FINAL COMMENTS OF THE NEW JERSEY LARGE ENERGY USERS COALITION REGARDING THE DRAFT ENERGY MASTER PLAN

I. INTRODUCTION

The New Jersey Large Energy Users Coalition ("NJLEUC") appreciates the opportunity to present it final comments regarding the Governor's Draft Energy Master Plan ("EMP"). NJLEUC is comprised of some of the State's largest consumers of electricity and natural gas. Since its formation, NJLEUC has intervened in virtually all significant energy-related proceedings convened by the Board of Public Utilities, including matters related to the restructuring of the electric and natural gas industries, the Basic Generation Service auction, utility rate cases, and utility merger proceedings. NJLEUC has also been an active participant in the various ongoing EMP proceedings.

NJLEUC supports the goals of the EMP to provide the State with a diverse portfolio of energy resources that is needed for a reliable, lower cost and environmentally responsible energy supply. Once implemented, the EMP must enable New Jersey to overcome the many energy and environmental challenges that have emerged in recent years, and to regain firm control of our energy destiny over the next decade.

NJLEUC's members provide a standard for the successful implementation of energy efficiency and conservation measures, and have also developed a number of solar projects, some quite significant, while others are now in the process of doing so. There should be no doubt that NJLEUC fully supports the EMP goals to foster the implementation of appropriate energy efficiency and conservation measures, demand management and renewable energy projects to reduce demand, increase reliability, lower energy costs and combat global warming. Our

members have repeatedly been acknowledged to represent the EMP's "low hanging fruit" that are best situated to deliver the most significant levels of energy efficiency, conservation and demand response at the lowest cost.

NJLEUC is optimistic that the EMP and legislation like the recent bills introduced in the Legislature which create incentives for commercial and industrial customers to develop cogeneration facilities (**A849** Chivukula/Voss) and to increase participation in demand response programs (**A2507** Chivukula) herald a welcome new direction in the State's efforts to foster energy efficiency, conservation and renewable energy programs. *We agree with the approach to incentivize key stakeholders, like large energy users, to reduce demand and operate in a more energy efficient manner*, thereby assisting the State to achieve its various energy goals.

The EMP and these energy bills signal a necessary and welcome movement away from the BPU's historic approach to advance it goals through programs that have been largely rebate-driven, heavily subsidized by the business community, and which limit commercial and industrial benefits to a small fraction of a customer's overall contribution to these programs. This approach has created the "perfect storm" for large energy users, who have been compelled to contribute substantial sums to support programs that largely benefit others and, accordingly, offer little return on investment. Moreover, the historic approach has created a disincentive for businesses to make more expansive self-investment in energy efficiency and conservation measures because it depletes scarce corporate resources that could otherwise be utilized far more effectively by New Jersey businesses to improve the efficiency and competitiveness of their operations.

NJLEUC urges the state to abandon the regressive and inefficient "business as usual" rebate and subsidy-driven approach to the funding of the energy efficiency, conservation and renewables programs that are the cornerstone of the EMP and whose performance over time will be the ultimate barometers of the EMP's ability (or inability) to achieve its challenging goals. *We believe that these goals can only be achieved if the State adopts an incentive/disincentive and performance-based approach to these programs that is designed to maximize the amount of energy savings achieved for each dollar invested*.

We believe that the significant energy-related issues that now confront the state—including spiraling costs, dysfunctional energy and capacity markets, reliability and long-ignored infrastructure issues, and the intersection of energy and environmental policy—must be addressed in a creative, comprehensive, and bipartisan fashion that is fully consistent with the Governor's equally important economic growth goals. An enlightened system of incentives, disincentives and performance-based rewards, that offers "carrots" to reward desired behaviors, "sticks" to address undesirable behaviors, and penalties for failures to achieve projected goals, is necessary if these issues are to be properly addressed.

It is clear to those who have participated in the development of the EMP that many of the policy initiatives that have been discussed will be expensive to implement and will, unless properly managed, significantly impact electric and natural gas rates that are already among the highest in the nation. While each of these initiatives--energy efficiency, demand response, conservation, renewables and infrastructure development—represent important components of a proper EMP, it is important that these elements be considered in a comprehensive and informed manner, and with appropriate weight given to considerations of both cost and cost-effectiveness. Due regard must also be given to the fact that the State is currently experiencing difficult

economic challenges and that high energy costs represent a serious and growing burden to our citizens, the business community, and to the State itself.

The risks to the economically challenged business community are real and can no longer be ignored if the State is to retain what is left of its industrial base. During the past several years, some former NJLEUC members have gone bankrupt, while others closed their New Jersey operations and relocated elsewhere. Several current members have closed down segments of their operations, downsized, or lost internal company competitions for the right to produce certain product lines in New Jersey, as opposed to other states (or countries) in which the costs of production are cheaper. These losses or roll-backs of business are not isolated events and have entailed the loss of a considerable number of well-paying jobs and significant economic benefits to affected communities.

Energy costs are very much a part of the reason why New Jersey manufacturing facilities are significantly more expensive to operate—and therefore far less competitive-- than those located elsewhere. The state's energy policies should therefore be harmonized with its economic growth initiatives to arrive at a proper balance that will accommodate both important policy goals. We believe that if we abandon the "business as usual" approach of the past and adopt a more enlightened incentive-based approach, this will better assure the accomplishment of the EMP's goals in a much more efficient, cost-effective and goal-oriented manner.

As NJLEUC has previously noted, the goals of the EMP—including the goals to increase energy efficiency 20% and reduce peak demand 5700 MW by the year 2020-- are aggressive and will be difficult to achieve. They will require fundamental changes in the way we live and work. NJLEUC looks forward to continuing to work to achieve these goals in a manner that is fair and

equitable to ratepayers, and reflects a proper balance of incentives, disincentives, and appropriate performance-based rewards that together will facilitate the necessary changes to our daily lives to best achieve these goals.

II. A NEW APPROACH TO THE SOCIETAL BENEFITS CHARGE IS NEEDED IF THE STATE IS TO ACHIEVE THE GOALS OF THE EMP

Many of the programs addressed by the EMP are proposed to be funded, in whole or in part, by the Societal Benefits Charge ("SBC"). Because the SBC is assessed on a **usage** basis, NJLEUC's members, as large end-users, have, in past years, paid disproportionate and steadily increasing contributions to the SBC as it has expanded each year to support these various programs. Spending to date for energy efficiency and renewable energy programs has doubled from a total of $115 million for 2001, to $235 for the current budget year. Under a recent staff proposal, these figures will increase to $379 million annually by 2012 --almost double the current level—without taking into account the significant SREC costs that will also be assumed by ratepayers.

