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April 9, 2019

By Hand Delivery and Electronic Mail

Honorable Aida Camacho-Welch, Secretary
NJ Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
P.O. Box 350
Trenton, New Jersey 08625-0350

Re: I/M/O Implementation of an Act Permitting Credits Against the Societal Benefits Charge (P.L. 2011, c.216) and Investigation of an Additional Program for Credits Against the Societal Benefits Charge
BPU Docket Nos. EO19020209 & GO19020210

Dear Secretary Camacho-Welch:

Please accept this original and ten copies of Comments submitted on behalf of the New Jersey Division of Rate Counsel ("Rate Counsel") in connection with the above-captioned matter. A copy of the comments was also submitted electronically to Rule.Comments@bpu.nj.gov.

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

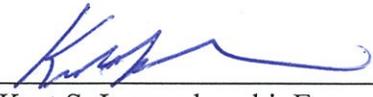
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Thank you for your consideration and assistance.

Respectfully submitted,

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**I/M/O IMPLEMENTATION OF AN ACT PERMITTING CREDITS
AGAINST THE SOCIETAL BENEFITS CHARGE (P.L. 2011, C.216)
AND INVESTIGATION OF AN ADDITIONAL PROGRAM FOR
CREDITS AGAINST THE SOCIETAL BENEFITS CHARGE**

BPU Docket Nos. EO19020209 & GO19020210

COMMENTS OF THE DIVISION OF RATE COUNSEL

April 9, 2019

Please accept these comments filed on behalf of the Division of Rate Counsel (“Rate Counsel”) regarding the above-referenced matter.

A. Background

On February 9, 1999, the Electric Discount and Energy Competition Act (“EDECA”) was enacted. The EDECA included, among its other provision, the establishment of a Societal Benefits Charge (“SBC”) at N.J.S.A. 48:3-60. The SBC provision of the EDECA provides for the recovery by New Jersey electric and gas public utilities of certain “societal” costs enumerated in the regulations to be collected as a non-bypassable charge imposed on all electric public utility customers and gas public utility customers. The categories of costs that were identified within the regulations to be recovered through the SBC include nuclear plant decommissioning costs, demand side management program costs, manufactured gas plant remediation costs, certain consumer education costs, and a Universal Service Fund.

Subsequent to the enactment of the EDECA, in 2010, the Board conducted a generic investigation to consider whether it was appropriate to establish standards for granting rate discounts for commercial and industrial natural gas customers.¹ The Board’s Discount Contract Order held, among other findings, that nothing in the SBC statute (N.J.S.A. 48:3-60(a)) shows a legislative intent that the SBC be applied to all customers at the same level. The Board further observed that New Jersey utilities’ SBC charges varied between each utility.

¹ In re a Generic Proceeding to Consider Prospective Standards for Gas Distribution Utility Rate Discounts and Associated Contract Terms and Conditions, BPU Docket Nos. GR10100761 and ER10100762 (Order, August 18, 2011) (“Discount Contract Order”).

To that end, subsequent to 2011, certain commercial and industrial customers have petitioned the Board seeking a reduction in SBC charges assessed by the electric or gas utility serving those customers. In those proceedings, the Board has consistently held that a reduction in SBC charge is warranted when doing so benefited not only the particular customer involved but also all ratepayers and the State.² That is, if there was a credible threat by the commercial or industrial ratepayer for an economic or physical by-pass of the local distribution utility's facilities or if there was a significant danger of load loss if a discount was not granted, it was in the best interest of all ratepayers and the State for the Board to authorize a reduced SBC in such instances.

In January 2012, N.J.S.A. 48:3-60 was amended to include N.J.S.A. 48:3-60.3 – Credit Against Societal Benefits Charge Permitted (“SBC Credit statute”). The amended provision provides for an SBC credit for commercial and industrial ratepayers that purchase or invest in products or services that are intended for energy efficiency purposes, that otherwise would be eligible for incentives under programs funded by the Clean Energy Program (“CEP”, “Clean Energy”) portion of the SBC. Specifically, N.J.S.A. 48:3-60.3 provides the following:

