believes that rebate programs remain a cost-effective and preferred alternative (to loan programs) for selected programs in some sectors. Important factors to consider include:

   a. An EEU would need to work closely with the EDCs in order to most effectively implement a revolving loan program, if "on-bill" financing is to be a part of the program.

   b. The New Jersey Natural Gas revolving loan program is an example that the Board can use when considering such programs for the EEU.[5]

   c. Loan programs are more likely to be cost-effective and workable if they are "on-bill" financing programs that minimize transaction hurdles for customers.

---

[4] For example, National Grid (in Rhode Island) first used revolving loan funding in the small business sector; and over time grew it for use for municipal entities. For 2011, it is under consideration for use in the large C&I sector.

[5] See I/M/O NJNG, BPU Dkt. Nos. GO09010056 and GO09010057 (Order, July 17, 2009) and I/M/O NJNG, BPU Dkt. No. GO010030225. (Order, 9/24/10)

5. **Program Delivery Competition If/As Appropriate**. Rate Counsel supports competition by RGGI –based utility programs if those programs can capture scope and scale economies of implementation and if they are not redundant to statewide programs. Consideration of these programs must include the appropriate return for the utility given the level of risk.

III. RESPONSES TO QUESTIONS IN THE TRANSITION WHITE PAPER

1. Overall Administrative and Management Options (Transition White Paper, Section 1)

Do the four choices in section 1 of the white paper cover all administrative options? Are there other administrative options to consider? Which of the options, in your opinion, works best for you, and why? (Transition White Paper, p. 3)

Rate Counsel supports an EEU structure. This structure would provide consistency across the state (with regional variation as is warranted) and retain a single point of contact for energy efficiency programs, as was established under the CEP structure. An EEU could be held accountable for achieving defined goals.

In the past, many regulators required electric utilities to implement energy efficiency programs. Utilities were chosen for this important task because they and their customers could benefit from the reduced electricity costs, they had the necessary infrastructure for raising funds, and they could be encouraged through the regulatory ratemaking process.

However, experience with utility-run efficiency programs has demonstrated that some utilities are reluctant to implement energy efficiency programs because efficiency savings lead to lower sales (or throughput) which can, in turn, lead to lower utility profits. Energy efficiency programs work directly against the central mission and a primary motivating factor of many electric utilities: the maximization of profits. Utilities have been unwilling to implement successful efficiency programs without aggressive regulatory pressure combined with ratemaking policies to overcome the financial disincentives to efficiency programs.

Lacking utility concerns about energy efficiency and conflicting motivations, a third-party administrator (of an EEU) is likely to be far more successful in implementing cost-effective and aggressive energy efficiency programs.[6] Third-party administrators do not face the powerful disincentives that utilities face. Instead, third-party administrators would consider the successful implementation of aggressive efficiency programs to be their central mission and overriding business objective, as opposed to being antithetical to their central mission. An EEU can be selected with "a competitively-bid, performance-based contract with consequential impacts for delivering measurable results on a firm schedule" and thus could become more accountable for the results than any other models.[7] Creating an EEU is a way to address this disincentive without the additional costs to ratepayers that the various "decoupling" proposals would foster. Because the EEU is a non-for-profit entity, at the very least, this solution is less costly since unlike a investor-owned utility it will

---

[6] Some utilities have, instead, recommended making efficiency the utility's "most profitable" resource option through generous incentives. While this has, in a few instances, led to significant savings, the costs have been very high. Equally important, the funds that pay for such incentives are then not available to pay for efficiency savings.

[7] Blair Hamilton and Michael Dworkin 2004. "Four Years Experience of the Nation's First Energy Efficiency Utility: Balancing Resource Acquisition & Market Transformation under a Performance Contract." Proceedings of the 2004 ACEEE Summer Study on Energy Efficiency in Buildings.

not need to include a return for investors. Some contentious and cumbersome regulatory policies may become unnecessary for third-party administrators.

There are other significant benefits to adopting third-party administrative systems. They can:

- Implement programs for multiple utilities, thereby providing consistency from one service territory to another. This can be an enormous advantage for all the "trade allies" who participate in programs (designers, engineers, retailers, installers, etc.) who now have only one set of program requirements to deal with.
- Develop much broader relationships with groups of customers (government or commercial building managers, schools, business associations), state and federal programs (state efficiency requirements and building codes, Department of Energy programs, Energy Star) and trade ally groups. These partnerships help recruit program participants, but also help change efficiency practices over time.
- Deliver gas and electric efficiency (and as appropriate, fuel oil end use efficiency) in a coordinated way. There are huge potential increases in administrative efficiency and in savings to customers by having a program that addresses whole building efficiency.
- Deliver other services if they are permitted. Efficiency services can be delivered in conjunction with combined heat and power ("CHP") services (especially if gas and electric energy efficiency programs are

being delivered). Load control and distributed renewable energy can be integrated into the offerings of an independent administrator.

The EEU model has proven successful in other states. The Appendix provides more information about other state's experience with EEU administered programs, including program funding, contracting arrangements, regulation and legislation, customer segments served, type of energy served (electricity and/or other fuels), and performance standards and rewards (e.g., shared incentive, ROR adder, etc).

The following are examples of states with EEU structures or EEU-like structures:

1. Vermont – Efficiency Vermont
2. Oregon – Energy Trust of Oregon
3. Delaware – Sustainable Energy Utility
4. Maine - Efficiency Maine

Administration of programs exclusively by the utilities has some benefits, including good access to customers for marketing, access to data, and existing data management systems. (A counterpoint to utilities' ability to market EE services to its customers is that economies of scale are lost when each utility must pay for advertisements in publications that reach customers in multiple service territories.) However, Rate Counsel maintains that exclusive utility administration is, on balance, undesirable for several reasons. Firstly, as noted above, they have a disincentive to promote energy efficiency due to numerous other organizational objectives including increasing sales and profits to their shareholders. Secondly, the distribution of costs

and benefits across the state may not be optimal. The comprehensiveness of EE programs may suffer in a utility-administered EE program model, potentially undermining the programs' effectiveness at achieving the state's EE goals. The fact that only some of the state's utilities have proposed RGGI EE programs, and that the proposed RGGI EE programs have varied widely in aggressiveness and scope, strongly suggests that these factors will undermine progress towards the state's energy efficiency goals.

Regarding state agency administration, there is no reason to think that another state agency would go farther towards achieving goals than the OCE has. Programs work best with some consistency in their funding and design over time; if a state agency runs the programs, EE programs would still be subject to some of the problems that have accompanied OCE programs, including political pressures and payment delays. Finally, it is unclear whether revolving loan funds could be administered by a state agency absent legislation.

Rate Counsel does not advise that the EE programs be administered by a trade organization because experience with this model is lacking. A model with administration by a non-profit or for-profit entity (other than an EEU) would lack the accountability of an EEU.

Which current NJCEP programs should, or should not continue as rebate programs? Which current NJCEP programs should transition to revolving loans or financing programs? Which current NJCEP programs should function in the marketplace, without incentives? (Transition White Paper, p.3)

While use of revolving loan funds or financing is desirable for some EE programs, these incentive structures should not be adopted universally across all

programs or across all measures. Although direct customer rebates can be costly to administer, loans are not suitable in all situations. Consumers who are elderly, with unstable income, or those who plan to sell a building in the short term may be hesitant to commit to loans. Also, loans with high transaction costs to participants make them impractical for small EE measures, such as CFLs or smaller appliances. In some situations such as purchasing and installing expensive HVAC measures or undertaking building energy retrofits, loans would help consumers with limited upfront cash to close the gap between what they could pay and the price of the measures with or without rebates. It is important to note that-in some instances- loans and rebates can work together to promote energy efficiency more efficiently than each working alone.

