

Discussion Points

1. The FY 2015 Appropriations Act **redirected** some \$98.3 million **from the dedicated, off-budget Clean Energy Fund into the State General Fund**. In addressing BPU Discussion Point #1 in the OLS FY 2014-2015 Department of the Treasury Budget Analysis the Board avoided the question on the use the BPU would have made of the \$117.4 million the Governor's FY 2015 Budget proposed at the time to newly lapse into the State General Fund in FY 2014 and FY 2015 combined. But a year prior, in replying to BPU Discussion Point #5 in the OLS FY 2013-2014 Department of the Treasury Budget Analysis, the Board had stated that the then anticipated FY 2014 lapse would not affect the FY 2014 Clean Energy Program. It did, however, keep BPU staff from recommending that fewer funds be raised from electric and natural gas ratepayers in support of the program.

The Governor's FY 2016 Budget now includes a proposal to transfer another \$157.3 million into the State General Fund in FY 2015 and FY 2016 combined. The table below shows the transfers authorized under the FY 2015 Appropriations Act and the Executive's proposed additional FY 2015 and FY 2016 redirections of funds as State revenue. The table excludes the annual transfers to the State General Fund to defray the administrative expenses related to State-funded positions of the BPU's Office of Clean Energy (\$2.3 million in each of FY 2015 and FY 2016), given that these expenses fall directly within the scope of the statutorily authorized spending purposes of the Clean Energy Program.

Fund Usage	FY 2015 Approp. Act (June 2014)	FY 2015 Proposed (Feb. 2015)	FY 2016 Proposed
State General Fund (unspecified)	\$0	\$39,000,000	\$0
State Utility Costs	\$52,500,000	\$52,500,000	\$52,500,000
NJ Transit Utility Costs	\$32,889,000	\$32,889,000	\$62,089,000
State Energy Efficiency Projects	\$9,200,000	\$9,200,000	\$0
Office of Sustainability and Green Energy (DEP)	\$3,700,000	\$3,700,000	\$3,700,000
TOTAL	\$98,289,000	\$137,289,000	\$118,289,000
Fund Diversions Proposed in FY 2016 Governor's Budget		\$39,000,000	\$118,289,000

The table below, in turn, shows the actual or estimated amounts of financial resources, program expenditures, General Fund transfers, and year-end fund balances for FY 2008 to FY 2016, as they are displayed in the pertinent annual Governor's Budget proposals. (Page 70 of the "Supplementary Information" section in the Governor's FY 2016 Budget, available in the online version only, exhibits the data for FY 2014, FY 2015, and FY 2016.)

Fiscal Year	Resources	Clean Energy Program Expenditures	General Fund Transfers	Year-End Fund Balance
2008	\$378,224,000	\$147,063,000	\$15,305,000	\$215,856,000
2009	\$463,600,000	\$154,658,000	\$10,932,000	\$298,010,000

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2010	\$595,641,000	\$202,974,000	\$198,830,000	\$193,837,000
2011	\$497,330,000	\$226,174,000	\$53,689,000	\$217,467,000
2012	\$633,735,000	\$266,086,000	\$255,097,000	\$112,552,000
2013	\$493,244,000	\$193,908,000	\$133,441,000	\$165,895,000
2014	\$543,750,000	\$167,193,000	\$273,660,000	\$102,896,000
2015 est.	\$447,716,000	\$184,900,000	\$139,576,000	\$123,240,000
2016 est.	\$468,060,000	\$212,450,000	\$120,594,000	\$135,016,000

As can be seen in the table, the Clean Energy Program has consistently produced significant surplus balances in recent years. BPU staff explain the technical reasons therefor in Section 2.3 of the "2nd Revised CRA Straw Proposal: Proposed Funding Levels FY14 - FY17," dated June 3, 2013. On the macro level, the BPU allocates specific amounts to new programs that may take months or years to develop and implement. On the micro level, the BPU sets aside funding for 100 percent of financing commitments made to individual projects. Experience suggests, however, that project completion rates for many programs are below 100 percent. The routine accumulation of significant excess balances prompted the BPU to include as a Clean Energy Program goal for FY 2014 that the BPU "[c]oordinate with Treasury to develop appropriate procedures to better match the collection of funds from ratepayers to actual program needs ..." (page 35 of the Board Order dated June 21, 2013, Docket number EO11050324V). The BPU specified in reply to BPU Discussion Point #1 in the OLS FY 2014-2015 Department of the Treasury Budget Analysis that its efforts in this respect included a renewed focus on financial analysis and expenditure forecasting, the market-driven assessment of program needs, and the more rigorous evaluation of program performance.