- a. On and after January 1 next following the date of enactment of P.L.2011, c.216 (C.48:3-60.3), a commercial or industrial ratepayer shall be allowed a credit against the societal benefits charge imposed pursuant to section 12 of P.L.1999, c.23 (C.48:3-60), and collected as a non-bypassable charge by the electric public utility or gas public utility, as appropriate, providing service to the commercial or industrial ratepayer.
- b. The amount of the credit authorized pursuant to subsection a. of this section shall be equal to one-half of that portion of the costs incurred by the commercial or industrial ratepayer during the preceding calendar year for the purchase and installation of products or services that are intended for energy efficiency purposes, that would be eligible for incentives under programs that the board shall have determined to be fund by the societal benefits charge pursuant to paragraph (3) of subsection a. of section 12 of P.L.1999, c.23 (C.48:3-60).
- c. The amount of the credit to be allowed under this section in any calendar year against the societal benefits charge for each commercial or industrial ratepayer

² See I/M/O Holcim, BPU Dkt. No. GR14040344 (Order, 9/30/14); I/M/O Gerdau Ameristeel, BOPU Dkt. No. EW17030256 (Order, 4/25/18); I/M/O Soundview, BPU Dkt. Nos. GR14111287/ER150608659 (Order, 11/16/15); and I/M/O Soundview, BPU Dkt. No. ER18070706 (Order, 12/18/18). In each of these matters, Rate Counsel opposed the proposed reductions in the SBC rate.

that is subject to such charge pursuant to section 12 of P.L.1999, c.23 (C.48:3-60) shall be determined by the board.

- d. The maximum amount of the credit to be applied under this section against the societal benefits charge imposed pursuant to section 12 of P.L.1999, c.23(C.48:3-60) shall not exceed 100 percent of the commercial or industrial ratepayer's liability for such charge that would otherwise be due in each calendar year.
- e. The amount of the credit against the societal benefits charge otherwise allowable under this section which cannot be applied for in the calendar year due to limitations of subsections b. and d. of this section may be carried over, if necessary to a maximum of 10 calendar years immediately following the initial year in which the credit is first applied to a commercial or industrial ratepayer's liability for societal benefits charges.
- f. The electric public utility or gas public utility providing service to a commercial or industrial ratepayer shall disclose in a written notice to the commercial or industrial ratepayer, upon request from the commercial or industrial ratepayer, the amount of societal benefits charges collected by the utility from the commercial or industrial ratepayer pursuant to section 12 of P.L.1999, c.23 (C.48:3-60) for each calendar year specified in the request from the commercial or industrial ratepayer.

Shortly after the enactment of the SBC Credit statute, the Board convened a stakeholder process which culminated in a Board Order setting forth procedures to follow to implement its provisions.³

On December 18, 2018, the Board initiated a stakeholder proceeding to further consider implementation of a SBC credit program pursuant to N.J.S.A. 48:3-60.3. The Board also directed Staff to establish a process for receiving input from interested parties on this matter. In a Notice dated March 15, 2019 ("Notice"), the Board set a stakeholder hearing date for this matter and invited written comments to be received on or before 5:00 p.m. on April 9, 2019. It is pursuant to this Notice that Rate Counsel submits the following written comments.

³ I/M/O Implementation of A2528/S2344 (N.J.S.A. 48:3-60.3) and the SBC Credit Program, BPU Dkt. No. EO12100940 (Order, 12/20/12).

B. Analysis

N.J.S.A. 48:3-60.3 sets forth the criteria for a SBC credit. Specifically, the SBC Credit statute provides for a credit “equal to one-half of that portion of the costs incurred by the commercial or industrial ratepayer....for the purchase and installation of products or services that are intended for energy efficiency purposes, that would be eligible for incentives” under N.J.S.A. 48:3-60(3). Thus, the Statute limits the credit to the energy efficiency portion, and no other portion, of the SBC.

Rate Counsel is not fundamentally opposed to a SBC credit program within the confines of the Statute. For commercial and industrial ratepayers applying for an SBC credit under N.J.S.A. 48:3-60.3, the credit, in essence, stands in place for what those ratepayers would have qualified for under an existing Clean Energy program. Thus, in addition to the credit to which commercial and industrial ratepayers are entitled under N.J.S.A. 48:3-60.3, Rate Counsel submits that ratepayers receiving an SBC credit will no longer be entitled to incentives provided by the Board that otherwise would have been available under a Clean Energy program, at least until the credits have expired.