Innovative loans such as on-bill financing could be a very effective tool given that the loan amount could be set up in a way that monthly energy bill savings exceed the monthly loan payment, resulting in positive cash flows to consumers.

At this point, Rate Counsel does not yet have adequate information to address the incentive structure of individual programs (e.g., rebate vs. loan). One of the largest concerns of shifting to loans from rebates is participation rate. We have limited or no information or data as to how much participation we could expect from offering loans. The participation would further vary depending on the type of customers (low income, residential, commercial, etc), type of technology, amount of incremental cost, customer payback periods, and free ridership rates.

What programs, not currently part of the NJCEP program, should be included in the program transition? (Transition White Paper, p. 3)

Utilities could be allowed to continue administering RGGI programs, provided that they continue to demonstrate benefits to ratepayers and can administer the program more cost effectively than would be the case under an EEU framework. Competition between an EEU and the utilities could help lower costs.

2. Transition Planning (Transition White Paper, Section 1 and 2)

A few questions are raised concerning the transition planning.

What should the overall timeframe be for transition planning and the transition? How should the planning inform the transition? (Transition White Paper, p. 4)

What is the time frame for this program transition? (Transition White Paper, p. 3)

Rate Counsel's comments in this section presume a transition to an energy efficiency utility. The Transition White Paper (at page 25) indicates that roughly 7 to 9 months would be required for a transition to an energy efficiency utility. While Rate Counsel has reservations on the number of days allocated for specific tasks, the total amount does not appear unreasonable.

With an expectation that the existing CEP market manager contracts would be extended through July 2011, it appears that then-approved 2011 CEP programs could be "converted" over to an EEU structure during 2011. Rate Counsel envisions maintaining the 2011 CEP program attributes intact through 2011 (based on the budgetary and programmatic outcome of the 2011 CEP filing) as a new program

management structure is implemented. A new EEU structure would then be in place to tackle the next stage of program refinement in time to proposed revised programs for the next cycle, during the latter half of 2011 for calendar-year 2012 programs.

3. Program Concepts (Transition White Paper, Section 5)

Given the [concepts listed in the Transition White Paper at page 6] what current programs should continue without modification, with modification, be reduced, eliminated, or expanded?

This question presents a fundamental program design issue: how should current EE programs be modified, eliminated, or expanded? As set forth on page 6 of the Transition White Paper, the OCE recommends that discussion focus on the following concepts: (i) consideration of phasing out rebates, (ii) utilizing revolving funds / load programs, and (iii) utilizing a competitive process to deliver energy efficiency. Rate Counsel notes that in order to answer this question, information about current and planned program costs, savings, and cost-effectiveness is required. We also note that unlike the structures put in place to "make markets" for renewable energy supply, energy efficiency does not lend itself to a pure "market-based" approach. The Board should cautiously review these program design issues because the sizable net benefits associated with well-delivered energy efficiency programs could be at risk if participation might be reduced under alternative incentive structures. While program-specific comments are difficult to make without further information and analysis, Rate Counsel has set forth below general energy efficiency program design principles that we believe should inform the more specific inquiry...

4. Societal Benefits Charge (SBC) Funding Levels and Rate Issues (Transition White Paper, Section 6)

Should SBC funding continue at its current level? (Transition White Paper, p. 7)

As noted in the comments Rate Counsel submitted on the 2011 CEP proposed budgets and programs, the amounts collected through the SBC to fund CEP-EE programs should be based on realistic projections of actual program expenditures. Historically, the SBC rates paid by ratepayers were higher than necessary to fund CEP EE programs. Rate Counsel has proposed a two-step process to bring some discipline to the budgeting process. The first step is the development of realistic projections of program activity and funding needs. This step requires sufficient information to inform budget determinations, including summary information about program cost effectiveness, energy savings, free-ridership rates, and participation rates, to facilitate comparisons across sectors and programs. The second step is to return over-collections to ratepayers in the form of reduced SBC rates in the next budget cycle.These principles hold true, regardless of who administers the program.

The CEP EE budget, and thus the amount of the SBC, also needs to be reviewed in light of increased utility EE spending resulting from the implementation of utility-based EE programs pursuant to the provisions of the RGGI law (L. 2007, c. 340). See N.J.S.A. 48:3-98.1. If an EEU structure results in greater implementation economies, then the SBC should be reduced.

Should the SBC be eliminated? If so, in what time frame?

If it is eliminated, what type of structure, if any, should replace the SBC? What is the time frame for this change? **(Transition White Paper, p.7)**

Rate Counsel believes the SBC should not be eliminated for the foreseeable future. If an EEU is created, the SBC would be a core funding source to ensure delivery of cost-effective EE resources.

5. Utility EE and Solar RGGI Programs and Funding Source (Transition White Paper, Section 7)

Should the Utility EE and Solar programs continue: in place of the NJBPU SBC funded Clean Energy Programs, complimentary to NJCEP, separate and apart from the NJCEP, or as an enhancement to the NJCEP? **(Transition White Paper, p. 9)**

If an EEU structure is adopted, a majority, if not all, of utility EE programs should be ideally transitioned to the EEU. However, Rate Counsel envisions that utility RGGI EE programs may continue side by side with an EEU, as a competitor. Utilities would continue to propose designs for their programs to the Board and to make filings for cost recovery. To facilitate assessment of the programs, the utility and EEU programs should be separately evaluated, and their costs and benefits should be indepedently quantified.

Rate Counsel does not support replacing the CEP with utility-administered programs, as discussed in response to question 1, above.

Given the results of the Utility EE and solar programs, what current programs should be continued without modification, with modification, be reduced, eliminated or expanded? **(Transition White Paper, p. 9)**

The results of the utility EE programs have yet to be fully vetted. Given their relatively recent start up, it is premature to gauge these programs' successes or shortcomings. As we noted elsewhere, we believe that all EE programs are probably best folded into a common EEU structure.

6. Federal EE and RE Programs and Funding (Transition White Paper, Section 8)

How should the transition be coordinated with the current ARRA funded programs? **(Transition White Paper, p. 10)**

Any coordination efforts currently undertaken or required between CEP programs and non-CEP ARRA-funded programs could be accomplished under a new EEU structure.[8] Rate Counsel suggests that the CEP coordinate with new EEU program administration to ensure that the transition *per se* doesn't jeopardize the ability of New Jersey to utilize ARRA funding. Our understanding of ARRA funding for EE programs is such that the timeframe is relatively limited (e.g., ARRA-funded EE programs need to utilize funding by 2012). As such, while ARRA funding is critical to a number of New Jersey programs, the overall plan and design for a transition to an EEU does not need to be driven by ARRA-funded program consideration, but rather such design should accommodate any ARRA requirements.

7. NJCEP 2011 Budget and Programs (Transition White Paper, Section 9)

[8] For example, Warm Advantage and Cool Advantage programs targeted at oil and propane heat customers, and customers of municipal utilities.

Should there be a continuation of the programs in the current OCE staff straw proposal for the 2011 NJCEP budget? If not, what structure should replace the current programs? **(Transition White Paper, p. 11)**

OCE administration of the CEP should continue until an EEU can be established.