New Jersey ratepayers finance the Clean Energy Program via the societal benefits charge included in their electric and natural gas bills. Operative since April 2001, the program was authorized as part of the "Electric Discount and Energy Competition Act," P.L.1999, c.23 (N.J.S.A.48:3-49 et seq.). Through the program the BPU seeks to promote increased energy efficiency and the use of renewable energy sources. The program no longer supports the installation of solar energy generation systems, as the State has adopted Solar Renewable Energy Certificates (SRECs) as the subsidy mechanism for solar power (see Discussion Point #16). The Offshore Renewable Energy Certificate (OREC) program attempts to do the same for offshore wind energy installations (see Discussion Point #20. a.).

- **Questions:** Please comment on the likely impact on the Clean Energy Program of the Executive's proposed transfer of another \$157.3 million in fund balances into the State General Fund in FY 2015 and FY 2016 combined. Has the BPU raised or will it raise the Clean Energy Fund component of the societal benefits charge for FY 2016 to cover this additional expense? Absent the additional proposed diversions, how would the BPU expend the \$157.3 million? Will alternative resources be allocated for these purposes? To what extent will any shift in moneys among BPU programs, prompted by the proposed transfer, reprioritize energy efficiency and renewable energy programs? If the BPU did

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not anticipate expending the \$157.3 million on specific spending purposes, was it contemplating drawing the sum down to temporarily lower the Clean Energy Fund component of the societal benefits charge?

- **Have the measures the BPU implemented in FY 2014 and FY 2015 to better align the collection of funds from ratepayers with actual Clean Energy Program needs been demonstrably effective in reducing the size of accumulated excess balances in the Clean Energy Fund? Does the BPU expect to take any additional steps in FY 2016 to improve the financial management of the Clean Energy Program?**

Response:

The BPU has continued to work with Treasury to ensure budget allocations are aligned with program needs. Taking into account the proposed State Budget allocations, the BPU expects to have sufficient resources to fund Clean Energy Program (CEP) needs in FY15 and FY16, with program expenses and commitments at or above historical levels. No significant surplus balances are anticipated at year-end, only funds required to meet contractual program commitments in accordance with procurement law and accounting policy. The higher balances projected for FY15 and FY16 reflect growth in commitments realized since the end of FY14 and are commensurate with an active program and growing economy. Ongoing market assessment, program evaluation, and fiscal analysis will ensure continuing alignment of resources and program needs.

The BPU is currently proceeding with its Comprehensive Resource Analysis (CRA) to establish CEP funding levels for FY16. Once approved by the Board, CEP funding will be allocated by program through the Office of Clean Energy's (OCE) annual budgeting process. Program budgets include new funding from the Societal Benefits Charge (SBC) plus any carryover funding for contractual commitments maintained at year-end. Board approval of the CRA and program budgets is anticipated in June 2015.

For FY16, the OCE will propose maintaining the CEP portion of the SBC at its current level (\$344,665,000), which will enable the CEP to satisfy market demand for program incentives.

2. The BPU intends to achieve administrative efficiencies from replacing the three current Clean Energy Program administrators (Applied Energy Group Inc., Honeywell International Inc., and TRC Energy Services) with a single manager. But the planned **contract award to a single Clean Energy Program administrator has been subject to considerable delays.**

On June 11, 2012, the Division of Purchase and Property in the Department of the Treasury issued Request for Proposal (RFP) 13-X-22546 for "Management Consulting – Program

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Administrator New Jersey Clean Energy Program (NJCEP).” The BPU noted in its response to BPU Discussion Point #6 in the OLS FY 2013-2014 Department of the Treasury Budget Analysis that six companies submitted bids and that the Division of Purchase and Property issued Letters of Intent to Award the contract to Applied Energy Group Inc. on February 22, 2013. The winner’s \$87.0 million bid for the five-year contract exceeded Honeywell International’s proposal by \$11.76 million and TRC Energy Services’ by nearly \$28.0 million, according to The Record’s May 4, 2014 “New Jersey’s Clean-Energy Overhaul Stalled by Long Dispute over Bid Fairness” article.