Several NJLEUC members each currently contribute up to $2 million annually in SBC charges, which is for some more than they pay in distribution charges. Indeed, almost 20% of our current electric bills is comprised of various surcharges like the SBC and taxes. We therefore react with understandable alarm when it is said that multiples of this amount could be required to achieve the EMP goals. We have said in the past (as has Rate Counsel) that the SBC cannot and should not be viewed as a bottomless pit because ratepayers clearly do not accept this view and are not able to provide unlimited funding to support SBC programs.

Moreover, while substantial, the SBC is now only one of several significant usage-based charges that are being added to our ever-increasing energy costs. The costs associated with, among others, the RGGI cap and trade program, the Solar Renewable Energy Credit program, and PSE&G's Solar Program, are or soon will be passed through to end-use customers. While we appreciate the importance of these various programs to the EMP and the State, we note the obvious that we all find ourselves in hard economic times and the "pancaking" of these costs poses a considerable financial burden in the form of a "stealth" tax to residential and business customers alike.

Ratepayers have seen Clean Energy program costs increase from $482 million for the years 2001 through 2004, to $745 million for the years 2005 through 2008, to the current proposal of **$1.2 billion** for 2009 through 2012. Does this mean that a large energy user that has paid two million dollars a year in SBC costs will now be expected to pay up to $6 million annually for the SBC alone? Does anyone truly believe that the potential tripling of program costs will only have a *de minimus* rate impact that will be largely offset by energy savings projected to be derived from these programs?

We point out that each of these increases has been equivalent to the additional cost that results from a major utility rate case. In light of the current and projected magnitude of these costs, which are extraordinary by any yardstick, we strongly urge the State to exercise great caution when considering the likely impact of these programs on the state's already-high energy costs.

While it is uncertain what the actual cost of the EMP, RGGI and SREC programs, among others, will be going forward, it is certain that ratepayers will pay all of these costs,

directly or indirectly. The SREC and RGGI costs will not be paid by the utilities, generators, or energy marketers—they will ultimately be passed through to end-users. While ratepayers may be funding fewer rebates for solar programs through the SBC they will instead be paying for SRECs that currently trade in the range of five hundred dollars each.

Therefore, the costs of these various programs must be made subject to reasonable limitations, and recovery of the SBC and other charges should occur in an equitable manner. As the State expands its infrastructure in the implementation of the EMP, the allocation of those costs by regulators across rate classes should adhere to well-known and long-standing ratemaking principles, chief among them that cost allocation should follow cost causation.

a) Large end users should be permitted an opportunity to self-invest in energy efficiency, conservation and renewables programs in lieu of paying a portion of the Societal Benefits Charge

Maintaining a "business as usual" approach to funding the EMP's ambitious programs would penalize large end users by requiring them to make disproportionate contributions to programs that largely benefit others while capping available C&I program benefits. This historic approach has created significant disincentives to large customers to self-invest in energy efficiency initiatives—a pattern that must be reversed if the EMP is to have the benefit of the "low hanging fruit" that C&I customers are acknowledged to represent.

We suggest that a far better approach would be for the State to follow the model established for the utilities under Section 13 of the RGGI law and create *incentives* for the business community to self-invest in energy-related programs to foster energy conservation and efficiency at their own facilities. *In so doing, the State could take full advantage of large end users proven capable of delivering the highest levels of efficiencies for the money invested.*

The RGGI law contained a Legislative finding that the involvement of the State's utilities in the energy efficiency and conservation industries is essential if the State is to achieve its various EMP-related goals. Therefore, pursuant to Section 13 of RGGI, the Legislature extended to the utilities a number of financial incentives to induce them to re-enter these businesses. While NJLEUC opposed Section 13, we urge that financial incentives similar to those of Section 13 should be extended to large end users to induce them to expand upon their prior and existing energy efficiency and conservation initiatives.

Notwithstanding RGGI's overture to the utilities, it is noteworthy that the EMP acknowledges that **the most "bang" for the energy efficiency and conservation dollar has consistently been obtained from investments made by commercial and industrial customers**. It is acknowledged that 68.5% of the 1.2 MWh of electricity saved as a result of the energy efficiency programs between 2001 and 2006 were achieved through the commercial and industrial energy efficiency program and that **every dollar expended in this program has resulted in approximately $11 in customer savings.** (Draft EMP at p. 52).

By way of contrast, during the same period, **66.3%** of the energy efficiency budget was expended on the residential program which resulted in only **31.2%** of total electricity savings. The EMP therefore acknowledges that only $4 in savings has resulted from each dollar spent on the residential energy efficiency program (Draft EMP at p. 52). Thus, the EMP establishes that no other clean energy-related expenditures made to date achieve results that even approximate those that have consistently been obtained from C&I energy efficiency and conservation programs.

If properly incented, and relieved of the obligation to subsidize other, less-efficient programs, commercial and industrial customers are poised to deliver the greater efficiencies a successful EMP will require on a going forward basis. We therefore recommend that the EMP adopt the following financial measures and incentives that will both contain the costs of large users and encourage them to undertake additional energy efficiency and conservation initiatives consistent with the EMP:

i) Self-Investment Exemption

Because they impose consistently high demands on the electric grid, large commercial and industrial customers are natural targets for energy efficiency, conservation and alternative energy programs. Large users have contributed millions of dollars into energy programs that have not achieved the level of reductions that would be possible through a more efficient deployment of funds. To date, the opportunity to use these funds to support effective energy efficiency and alternative energy programs at industrial and manufacturing facilities—facilities managed by people with an obvious incentive to produce the best possible results—largely represents an opportunity missed.

To date, the need to remain competitive in an increasingly global economy has spurred NJLEUC members to invest in energy efficiency programs of their own accord. NJLEUC believes that the EMP should build on these private efforts by providing large users a mechanism that recognizes and rewards their investment in their own energy efficiency programs based on the achievement of documented efficiency gains.

To that end, NJLEUC recommends that the EMP provide commercial and industrial ratepayers that satisfy certain requisite criteria an opt-out exemption from the SBC, and any

related or successor charges that fund programs within the EMP. The opt-out would apply to "self-managed" customers to enable them to invest in programs at their own facilities if they are able to demonstrate to the Board's satisfaction that they have achieved an agreed level of energy efficiencies or savings. *We envision that the Board would require companies eligible for the self-investment exemption to continue to make appropriate contributions to the low income programs funded by the SBC*. We underscore that we do not seek to avoid the obligation to pay our fair share to support the Board's societal welfare programs.