Is there a specific program in the residential EE market that should be continued, reduced, increased or eliminated, and why or why not? **(Transition White Paper, p. 11.)**

In its November 17, 2010 comments on the proposed 2011 CEP budget and programs ("November 17 Comments"), Rate Counsel addressed its concerns about Honeywell's compliance filing for the 2011 residential EE CEP.

Is there a specific program in the commercial and industrial EE market that should be continued, reduced, increased or eliminated, and why or why not? **(Transition White Paper, p. 11)**

In its November 17 Comments, Rate Counsel addressed its concerns about EE Market Manager TRC's compliance filing for the 2011 Commercial and Industrial ("C&I") EE CEP.

In light of the objectives of the transition, and the transition program concepts listed in section 9, what current NJCEP EE or RE programs should be transitioned to a revolving loan or financing program, and when should this occur? **(Transition White Paper., p. 11)**

As noted under the response to question 1, Rate Counsel does not have adequate information to address the incentive structure of individual programs. As

noted in our summary comments, revolving loan programs can play a role – either replacing or complementing incentive payments for some programs – but must be designed carefully to avoid a reduction in participation in otherwise beneficial EE programs.

8. Program Management (Transition White Paper, Section 10)

See response to Section 1.

9. Programs (Transition White Paper, Section 11)

While some program-specific comments are difficult to make here without further information and analsyis, Rate Counsel recommends that the following general guidelines inform the development of EE programs, Regardless of the type of agency that implements the energy efficiency programs, they should be designed to use public funding as effectively as possible and to maximize the benefits of the efficiency investments. The following principles are useful in designing effective efficiency programs:

- The overall cost and rate impact of the proposed EE programs should be considered as well as the distribution program benefits among the customer classes.
- Programs should seek opportunities to overcome existing market barriers, both to ensure that energy savings are achieved in the short- to medium-term, and to promote the transformation of markets for specific energy end-uses over the long-term.
- Programs should be designed to minimize "lost opportunities." Lost opportunities occur when efficiency measures are not installed when it is most cost-effective to do so (e.g., the construction of a new building or facility, building renovations, and the purchase of new appliances or equipment).
- Programs should be designed to minimize "cream skimming." Cream-skimming occurs when only the most cost-effective efficiency measures are installed, even though additional, higher-cost measures would be cost effective. Cream-skimming can lead to lost opportunities, because revisiting a

customer to install the remaining measures may involve prohibitive transaction costs.

- Programs should be designed to provide efficiency savings to all types of customer classes and subclasses. This will promote equitable use of the efficiency funds, and will help maintain customer and political support for the public benefits charge.
- Programs should be designed to be cost effective. This will help increase the societal value of the efficiency expenditures, and will help maintain customer and political support for the public benefits charge.
- Program designers should consider multiple fuels as alternatives to electricity. Efficient natural gas appliances and solar designs and technologies should be used to replace electric end-uses, if they are cost-effective.
- Some key elements of the program should be competitively bid, in order to harness market forces, lower costs, and help develop the market for efficiency vendors and service companies.
- Programs should seek to address as many cost-effective end-uses as possible. Examples of some of the key end-uses include:
  - For residential electric customers the key electric efficiency measures include: efficient light bulbs; efficient light fixtures; refrigerators; clotheswashers; dishwashers; hot water heating measures; heating ventilation and air conditioning measures; weatherization, insulation and other building shell measures; and building design measures, such as daylighting and shade trees.
  - For commercial electric customers the key electric efficiency measures include: efficient lamps and ballasts; daylighting; efficient exit lamps, street lights and traffic lights; heating ventilation and air conditioning measures; refrigeration measures; office equipment measures; and energy management systems.
  - For industrial electric customers the key electric efficiency measures include: efficient motors and motor drives; industrial process improvements; heating ventilation and air conditioning measures; efficient lamps and ballasts; and energy management systems.

10. ARRA and Legacy Programs (Transition White Paper, Section 12)

See Section 8.

RATE COUNSEL COMMENTS ON THE NEW JERSEY CLEAN ENERGY PROGRAM WHITE PAPER FOR STAKEHOLDER DISCUSSION

RESPONSE TO QUESTIONS ON RE ISSUES

(1) OVERALL ADMINISTRATIVE AND MANAGEMENT OPTIONS

a. Do the four choices cover all administrative options?

RE Position: The four choices provided in the White Paper represent the major known options for delivering renewable energy resources. While there are a number of state-sponsored third party administrators for energy efficiency, and to a lesser extent, renewable energy programs, Rate Counsel is unaware of any regulated energy efficiency utilities that are independent, for-profit companies. Developing such a utility, and establishing its operating parameters, responsibilities, and performance-metrics, would take considerable effort and should only be pursued to the extent the Board feels that the competitive marketplace is consistently failing at delivering EE and RE to New Jersey ratepayers.

A for-profit clean energy utility of this nature, however, would provide a certain degree of competition to the programs that are currently sponsored by EDCs. It could be the case that the "utility," as a for-profit entity that is separate from a traditional delivery utility, may have different motivations, and lower delivery costs, than EDCs. A closer investigation of these issues may be warranted.

Rate Counsel also notes that reliance on competitive renewable energy markets, such as selling SRECs in various spot or bilateral transactions, is one obvious omission from the list provided in the White Paper.

b. Are there other administrative options to consider?

RE Position: Yes, the use of competitive renewable energy markets for RECs and SRECs should be relied upon, where possible, to deliver efficient and cost-effective EE and RE resources to ratepayers. The current list of market delivery options does not consider allowing the market to determine the types, scale, and scope of renewable

energy development. Rate Counsel believes that the market-based approaches should be preferred to regulatory-directed or utility-based alternatives.

c. Which of the options are likely to be the superior policy option?

RE Position: Rate Counsel believes that the Board's considerable efforts over the past four years has laid important market-based framework for the development of New Jersey renewable energy markets. Rate Counsel believes that these market-based mechanisms are superior in supporting renewable energy than rebate-based approaches delivered by government. The repeated carry-overs of program funding over the past several years serves as strong empirical support that government-delivery mechanisms are not the most effective measures of stimulating New Jersey renewable energy.

d. Which current NJCEP programs should transition to revolving loans or financing programs?

RE Position: Rate Counsel supports examination of a revolving loan or financing program within the context (or administration) of a clean energy/energy efficiency utility, an existing utility, or other type of institution if an approach can reduce the cost of ratepayer-supported clean energy. Establishing a new financial support mechanism that would ultimately become "self-funding" would represent a significant and positive movement away from traditional clean energy subsidy-based approaches. Further analysis of specific options would be constructive. Rate Counsel supports any opportunity to use market-based incentives to reduce program delivery inefficiencies, empower innovation, and reduce the cost of delivering renewable energy to ratepayers.

(2) TRANSITION PLANNING

a. What should the overall timeframe be for transition planning and the transition?

RE Position: Rate Counsel recommends that the transition away from reliance on rebates to promote renewable energy markets begin in the upcoming budget year. Current budget carry-overs from the 2010 budget should be credited to ratepayers by reducing SBC assessments in 2011.

b. How should planning inform the transition?

RE Position: The Board's planning and efforts of the past four years in formulating the transition away from rebates to market-based mechanisms for solar energy has played an important role in facilitating the ability to discontinue solar energy and other renewable energy rebates during the course of the 2011 budget cycle. Rate Counsel believes that additional market design analyses for non-solar renewable resources should be conducted along the same lines as those completed during the Generic SREC and Solar Securitization proceedings.