On the other hand, the SBC discounts contemplated by the Board present other considerations. As the Board has ruled in previous SBC discount proceedings, only limited, exigent circumstances qualify a commercial or industrial ratepayer for a discounted SBC. The specific exigent circumstances that previously qualified a commercial or industrial ratepayer for an SBC has been either the ratepayer had a credible economic or physical bypass opportunity or, in the absence of base rate and SBC discounts, there was a real threat that the customer would have discontinued operations. In both such circumstances, not authorizing an SBC discount would have resulted in an increase in costs recovered by other ratepayers on the system and an economic loss to the State of New Jersey. This economic loss standard should be the sole qualifying criteria for any SBC Discount program that the Board considers adopting. Moreover, to the extent that a commercial or industrial ratepayer qualifies for a discounted SBC, the discount should be only for a limited amount (not to exceed 50% of the Clean Energy portion of the SBC charge) and for a limited time (not to exceed three years without the Board’s re-authorization).

With these broad frameworks in mind, following are Rate Counsel’s responses to the specific questions posed in the Notice requesting comments.

1. *In implementing P.L.2011, c. 216, should the Board establish a tiered credit program? If so, please comment on the use of factors such as a customer's contribution to the SBC, the customer's total electric and/or natural gas usage, and the nature of the customer's business and facilities. Should additional factors be considered? If the Board were to establish a tiered credit program, how should it be structured?*

Rate Counsel's Response:

Without an example, Rate Counsel cannot opine on how a tiered credit program would be designed and implemented. Nor does Rate Counsel believe that a tiered program is necessary. Rate Counsel presumes that N.J.S.A. 48:3-60.3 was enacted to encourage individual commercial and industrial customers to undertake energy efficiency measures and investments in a more focused manner, apart from what is provided under the Board's Clean Energy programs. To the extent that the energy efficiency measures are effective, both the individual customer and ratepayers as a whole should benefit, whether the benefit is small or large. Thus, Rate Counsel does not believe it is significant that a commercial or industrial ratepayer's total electric and/or natural gas usage is small or large or what the nature is of the ratepayer's business and facilities, so long as the requirement is met that the energy efficiency investment would have been eligible for incentives under the existing Clean Energy program.

Having said that, Rate Counsel will review comments by others who support a tiered credit program and respond accordingly if additional issues concerning a tiered program that were not considered in our comments are brought to light.

2. *In what form and how often should credits be issued? Should a credit be provided via the issuance of a check, a credit to the utility account, or in some other way? How should program administrative costs be funded? Should a portion of the credit be set aside to cover program administration costs?*

Rate Counsel's Response:

Rate Counsel believes that credits should be issued in the most transparent manner possible involving the least amount of administrative costs. Rate Counsel believes that these dual purposes can best be accomplished through a line-item credit applied to the SBC charge on the commercial or industrial ratepayer's monthly statement from its electric or gas utility. Following this approach, apart from possibly start-up re-programming costs for utility billing systems, recurring administrative costs should be minimal. Administrative costs for processing petitions under the credit program should either be recovered through a uniform filing fee to be paid with each petition for an SBC credit, or through a set aside to be paid from the credit received. In no event, however, should administrative costs be added to the SBC charges of other customers not participating in the SBC credit program.

3. *Should a minimum SBC contribution or maximum credit amount be implemented as part of this program?*

Rate Counsel's Response:

The maximum credit to which a commercial or industrial ratepayer is entitled is set forth in the statute, specifically at N.J.S.A. 48:3-60(3)(d) – The maximum amount of credit to be applied under this section against the societal benefits charge imposed pursuant to section 12 of P.L.1999, c.23 (C.48:3-60) shall not exceed 100 percent of the commercial or industrial ratepayer's liability for such charge that otherwise be due in each calendar year.

If a commercial or industrial ratepayer remains eligible to receive incentives under the Board's Clean Energy program in addition to the SBC credit, a minimum SBC contribution is essential. The minimum SBC contribution in that instance should equal the difference, if any, between the full SBC rate, including the Clean Energy portion, and the value of the SBC credit granted to the commercial or industrial ratepayer. As a matter of public policy, the Board should not permit a reduction in the USF portion of the SBC charge.

