



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

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

STEFANIE A. BRAND
Director

March 16, 2012

By Overnight Delivery Service

Honorable Kristi Izzo, Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue, 9th Floor
P.O. Box 350
Trenton, NJ 08625-0350

**Re: General Questions Posed by Board Staff Regarding the
Implementation of an Act Permitting Credits Against the
Societal Benefits Charge (P.L. 2011, c.216; A2528/S2344)**

Dear Secretary Izzo:

Please accept for filing an original and ten copies of Comments submitted on behalf of the New Jersey Division of Rate Counsel (“Rate Counsel”) concerning the above-referenced matter. Rate Counsel reserves its right to submit further comments as additional information and data are provided over the course of this proceeding. Enclosed is one additional copy. Please date stamp the copy as “filed” and return to us in the enclosed self-addressed, stamped envelope.

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Thank you for your consideration and attention to this matter.

Respectfully submitted,

STEFANIE A. BRAND
Director, Division of Rate Counsel

By: /s/ Kurt S. Lewandowski, Esq.
Kurt S. Lewandowski, Esq.
Assistant Deputy Rate Counsel

c: publiccomments@njcleanenergy.com
OCE@bpu.state.nj.us
Alice Bator, BPU
Mary Beth Brenner, BPU
John Garvey, BPU
Eleana Lihan, BPU
Kristina Miller, BPU
Elizabeth Teng, BPU
Mike Winka, BPU
Babette Tenzer, DAG
Diane Zukas, TRC

**The Division of Rate Counsel's Responses to the
General Questions Posed by Board Staff Regarding the
Implementation of an Act Permitting Credits Against
the Societal Benefits Charge
(P.L. 2011, c. 216; A2528/S2344)**

March 16, 2012

Q1. Should C&I ratepayers be able to access the SBC credit as well as SBC funded Clean Energy energy efficiency rebate programs at the same time in the same year?

No. For equity reasons and to minimize impacts on CEP budgets, eligible customers should not be able to access the SBC credit and also receive CEP EE rebates in the same year.

Q2. If they can only access the credit or rebate one at a time should there be some time limit for accessing either the credit or the Clean Energy incentives? As an example: If the C&I ratepayer received an energy efficient rebate last year should that be deducted from the credit? Is there a timeframe for this look back? Can the C&I ratepayer apply for a Clean Energy rebate the next year following the year in which a credit was sought? Is there a timeframe for when the customer can apply for a NJCEP rebate after receiving the credit?

The amount and timing of SBC credits should be linked to SBC collections for each C&I customer. For example, if a customer receives an incentive (including rebates and financing) through the CEP in one year, and that customer applies for SBC credits in the following year, the amount of the SBC credit should be reduced by the amount of the CEP incentive.

Q3. How should the Board determine which energy efficiency products and services for C&I ratepayers should qualify for the credit?

Eligible SBC credit applicants should be required to submit an energy efficiency plan (“EEP”). The EE measures and services included in an EEP should be considered both individually and collectively. Furthermore, all EE measures and services should conform to the New Jersey CEP EE Protocols for minimum performance, by type of measure and how the savings are measured. The EEPs should be evaluated using the following criteria:

1. The measures outlined in the EEPs should be designed to reasonably lead to reductions in total building source energy consumption of at least 25%. Alternately, C&I customers seeking SBC credits may request a custom energy savings threshold, as defined in the Pay for Performance program description. This would be determined on a case-by-case basis and subject to approval by CEP administrators, for projects that involve:
 - A manufacturing facility, including such industries as plastics and packaging, chemicals, petrochemicals, metals, paper and pulp, transportation, biotechnology, pharmaceutical, food and beverage, mining and mineral processing, general manufacturing, equipment manufacturers and data centers.
 - Manufacturing and/or process-related loads, including data center consumption, consume 50% or more of total facility energy consumption.
 - Projects meeting the above criteria will have annual energy savings of 100,000 kWh, 350,000 MMBTU or 4% of total building source energy consumption, whichever is greater.
2. The EEPs should demonstrate cost-effectiveness using the same methodology employed by CEP administrators in evaluating applications for Pay for Performance.
3. The EEPs should take a whole-building approach. Energy audits should consider all cost-effective measures at site(s) for which SBC credits are sought to avoid cream skimming (i.e., only investing in the most cost-effective cost energy efficiency measures but leaving other cost-effective opportunities undone) and lost opportunities (i.e., investments that are not made at the time it is most cost-effective to do so).
4. Credits should not be allowed for investments made prior to enactment of A2528.

These criteria are intended to ensure that the savings and system benefits (including avoided capacity and energy investments, avoided transmission and distribution investments, reductions in the overall price of electricity system-wide, and emissions

reductions) from the EE measures underlying the SBC credits are comparable to the savings and system benefits of the foregone EE opportunities that would otherwise be provided by the CEP.

