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*Director*

May 27, 2011

**Via Hand Delivery and Electronic Mail**

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

**Re: In the Matter of Comprehensive Energy Efficiency  
and Renewable Energy Resource Analysis for 2009-2012:  
2011 Programs and Budgets: Proposed Changes to CORE and REIP  
Extension Policy and Proposal for Large Energy Users Pilot Incentive  
Program  
BPU Docket Nos.: EO07030203 and EO10110865**

Dear Secretary Izzo:

Enclosed please find an original and ten copies of comments submitted on behalf of the New Jersey 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.

Honorable Kristi Izzo, Secretary  
May 27, 2011  
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Thank you for your consideration and assistance.

Respectfully submitted,

STEFANIE A. BRAND  
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## **Proposed Changes to CORE, REIP and the ESFI**

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

**May 27, 2011**

The Division of Rate Counsel (“Rate Counsel”) would like to thank the Board for the opportunity to present our comments on the proposed changes to the EDC Solar Financing Incentive (“ESFI”) and to the Customer On-site Renewable Energy Program (“CORE”) and Renewable Energy Incentive Program (“REIP”) extension policy.

As discussed during the May 10, 2011 Renewable Energy Committee meeting, the Office of Clean Energy (“OCE”) is proposing to change the ESFI eligibility period. The \$0.50 per watt incentive will be available up until June 10, 2011, rather than through December 31, 2011. Given the robust participation in the program’s Solicitation Round 6, and the number of projects that have been installed without the need for a rebate, Rate Counsel supports this proposed change.

In addition, OCE is proposing modifications to the Board’s extension policy for CORE and REIP solar projects. Under the proposed modifications, projects that have not received an extension would be eligible for only one extension of four or six months, depending on project size, and projects that previously received an extension would be eligible for one additional extension of six months. The OCE proposal would establish more stringent criteria for the granting of extensions. Again, it is apparent that the CORE and REIP rebates are no longer needed to encourage solar installations.

Rate Counsel has previously raised concerns about the continued multi-year wind-down of the CORE program.<sup>1</sup> Rate Counsel has already recommended that the Board discontinue funding for the CORE program in the 2011 budget and return those dollars to ratepayers. Rate Counsel has also recommended any new spending allocated to REIP be refunded to ratepayers. Based on the state of the SREC market, decreases in installation costs, and windfalls for projects that have received rebate approvals, it is evident that these programs need not continue. Rate Counsel therefore supports OCE’s proposed modifications and any further changes that will bring these programs closer to conclusion.

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<sup>1</sup> 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; Rate Counsel Comments on the Proposed Renewable Energy Program Budget for 2010-2011, November 17, 2011.

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

**Comments of the New Jersey  
Division of Rate Counsel  
on the Concept Paper – Revised 05.16.11:  
C&I Large Energy Users Pilot Incentive Program Proposal**

**May 27, 2011**

**Introduction**

The Division of Rate Counsel (“Rate Counsel”) would like to thank the Board of Public Utilities (“BPU” or “Board”) for the opportunity to present our comments on the proposal for a Large Energy Users (“LEU”) Pilot Incentive Program (“LEU Pilot Proposal”) submitted to stakeholders for comment by AEG, the Market Coordinator for the Clean Energy Programs (“CEP”), on May 18, 2011.

**I. Incentive Specifications**

In contrast to the incentives offered by the CEP’s Pay for Performance program (“P4P”), the proposed maximum incentives per entity for the LEU Pilot Proposal appear to be excessive. P4P provides incentives, up to a maximum total incentive of \$2 million (plus additional incentives for Combined Heat and Power applications), at satisfactory completion of three milestones:

1. Submittal of a complete Energy Reduction Plan (“ERP”)
2. Installation of all recommended measures per the ERP

### 3. Completion of Post Construction Benchmarking Report

For the first milestone, the P4P incentive is structured as follows:

- Incentive Amount - . \$0.10 per sq ft
- Minimum Incentive - \$5,000
- Maximum Incentive - \$50,000 or 50% of facility annual energy cost (whichever is less)

For the second and third milestones, P4P provides incentives of up to \$0.22 per kWh saved annually and \$2.50 per Therm saved annually. The total incentive for these two milestones is capped at 50% of total project cost.