The Record related that Honeywell International and TRC Energy Services filed protests against the intended contract award, alleging that the selection of Applied Energy Group was the result of favoritism and manipulation. Honeywell’s protest reportedly noted that Applied Energy Group and one of its main subcontractors, Concord Engineering, employed several former BPU employees. Honeywell highlighted one former BPU executive in particular who had left the BPU in 2011 to work for Concord Engineering and who was the project director for Concord Engineering’s part of Applied Energy Group’s bid. Several of the former BPU executive’s former subordinates were on the bid evaluation committee and the former BPU executive still attended an initial meeting in early 2011 with the Division of Purchase and Property to discuss the timeline and approach for the RFP before leaving the BPU, according to The Record. The newspaper reported further that the division requested the State Ethics Commission to determine whether the former BPU executive violated any State conflict of interest law. The commission found no infraction, for lack of evidence tying the former BPU executive to the RFP’s actual drafting.

Irrespective of the State Ethics Commission’s determination, the division’s review of the contract award process “revealed inconsistencies that raise questions as to the objectivity and fairness of the evaluation process” (quoted from a Treasury official’s letter to TRC Energy Services’ attorney in The Record’s article). In November 2013, the division therefore assembled a second RFP evaluation committee to review all bid submissions. The division ultimately cancelled the procurement on April 25, 2014 on account of unspecified “cogent and compelling reasons,” as the BPU stated in reply to BPU Discussion Point #3 in the OLS FY 2014-2015 Department of the Treasury Budget Analysis.

The division has not yet released a new RFP. But it issued a Request for Information that calls upon interested parties to provide the BPU by August 7, 2014 with information that would support the BPU’s formulation of a new RFP for a single Clean Energy Program administrator.

- **Questions: Please provide a status report on the planned replacement of the three current Clean Energy Program administrators with a single manager. How many responses has the BPU received to its Request for Information to assist the Board in drafting a new RFP for a single program administrator?**

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Have Applied Energy Group, Honeywell International, and TRC Energy Services responded? By what date does the BPU expect issuing the RFP and making a final contract award?

Response:

BPU drafted the next generation RFP, Program Administration and Management Services, New Jersey Clean Energy Program, which, under Division of Purchase and Property (DPP) directive, also folds in another State Term Contract (T-2545 Local Government Energy Audits). This RFP was released to the public in April 2015.

Previously, DPP generated a Request for Information (RFI) on behalf of the BPU and received eight (8) responses, including those from Applied Energy Group, Honeywell International, and TRC Energy Services.

- **Please outline the reasons for which the BPU intended to award the contract under RFP 13-X-22546 to Applied Energy Group even though Honeywell International and TRC Energy Services had reportedly submitted significantly lower bids.**

Response:

As included within RFP 13-X-23762, each proposal received a Total Proposal Score comprised of the average technical score and the price proposal points. The bidder receiving the highest Total Proposal Score was to be recommended for contract award.

- **Please detail the reasons for which a second RFP evaluation committee was convened to review all bid submissions. Were any irregularities detected that materially affected the original contract award? If so, has the BPU taken any disciplinary actions against any BPU employee who may have acted improperly in evaluating the bids?**

Response:

The reasons were set forth in the letter from Treasury and formed the foundation of the Board's action.