By creating the self-investment exemption, the EMP could significantly further its "major objective" to assist customers and the State in achieving its EMP goals in the most efficient and cost-effective manner, while at the same time providing a needed financial benefit to commercial and industrial customers. Rather than increasing a large customer's cost of doing business here by requiring the company to make ever increasing SBC payments used to fund less efficient and less cost-effective programs, an opt-out opportunity would enable the business to operate more efficiently and competitively while at the same time reducing overall peak demand and emissions of greenhouse gases—a true win/win situation for all.

We note that other states have adopted a similar approach. Public Utility Commissions in Indiana and Virginia have ordered that utility tariffs include similar SBC-type opt-out and exemption provisions for commercial and industrial customers who self-invest in approved energy efficiency programs. North Carolina has rejected an SBC-type charge (and is also phasing out its sales tax on energy). Therefore, New Jersey would not be breaking new ground in adopting this well-reasoned approach, and would do much to encourage needed investment. In this regard, we would also encourage the State to follow the lead of others and exempt from the sales and use tax electric and natural gas consumed in manufacturing processes.

ii) Divide the Societal Benefits Charge By Rate Class

Consistent with the approach suggested in pending Assembly bill **A616** (Chivukula/Karrow/Prieto), the SBC should be divided by rate class, while providing a separate fund, supported by all rate classes, to benefit low-income residential customers. The Assembly bill would establish separate Energy Efficiency, Clean Energy and Renewable Energy Program Funds for residential, small commercial and large commercial and industrial customers.

The bill would require electric and natural gas utilities to report annually to the Board regarding the SBC payments made by each rate class and the Board would establish separate funds for each class in proportion to the amount of revenue remitted to the Board in the preceding state fiscal year. The funds would then be disbursed exclusively to the members of the rate class that contributed the funds. This approach would eliminate the significant inter-class subsidies of EMP programs that are adversely affecting New Jersey businesses and provide a measure of equity and parity that is decidedly absent from the current structure.

iii) Eliminate Program Benefit Restrictions

As previously noted, under the current system large customers contribute significantly to SBC-supported programs for which large customers may be ineligible, or eligible only to receive benefits that are capped at low levels. It is not unusual for certain commercial and industrial customers to contribute millions of dollars to the SBC each year only to receive, at most, $200,000 in benefits in return because of existing program restrictions that cap the benefits that can be obtained by a customer.

We urge that such restrictions be eliminated or, in the alternative, made performance-based to afford large end users with significant energy efficiency and conservation opportunities

access to adequate funding to enable them to pursue all available energy savings opportunities. The State should also permit companies with multiple facilities within New Jersey to aggregate energy efficiency and renewable energy investment allowances or incentives to benefit an individual site. Such an option would afford a customer additional flexibility in its energy efficiency and conservation investments and could enhance energy savings overall.

Because, as noted, large commercial and industrial customers represent the "low hanging fruit" for energy savings initiatives, it would be smart policy to remove all impediments and benefit restrictions that would impede a customer's efforts to take maximum advantage of these energy savings opportunities. Such a policy would appear to lend itself well to the proposal to divide the SBC by rate class, in order to avoid a situation in which rate classes "compete" for finite program resources.

iv) <u>Cap Program Costs</u>

Board staff has proposed a $1.2 billion budget for the next four years to foster the energy efficiency, conservation, and renewables programs that are central to the EMP. These program costs are in addition to those associated with RGGI, the SREC trading program, the PSEG Solar Program and other current and proposed programs, all of which will doubtlessly prove to be expensive, and their costs will be recovered on a usage basis.

The Board has imposed a 2% cap on the costs associated with the Board's solar program and has included the PSEG Solar Program within the same cap. NJLEUC recommends that cost capping continue to be an essential element of these various programs because of their sheer size and the potential for significant error in the numerous studies and assumptions that provide the basis for the programs' projected costs.

NJLEUC urges that an "overall" cost cap be imposed that represents the outer financial boundaries of ratepayer cost responsibility for the various EMP-related programs and to assure that program costs will be limited to a certain and pre-defined level. This would protect ratepayers by providing a level of assurance that they will not have unlimited financial exposure should the various cost-related studies and assumptions relied upon prove to be erroneous or unfounded over time. This would also enable the State to remain competitive with other states that have implemented similar rate caps or other forms of ratepayer protection.

The cap should be implemented in a manner that applies equally to all rate classes. The 2% cap imposed on the solar program should not be created as a "generic" cap under which actual increases could vary widely by rate class, due to differing levels of energy usage and other factors. Rather, the cap should assure that the rates charged to residential, small commercial, and large commercial and industrial customers should each be subject to a hard, not-to-exceed 2% cap.

v) Cost Capping in Other States

Information provided by the Office of Clean Energy, as well as the July 17, 2007 Summit Blue Report (at p.61), reveals that several states with similar programs have implemented cost caps to protect consumers. Thus, for example, Colorado has, by statute, established a maximum retail rate impact of one percent of the total electric bill annually for each customer. Similarly, in New Mexico, utilities are not required to acquire renewable energy resources that result in costs above a reasonable cost threshold established by the Public Regulation Commission. The reasonable cost threshold was set at an overall customer rate increase of no more than one percent in 2006, and no more than an additional 0.2 percent per year until capped at two percent

for each year beginning in 2011. New Mexico also caps the price of resources by type. Solar projects of less than 10 kilowatts are capped at $0.15 per kWh, and projects of greater than 10 kilowatts are capped at $.10 per kWh.

It is noteworthy that New Mexico has also implemented a cost cap for industrial customers that have electric loads that surpass 10 million kWh. These customers are protected against paying Renewable Portfolio Standard ("RPS") charges higher than $49,000 in 2006, a ceiling amount that will increase by $10,000 per year until 2011.

New York and California use only capped SBC funding to pay for the above-market costs of renewable energy used for RPS compliance, eliminating additional pass-throughs of RPS compliance costs to ratepayers. (see, Summit Blue 7/31/07 Report at p.68). Pennsylvania has adopted a similar approach to renewable purchase costs that exceed the Locational Marginal Price of energy, allowing the above-market costs to be deferred and collected pursuant to an automatic energy adjustment clause. Pennsylvania's recent "Energy Independence Strategy" includes the creation of an Energy Independence Fund for clean energy projects, including solar, rebates, sunshine grants, venture capital grants and loan programs. The fund, whose budget is approximately $850 million, will be supported by expected increases in gross receipts revenue in lieu of a "systems benefit charge" on power use. The systems benefit charge was eliminated from the version of the bill that was passed last March by the Pennsylvania State House (**SHB 1**) because it was viewed as a tax that was unacceptable in the current economic climate. It is noteworthy that the charge to industrial customers for the fund is capped at $10,000 per year.