P4P's incentive for completion of an ERP appears to be a very small portion of the entire P4P incentive. Assuming the maximum total incentive for the second and third milestones (\$2 million), the maximum incentive for completion of the ERP (\$50,000) is roughly 2% of the total project cost. The Commercial and Industrial ("C&I") Energy Efficiency ("EE") Market Manager reported that it does not have actual program data on what ERPs generally cost P4P participants but was able to inform us that P4P partner fees, largely comprised of costs to develop the ERP, make up 5% of total project cost on average.

In contrast to the P4P incentive structure, the LEU Pilot Proposal would not offer a separate incentive for completion of an ERP. As proposed in the 2<sup>nd</sup> bullet point under the Incentive Specifications section of the LEU Pilot Proposal (page 2), the pilot's maximum incentive per entity would be the lesser of:

- \$1 million
- 75% of total project(s) cost
- 90% of total NJ CEP fund contribution in previous year
- \$0.33 per projected annual kWh saved and \$3.75 per projected Therm saved annually.

When compared to P4P incentives, two of the proposed thresholds appear to be excessive: 75% of total project cost and \$0.33 per projected annual kWh saved and \$3.75 per projected Therm saved annually. The lack of a separate incentive for completion of an ERP in the LEU Pilot Proposal does not justify increasing incentives to 75% of total project cost. The difference in incentive caps between the P4P and the LEU Pilot Proposal — 25% of project cost — is well above the average cost of P4P partner fees (as a proxy for ERP costs), which amount to 5% of total project cost.

The LEU Pilot Proposal's increase in incentive caps above P4P levels appears even more excessive when one considers that the LEU Pilot Proposal doesn't tie incentives to actual performance of the measure. While the LEU Pilot Proposal protects against giving full incentives for LEU projects that were not built as specified,<sup>1</sup> tying incentives to actual performance adds risk to the decision to engage in a project. That uncertainty has a financial cost, which implies that the LEU incentive does not need to be as high as the P4P incentive, as else equal.

Given these considerations, and in order to minimize free riders, we suggest an alternative incentive structure for the LEU Pilot Proposal as follows.

Maximum incentive per entity lesser of:

- \$1 million;
- 100% of the incremental cost;
- project cost buy down to 1.5 years of simple payback;
- 90% of total NJCEP fund contribution in previous year (i.e., from all entity facilities); or

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<sup>1</sup> Per page 4 of the LEU Pilot Proposal under "Submittal Requirements and Incentive Payment", estimated LEU incentives based on the proposed project would be trued up to as built conditions: "in the event the scope of work, savings, and/or cost estimates do not match as built documentation, an incentive true-up will occur. The true-up is not to exceed the original incentive commitment." The actual performance will be measured and verified, but the monitoring and verification requirement is not tied to incentives.

- \$0.22 per kWh annual savings and/or \$2.5 per Therm annual savings.

The incremental cost is the cost premium of an efficiency measure over the cost of a standard measure. Tying incentives to incremental cost is one of the most widely used approaches for establishing incentives for large commercial and industrial (“C&I”) customers, according to a report by Quantum Consulting titled “Non-Residential Large Comprehensive Incentive Programs Best Practices Report.”<sup>2</sup> The report reviewed several large C&I efficiency programs across the nation, and recommends to "use incremental costs to benchmark and limit payments."<sup>3</sup> The incentives identified in the report range from 50% to 100% of the incremental cost. We believe the incremental cost should be one of the factors determining the maximum incentive, to minimize free ridership. For example, the incentive for replacing an existing HVAC system with a new system should be capped at the cost of the energy efficient system in excess of the cost of a standard HVAC measure that meets the minimum efficiency level required by the Federal Appliance Energy Standard.

We also recommend the use of 1.5 payback years as one of the maximum incentive thresholds. This is another approach recommended by Quantum Consulting (2004) in order to maximize net savings and minimize free ridership. A payback term of 2 years is typical for reducing free riders. However, in consideration of supporting economic activity in the State, we propose 1.5 years instead. Rate Counsel contends that an investment with a 1.5 year payback term is a very attractive investment for large C&I customers. An analysis of payback acceptance curves used for Delmarva Power & Light Company’s integrated resource planning, indicates that