- **Please set forth the "cogent and compelling reasons" that motivated the cancellation of the procurement under RFP 13-X-22546.**

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Response:

During the period in which DPP reviewed protests and determined to form a second Committee, several substantial developments related to the Clean Energy Program (Program) were brought to the attention of the DPP. These developments directly impacted the scope of work contained in RFP 13-X-22546 and the proposals submitted in response to this solicitation. These developments included:

- Changes to the mix of financing proposed by the RFP;*
 - New regulations promulgated under the Societal Benefits Charge Credit Program after the issuance of RFP 13-X-22546;*
 - Changes related to the establishment of an Energy Resilience Bank; and*
 - Technological changes in the energy savings space and data management since the issuance of RFP 13-X-22546.*
- **What insights has the BPU gained from its procurement attempt under RFP 13-X-22546? Does the Board intend to alter its procurement practices, such as the appointment of staff members to RFP evaluation committees, as a result of the difficulties encountered with the evaluation of bids submitted under RFP 13-X-22546? Is the BPU considering tightening its post-employment restrictions or placing engagement limitations on companies that employ former BPU staff so as to avoid the appearance of impropriety?**

Response:

BPU used the cancelled procurement as a "lesson-learned" and revamped the structure of RFP 16-X-23762. Changes include streamlining the of scope of work requirements, a transition to alternate financing that more accurately reflects current market conditions, and a more clearly defined price schedule, tied directly to RFP scope of work requirements. In addition, bidders' pricing will be ranked, rather than assigned a point value. This will facilitate the evaluation process, and the Evaluation Committee will recommend a contract award to that responsible bidder whose proposal, conforming to this RFP, is most advantageous to the State when price and other factors are considered.

3. The BPU Board Order dated December 17, 2014, Docket number QO14050489 shows that the Clean Energy Program's total budget for FY 2015 is \$507.2 million. Administration takes up \$11.1 million, or 2.2 percent, of the total. But it appears that the amount only comprises the administrative costs incurred by the BPU's Office of Clean Energy (\$2.4 million); its contracted program coordinator, Applied Energy Group, Inc. (\$2.2 million); and miscellaneous administrative expenditures (\$6.5 million) of which payments to contractors for research and program evaluation services constitute the lion share. **Total management costs of the Clean Energy Program**, however, are substantially higher once the

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administrative expenses of the two contracted program administrators are included: Honeywell International, Inc. and TRC Environmental Corporation.

For example, the BPU estimated that the contractors' FY 2014 administrative expenses, including those of Applied Energy Group, Inc., would approach \$27.5 million, or 9.5 percent of a total \$289.3 million program budget for energy efficiency and renewable energy programs under the BPU's jurisdiction. The equivalent administrative expenses were \$37.1 million, or 10.0 percent of the \$369.7 million total program budget for the 18-month period from January 2012 through June 2013; \$32.2 million, or 9.8 percent of the \$330.0 million total program budget, in calendar year 2011; and \$53.2 million, or 12.9 percent of the \$413.5 million program budget, in calendar year 2010. (This paragraph's data are based on BPU answers to BPU Discussion Point #2 in the OLS FY 2010-2011 Department of the Treasury Budget Analysis, BPU Discussion Point #7 in the OLS FY 2013-2014 Department of the Treasury Budget Analysis, and BPU Discussion Point #6 in the OLS FY 2014-2015 Department of the Treasury Budget Analysis.)

Replying to BPU Discussion Point #6 in the OLS FY 2014-2015 Department of the Treasury Budget Analysis, the BPU stated that the planned transition of the Clean Energy Program to a single program administrator would reduce annual administrative expenses by approximately \$8.5 million. (Discussion Point #2 addresses the single program administrator contract.)

New Jersey Clean Energy Program FY 2014 Budget				
Program	Contractor	Total Budget	Direct Rebates	Administrative Cost
Residential Energy Efficiency Programs	Honeywell	\$89,069,000	\$76,886,000	\$12,183,000
Commercial and Industrial Energy Efficiency Programs	TRC	\$178,843,000	\$168,529,000	\$10,314,000
Renewable Energy Programs	Honeywell	\$19,488,000	\$16,371,000	\$3,117,000
Program Coordinator	AEG	<u>\$1,863,000</u>	<u>\$0</u>	<u>\$1,863,000</u>
Total		\$289,263,000	\$261,787,000	\$27,476,000

- **Questions:** For FY 2014, please update the above table showing for each program class under the Clean Energy Program the actual total budget, the actual amount of benefits paid out, and the contracted program manager's actual administrative cost. For FY 2015, please update the above table showing for each program class the estimated total budget, the estimated amount of

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benefits paid out, and the contracted program manager's estimated administrative cost.