We urge that every possible avenue be exhausted to provide some measure of relief to ratepayers from the very expensive programs that comprise the EMP. It is critical that we craft a prudent, equitable, and fiscally sound method by which the various EMP programs can be

funded over time. NJLEUC believes that these recommendations will significantly advance the goals of the EMP while at the same time allow the State's large businesses an opportunity to become more energy efficient and competitive in their respective markets, while leveling the energy cost playing field between states.

III) ENERGY EFFICIENCY, RATE DECOUPLING AND RELATED ISSUES

The EMP establishes a goal to reduce the State's energy usage 20% by the year 2020. NJLEUC reiterates its view that the goal is an aggressive one that will literally require all of us to fundamentally change the way we live and work. Over the past year, a number of energy efficiency-related initiatives have been proposed or implemented to assist in achieving the goal—including an Energy Efficiency Portfolio Standard, more aggressive building and appliance standards, and renewed utility involvement in the promotion of energy efficiency and conservation measures.

While NJLEUC has deferred to the judgment of others regarding the merits of certain of these proposals, we have consistently urged that there must be an appropriate, detailed and considered analysis of these various energy efficiency options to determine their effectiveness and cost justification. Because it has been proposed that several billions of dollars be spent in the coming years on these programs, and that an as yet unknown degree of responsibility for these programs may be shifted away from the Board to the utilities or third parties, it is necessary and appropriate to fully understand what we are getting ourselves into and whether the approaches chosen assure accountability for ratepayer funds and program performance, are cost-effective, and the most prudent and likely to deliver the projected benefits and cost savings.

We therefore view with initial skepticism the energy efficiency structure proposed by NEEP which appears to bypass Treasury procurement procedures and transfer an inordinate amount of responsibility for energy efficiency programs to the EDCs. There would also appear to be significant cost, redundancy and accountability issues to be addressed, as well as issues regarding the continuing role of the Board as regulator of these programs. The NEEP and all other potential options must be measured against their potential costs—from a financial, regulatory and accountability perspective—and only those options that produce net positive benefits and lead in a demonstrable and reasonable fashion to the achievement of the State's EMP goals should merit serious consideration.

Expanded Use of Hourly Pricing and Market-Reflective Rates

To help achieve its ambitious goals, the EMP proposes to extend hourly pricing to additional large business consumers and to consider block pricing for residentials and small commercials. NJLEUC fully supports this proposal. We have long said that all New Jersey consumers could contribute to achieving more efficient energy consumption if they had available real-time market data and market-responsive pricing mechanisms, including hourly rates and time of use rates, as well as the means to react to these pricing signals. This would incent consumers to shift their loads from peak to off-peak hours to reduce energy costs, thereby curtailing otherwise unnecessary energy consumption and contributions to peak demand. Real time and time-differentiated pricing mechanisms will also encourage increasing numbers of larger customers to participate in today's largely-unsubscribed demand response programs.

Because current rate structures, such as the three year "averaged" price that derives from the Basic Generation Service auction, shield customers from actual market prices as they vary from time to time, customers do not receive appropriate price signals that would induce them to be more efficient consumers of energy. In a sense, current rates amount to little more than a "green light" to consume electricity because customers are unaware of the variable cost of energy and the consequences of their unconstrained usage of energy during peak periods. Similarly, the establishment of inverted block rates, which would penalize energy usage deemed excessive, should provide a sufficient disincentive to customers to engage in unconstrained energy consumption, thereby promoting conservation.

While we understand the desire to cushion the impact of increasing energy costs, it must be recognized that if customers are shielded from price signals that reflect or approximate the market and changing value of energy, they will not be encouraged to shift their usage patterns and conserve energy, particularly during system peaks. In order to foster the types of conduct necessary to achieve the EMP goals, increasing numbers of customers must be exposed to market-reflective rates. The "green" signal to consume must be eliminated and replaced by signals that will facilitate the desired behaviors of conservation and demand response. One need look no further than to consumers' recent reaction to escalating gasoline prices for convincing evidence of how conservation (and changes in automobile buying habits) may be fostered by exposing consumers to increasing energy prices.

We underscore, however, that the move to market-based rates is merely the first step, and that real time pricing is not a sufficient conservation mechanism in and of itself. First, customers must have an ability to reduce demand, particularly if consumption-related penalties are proposed. Next, customers with the ability to reduce demand must also have greater access to

market-based pricing and an ability to react to price signals on a real time basis. At the current time, most customers do not have meaningful access to real time pricing and there is no formal structure in place that would enable customers to change their usage patterns and reduce overall demand. Nor have customers been properly educated regarding the need to modify their consumption habits and how this may be best accomplished. All of these steps must occur for market-based pricing and block pricing to cause reductions in consumption.

The role of the utilities and rate decoupling

The EMP contemplates that the utilities will play a primary role in helping to achieve the EMP's energy efficiency, conservation and renewables goals. It is suggested that the utilities' relationships with customers statewide and broad "brand" recognition necessitate their active involvement in the implementation of the EMP. Therefore, both the EMP and Section 13 of RGGI authorize the utilities to engage in these activities, and provide a number of financial and other incentives, including the potential implementation of rate decoupling, to encourage them to do so.

NJLEUC acknowledges the need to involve the utilities (as well as all other stakeholders, including energy service companies) in the implementation of the EMP. However, we also observe the obvious—*it was only a few years ago that the utilities were taken out of the energy efficiency/conservation business because of their inherent conflicts of interest and unremarkable overall performance*. We are therefore concerned regarding the nature and extent of the financial incentives that will be given to the utilities to "align" our interests; whether these incentives will adequately cure the utilities "conflict" without causing offsetting collateral problems to arise; whether competitors that are not afforded these incentives will be able to effectively compete

with the utilities; how the State will assure that the utilities perform at expected levels; and what disincentives/penalties will be implemented if the utilities fail to deliver as promised.

In turning to the State's utilities for help in implementing its proposals, the EMP would consider permitting "rate decoupling", a ratemaking mechanism that purportedly eliminates or reduces the dependence of a utility's revenues on sales. The stated purpose of rate decoupling is to eliminate a utility's disincentive to foster energy efficiency and conservation projects that, if successful, would reduce utility energy sales and adversely affect the utility's bottom line.

Rate decoupling has been euphemistically referred to as "innovative rate making" that would align the interests of utilities and their customers in promoting energy efficiency and conservation. This "innovation", however, would turn on their ear a century of universally accepted regulatory ratemaking policies—e.g. that utilities are only given an *opportunity* to recover their reasonable and prudent costs and a fair rate of return, without any guaranteed recovery. In a significant departure from traditional cost-of-service principles, rate decoupling would actually *guarantee* a utility's earnings at a pre-determined level by automatically adjusting customer rates to immunize utility earnings from fluctuations in sales. In the past, these utility "price supports" have at times been awarded without regard to whether the reduced sales occurred as a direct result of utility conservation efforts or due to unrelated factors such as moderate weather patterns or economic downturns.

