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**Remarks of Stefanie A. Brand, Director, Division of Rate Counsel,
Regarding S3032, Presented at the Senate Environment and Energy
Committee Meeting
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Good morning. My name is Stefanie Brand, I am the director of the Division of Rate Counsel. I would like to thank Chairman Smith and Members of the Senate Environment and Energy Committee for the opportunity to testify today regarding S3032 (Increases renewable energy and energy efficiency requirements under "Electric Discount and Energy Competition Act.").

The Division of Rate Counsel represents and protects the interest of all utility consumers—residential customers, small business customers, small and large industrial customers, schools, libraries and other institutions in our communities. Rate Counsel is a party in cases where New Jersey utilities seek changes in their rates or services. Rate Counsel also gives consumers a voice in setting energy, water and telecommunications policy that will affect the rendering of utility services well into the future.

Rate Counsel has several concerns about this bill. We believe that several of the provisions in the bill will deprive ratepayers of the benefit of advances in technology or administrative improvements that may bring the cost of clean energy programs down, and will limit the benefits to ratepayers that result from the programs they are funding. Several other

provisions do not reflect the programs in place today or the structure of utility regulation in this state and thus they are unworkable and serve to increase regulatory uncertainty.

You all received a letter from me last week setting forth our significant concerns about this bill. I am here to reiterate and explain those concerns. However, I do want to note that we did not discuss in our letter the issue of whether the goal for Class 1 renewables in 2020 should be 30% or 22.5%. This is because I very much believe that the discussion of the desirable goal for 2020 is a red herring that is distracting from the important issues that we need to address to ensure the continued success of our Energy Efficiency and Renewable Energy programs. I do not know if current technology will allow us to reach 30% by 2020 or even 22.5%. I sincerely hope that as the solar and wind industries grow, technological advances will make this discussion moot by the time we get to 2020. But for 2011, 2012, 2013, we need to focus on maintaining the advances we have made and improving on our programs going forward. Ratepayers have already made an enormous investment in these programs and will no doubt be asked to contribute more as we go forward. So I would like to focus on the other aspects of this bill that I believe will increase costs to ratepayers without enhancing our ability to meet whatever goals we set for ourselves in 2020.

Specifically, the bill eliminates any ability to lower the Societal Benefits Charge (SBC) below the level in effect on January 1, 2011. Presumably, this provision is aimed at ensuring a level of funding for clean energy programs that is sufficient to meet the goals set forth in the statute. However, this language fails to accomplish that goal and instead may force ratepayers to pay charges greater than what is necessary to sustain productive and successful clean energy programs.

The SBC is a charge that pays for a variety of programs, some of which have no relation to clean energy. The SBC pays for the Universal Service Fund, which assists ratepayers who are unable to pay their utility bills. The amount collected for USF each year through the SBC is based on the amount that was needed in the years before. That amount is then reconciled at the end of the year to assure that the utilities collected the appropriate amount, and a new amount is then set for the next year based on projections of what will be needed. In this way, the program is fully funded but ratepayers are not asked to pay more than what is needed. By definition the amount will fluctuate based on a variety of reasons including the weather, the economy, and the effectiveness of energy efficiency programs for low income customers. Preventing reductions in the SBC threatens this process as the amount collected for USF could not be reduced if in a given year more was collected than was needed. Similarly, other components of the SBC may be reduced or eliminated, such as the nuclear decommissioning costs collected by one of the state's utilities, or the remediation funds for manufactured gas sites. If those costs are reduced or eliminated shouldn't ratepayers gain a reduction?