Response:

The chart below reflects a forecast reduction in administrative expenses in FY15 versus FY14 actual, in dollars and as a share of total expenses. After transition, the new contract for a single Program Administrator is expected to bring further efficiencies. (Note the actual and forecast data includes expenditures only; the FY14 budget data presented above includes funding of new program commitments.)

Program	Contractor	Total Expenses	Direct Rebates	Administrative Cost
<i>FY14 Actual</i>				
Residential EE Programs	Honeywell	\$72,410,950	\$60,140,908	\$12,270,042
Commercial & Industrial EE Programs	TRC	73,947,195	66,088,355	7,858,841
Renewable Energy Programs	Honeywell	4,193,890	1,078,069	3,115,821
Program Coordinator	AEG	1,890,610	-	\$1,890,610
Total		\$152,442,645	\$127,307,331	\$25,135,314
<i>FY15 Forecast</i>				
Residential EE Programs	Honeywell	\$70,377,107	\$60,408,888	\$9,968,219
Commercial & Industrial EE Programs	TRC	79,433,783	72,607,331	6,826,452
Renewable Energy Programs	Honeywell	2,570,966	130,746	2,440,220
Program Coordinator	AEG	1,901,456	-	1,901,456
Total		\$154,283,312	\$133,146,965	\$21,136,346

4. Following recommendations presented in the 2011 Energy Master Plan, the BPU is looking to **restructure the Clean Energy Program**, which is the umbrella for the State's energy efficiency and renewable energy programs. In its reply to BPU Discussion Point #8 in the OLS FY 2012-2013 Department of the Treasury Budget Analysis the Board stated that its long-term goal was to reduce the reliance of the Clean Energy Program on the societal benefits charge as the program's funding mechanism and to inaugurate revolving loan funds as alternative funding vehicles. Societal benefits charge collections would initially fund the revolving loan funds, however. Moreover, the BPU envisaged operating Clean Energy Program incentives more on a performance basis so as to reduce the incentives' costs and improve their effectiveness.

The restructuring initiative has been held in abeyance by delays in the contract award to a single Clean Energy Program administrator who would replace the three existing managers (see Discussion Point #2). Upon contract award the selected contractor was to have 120 days to develop a multi-year strategic plan for the Clean Energy Program in collaboration with the BPU that was to include program funding levels from FY 2015 through FY 2017 and the aforementioned transition in the program's financing method. The BPU was to perform

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preliminary studies in FY 2014 so as to assist the program administrator in crafting the strategic plan (BPU Discussion Point #6 in the OLS FY 2013-2014 Department of the Treasury Budget and pages 19 and 20 of the Board Order dated June 21, 2013, Docket number EO13050376V). In addressing BPU Discussion Points #3 and #5 in the OLS FY 2014-2015 Department of the Treasury Budget, the BPU noted that it had formed three work groups to conduct the studies and that it anticipated the work groups to present their findings and recommendations in late summer 2014. The Utilities Work Group was to review and better coordinate the several energy efficiency and renewable energy programs run by utilities and the Clean Energy Program, including a review of the program's administrative structure and financing methods. The Evaluation Work Group, in turn, was to develop a long-term schedule of ongoing program evaluations and determine data needs. The Data Work Group was to collect available data points and metrics, identify unmet data needs and potential remedies, and in conjunction with other states standardize data collection and reporting methods so as to produce data that are useful for economic actors seeking to finance energy efficiency and renewable energy projects. Work group reports remained unpublished as of March 18, 2015.

- **Questions:** Have the three work groups that the BPU had formed to assist the future program administrator in developing a multi-year strategic plan for the Clean Energy Program presented their findings and recommendations? If not, please specify the date by which they are expected to do so. If so, please share the findings and recommendations, including the recommended timeline of the new long-term evaluation plan, the performance metrics being assessed, and an explanation of the extent to which the new evaluation strategy differs from the one employed previously. Has the BPU begun to implement, or does it intend to implement, any of the recommendations? If the BPU is rejecting the implementation of any recommendations, please justify the rejection.