Contrary to the suggestion by some that it is new and innovative, rate decoupling has actually had a long and checkered past. In fact, rate decoupling has been around for decades, during which time it has fallen in and out of favor in a number of jurisdictions. States like New York and Maine pulled the plug on their experiments with rate decoupling programs after the programs provided excessive and embarrassing windfalls for the utilities. The Maine experiment

was particularly telling, as the utility was protected from reduced sales caused by a downturn in the state's economy, as opposed to the utility's conservation efforts. It was because of this past failure that current efforts by some to renew Maine's experiment with decoupling are being actively opposed by the Maine Public Service Commission. (See, *Report on Revenue Decoupling for Transmission & Distribution Utilities*, Maine Public Utilities Commission, January 15, 2008).

Maine's experience with decoupling, which is consistent with that of other states involved in the early experiments, was described in the Maine PUC Report as follows:

> …Maine has experience with revenue decoupling that is generally considered a failure. In 1991, the Commission adopted, on a three-year trial basis, a revenue decoupling mechanism for Central Maine Power (referred to as "Electric Revenue Adjustment Mechanism" or "ERAM"). The "allowed" revenue was determined in a traditional rate case proceeding and adjusted annually based on changes in the utility's number of customers…Analyses before the Commission at the time indicated that changes in the number of customers were at least as good an indicator of CMP's costs as changes in sales levels…
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> CMP's ERAM quickly became controversial. Around the time of its adoption, Maine, as well as the rest of New England, was experiencing the start of a serious recession that resulted in lower sales levels. The lower sales levels caused substantial revenue deferrals that CMP was ultimately entitled to recover…By the end of 1991, CMP's ERAM deferral had reached $52 million. The consensus was that only a very small portion of this amount was due to CMP's conservation efforts and that the vast majority of the deferral resulted from the economic recession. Thus, ERAM was increasingly viewed as a mechanism that was shielding CMP against the economic impact of the recession, rather than providing the intended energy efficiency and conservation incentive impact….Maine's experiment with revenue cap regulation came to an end on November 30, 1993 when ERAM was terminated by stipulation of the parties."

Maine PUC Report, at pp. 12-13

Given the lessons learned from past experiments with rate decoupling, NJLEUC strongly recommends that the EMP reject adoption of a decoupled rate structure, utility "revenue erosion" protections, or any other such form of rate relief. However, should some form of so-called "innovative rate design" be considered by the State, NJLEUC urges the rejection of any rate design that could lead to unjustified utility price supports, and is not justified by a) objective cost-benefit analysis, b) the removal from rate relief consideration of any reductions in sales that are not directly caused by utility energy efficiency and conservation programs, including the effects of externalities like variations in weather and prevailing economic conditions, and efficiencies that derive from the independent efforts of customers and energy service companies, and c) a performance-based component that includes penalties for inadequate performance. *Compensation should only be afforded to the utilities for efficiencies that are specifically caused by the utilities, subject to adequate measurement and verification standards and protocols.* The need for these protections should be obvious.

History has shown that while decoupling may purport to align the interests of utilities and regulators who wish to promote energy efficiency, it does not necessarily benefit customers. Decoupling would not appear to benefit commercial and industrial customers that have already invested in energy efficiency. In fact, decoupling could place large consumers in a lose/lose situation in which they pay SBC-type charges to support energy efficiency programs that largely benefit others, while at the same time paying "guaranteed" utility distribution rates, thereby denying large consumers some of the benefit from the cost-saving efficiencies they are able to achieve.

The same is true for residential customers. What incentive is there for customers to make their homes and lifestyles more energy efficient if their electric distribution bills remain the same

each month, notwithstanding their best efforts to reduce their consumption of energy? We think that consumers, rather than utility shareholders, should benefit from their reduced energy consumption. If consumers don't get the benefit of lower costs from the efficiencies they produce, what incentive do they have to be more energy efficient? Here again, a proper system of incentives/disincentives is needed to assure the desired behaviors necessary to achieve the conservation goals of the EMP.

It is noteworthy that one of the criticisms of rate decoupling has been its tendency to contribute to utility indifference to the needs of its customers. Because the net effect of rate decoupling is to put a utility's distribution revenue stream on "autopilot", it could promote complacency on the part of utility management because it isolates them from normal business risk. If rates are artificially maintained between rate cases, utility management could grow inattentive to aspects of its business, including sales growth through the facilitation of economic development opportunities in local communities, secure in the knowledge that its bottom line is cushioned by a guaranteed revenue stream. Thus, rather than spur the utilities into action to assist in the accomplishment of EMP goals, decoupling could have the opposite effect as it could make retail electric distribution service essentially risk free for utilities.

In this regard, the Maine Public Utilities Commission observed in its Report, "…Revenue decoupling does not, however, provide any positive incentive for utilities to promote or support energy efficiency or conservation programs. The mechanism only makes a utility financially neutral to such activities". (Report, p.9). Similarly, in New Jersey, absent the implementation of appropriate performance-related penalties, there is no guarantee that utilities granted rate decoupling or revenue protection as part of the EMP will achieve energy efficiencies at the

projected levels or that their efforts will result in measurable efficiencies that justify the rate relief granted.

Rate decoupling also implicates other important rate-related concerns that represent significant departures from traditional ratemaking principles. The allocation of, and compensation for the business risks associated with a utility's distribution business is one such concern. As part of the traditional financial structure of an investor-owned utility, utility shareholders assume normal business risk as part of the risk/reward system on which private enterprise is predicated. However, rate decoupling shifts this risk from shareholders to ratepayers, representing a distinct departure from longstanding regulatory policy designed to balance their respective interests.

Notwithstanding this reallocation of business risk, noticeably absent from the EMP-related commentary is any offer by a utility advocating rate decoupling or "revenue protection" to reduce its allowed return on equity to a level that reflects the lower shareholder risk that would be caused by decoupled or "guaranteed" rates. To ensure that utility rates properly reflect this lower risk, the Board should require any utility seeking decoupled rates or any form of revenue protection to bring a base rate proceeding in which a proper rate of return (and any necessary decoupled rate "baselines") would be established.