As for the Clean Energy portion of the SBC, the current process requires the development of a budget which is approved by the BPU. For each utility, a per KWh charge is then calculated based on the budget and a similar annual reconciliation occurs to ensure that the right amount has been collected. There are several reasons, unrelated to cuts in clean energy programs, why that charge may go up or down. For example, if the economy improves and new businesses decide to locate in New Jersey, new business for the utilities could allow the same level of funding with a lower per KWh charge.¹ In addition, the BPU is currently reviewing the administrative structure

¹ Conversely, if the EE programs funded by the SBC are extremely successful and lower the KWhs sold, this bill would produce the perverse result of causing an *increase* in the SBC because the total charge could not be reduced and would have to be spread over fewer KWhs.

through which it delivers clean energy programs. If that review yields savings in administrative costs, there could be available reductions in the SBC without compromising any programs. The Legislature should not deprive ratepayers of much needed savings when there is no policy goal that will be served.

The bill also requires that the incentives offered for demand side management and Class 1 renewable energy programs stay at the "same level and type" as offered on January 1, 2011. It is not clear what this means. Currently the SBC funds very few of the incentives for renewables. Pursuant to the Board's decision in 2008 to transition to a market structure for renewable energy, most renewable energy incentives come in the form of renewable energy credits that are paid by ratepayers through the cost of electricity. These subsidies are in addition to the OCE programs, which involved direct subsidies that are being phased out under the market transition. The BPU does not set the "level" of renewable energy credits as that is set by the amount of renewable energy generated and the price in the market. If this language is intended to freeze the price or number of renewable energy credits, it will create significant damage to the market structure that has made New Jersey's program a model for other states. Even if the Legislature seeks to address some recent declines in the SREC market, the answer is not to jettison the market structure. This system was designed to provide regulatory certainty to encourage investors to pursue solar, and it is working. The system was never intended to insulate the industry from market uncertainty. If the Legislature steps in to set prices each time they drop, both market uncertainty and regulatory uncertainty will result, endangering the programs we have worked so hard to develop.²

² Rate Counsel has long supported eliminating market segmentation in solar programs, which has traditionally been instituted to support the residential solar market. To the extent the language in section 1 (b) (iii) of this bill prohibits segmentation; Rate Counsel would support this language. However, it is not clear whether this language is instead intended to preserve dedicated segments for particular classes of customers. Rate Counsel would not support this

The bill's provisions establishing Energy Efficiency Portfolio Standards (EEPS) for electricity and gas do not recognize that EDECA deregulated generation. The statute presently allows the BPU to consider whether to establish an EEPS, but does not mandate it because establishing an EEPS in a deregulated state such as New Jersey is extremely complicated. The bill requires electric and gas utilities to consider their ability to meet demand through conservation and energy efficiency before developing new or expanded power supply. However, the utilities in this state do not develop new or expanded power supply. Electric utilities transmit and deliver power purchased from third party suppliers and BGS auction winners. Gas utilities purchase gas as needed to meet demand. The decision to build new plants is made by unregulated generating companies. If the goal is to encourage energy efficiency, which Rate Counsel strongly supports, this language will not help us reach that goal. It is unworkable and fails to reflect the current configuration of our system.

The language in the bill that requires the BPU, in determining the appropriate level over the next 15 years of the Solar Alternative Compliance Payment (SACP), to set the SACP at a value "higher than the value of an SREC," simply makes no sense. First, BPU does not set the value of SRECS as they are set in the market. BPU therefore does not know 15 years in advance what the value of an SREC will be. However, because the SACP is the amount that suppliers would pay if they do not procure SRECS, then by definition the SACP value sets the ceiling for SREC values. Thus, SREC have always traded at values below the SACP, and there is no reason to believe that this would change.

language in that event as we believe that, absent specific policy concerns, market forces should determine which projects get built.

Based on the above, Rate Counsel strongly urges that this bill not be released from Committee until further discussion can be had regarding what goals the sponsors are trying to achieve and how the changes in the bill relate to those goals. Right now, the language is such that it will foster greater regulatory uncertainty and damage the programs we have been developing to date. Ratepayers have already invested billions of dollars in these programs and it is important to ensure that their investment was not wasted.

Thank you for the opportunity to testify. I am available to answer any questions.