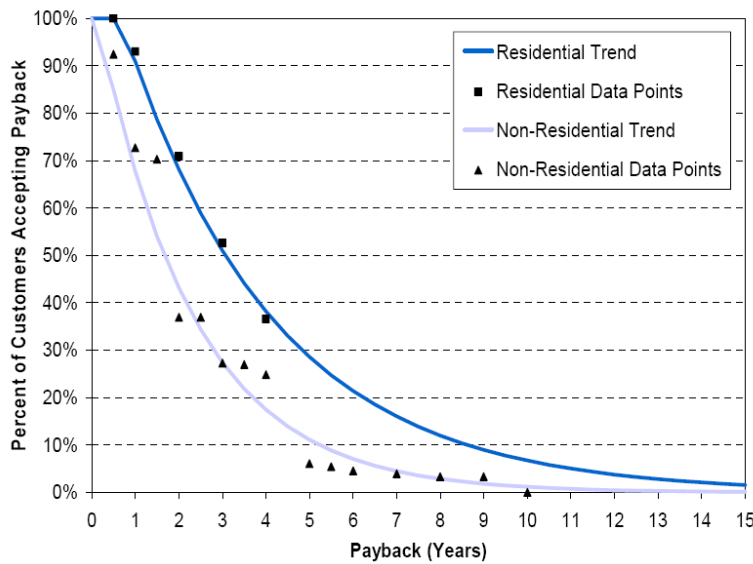
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<sup>2</sup> Quantum Consulting Inc. 2004. National Energy Efficiency Best Practices Study: Volume NR5 Non-Residential Large Comprehensive Incentive Programs Best Practices Report

<sup>3</sup> Quantum Consulting Inc. 2004, page NE5-49.

50% of non-residential customers would be willing to pursue an energy savings project at this level of payback (See TABLE below).<sup>4</sup>

**TABLE: Payback Acceptance Analysis by DPL<sup>5</sup>**



If desired, the pilot could also use cents per kWh or \$ per Therm as one of the incentive caps. For this, we propose \$0.22 per kWh saved annually and \$2.50 per Therm saved annually, consistent with current P4P incentives. We do not see any particular reason that the proposed incentive found in the LEU Pilot Proposal should be higher than the incentive for the P4P given that participation in the LEU program is less risky than the P4P as discussed above.

Rate Counsel does not recommend the proposed incentive structure found in the LEU Pilot Proposal. However, if the Board adopts the LEU’s proposed incentive structure, the Office of Clean Energy (“OCE”), AEG, or TRC, the C&I Market Manager, should justify a level of incentive that is 50% higher than the P4P incentive cap (i.e., why 75% of the total project cost, or

<sup>4</sup> Delmarva Power & Light Company (DPL) 2006. Delmarva Power & Light Company's Third Update to Its Integrated Resource Plan (“DPL 2006”), Appendix B - Demand Side Resources

<sup>5</sup> DPL 2006. Appendix B, page 10.



\$0.33 per estimated annual kWh saved and \$3.75 per estimated annual Therm saved should be the cap). If no justification is provided, the LEU pilot should use P4P limits.

## **II. Submittal Requirements for Incentive Reservation**

For historical energy efficiency consumption data, it is proposed that participants provide historical consumption data for the previous 12 months. However, the previous 12 months may not be representative of baseline consumption for projecting future years' savings (e.g., if the previous year's consumption is lower than normal due to variation in weather, macroeconomic conditions, and/or unscheduled disruptions in operations). We suggest that applicants provide a minimum of 24 months of data. Exceptions could be made on a case by case basis for facilities with less than 24 months of consumption data.

For the projection of energy savings, we recommend applicants also submit projected lifetime energy savings in MWh and Therms and capacity reduction in kW in addition to projected annual savings. This information should be provided in the Executive Summary and the main body of a Draft Energy Efficiency Plan ("DEEP") as well as in the Final Energy Efficiency Plan ("FEEP").

For project cost, applicants should be required to submit information on the incremental cost per measure for each measure, in addition to the total project cost per measure—regardless of whether incremental cost used for determining maximum incentives per the recommendation in the previous section.

## **III. Eligibility and Pre-Qualification**

Under the LEU Pilot Proposal, the 25 entities with the greatest contribution to NJ CEP funding in 2010 from eligible facilities (400kW annual peak demand or greater) would be eligible to submit a draft energy efficiency plan to participate in the program. These 25 entities could each receive up to \$1 million in incentives. If there are more qualifying applications than the \$20 million budget permits, proposals will be selected based on order in the queue (per Incentives Specifications, 5<sup>th</sup> bullet). We suggest retaining first come basis for selecting proposals. However, we have concerns that the eligibility requirement that an entity must be one of the 25 highest contributors to the CEP would screen out the projects with the deepest energy savings. Instead, we recommend that more stringent requirements for projects, as discussed in the following section of this document, serve to reduce the number of applications and thereby reduce administration costs relative to opening the field to all entities with 400 kW and greater peak demands. If the pre-qualification process proposed in the LEU Pilot Proposal is retained for the pilot, an administratively feasible merit based system should be implemented for any full-scale rollout of the program.