(3) PROGRAM RESULTS

a. Given the NJCEP results from 2001 to 2009, which programs should continue without modification, with modification, be reduced eliminated or expanded?

RE Position: Rate Counsel's position on proposed program modifications and changes are summarized in Table 1 attached to these comments. As a general matter, Rate Counsel supports the Board's goal of moving New Jersey renewable energy development towards market-based support, and away from rebate-based support. Rate Counsel recommends eliminating all rebates and having OCE focus its attention on market monitoring, inspections, and certifications. Rate Counsel offers the following recommendations for each of the existing renewable energy programs.

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

Rate Counsel recommends that the Board discontinue funding for the CORE program in the 2011 budget and return those dollars to ratepayers for the following reasons:

- The CORE transition process has been ongoing for two years with no end. While program carry-overs are admittedly lower, there is still a significant $20.8 million that is unneeded for continued solar energy development, but clearly needed for ratepayers in these challenging economic times.
- Cancelling the funding for the CORE program in 2011 will have no impact on future solar development since the program has been closed.

- OCE noted in its program evaluation that rebates are no longer needed in today's market for projects of any size.[1] Thus, continued CORE funding is unneeded given the current solar energy market structure. Continued funding simply offers a "free ride" to solar projects that attain money under this closed program.
- There are other funding and financial mechanisms that exist to support solar development, including tax incentives, revenues that individual projects secure from the sale of their SRECs (i.e., SREC revenues), and long-term contracting under the programs implemented by Atlantic City Electric Company ("ACE"), Jersey Central Power & Light Company ("JCP&L"), and Rockland Electric Company ("RECO"). Further, high participation in the current "spot" SREC market would suggest that the market-based mechanisms established by the Board are relatively attractive in encouraging solar energy development without rebates.

Clean Power Choice Program

Rate Counsel supports OCE's proposal to transition the Clean Power Choice program to competitive markets. Rate Counsel has raised questions about this program in past CEP budget comments.[2] The program has historically operated under a Board Order, but no formal rules outlining the specific guidelines, goals, and oversight for the program. Further, historic participation in the program has been exceptionally low reflecting the fact that the market discounts the program's effectiveness in developing renewable energy, particularly given the wide range of other more direct means of RE market participation. Now would clearly seem to be an appropriate time to discontinue direct ratepayer support for this program.

Offshore Wind

Rate Counsel supports continued support of prior-Board commitments to offshore wind ("OSW"). However, as a general matter, Rate Counsel recommends

[1] Honeywell's Residential Energy Efficiency and Renewable Energy Program Filing for 2011, p. 37 (October 20, 2010).

[2] For instance, see *Final Comments of the Department of the Public Advocate, Division of Rate Counsel on the 2008 Clean Energy Program Market Manager Report*, November 30, 2007, p.4-7.

ratepayer credits for any dollars that go beyond a prior Board-approved commitment for OSW projects. The recently enacted *Offshore Wind Economic Development Act*, P.L. 2010, c. 57, and the ongoing Board offshore wind rulemaking designed to implement this legislation, should provide adequate financial support for OSW projects on a forward going basis. Therefore, Rate Counsel believes that continued OSW funding through the RE budget is unnecessary.

Renewable Energy Development Initiative ("REDI")

Rate Counsel supports OCE's proposal to discontinue this program in preference of market-based methods. Rate Counsel has been historically critical of this program since its inception in 2008.[3] REDI has been an ill-defined program that attempts to provide a solution to RE development that is unneeded. Like rebates, direct grant funding and other support is not needed at the current time for non-solar renewable energy development. Instead, the development of market design mechanisms comparable to solar would likely go much further, and would cost far less, than administratively-determined system of grants and subsidies supported by ratepayers. Rate Counsel supports an investigation into these opportunities.

Renewable Energy Incentive Program ("REIP")

Rate Counsel strongly supports the elimination of the current set of rebates in favor of market-based support for renewable energy. As we have noted in the past, rebate-based approaches can be successful in stimulating a market in its infancy, but is a policy mechanism that is based simply on "buying your way" into the RE business rather than one that is based upon an effective market design.[4] Over the longer run, such an approach will be unsustainable given its significant costs.

---

[3]For instance, see *Final Comments of the Department of the Public Advocate, Division of Rate Counsel on the 2008 Clean Energy Program Market Manager Report*, November 30, 2007, p.6.

[4]See Public Testimony, Division of Rate Counsel, *Comments on Proposed Clean Energy Program Budget (2009-2012)*, May 6, 2008, p.4.

Further, over the past four years, the Board has worked diligently to develop a number of market mechanisms that effectively support renewable energy, including:

- Solar Renewable Energy Certificates ("SRECs") and Solar Energy Alternative Compliance Payments ("SACP") where SRECs define and reflect the prevailing value of solar energy as established in trades between voluntary market participants, while SACPs serve multiple market signaling roles by (a) penalizing energy suppliers who do not seek out market opportunities for solar energy development; (b) capping the upper bound of ratepayer costs for solar energy; and (c) providing a back-up funding source for unmet solar energy goals.
- SRECs that have a two-year, rather than one-year life, recognizing the timing challenges of solar development.
- Long term established SACP values that were originally set on an eight-year schedule per the Board's Generic SREC proceeding, but have recently expanded to terms that are 15 years in length pursuant to recent legislation.
- Continued solar energy rebates that support smaller solar installations.
- Long-term contracting programs that provide regulatory certainty for projects in the ACE, JCP&L, and RECO service territories.
- Solar loan, and direct solar investment support programs, such as "Solar 4 All," that have been approved for PSE&G.

Given these developments, Rate Counsel believes that continued rebates, particularly for solar energy, are unneeded and we support the findings in OCE's recent market manager report reaching similar conclusions.[5]

---

[5] Honeywell's Residential Energy Efficiency and Renewable Energy Program Filing for 2011, p. 37 (October 20, 2010).

Rate Counsel strongly opposes the creation of a new set of rebates including OCE's recent proposals to utilize an EDC Solar Financing Incentive ("ESFI"). Rate Counsel is strongly opposed to the ESFI for the following reasons:

- The proposal is not based on any evidence showing that benefits are likely to exceed costs. Stakeholders, and some parties to the Settlement Agreements in EDC long-term SREC contracting proceedings, including Rate Counsel, have expressed concerns and objections to similar proposals in the past. The Board should not approve any new funding mechanism without a clear showing that its benefits exceed costs.
- The proposal raises a number of equity issues since it would take funds collected in the SBC from all New Jersey ratepayers yet only offer ESFI-based rebates to those EDCs that have solar long-term contracting programs, which excludes PSE&G. This will add costs for PSE&G ratepayers and compound the problem created by that utility's refusal to participate in such programs.
- OCE has provided no evidence that the rebates would result in lower cost SREC contracts, or that bidders would be required to reduce their SREC offers by the amount of the incentive.
- The proposal is entirely inconsistent with OCE's earlier conclusions that the solar energy market, at all size levels, can function without direct subsidies. The ESFI is simply another form of subsidy that is not needed to develop solar energy.
- The ESFI would likely result in a profit "windfall" for small-scale solar installations since long-term contracting participation has started to increase, particularly in the JCP&L service territory.
- Increasing installation size eligibility in the EDC long-term contracting programs would likely lead to more solar energy generation, at lower unit costs with no additional rebate funding, than the ESFI proposal offered by OCE.