4. *Should a program annual credit maximum be established which could reduce individual credit amounts if a threshold dollar amount of the SBC credits is reached for a program year? Should a mechanism to reduce or freeze the impact of the SBC Credit Program be included?*

Rate Counsel's Response:

As a practical matter, the annual credit under an SBC credit program should never exceed the annual amount that the Board authorizes for recovery through the SBC for Clean Energy programs; but that is unlikely to ever happen. However, if significant interest in an SBC credit program occurs, the Board should consider reducing the budget for similar Clean Energy projects funded through the SBC. Increased participation by individual ratepayers in an SBC credit program indicates a reduced need for similar energy efficiency programs funded through the SBC.

5. *What process should be used to review applications?*

Rate Counsel's Response:

The Board should establish uniform filing requirements for applications submitted under an SBC credit program. At a minimum, each filing under an SBC credit program should contain the following information:

- a. Name, address, and general description of the business or industry of the applicant;
- b. Identify the electric and/or gas utility currently providing service to the applicant and the rate schedule(s) under which service is being provided;
- c. Provide a summary of the applicant's SBC payments, by rate component, by month, for the prior three years;

- d. Provide a summary of any Clean Energy program benefits received by the applicant, by month, for the prior three years and a detailed description of the specific energy efficiency measures taken under the Clean Energy program;
 - e. Provide a detailed description of the energy efficiency measures undertaken by the applicant that are the subject of the applicant's request for an SBC credit.
 - f. Provide documentary evidence that the subject energy efficiency measures would have qualified as an approved Clean Energy project;
 - g. Provide documentary evidence such as receipts, purchase orders, billing statements, etc. of the actual costs incurred by the applicant for purchasing and installing the subject energy efficiency measure.
 - h. Provide a detailed calculation showing how the requested SBC credit being requested was determined.
 - i. Provide a statement that if the SBC credit is approved, the applicant will not seek additional incentives under the Board's Clean Energy program for the duration of the credit.
6. *What minimum filing requirements should a commercial or industrial customer be required to include in any petition filed before the Board under the SBC Credit Program? Should a customer receiving an SBC credit be prohibited from participating in other NJCEP or utility Programs for the duration of the credit?*

Rate Counsel's Response:

See Rate Counsel's response to Question #5 above.

7. *How should the SBC contributions per customer, as currently tracked by New Jersey investor-owned utilities, factor into the determinations on granting an SBC credit, if at all?*

Rate Counsel's Response:

Clearly, the SBC contribution of a commercial or industrial ratepayer applying for an SBC credit is relevant to the determination of the maximum amount of credit to be authorized under the regulations.

8. *Should the Board implement a SBC credit program beyond the required implementation of N.J.S.A. 48:3-60.3 (SBC Discount Program)? If so, what should be the eligibility criteria be? What eligibility limits or criteria should the Board implement on as SBC Discount Program?*

Rate Counsel's Response:

Rate Counsel is not opposed to the Board establishing uniform procedures, such as through an SBC Discount program, for commercial or industrial ratepayers requesting a discounted SBC. Such procedures should make clear that the bar is set very high for a commercial or industrial customer to receive a discounted SBC rate. As the Board has decided in previous SBC discount proceedings, only limited, exigent circumstances qualify a commercial or industrial ratepayer for a discounted SBC. The specific exigent circumstances that previously qualified a commercial or industrial ratepayer for an SBC

has been either the ratepayer had a credible economic or physical bypass opportunity or, in the absence of base rate and SBC discounts, there was a real threat that the customer would have discontinued operations. In both such circumstances, not authorizing an SBC discount would have resulted in an increase in costs to other ratepayers on the system and an economic loss to the State of New Jersey. This economic loss standard should be the sole qualifying criteria for any SBC Discount program that the Board considers adopting. Moreover, to the extent that a commercial or industrial ratepayer qualifies for a discounted SBC, the discount should be only for a limited amount (not to exceed 50% of the Clean Energy portion of the SBC charge) and for a limited time (not to exceed three years without the Board's re-authorization).

9. *Should there be limits on the term of any potential discount under and SBC Discount Program?*

Rate Counsel's Response:

If approved, Rate Counsel believes it is reasonable to reassess the need for continuation of a previously authorized SBC Discount every three years. It may well be that the particular economic circumstances that warranted an SBC Discount has dissipated within the intervening three years and there no longer is justification for a discounted SBC. If circumstances have not changed significantly, the Board could simply re-authorize a discounted SBC charge for another three-year period. However, Board's SBC Discount program should encourage movement away from SBC discounts as quickly as possible, since such discounts necessarily place a burden on other ratepayers to make up for the revenues that are not recovered because of SBC discounts extended to certain customers.