Response:

The Comprehensive Resource Analysis draft has been released and provides this detail. The draft can be found at

<http://njcleanenergy.com/files/file/Staff%20Straw%20Proposal%20FY2016%20050415.pdf>

Given the April 2014 cancellation of Request for Proposal 13-X-22546 for "Management Consulting – Program Administrator New Jersey Clean Energy Program (NJCEP)," does the BPU continue to defer the development of a multi-year strategic plan for the Clean Energy Program pending the engagement of a single program administrator? If not, please indicate by what date the BPU intends to have the multi-year strategic plan completed and adopted. If a multi-year strategic plan has already been adopted, please: a) provide a paper copy of the strategic plan or a link thereto on the Internet; b) describe the

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anticipated timetable for phasing in any new financing mechanism, such as revolving loan funds, and transitioning out of the societal benefits charge as a funding source; c) list all energy efficiency and renewable energy programs the BPU intends to end and provide a brief justification for ending each; and d) set forth any revisions to the performance metrics and targets for the Clean Energy Program.

Response:

The Comprehensive Resource Analysis draft has been released and provides this detail. The draft can be found at

<http://njcleanenergy.com/files/file/Staff%20Straw%20Proposal%20FY2016%20050415.pdf>

5. The delays in the engagement of a single program administrator and the development of a strategic plan for the Clean Energy Program (see previous Discussion Point) have in turn held up the adoption of a **Clean Energy Program budget for FY 2016 and FY 2017**. Subsection (3) of section a. of N.J.S.A.48:3-60 requires that the BPU set the program's funding levels for a four-year period. A budget for FY 2014 through FY 2017 was due by July 1, 2013. The BPU, however, only approved one-year budgets for FY 2014 and FY 2015 that continued the program under the existing framework and did not commence the envisioned restructuring (Board Order dated June 21, 2013, Docket number EO13050376V and Board Order dated June 30, 2014, Docket number QO14050489). The Board deferred the production of a spending plan for FY 2016 and FY 2017 in the expectation that the envisioned strategic plan would be adopted in FY 2015 and guide program allocations from FY 2016 onward.

- **Questions:** Please indicate the BPU's approach to the formulation of the **Clean Energy Program budget for FY 2016 and FY 2017**. Will the BPU once more opt for continuation budgets with some marginal adjustments? Will the BPU use the FY 2016 program budget as the vehicle through which to implement the first phase of the envisioned restructuring of the Clean Energy Program irrespective of the engagement of a single program administrator? Please summarize any planned programmatic changes in FY 2016 and provide a brief justification for each change. If applicable, please provide a paper copy of or Internet link to the program budget for either FY 2016 alone or the period from FY 2016 to FY 2017. If unavailable, please indicate the date by which the BPU intends to adopt a new spending plan.

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Response:

The Comprehensive Resource Analysis draft has been released and provides this detail. The draft can be found at

<http://njcleanenergy.com/files/file/Staff%20Straw%20Proposal%20FY2016%20050415.pdf>.

6. According to section 2.1 of the BPU's "Comprehensive Resource Analysis — Staff Straw Proposal: Proposed Funding Levels FY15," dated May 23, 2014, the BPU engaged the Center for Energy, Economic and Environmental Policy (CEEPP) at Rutgers, the State University of New Jersey, to perform a benchmarking and metrics study in FY 2015 for the suite of electricity and natural gas energy efficiency programs operating under the Clean Energy Program. Building upon the June 11, 2012 "Evaluation of New Jersey's Clean Energy Programs" benchmark study prepared by Applied Energy Group, the CEEPP study is to set benchmarks for the many energy efficiency programs.