Thus, Rate Counsel recommends that all renewable energy rebates be discontinued.

Solar Energy Renewable Certificates ("SRECs")

Rate Counsel believes that OCE, and any forward-looking RE funding supported through the CEP, should concentrate on activities that facilitate market development and oversight. A critical part of this is process is certifying SRECs and the inspection process for solar energy. Market monitoring and market reporting are additionally important tasks that should be facilitated and supported through the CEP. Rate Counsel supports funding for these activities.

Renewable Energy Manufacturing Incentive

Rate Counsel recommends that the Renewable Energy Manufacturing Incentive ("REMI") be eliminated and have raised our concerns about this program in various rounds of CEP comments.[6] This incentive is concerning for a number of reasons.

First, the REMI is unnecessary since there are a number of other manufacturing programs and incentives already offered by the Economic Development Authority ("EDA"). Adding additional incentives simply over-incents development. Further, the REMI is simply another form of rebate, which is unnecessary, and should be eliminated on a forward going basis.

Second, the proposal is anti-competitive and discriminating and grants a preference to one group of solar manufacturers over another without regard to whether or not the provider is delivering efficient solar energy equipment to the New Jersey market.

Third, the proposal could lead to counterproductive reciprocity measures from other states that may have manufacturing facilities serving the New Jersey market that may be penalized from this program. Should reciprocity occur, it would be New Jersey manufacturing facilities that would find themselves under similarly situated prejudicial and anti-competitive policies. Thus, Rate Counsel recommends the REMI be discontinued.

---

[6]For instance, See Rate Counsel's comments on Honeywell's Residential Energy Efficiency and Renewable Energy Program Filing for 2009, May 19, 2009.

RE Project Grants, Venture Capital Support, and Innovation Funds

The CEP supports a variety of project grant programs, venture capital support, and innovation funds. Participation in all of these programs has been very limited to date, and would appear to reflect lack of interest or program ineffectiveness. The Board should eliminate these programs and allow the market and private capital markets to provide the support for renewable energy. While special studies, renewable project grants, green venture capital, and innovation funds all have conceptual merit, they all have difficult-to-measure outcomes. CEP funds dedicated to these programs, like rebate programs, should be eliminated.

b. Should all customer classes participate directly?

RE Position: This issue is not relevant for renewable energy programs once rebates are discontinued and the market determines the scope and magnitude of customer class participation. No particular customer class will be harmed provided that the SBC is not collecting funds for renewable energy programs that extend beyond market monitoring, inspections, and certifications.

(4) OBJECTIVES

a. Given the program concepts outlined in Section 4, what current programs should continue without modification, with modification, be reduced, eliminated, or expanded?

RE Position: See Rate Counsel's comments responding to question 3(a) for its recommendations on the future disposition of renewable energy programs.

(5) PROGRAM CONCEPTS

a. Given the program concepts outlined in the discussion paper, what current programs should continue without modification, with modification, be reduced, eliminated or expanded?

RE Position: See Rate Counsel's comments responding to question 3(a) for its recommendations on the future disposition of renewable energy programs.

(6) SOCIETAL BENEFITS CHARGE (SBC) FUNDING LEVELS AND RATE ISSUES

a. Should SBC funding continue at its current level?

b. Should the SBC be eliminated? If so, in what time frame?

c. If the SBC is eliminated, what type of structure, if any, should replace the SBC?

d. What is the time frame for this change?

Please see the EE section response to this question.

(7) UTILITY EE AND SOLAR RGGI PROGRAMS AND FUNDING SOURCE

a. **Should the utility EE and solar programs continue: in place of the NJBPU SBC funded Clean Energy Programs, complementary to NJCEP, separate and apart from the NJCEP, or as an enhancement to the NJCEP?**

RE Position: See Rate Counsel's comments responding to question 3(a) for its recommendations on the future disposition of renewable energy programs.

b. Given the results of the utility EE and solar programs, what current programs should be continued without modification, with modification, be reduced, eliminated or expanded?

RE Position: See Rate Counsel's comments responding to question 3(a) for its recommendations on the future disposition of renewable energy programs.

(8) FEDERAL EE AND RE PROGRAMS AND FUNDING

a. How should the transition be coordinated with the current ARRA funded programs?

RE Position: There will be no RE impact since Board put all these funds into EE programs.

(9) NJCEP 2011 BUDGET AND PROGRAMS

a. Should there be a continuation of the programs in the current OCE staff straw proposal for the 2011 NJCEP budget?

RE Position: See Rate Counsel's comments responding to question 3(a) for its recommendations on the future disposition of renewable energy programs.

b. If not, what structure should replace the current programs?

RE Position: See Rate Counsel's comments responding to question 3(a) for its recommendations on the future disposition of renewable energy programs.

c. Is there a specific program in the residential EE market that should be continued, reduced, increased, or eliminated, why or why not?

d. Is there a specific program in the commercial and industrial EE market that should be continued, reduced, increased, or eliminated, why or why not?

e. Is there a specific program in the RE market that should be continued, reduced, increased or eliminated, and why or why not?

RE Position: See Rate Counsel's comments responding to question 3(a) for its recommendations on the future disposition of renewable energy programs.

f. In light of the objectives of the transition, and the transition concepts, what current NJCEP EE or RE programs should be transitioned to a revolving loan or finance program and when should this occur?

RE Position: Rate Counsel is opposed to any new CEP funding that would create any new ratepayer-subsidized mechanisms for renewable energy development. The current market design provides ample opportunities for development support on both a short

term and long term basis. Revolving loan programs, that do not reflect the true opportunity cost of capital, and are subsidized by captive ratepayers, are simply alternative forms of rebates that should be eliminated on a forward-going basis.

(10) PROGRAM MANAGEMENT

a. Are these the right options for implementation contractors?

b. Are there additional options to consider?

c. Which option would deliver the most savings or generation at the lowest cost to ratepayers?

RE Position: See Rate Counsel's comments responding to questions 1 and 3 for its recommendations on the future disposition of renewable energy program management.

(11) PROGRAMS

a. Which current NJCEP program should or should not continue as rebate programs?

RE Position: See Rate Counsel's comments responding to question 3(a) for its recommendations on the future disposition of renewable energy programs.

b. Which current NJCEP programs should transition to revolving loans or financing programs?

RE Position: See Rate Counsel's comments responding to question 3(a) for its recommendations on the future disposition of renewable energy programs. See response to 9(f) for Rate Counsel's position on revolving loan proposals.

c. What programs, not currently part of the NJCEP program, should be included in the program transition?

RE Position: None.

d. What is the timeframe for this program transition?

RE Position: The 2011 CEP Budget Process.

(12) ARRA AND LEGACY PROGRAMS

a. What option for transition of the NJCEP administration and programs works best to address the federal ARRA programs and the legacy issues in the transition?

RE Position: See Rate Counsel's comments responding to question 8 for its recommendations on the future disposition of renewable energy programs.