Q4. Should the array of Clean Energy programs and current structure under the SBC change or stay the same with the introduction of the C&I ratepayer opportunity to receive credit?

The Board should initiate a formal proceeding to determine what changes should be made to the CEP and SBC structure to align these programs with the SBC credit program.

Q5. The Act also requires that the amount of the credit “shall be determined by the board.” What process should the Board use to review and approve any requests for a credit?

The SBC credit provided to an eligible applicant should be determined on a case-by-case basis. The Board should initiate a proceeding to determine the SBC credit, with an opportunity for Rate Counsel and other interested parties to intervene, propound discovery, and submit comments, as well as provide for evidentiary hearings in contested matters. The Board should also develop minimum filing requirements. For example, eligible SBC credit applicants should be required to submit an EEP that provides the following information, in addition to sufficient information to evaluate the criteria listed in the response to Question 3

- (1) a description of the proposed EE measures, which must conform to the methodology for calculating efficiencies set forth in the New Jersey CEP EE Protocols for the type of measures and how the savings are measured;
- (2) a calculation of energy savings per EE measure of at least 25% or meeting a custom energy savings threshold, described in the response to Question 3, above;

- (3) for the purpose of demonstrating the cost-effectiveness of each EE measure, cost data and annual and lifetime energy savings (kWh or therms), as well as capacity savings (kW);
- (4) a construction/measure implementation timeline; and
- (5) a measurement and verification plan for the proposed EE measures.

Regarding item (4), a timeframe should be established for eligible customers to spend SBC credits on EE investments, in order to account for planned outages or downtime. As is done in several other states, a time frame (e.g., two or three years) within which eligible customers would be required to implement measures funded by their SBC credit should be established -- after which unused SBC credits should be made available to fund the CEP -- to ensure that EE investments are made in a timely manner and thus have benefits comparable to supply-side resources. A mechanism may need to be established to recoup funds from SBC-credit recipients if savings were claimed erroneously or EEP savings failed to materialize.¹

Regarding item (5), measurement and verification is a critical component of effective “self-direct” programs that allow customers to divert all or a portion of their societal benefits charges into internal EE investments.²

Q6. The Act states that the C&I ratepayer “shall be allowed a credit against the societal benefits charge.” The SBC funds a number of societal programs in addition to the Clean Energy funds for energy efficiency. These other programs have nothing to do with energy efficiency, and the Board may have little discretion in funding them. To the extent that some of the other SBC programs, like the Universal Service Fund, Lifeline, nuclear decommissioning and manufactured gas plant remediation costs are nondiscretionary, how should the funding of these nondiscretionary programs be achieved if there is a reduction in the total SBC from the energy efficiency SBC credit? Please explain.

¹ Chittum, Anna. 2011. Follow The Leaders: Improving Large Customer Self-Direct Programs. Washington DC: ACEEE

² Ibid.

The Act empowers the Board to set the amount of the SBC credit in any calendar year for each customer. N.J.S.A. 48:3-60.3(c). The Board should interpret this language to allow SBC credits only from the clean energy portion of the SBC, as defined by N.J.S.A. 48:3-60(a)(3). The statute governing SBC collections which provides for a non-bypassable charge also mandates funding social programs, nuclear decommissioning, gas plant remediation, and public education activities, as well as the USF. See N.J.S.A. 48:3-60(a)(1), (2), (4) and (5); N.J.S.A. 48:3-60(b). The Board must ensure that the SBC has sufficient funds to support these mandated activities, consistent with its duty under the Act to set the SBC credit in any calendar year.

Two factors may also operate to ensure that the SBC fund is sufficient to support the other SBC activities mandated by law, without unduly burdening residential, small commercial, and other C&I customers. First, the Act defines eligible EE measures with reference to the EE programs funded pursuant to N.J.S.A. 48:3-60(a)(3). Specifically, the amount of the SBC credit is limited to one half of the portion of the costs incurred for eligible EE measures, as defined by the type of measures that would otherwise be eligible for incentives under the EE programs funded pursuant to N.J.S.A. 48:3-60(a)(3). Since applicants would experience a cash outflow to fund their portion of the cost of the EE measure, the fifty percent limitation should operate to stem depletion of the SBC fund to support SBC credits granted pursuant to N.J.S.A. 48:3-60.3(c).

Another factor which would mitigate against the depletion of the SBC fund would be the imposition of a 25% energy savings threshold for EE measures supported by SBC credits. The higher threshold would be applicable to EE projects supported by the SBC credit, in order to compensate for less CEP oversight of self-directed EE projects. This

threshold would limit projects supported by SBC credits to only those projects with substantial energy savings.