Finally, rate decoupling runs afoul of the longstanding regulatory policy against single issue ratemaking. In base rate cases, <u>all</u> aspects of a utility's financial performance, the risks associated with the conduct of the utility's business, and ratepayers' responsibility for utility costs are exhaustively assessed in order to derive reasonable and prudent rates and appropriate rates of return. By way of contrast, rate decoupling focuses narrowly on only those elements—such as number of utility customers or the utility's "assigned" rate of recovery-- that provide the

benchmark for the decoupled rates. *This narrow focus ignores the overall financial health of the utility, including consideration of whether the utility may actually be over-earning, or increasing its overall sales or revenues, notwithstanding the lost sales that may occur as a result of the utility's conservation efforts.*

Without this system of ratemaking "checks and balances", the utility could be in a position to recover more than it would have been allowed had all of its financial operations been examined. Indeed, the financial "auto pilot" aspect of rate decoupling all but assures that *base rate cases will be few and far between.* Clearly, a utility that is over-earning will have no incentive to invite the broad financial scrutiny of a rate case, but will prefer the single issue focus of rate decoupling that would fail to fully depict the utility's true financial picture. However, we urge that it is far better policy, from both a consumer protection and regulatory viewpoint, to require a utility that complains of revenue losses caused by its energy efficiency and conservation initiatives to bring rate cases in which the losses may be comprehensively examined and properly compensated.

Accordingly, NJLEUC recommends that the EMP not endorse rate decoupling or revenue erosion protections or, alternatively, permit their use only where the utility's compensation is limited to those lost revenues that are measurable, verifiable and occur as a direct result of the utility's conservation efforts.

V. THE ENERGY MASTER PLAN SHOULD ENCOURAGE IMMEDIATE INVESTMENT IN NEW GENERATION, GAS SUPPLY AND TRANSMISSION FACILITIES IN NEW JERSEY

It is no secret that the high cost of energy in New Jersey threatens the State's economic competitiveness and hurts consumers of all rate classes. New Jersey rates are significantly above

the prevailing regional average, and even higher relative to other states that compete with New Jersey for jobs and products. In addition, our ability to maintain reliable, reasonably priced supply is threatened by the fact that over the past decade, we have consistently and dramatically increased our electric demand. At the same time, our power supply is provided by a generation fleet that is aging, with many plants already in service beyond their anticipated useful lives. The fleet has also been significantly depleted by a series of plant retirements and more retirements are expected in the near term.

Moreover, transmission constraints limit the amount of power that can be imported from the west to make up for generation shortfalls. Conditions in the power markets have deteriorated to such an extent that PJM recently stated (in support of its then-proposed Reliability Pricing Model) that in order to avoid the risk of blackouts and brownouts, over 4000 megawatts of new generation and hundreds of millions of dollars in transmission upgrades will be required in the near term. Therefore, *it is clear that the time for equivocation and half-measures is over; something clearly must be done to reclaim a measure of control over our energy destiny and to keep the lights on.*

The higher energy costs in New Jersey are driven, in large part, by the related problems of the State's congested electric transmission systems and concentrated generation market. The lack of generation to meet peak demand creates the need to import power, increases the potential for the exercise of market power and reduces the reliability of the power grid. However, transmission constraints prevent necessary imports and function to increase energy costs as more expensive localized power plants are dispatched to deliver power within constrained areas. A similar phenomenon has occurred on the natural gas side, where New Jersey has long suffered

the impact of capacity constraints on the interstate natural gas pipelines that deliver natural gas supplies to the State and which, in turn, drive up the cost of gas-fired generation.

In addition, regional pressures on our energy supplies exacerbate the gap between supply and demand growth. Because of the deregulation of the wholesale markets and creation of a class of merchant generators, competitive pressures entice generation companies to sell their power into the most lucrative markets. For power plants located in New Jersey, the Metropolitan New York markets are attractive because of the higher prices for power that may be obtained there. Therefore, a trend has begun in which new transmission lines are constructed to export needed power from New Jersey into New York. One such project—the Neptune Line—currently exports about 660 megawatts of electricity from Sayreville to Long Island—the equivalent of about 3.5% of our generation capacity. Additional proposed "extension cords" to New York—like PSE&G's proposed Cross-Hudson Project—could withdraw more than 2000 megawatts of additional capacity from New Jersey over the next several years. This loss of valuable New Jersey-based power would leave New Jersey with an energy shortfall that is increasing at an alarming rate and threatens even higher prices.

To address these concerns, the EMP should commit the State to actively supporting, through various means, immediate investment in new supply sources and transmission facilities for electric and natural gas within New Jersey. More specifically, the State should affirmatively foster the siting and construction within New Jersey of new generation and power lines on the electric side, and the siting and construction of interstate pipeline and local distribution capacity and Liquified Natural Gas (LNG) terminals on the gas side.

The Draft EMP is somewhat equivocal regarding whether there is a need to increase gas capacity into the State, suggesting that the projected reduction in energy use by 2020 will obviate

the need for expansion. NJLEUC urges that there is a current need for increased capacity, a need that is underscored by the state's increasing reliance on natural gas to generate electricity, a trend that is likely to continue in light of RGGI and if the proposed cogeneration and distributed generation initiatives are pursued at the levels contemplated. Increased capacity is also needed to reduce or contain the cost of natural gas going forward, particularly given the high usage levels already achieved by the utilities' systems, particularly during periods of peak demand.[1]

Facility siting represents perhaps the greatest barrier to the construction of new generation, gas supply, and transmission facilities in the State. NJLEUC supports policies, such as the EMP's proposed creation of a Power Authority, that will not only facilitate, but will encourage construction of these vital facilities in strategic locations within the State. Such facilities are immediately needed to increase competition, provide access to less costly electric and natural gas supplies, insure the continuing reliability of the State's energy infrastructure, and promote the State's continued economic vitality and competitiveness.

NJLEUC also strongly supports the EMP's goal to facilitate the development of 1500 megawatts of combined heat and power/cogeneration facilities. These facilities will afford

[1] NJLEUC also urges that the EMP should address how the utilities should plan their capacity requirements for serving their territories. For example, if the utilities' obligation to serve is viewed as requiring each utility to hold enough firm capacity to serve all customers (even those that switch to third party supply-- on the theory that the customers may someday return to utility default service), significantly less capacity will be available to the market than if the utility is required to hold only enough firm capacity to serve default customers and a reasonably estimated number of returning customers, based on historic patterns or an agreed reserve margin. Currently, there is no uniform approach to utility capacity requirements and the issue has been addressed, without final resolution, in at least one utility rate case.

There should be a uniform approach or policy developed, and NJLEUC urges that the policy should be that utilities serving as providers of last resort should hold only that capacity necessary to serve the utility's reasonably forecasted load requirements, plus a reasonable level of reserves to accommodate unanticipated circumstances. Such a policy would insure that the capacity paid for by customers will be available and utilized primarily for their benefit, rather than provide an additional source of income for the utilities through sales of "surplus" capacity in the secondary markets.

additional means to reduce transmission congestion, improve efficiency, and reduce carbon emissions and electricity costs, and should therefore be encouraged.