Table 1: Rate Counsel Positions on RE Programs

Program	Proposed Program Change	Estimated Administrative Cost Reductions	Program Manager	Rate Counsel Position
Customer On-Site Renewable Energy (CORE)	Program closed to new applicants. We will need an entity to process applications for previous commitments.	NA	TBD or Staff	Rate Counsel agrees with OCE that rebates are no longer necessary to support the solar energy development and recommends that the 2010 budget carry-overs associated with CORE be credited to ratepayers and the program permanently closed. This will eliminate the need for an entity to process applications.
Clean Power Choice	Transition to voluntary market.	$100,000	NA	Rate Counsel agrees.
Offshore Wind	Board staff will continue to manage applications for previous commitments.	NA	Staff	Rate Counsel agrees.
Renewable Energy Program: Grid Connected (formerly REDI)	Explore transition to a competitive market based on REC phase away from grants. Board staff will continue to manage applications for previous commitments.	TBD	Staff	Rate Counsel agrees.
Renewable Energy Incentive Program	Consider discontinuing solar rebates in 2011 and determing what changes to utilty/SREC programs may be required to continue market momentum. Continue rebates for small wind and biomass and consider phased transition to competitive market-based on REC.	$2 million in first year; $4 million in second year.	TBD or Staff	Rate Counsel agrees with OCE that rebates are no longer necessary to support solar energy development. Rate Counsel disagrees with the OCE's proposal to establish a new rebate in the form of an EDC Solar Financing Incentive ("EFSI").
SRECs	We will need an entity to review applications and isuse NJ SREC certification numbers to provide to PJM GATS and to perform inspections if required.	TBD	TBD or Staff	Rate Counsel agrees.
RE Marketing	Discontinue	$400,000	TBD	Rate Counsel agrees.
RE Project Grants and Financing	Program closed to new applicants. EDA to continue managing existing commitments.	NA	EDA	Rate Counsel agrees to closing the program to new appplicants but recommends that 2011 funding be suspended, and all 2010 carry-overs be funded to ratepayers. Program effectiveness should be evaluted over the next year.
EDA Renewable Energy Business Venture Financing/REED	Program closed to new applicants. EDA to continue managing existing commitments.	NA	EDA	Rate Counsel agrees to closing the program to new appplicants but recommends that 2011 funding be suspended, and all 2010 carry-overs be funded to ratepayers. Program effectiveness should be evaluted over the next year.
EDA Clean Energy Manufacturing (REMI)	Continue	NA	EDA	Rate Counsel agrees with OCE that rebates are not needed to support solar energy development but recommends that this fund be discontinued.
CST Edison Innovation Clean Energy Fund	Explore alternatives with EDA. We will need an entity to process final applications for previous commitments.	TBD	EDA	Rate Counsel agrees to closing the program to new appplicants but recommends that 2011 funding be suspended, and all 2010 carry-overs be funded to ratepayers. Program effectiveness should be evaluted over the next year.
Total RE		$2.5 million in first year $4.5 million in second year.		

APPENDIX

OTHER STATES' EEU PROGRAMS

A. Vermont: *Efficiency Vermont*

Efficiency Vermont ("EV") is the state's independent energy efficiency administrator and has been providing comprehensive energy efficiency with a focus on electricity throughout the state since 2000.[1] EV has been regarded one of the leading efficiency entities in the nation with its high energy savings (e.g., 2.5% of annual sales in 2008)[2] and low cost programs (e.g., 2.7 cents/kWh overall).[3] Beginning in 2000, EV replaced all of Vermont electric utilities' EE programs except the City of Burlington's Burlington Electric Department ("BED"). BED still operates the programs for its municipal customers. On the gas side, Vermont Gas Systems, the only natural gas company in the state, has been providing gas efficiency services to its customers throughout the state since 1993.[4]

State legislation, S. 137, effective June 1, 1999, authorized the Vermont Public Service Board ("PSB") to establish an Energy Efficiency Charge ("EEC") and to create Efficiency Vermont. Later that year, the Board approved a memorandum of understanding among utilities, regulators and other parties, providing for establishment of a statewide energy efficiency utility and a transition plan from utility operated programs. Some of the motives for establishing a third party administrator were to (1) increase statewide availability and uniformity of efficiency services and to (2) reduce regulatory contentiousness and cost associated with utility EE programs.[5]

The structure of Efficiency Vermont involves a Contract Administrator, a Fiscal Agent, and an Energy Efficiency Utility. All of these agents are competitively selected by the Public Service Board ("PSB"). The Contract Administrator handles any day-to-day contract administration responsibilities on behalf of the PSB. The Fiscal Agent receives the EEC from utilities and disburses funds against bills submitted by the EEU after the approval by the Contract Administrator.

Efficiency Vermont is funded through a non-bypassable volumetric systems benefits charge called an Energy Efficiency Charge ("EEC") on distribution utilities' bills. The

---

[1] EV has recently launched several initiatives to target unregulated fuels such as fuel oil.
[2] Vermont 2009. Annual Report 2008
[3] VEIC 2010. Initial Overall Performance Assessment of Efficiency Vermont Service Delivery: Draft Information Filing by the Vermont Energy Investment Corporation for the Vermont Public Service Board.
[4] http://www.aceee.org/sector/state-policy/vermont
[5] Blair Hamilton and Michael Dworkin, 2004 ACEEE Summer Study on Energy Efficiency in Buildings

level of system benefit charges is different by type of customers. For customers without a demand charge the EEC currently ranges from 5.2 to 7.7 mills per kWh,[6] as compared to the roughly 2 mills charge in New Jersey. In addition to the EEC, EV taps into the funding from Forward Capacity Market ("FCM") payments and RGGI proceeds. Vermont's EEC charge per kWh is one of the highest, if not the highest, in the nation.

The contract for EV lasts for three years and is performance-based with several specific minimum performance requirements for energy savings, demand savings, benefits cost ratios, total resource benefits, spending on residential and low income customers, and the number of small business customers.[7] The incentive for EV is to meet these goals and to retain its EE administrator contract in the next round. EV also retains approximately 2.5% of contract funds as a performance incentive.[8] Beginning in 2012, Vermont will undertake a drastic change in that the above-mentioned three-year contract structure will be changed to an order of appointment for up to 12 years.[9]

EV provides opportunity for all Vermonters to participate in its programs. To ensure this goal, EV has minimum requirements for the amount of budget spent on residential customers and low income customers and also for the number of small business customer participation.[10] EV also offers three programs (Customer Credit, Energy Savings Accounts, and Self-Managed Energy Efficiency Programs) that allow large business customers to either self-manage the majority of their funding contribution or opt out and self-administer their own efficiency programs.[11]

B. Delaware: *Sustainable Energy Utility*

Delaware's Sustainable Energy Utility ("SEU") is the nonprofit entity that operates and oversees comprehensive end-user energy efficiency and customer-sited renewable energy programs in the state. Although the SEU was created in 2007, efficiency programs have been launched more recently—over the last year and a half, starting with appliances and expanding into more comprehensive services.

---

[6] Vermont PSB 2009. Memorandum regarding 2010 Energy Efficiency Charge Rates
[7] VEIC 2010. Efficiency Vermont Annual Plan 2011.
[8] Blair Hamilton 2008. "Taking the Efficiency Utility Model to the Next Level."
[9] The Public Service Board's November 2009 order in Docket 7466.
[10] Efficiency Vermont 2010. 2011 Annual Plan, prepared for the Vermont Public Service Board, Table 4. Minimum Performance Requirements.
[11] Efficiency Vermont 2009. Annual Plan 2010-2011, Prepared for the Vermont Public Service Board; Energy Savings Accounts program allows customers who pay at least $5000 a year for the EEC to self-manage a portion of the funds to undertake energy efficiency projects. Self-Managed Energy Efficiency Program (SMEEP) is a new three year pilot program, enacted by the Legislature in 2009, provides the option to large customers who meet certain conditions including payment of at least $1.5 million EEC to opt out of paying the EEC and entirely self-manage their own energy efficiency programs.