#### **IV. Terms and Conditions**

Given the large budget proposed for this pilot, it is reasonable to expect projects meet a high threshold. In addition to payback requirements, DEEPs should be required to demonstrate at least 15% energy savings. In addition, lighting should not be permitted to comprise more than 50% of the proposed measures. Both of these requirements are consistent with P4P requirements and would protect against cream skimming and lost opportunities.

The Minimum Performance Standards laid out in the 2nd bullet point on page 2 of the LEU Pilot Proposal, should be reconsidered and modified for the following reasons.

- It is our understanding that the state is in a three year cycle for updating building codes and that as a result of the most recent update in 2007 the state adopted ASHRAE 90.1-2004. If the state adopts ASHRAE 90.1-2007 in the near future, participants would be just meeting code. Program participants should be held to a higher standard than state code. OCE and the market manager should consider requiring ASHRAE 90.1-2010 instead of ASHRAE 90.1-2007.
- Proposed updates to the CEP Protocols to Measure Resource Savings were circulated to the Energy Efficiency subcommittee listserv on May 24, 2011 (“Draft protocols”).<sup>6</sup> The draft revisions suggest modifying the baseline for Ground Source Heat Pumps to 16.2 EER. Draft Protocols, page 79. Rate Counsel suggests that the minimum performance standard for the LEU program for Ground Source Heat Pumps be increased to a level higher than 16.2 EER.
- On page 79 of the Draft Protocols<sup>7</sup>, increases in the baseline efficiency of Electric Unitary HVAC/Split systems are recommended. Rate Counsel suggests that the LEU Pilot Proposal’s minimum performance standards for Electric Unitary HVAC/Split systems be higher than those listed in table B-3 of the LEU Pilot Proposal. At a minimum, the standard for  $\geq 5.4$  to  $< 11.25$  tons should be increased to  $> 12$  EER. Higher efficiency levels should be considered for the other system capacities in table B-3 as well.

In the 3<sup>rd</sup> bullet point on page 2 of the LEU Pilot Proposal, “ninety” should be changed to “one hundred twenty”, consistent with the number of days in parentheses.

## V. Limitations and Restrictions

The LEU Pilot Proposal suggests allowing the total of federal, state, utility, and CEP funds for a project to equal up to 100% of the total project cost. Rate Counsel opposes the use of ratepayer funds for any incentive that pays 100% of the applicant’s costs. Rate Counsel has consistently maintained that incentives should be less than 100% of costs, in the interest of fairness to ratepayers, and in order to maximize savings and minimize free riders as well as to

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<sup>6</sup> Protocols to Measure Resource Savings - Revision to September 2010 Protocols - May 2011, NJ BPU CEP, circulated 5/24/11...

<sup>7</sup> Id.

assure that program participants have a stake in the successful implementation and ongoing operation of energy efficiency measures. See, e.g. I/M/O the Petition of New Jersey Natural Gas Company for Approval of Energy Efficiency Programs With an Associated Cost Recovery Mechanism, NJ BPU Dkt. Nos. EO09010056 and EO09100057 (Order dated June 17, 2009), Stipulation, par. 20 (provision that combined ARRA, CEP and utility-provided incentives will not fund 100% of a project's costs).

## **VI. Assurances**

Provisions should be added to the LEU Pilot Proposal to ensure that program incentives are recoverable through some type of “claw-back” mechanism if the beneficiary ceases operations at the host facility(ies). Such measures would help protect ratepayers by ensuring that the projected energy savings continue into the future. Furthermore, such provisions would fairly treat applicants who intend to continue operations in New Jersey over the course of the projected lifespan of the approved EE measures.

## **Conclusions**

Rate Counsel respectfully submits that the Board should adopt the modifications to the LEU Pilot Proposal set forth above. Rate Counsel submits its proposed modifications to the incentives, eligibility requirements, energy savings requirements, funding limits and assurance measures would help protect ratepayers and fairly treat program applicants.