NJLEUC recognizes that the State's goal to assure the continuing supply of reliable, reasonably priced electricity conflicts to a degree with its goal to minimize our contribution to global warming and that these initiatives must be implemented in an environmentally responsible manner. In an era in which energy and environmental (and economic development) policies increasingly intersect, the State must harmonize the need to develop additional energy resources of all types with the State's strong commitment to protecting the environment and combating global warming. However, these goals are not, and must not become, mutually exclusive. These are equally important policy goals and it is therefore necessary for the EMP to craft an appropriate policy balance that will address both issues and create the necessary tools to minimize environmental impacts, but allow critical energy supply-related decisions to be made and implemented in a timely way to assure that the lights will remain on.

Changing Regulation as a Result of the Restructuring of the State and Regional Power Markets and the Need for State Action, Including Increased Advocacy Before FERC and PJM

As part of the 1997 restructuring of the electric industry, the Board relinquished authority over the power generation function and, therefore, is no longer involved in resource planning decisions or the regulation of the price of the commodity. Currently, decisions to develop or retire generating plants, or to add transmission facilities, are now made almost entirely by power plant developers or owners, subject to limited oversight by PJM and FERC. Recent purportedly "pro-competitive" decisions by FERC have underscored FERC's apparent ambivalence to the impact of its policy decisions on New Jersey, creating a situation in which critical decisions that

directly affect the viability and costs associated with our energy infrastructure—decisions formerly made by the State—are now made instead primarily by market participants, whose economic interests do not necessarily coincide with those of the State and ratepayers.

Eleven years after the restructuring, power prices in the New Jersey remain among the highest in the nation. The three most recent wholesale auctions conducted to support the State's Basic Generation Service ("BGS") function have yielded dramatic rate increases for those consumers who still receive generation service from their local electric utility. These increases have been caused, at least in part, by policies that govern the wholesale markets.

NJLEUC recognizes that PJM and the wholesale markets are subject to FERC jurisdiction. However, State policymakers cannot continue to simply respond to spiraling BGS and other costs by retreating behind a "that's the market" rationalization. Rather, the State can and should take affirmative steps to encourage the development of the competitive wholesale markets, and attendant ratepayer benefits that were anticipated by New Jersey regulators when they restructured the electric and natural gas industries.

Thus far, applications to FERC by a variety of PJM stakeholders to modify the RPM structure have largely been rejected. In addition, FERC's recent approval of PSE&G's Cross-Hudson Project provides yet another example why New Jersey cannot rely upon FERC to take into account the impact of projects like these on system reliability and the cost of power in the State. Rather, FERC has been responsible for the policies that create the incentives for generators to export critically needed power from New Jersey into other markets and has not demonstrated any inclination to champion our needs as a State. The State's recent experience with the PSEG/Exelon merger illustrates the limited extent to which the State can or should rely on FERC's market power screens to protect against the exercise of market power.

It is clear that the lesson to be learned is that New Jersey must act affirmatively on its own behalf and implement policies that will afford meaningful protection of the reliability of our power supply, reign in spiraling energy costs and, more generally, regain a measure of control over the State's energy destiny. New Jersey should become an activist both in terms of initiatives within its control and as a strong advocate of the State's interests before FERC and PJM.

THE SOLUTION: ENHANCED STATE ENERGY PLANNING, EXPANDED INFRASTRUCTURE AND ACTIVE INTERVENTION BEFORE FERC AND PJM

While New Jersey regulators and policymakers cannot directly regulate the conduct of PJM or the wholesale markets, it is imperative that the State adopt an activist approach with PJM and FERC to influence, to the greatest extent possible, their decisions that impact the cost and reliability of electricity in New Jersey. It is essential for the State to weigh in on issues like the ongoing RPM, demand response and other debates to protect the interests of New Jersey ratepayers and preserve for the State some degree of influence over federal and regional policy decisions that directly impact the State and its citizens. *There should be no question that in addition to its EMP efforts, the State must pursue aggressive parallel efforts at FERC and PJM to avoid situations in which actions taken by FERC and PJM could undermine the achievement of EMP goals, including reductions in energy cost, enhanced reliability, and increased conservation and demand response.*

In addition, New Jersey can take affirmative "self-help" steps that will affect the competitive market structure on which the PJM markets rest. In the short-term, NJLEUC urges the State to pursue the following four-part strategy to address the evident market structure shortcomings that currently compromise the PJM markets:

- Support siting of new transmission and generation to eliminate reliability and economic bottlenecks.
- Support fuel diversity in new generation by removing barriers to entry.
- Support and participate in demand response and other market opportunities.
- Support combined heat and power and distributed generation facilities.

In pursuing these near-term objectives, the State must consider both its projected energy needs and the mix of supply options that would meet those needs in the most efficient, cost-effective manner possible. To that end, NJLEUC envisions a planning process, conducted by the proposed Power Authority or similar entity, that would look forward over a twenty-year time horizon. Planning input would be sought from PJM, FERC, and all interested stakeholders, with the State ultimately responsible for the plan's content. As part of this process, the State should identify locations within the State for new generation plants for which the State can commit to an expedited development and environmental approval process. By adopting this affirmative energy planning approach, New Jersey would position itself to exercise its "opt out" right under the RPM pricing model, which has already cost New Jersey billions of dollars.

Once the state has completed this planning process, it should formally invite parties to propose generation, transmission and/or demand response solutions for meeting the State's energy needs. Through such an approach, the state could establish location, fuel-type and timing parameters for proposals, as well as outline required performance guarantees. As with generation, the State should stand ready to facilitate the siting of transmission and other needed facilities through streamlined regulatory and environmental permitting processes. By establishing fuel-type parameters, the State can potentially assure a diverse fuel mix for its generation assets that also furthers the State's strong commitment to safeguarding the

environment. Through timing parameters, the State can exercise some control (considering long lead-time generation projects) over how quickly the State's current generation deficit is addressed.

Further, the EMP should empower the State, through a Power Authority or similar entity, to enter into short and long term power purchase arrangements for energy and capacity determined through the planning process to be necessary and proper to insure reliability and moderate energy costs. The State should also be permitted to assist in the financing and construction of new generation facilities either through existing means such as financing through the Economic Development Authority. The State should also pursue public-private partnerships, including competitive procurements for generation facilities utilizing long term power purchase contracts in which the price of power is not tied to the PJM market clearing price. We emphasize that the State should only facilitate infrastructure development, through a variety of means, but should not function as an owner or operator of any facilities that are developed.