SEU's mission is deliberately broad, seeking to harness cost-effective, end-use energy efficiency and customer-sited renewable energy applications across all sectors, and fuels, including transportation.[12]

The Energy Conservation and Efficiency Act of 2009 created Energy Efficiency Resource Standards ("EERS") for state electric and natural gas utilities. The EERS goals are a 10% natural gas consumption savings and 15% electricity consumption and peak demand savings by 2015, measured as a percentage of total retail sales. To achieve the EERS targets, utilities can invest directly in demand response programs, engage in aggressive EE information campaigns, or provide direct weatherization and energy efficiency services, in collaboration with the SEU. [13] A workgroup was established to investigate the feasibility and impacts of pursuing the EERS percentage reduction goals, to provide recommendations for the planning and implementation of the policy, and report its findings by the end of December, 2010.[14] Delaware's Weatherization Assistance Program, using federal American Recovery and Reinvestment Act ("ARRA") funds and targeting low income populations, operates separately from the SEU.

The legislation that created the SEU designed it to be independent from utilities and to operate through a competitively procured Contract Administrator ("CA") under contract to the Delaware Energy Office ("DEO"). The CA is tasked with routine administration of the SEU, including program research and design, administration of contracts with the entities that implement the specific programs and services ("Implementation Contractors" or "IC"), and oversight to ensure the IC meet appropriate performance and budgetary targets. Affiliates of the CA, utilities, and the CA itself can serve as ICs. [15] An initial requirement that the CA be a non-profit entity was later repealed.[16] Currently, Applied Energy Group serves as the CA.[17] The CA is required to coordinate with low income weatherization programs, other regional or national efficiency programs, and utility programs.

An independent Fiscal Agent ("FA"), charged with financial management of the SEU's activities, is also selected by the DEO through an open, competitive bidding process. Specific duties of the FA include receiving funds for the SEU and disbursing them to the CA, record keeping, interfacing with bonding and revenue authorities, and paying SEU invoices. The terms of the CA and FA contracts are between three and five years.[18]

---

[12] The Sustainable Energy Utility: A Delaware First. A Report to the Delaware State Legislature by the Sustainable Energy Utility Task Force. Adopted March 28, 2007.
[13] http://www.dnrec.delaware.gov/energy/information/Pages/EERS_Energy_Efficiency_Tools.aspx
[14] http://www.dnrec.delaware.gov/energy/information/Pages/EERSWorkgroup.aspx
[15] Senate Substitute No. 1 for Senate Bill No. 18 to amend title 29 of the Delaware Code (2007)
[16] Senate Amendment 1 to Senate Bill No. 228 to amend title 29 of the Delaware Code (2008)
[17] http://www.dnrec.delaware.gov/energy/services/Pages/SustainableEnergyUtility.aspx
[18] Senate Substitute No. 1 for Senate Bill No. 18 to amend title 29 of the Delaware Code (2007)

The legislation also created an SEU Oversight Board ("SEU Board"), to be comprised of public, academic and private sector representatives. Ultimate responsibility for oversight lies with the DEO under the direction of the State Energy Coordinator and the SEU Board. The DEO is required to report to the SEU Board on the progress of the SEU and the management of the CA and FA contracts every two years. The SEU Board reviews and approves Requests for Proposals developed by the DEO for the CA and FA contracts.

The legislation establishing the SEU charges the DEO with ensuring continuity of program implementation and sufficient carry-over funding during transitions between CA or FA contracts. [19]

The SEU may be funded from several sources:

- Sale of special purpose bonds subject to an initial $30 million bonding authority limit through 2015; the long term goal is to use bonds to support the SEU's main activities
- Shared savings agreements with SEU participants
- Green Energy Fund to provide equity leverage for the SEU
- Funds remaining from the Delaware Energy An$wers Program for DEO staffing
- Funds from renewable energy and solar renewable energy credit (REC and SREC) sales, "white tag" sales and other similar market-based programs.
- 65% of RGGI auction proceeds (approximately $5 to $6 million per year for at least 4 years).[20]

The CA recommends program designs, which must specify program goals, performance targets, an estimated budget, an implementation strategy, and an evaluation strategy. The SEU Board reviews and approves the annual and contract-term SEU performance targets recommended by the CA. The SEU Board has responsibility for overseeing SEU program planning, implementation, and evaluation to ensure compliance with performance targets. Per the 2007 legislation, the SEU is awarded a bonus if it exceeds program targets by 120% and is assessed a penalty if it achieves less than 80% of program targets. The DEO sets the level of incentive and disincentive. [21]

The overall legislative target is a 30% reduction by December 31, 2015 in annual energy usage for SEU participants, relative to January 2006 baseline levels. One-

---

[19] Senate Substitute No. 1 for Senate Bill No. 18 to amend title 29 of the Delaware Code (2007)
[20] SEU Contract Administrator Scope, February 28, 2009, Attachment A.
[21] Senate Substitute No. 1 for Senate Bill No. 18 to amend title 29 of the Delaware Code (2007)

third of these savings should come from the residential sector. Separate legislative targets were established for solar and weatherization programs.[22]

All residents and businesses can participate in SEU programs. The CA is obligated to study low-income, residential, commercial, industrial, agricultural, and transportation sectors when designing the programs. SEU's programs can cover a broad range of energy end-user markets, including but not limited to electricity end-uses, natural gas end-uses, clean vehicles, green buildings, weatherization, and affordable energy services.[23]

C. Oregon: *Energy Trust of Oregon*

The Energy Trust of Oregon ("the Trust") is the state's independent, non-profit energy efficiency and renewable energy program administrator since 2002. It started focusing on electric efficiency measures, but later took over and expanded natural gas efficiency programs previously managed by local natural gas companies starting in 2003. It now serves customers of Portland General Electric, Pacific Power, NW Natural and Cascade Natural Gas and covers approximately 70% of the state's electric customers and 90% of the state's natural gas customers in terms of sales. The Trust's programs have been successful. In 2009, the Trust saved about 283 GWh of electricity (about 0.7% of retail sales) and 2857 therms of gas (about 0.3% of retail sales).[24] All of their programs have positive benefit cost ratios and saved energy at about 1/3 of the retail electric and gas prices (2.8 cents/kWh saved and 48 cents/therm saved).[25]

Oregon's 1999 electric-utility restructuring law (SB 1149) required the majority of the state's investor owned electric utilities to collect a 3% public-purpose charge to support energy efficiency and renewable energy projects through January 1, 2026. The law also authorized the Public Utility Commission ("PUC") to establish non-utility administration of programs.[26] Accordingly, the PUC authorized the Energy Trust of Oregon, an independent non-profit organization, to administer these programs beginning in 2002. Starting in 2003, the state's gas utilities decided to transfer their gas efficiency programs to the Trust.[27]

---

[22] Senate Substitute No. 1 for Senate Bill No. 18 to amend title 29 of the Delaware Code (2007)
[23] Senate Substitute No. 1 for Senate Bill No. 18 to amend title 29 of the Delaware Code (2007)
[24] 32.3 Avg annual.MW converted to MWh. Sales data are 2007 sales data based on US EIA Form 176 for the utilities that are contributing system benefit charges to the Trust.
[25] For comparison, the average electric in Oregon in 2009 was about 7.6 cents/kWh and natural gas prices range from 97 cents/therm to136 cents/therm according to US EIA EIA.
[26] See Section 3 of Senate Bill 1149, available at http://www.leg.state.or.us/99reg/measures/sb1100.dir/sb1149.en.html
[27] http://www.dsireusa.org/incentives/incentive.cfm?Incentive_Code=OR05R&re=1&ee=1