10. *Should a minimum SBC contribution or maximum discount amount be implemented as part of an SBC Discount Program?*

Rate Counsel's Response:

It was initially intended for the SBC to be a *non-bypassable charge* imposed by electric and gas utilities to recover certain "societal" costs. Granting SBC discounts to certain ratepayers is contrary to that intended purpose. But, as the Board found in prior SBC discount cases, under certain, limited, conditions it makes economic sense to authorize a limited SBC discount where the commercial or industrial ratepayer has a legitimate ability for economic or physical bypass or there is a real threat of significant loss of load. Losing such customers in such instances has a detrimental impact on remaining customers, since whatever fixed cost contribution is being received from the commercial or industrial ratepayer will be lost and will become a burden to customers remaining on the utility's system. It is not likely, however, that even a 100% SBC discount will "cure" any ratepayer's economic woes. That is, the SBC itself cannot be blamed, nor can an SBC discount cure, economic adversity faced by a commercial or industrial ratepayer. Thus, to recognize in some fashion the intention that the SBC be non-bypassable, Rate Counsel respectfully recommends that any SBC discount granted be limited to 50% of the Clean Energy portion of the SBC. Also, if an SBC discount is granted, the commercial or

industrial ratepayer should not be entitled to receive incentives under the Board's Clean Energy program for the duration of the SBC discount.

11. *What minimum filing requirements should a commercial or industrial customer be required to include in any petition filed before the Board under an SBC Discount Program? Should the requirements be different for any application applying pursuant to an SBC Discount Program than for an application made pursuant to N.J.S.A 48:3-60.3(a)?*

Rate Counsel's Response:

Yes, the application process for an SBC discount should be distinct from the SBC credit application process. The SBC credit and an SBC discount should be mutually exclusive. The applicant must decide whether to apply for a SBC credit under N.J.S.A. 48:3-60.3(a) or a SBC discount.

Any petition for an SBC discount should be accompanied by a clear showing that the applicant has a *bona fide* opportunity for an economic or physical bypass of the local utility's system or that in the absence of a rate discount there is a substantial threat that the applicant will either discontinue or significantly scale back its present operations and utility load requirements. The fact that a commercial or industrial ratepayer faces stiff competition in the market in which it operates should not, *per se*, qualify it for an SBC discount. Competition and competitive markets are, in fact, the backbone of the American economy. Thus, facing stiff competition, alone, is not a justifiable basis for authorizing preferential treatment to certain customers in the form of an SBC discount, unless by not doing so, the load would be lost. Under no circumstances, however, should an SBC discount be authorized solely for the purpose of granting an individual ratepayer a competitive advantage within the market in which it operates, at the expense of all other ratepayers.

As to specific filing requirements for petitions requesting an SBC discount, we recommend the following:

- a. Name, address, and general description of the business or industry of the applicant;
- b. Identify the electric and/or gas utility currently providing service to the applicant and the rate schedule(s) under which service is being provided;
- c. Provide a summary of the applicant's SBC payments, by rate component, by month, for the prior three years;
- d. Provide a summary of Clean Energy incentives received by the applicant, by month, for the prior three years and a detailed description of the specific energy efficiency measures taken under the Clean Energy program;
- e. Provide a detailed justification for the SBC discount sought. This should include, but not be limited to, analyses supporting the applicant's claim that it has a credible opportunity for an economic or physical bypass of the local utility's system or that in the absence of the SBC discount it will cease or significantly diminish its operations and load requirements;

- f. Provide a detailed calculation showing how the requested SBC discount being requested was determined; and
- g. Provide a statement that if the SBC discount is approved, the applicant will not seek a SBC credit and will not seek additional incentives under the Board's Clean Energy program for the duration of the discount.

C. Conclusion

Rate Counsel appreciates the opportunity to present to the Board the foregoing comments concerning the SBC Credit program and the contemplated SBC Discount program. Also, Rate Counsel looks forward to working with Board Staff and with other interested participants in this proceeding in crafting meaningful and efficient programs designed to promote the interests of not only qualifying applicants, but also the interests of all ratepayers and of the State of New Jersey.