This approach should enable the State to resume more direct control over the New Jersey energy and capacity markets and to foster the development of an infrastructure that will lead to greater reliability and lower costs. A properly constituted Power Authority or similar entity, staffed by industry professionals familiar with the nuances of the wholesale markets and existing employees of the Board and other State agencies, should spur competition and afford the State more control over aspects of the wholesale markets that have led to our current high priced, concentrated and constrained market environment.

Further, it appears that in order to achieve the State's various energy-related and environmental goals, it is necessary to consider all available fuel types, including nuclear generation, to be "on the table" as part of a potential supply mix to satisfy our demand and

environmental requirements in the long term. The State's greenhouse gas mandates clearly point to the potential expansion of nuclear energy to produce carbon free generation at lower cost.

In addition, consistent with the recommendations of the Draft EMP, the State should implement financial, permitting, siting and other incentives to foster customer-located generation. In particular, behind-the-meter combined heat and power/cogeneration facilities would provide a highly efficient alternative source of distributed in-state generation. NJLEUC notes that industrial sites often provide brown-field siting opportunities for generation. Beyond providing yet another alternative source of in-state generation, such generation projects would reduce load on the already congested power grid. Here again, the State could play a role in determining where such assets are located by providing larger incentives, including rebates and tax exemptions, that target strategic areas within the State.

VI. FURTHER ACTIONS SHOULD BE TAKEN TO FOSTER THE DEVELOPMENT OF COMBINED HEAT AND POWER FACILITIES

NJLEUC fully supports the EMP's goal to foster development of 1500 MW of new combined heat and power/cogeneration capacity in New Jersey by 2020. We agree that cogeneration is an efficient and clean burning form of generation that should be encouraged to assure the continued reliability of the power supply, and produce lower cost power that is environmentally friendly.

As the EMP properly notes, no significant new cogeneration plants have been built in New Jersey since 1999. This "moratorium" on development was caused by a number of factors, including long payback periods on investments, uncertain fuel costs, tax, legal and regulatory concerns, and certain utility tariff provisions. It is clear that in order to foster cogeneration going forward, the State must revisit and eliminate each of these barriers to cogeneration to the greatest extent possible.

The EMP's recommendations to streamline the permitting processes, use the Retail Margin Fund and proceeds of the RGGI auction to provide rebates to new facilities, and exempt all fuels used by cogeneration facilities from the sales and use tax represent significant steps that will help to foster new development and achieve the 1500 MW goal. The role of the DEP will be a critical variable and we urge that "streamlining the permitting processes" should translate into a "one stop shopping" approach to permitting requirements so that approvals of new facilities are fast-tracked and not mired in the types of regulatory pitfalls that have deterred prior development.

The amount of the rebates given will be a critical factor. In our neighboring states of Connecticut and New York, very significant incentives are being offered. In Connecticut, a rebate of $450 per kilowatt has been established. New York is offering a rebate of $750 per kilowatt, together with a "kicker" of an additional 10 cents for each kilowatt hour generated in the first two years of a plant's operation. These programs are already generating a considerable amount of interest and will doubtlessly lead to the development of the needed plants. *New Jersey must follow suit.*

NJLEUC respectfully recommends that the following additional incentives, initiatives, and regulatory and legislative amendments to existing policy are adopted to assure that the EMP's cogeneration goal is met. First, the following utility tariff revisions should be mandated:

-Cogeneration standby rates should be eliminated from utility tariffs. Certain utilities continue to charge penalty "standby charges" for making service available to cogeneration facilities. These charges should be eliminated as they serve as a disincentive to the use of cogeneration plants during critical periods.

-Re-open or extend interruptible cogeneration tariffs to new facilities. Tariffs like PSE&G's Cogeneration Interruptible Gas (CIG) rate provides service to cogeneration facilities at a price that accurately reflects the cost of service for cogeneration fuel. However, this interruptible rate is only available to "grandfathered" customers that subscribed to the service on or before January 8, 2002. Each of the State's gas utilities should offer a CIG tariff or its equivalent to all cogeneration customers, including new facilities.

-Allow for the net metering of cogeneration projects that sell excess power into the grid, similar to the net metering arrangement permitted for renewable energy projects.

-Measurable and standard interconnection requirements should be developed for the State's EDCs. The requirements should be promulgated with a view to encourage cogeneration development and should be uniform and cost-effective.

In addition, the gas utilities should be required to provide reasonable access to high pressure natural gas service. Cogeneration systems utilizing combustion turbines require natural gas at pressures significantly above that required for most equipment. To compensate for low pressure service, cogeneration plants have been forced to install compressors, which detract from the efficiency of the units and reduce their availability.

Finally, amendments should be made to the Electric Discount and Energy Competition Act (EDECA) to eliminate unnecessary site restrictions and cogeneration "cap" provisions that are outdated and will impede the State's goal to expand cogeneration. For example, N.J.S.A. 48:3-51 contains a narrow definition of "on-site" cogeneration for purposes of determining those customers that are exempt from payment of Societal Benefit, Market Transition and Transition Bond Charges for electricity generated "on-site". The definition of "on-site" requires the generating plant to be located on "the property" or "property contiguous to the property on which the end user is located". Properties are considered to be "contiguous" only "if they are geographically located next to each other, but may otherwise be separated by an easement, public thoroughfare, transportation or utility-owned right of way." This definition should be eliminated or expanded in a manner that would accommodate cogeneration facilities that are developed to service multiple sites or end users on "non-contiguous" properties, such as the sale of steam to neighboring third parties.

N.J.S.A. 48:3-77 should be amended to eliminate the ceiling established for "displaced customer purchases from an electric public utility". In its current form, this provision establishes a 92.5% cap on total 1999 kilowatt hours distributed by electric utilities than can be "displaced" by cogeneration before the exemption from the payment of the Societal Benefit, Market Transition and Transition Bond Charges is lost. If this provision were to remain in its current form, should total cogeneration in the State exceed the 7.5% threshold amount, all additional cogeneration facilities would then have to pay these charges, which are considerable, unless a statutory exemption—e.g. development of a specific project had already commenced when the statutory threshold was exceeded—is found to apply. Because exemption from these charges is a

considerable benefit afforded to cogeneration customers, the exemption must be retained as an incentive to foster further development by preserving the economics of a unit.

In sum, the EMP clearly recognizes the importance of renewed cogeneration development in the State to the success of its various price, reliability and environmental goals. If cogeneration development is to occur, however, it is critical that the EMP adopt each of the elements described in this section, as they are all necessary components of an overall incentive package that will renew long dormant interest in developing the cogeneration facilities that are of recognized importance by the State.

IV. CONCLUSION

NJLEUC looks forward to continuing to work with the Board in crafting appropriate resolutions of all of these issues and assisting the achievement of the goals of the EMP.

Respectfully submitted,

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