The PUC contracts with and oversees the Trust to administer its energy efficiency and renewable energy programs. The Trust hired an executive director and other staff. However, the Trust uses competitive procurement to select contractors to manage major programs. The initial contract of the Trust with the PUC lasts for 10 years with a renewable report required in 2011.[28] As an independent contractor, the Trust is required to report annually to the PUC on its makeup and operations as well as program activity. The PUC reviews Trust goals, plans, and budgets. In addition to program evaluations, the Trust is required to periodically commission independent audits of its own management performance. Additionally, the statute requires periodic independent reports to the legislature on the describing program spending and results.[29]

Electric utilities provide 3% of their revenue to the public purpose charge. About 56 % of the public purpose fund from electric utilities is allocated to the Trust's efficiency programs, and about 17% is allocated to the Trust's renewable energy programs. The rest of the fund is managed by other entities and is spent on low income housing energy assistance and K-12 school energy conservation efforts. Gas utilities are currently contributing from 1.25 to 1.5% of their revenue to the public purpose charge.[30] Large electric customers (over 1 average megawatt or 8,760,000 kilowatt hours a year) can use part of their public purpose charge for their own investments in conservation and renewable resources. The Oregon Department of Energy reviews and verifies applications by large electric consumers for their efficiency and renewable energy projects. If an audit finds no conservation opportunities available, the consumer may receive credit of 54 percent of the public purpose charge.[31]

While no performance incentives are used in the Trust's competitively bid contractors, the PUC establishes minimum performance measures in a variety of categories for the Trust each year. Such performance measures includes the amount of energy saved, levelized life-cycle cost of the measures, benefit cost ratio, administrative and program support spending, and customer satisfaction.[32]

D. Maine: *Efficiency Maine*

---

[28] Energy Trust of Oregon 2010. 2009 Annual Report; Scudder Parker and William Steinhurst 2004. How to Deliver the (Efficiency) Goods: Why an Independent Third Party Works Best and How to Make Sure It Works Well. Synapse Energy Economics, available at http://www.synapse-energy.com/Downloads/SynapseTestimony.2004-09.CACI.Review-of-Natural-Gas-Energy-Efficiency-Programs-in-Indiana.04-43-Report.pdf

[29] David Nichols, Anna Sommer, and William Steinhurst 2007. Independent Administrator of Energy Efficiency Programs: A Model for North Carolina. Synapse Energy Economics, available at http://www.synapse-energy.com/Downloads/SynapseReport.2007-04.ClnWtrNC.Independent-Administration-of-DSM.07-008.pdf

[30] http://www.dsireusa.org/incentives/incentive.cfm?Incentive_Code=OR05R&re=1&ee=1

[31] http://www.oregon.gov/ENERGY/CONS/SB1149/Business/self-direct.shtml

[32] Energy Trust of Oregon 2010. 2009 Annual Report.

In 2002, the State Legislature established Efficiency Maine ("EM") with the goals of saving energy, reducing energy costs, helping the environment and promoting sustainable economic development in the state.[33] Initially administered by the Maine Public Utility Commission ("MPUC"), in July 2010 EM transitioned to a new semi-autonomous State agency governed by the nine-person Efficiency Maine Trust Board ("EM Board").[34] As required by legislation, the benefit-cost ratio of EM programs is high: from 2004 through 2009, the cumulative ratio is 3:1.[35] EM offers a wide range of programs providing incentives, training and technical assistance to residents (including low income populations), businesses, contractors, schoolchildren, and others. EM's energy efficiency programs cover all fuels in Maine.[36]

EM coordinates with the Maine State Housing Authority, which administers a low-income program, and local Community Action Programs. [37] Unitil operates Commercial Energy Efficiency Programs for its gas C&I customers.[38]

The EM Board appoints a director of the Efficiency Maine Trust, who is responsible for staffing and managing the trust's programs and services. The MPUC has authority to approve a triennial plan developed by EM staff and approved by the EM Board. In developing this plan, EM coordinates with other entities and agencies that deliver efficiency programs in the state. The triennial plan provides integrated planning, program design and implementation strategies for the EM programs and includes quantifiable measures of performance, to which recipients of trust funding are held accountable.

Although not limited by state purchasing agent rules in selecting service providers, EM is required by law to consider a competitive bid process for contracts for delivering program services.[39] "Qualified Partners," private contractors chosen through a competitive bidding process, deliver Business Program efficient products and services. Residential programs largely focus on incentives and promotions for high efficiency lighting and appliances through partnering retail stores.[40]

Efficiency Maine is funded through the system benefit charge, projected to provide $14 million in fiscal year 2011, and through federal grants, estimated to provide $42 million in FY 2011, including Housing Authority ARRA funds. EM also manages

---

[33] http://www.efficiencymaine.com/about
[34] http://www.efficiencymaine.com/faqs
[35] http://www.efficiencymaine.com/about
[36] http://www.efficiencymaine.com/faqs
[37] http://www.efficiencymaine.com/faqs
[38] North Carolina State University, DSIRE database.
http://www.dsireusa.org/incentives/index.cfm?re=1&ee=1&spv=0&st=0&srp=1&state=ME
[39] Maine Revised Statutes Title 35-A §10105
[40] http://www.efficiencymaine.com/faqs

funds generated by the auction of Regional Greenhouse Gas Initiative emissions allowances, with estimated revenue of almost $9 million in FY 2011. Forward capacity market revenues are expected to provide less than $2 million in FY 2011.[41]

In the triennial plan, EM sets forth its design for coordinated and integrated energy efficiency and weatherization programs toward achieving the following goals:

> (1) Weatherizing 100% of residences and 50% of businesses by 2030;
>
> (2) Reducing peak-load electric energy consumption by 100 megawatts by 2020;
>
> (3) Reducing the State's consumption of liquid fossil fuels by at least 30% by 2030;
>
> (4) By 2020, achieving electricity and natural gas savings of at least 30% and heating fuel savings of at least 20%;
>
> (5) Capturing all cost-effective energy efficiency resources available for electric and natural gas utility ratepayers;
>
> (6) Saving residential and commercial heating consumers not less than $3 for every $1 of program funds invested by 2020 in cost-effective heating and cooling measures that cost less than conventional energy supply;
>
> (7) Building stable private sector jobs providing clean energy and energy efficiency products and services in the State by 2020; and
>
> (8) Reducing greenhouse gas emissions from the heating and cooling of buildings in the State consistent with State goals.[42]

Progress toward these goals is reviewed in an annual report that is approved by the EM Board and subsequently presented to the MPUC and the legislative committee with jurisdiction over energy matters. This report also describes programs implemented in the current year, EM's assessment of their cost-effectiveness, and the programs to be implemented in the following year.[43] EM's performance is not subject to incentives or penalties. Independent evaluation of each major program occurs at least once every 5 years. [44]

---

[41] Triennial Plan of the Efficiency Maine Trust: 2011-2013. April 2010.
[42] Maine Revised Statutes Title 35-A §10104
[43] Maine Revised Statutes Title 35-A §10104
[44] Maine Revised Statutes Title 35-A §10104