In analyzing the benchmark data in 2012, Applied Energy Group noted an **"apparent under-performance" of the Clean Energy Program in comparison to 25 electric and natural gas energy efficiency programs operated in nine reference states** (Section 4.4 of the "2nd Revised CRA Straw Proposal: Proposed Funding Levels FY14 - FY17," dated June 3, 2013). Notably, the contractor calculated that while the Clean Energy Program's electric energy efficiency programs are relatively efficient by spending \$0.20 per kilowatt-hour of electricity saved (\$0.19 for the benchmark reference class), they are relatively ineffective in delivering electricity consumption savings of only 0.5 percent of total electricity sales (1.0 percent for the benchmark reference class). The Clean Energy Program's natural gas energy efficiency programs, in turn, are both inefficient and ineffective. While the Clean Energy Program spent \$5.03 per therm of natural gas saved (\$2.67 for the benchmark reference class), total consumption savings delivered by the suite of natural gas energy efficiency programs represent only 0.2 percent of total natural gas sales (0.6 percent for the benchmark reference class). Unable to explain the comparatively weak results of the Clean Energy Program, the BPU recommended a thorough review to determine their origins. The FY 2015 CEEPP benchmarking and metrics study is intended to provide further analysis.

- **Questions: Has the CEEPP completed the FY 2015 benchmarking and metrics study for the energy efficiency program portfolio under the Clean Energy Program? If so, please share the findings, policy recommendations, as well as recommended benchmarks and metrics. If not, please specify the date by which the CEEPP anticipates the study's completion.**

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Response:

The Comprehensive Resource Analysis draft has been released and provides this detail. The draft can be found at

<http://njcleanenergy.com/files/file/Staff%20Straw%20Proposal%20FY2016%20050415.pdf>.

- **Has the BPU determined the causes of the “apparent under-performance” of the Clean Energy Program’s suite of electricity and natural gas energy efficiency programs relative to similar programs in the nine reference states that Applied Energy Group analyzed in its June 2012 benchmark study? If so, what are they? Is the Clean Energy Program’s comparatively lower rate of energy consumption savings as a percentage of total energy sales primarily evidence of relative underfunding? Specifically, what factors account for the Clean Energy Program’s natural gas energy efficiency programs expending \$5.03 per therm of natural gas saved, whereas the reference class averages \$2.67 per therm?**

Response:

Multiple factors contribute to the performance of the suite of CEP programs as compared to the reference programs, many of which are identified in the benchmarking study discussed above. The study acknowledges that the cost of doing business in New Jersey is on average 9% higher than peer states. The study also observes that incentive levels in New Jersey tend to be higher than in other states and recommends a reduction in incentive levels for the CEP.

The study also notes that most states spend an average of 5-7% of overall budget on program marketing. In FY14, less than 1% of the CEP budget was spent on marketing. As noted previously, the BPU anticipates the award of a new marketing and website contract in FY16 which will increase the marketing budget to greater alignment with industry norms. BPU staff believes that increased marketing will drive demand for the programs and enable the CEP to lower some rebate levels and improve program performance.

With regard to the costs associated with natural gas savings, the study addressed several factors that impact the cost per therm saved. A key factor is that the CEP has programs that deliver both gas and electric savings, but costs are not allocated as such. The study notes that a small change in the allocation of shared costs to either gas or electric will have a significant impact on the savings/therm results. Furthermore, the study does not accurately account for the impact of fuel conversions, i.e. projects that convert from electric, oil or propane to natural gas. While greater efficiencies are achieved, the result is an increase in natural gas consumption.

7. The BPU deems effective **incentive programs for Combined Heat and Power and Fuel Cell (CHP-FC) systems** an important tool in: a) attaining the 2011 Energy Master Plan

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goal of developing 1,500 megawatts of CHP generation capacity by the end of 2021; and b) strengthening the resilience of the electric infrastructure of critical facilities during power outages. But the BPU's CHP-FC incentive program does not appear to be effective. Operating under the Clean Energy Program umbrella, the CHP-FC program had "minimal" participation in FY 2014, according to section 3.2 of the BPU's "Comprehensive Resource Analysis — Staff Straw Proposal: Proposed Funding Levels FY15," dated May 23, 2014. The Board attributed the lax response to CHP developers' wait-and-see attitude prior to the launch of a second CHP-FC incentive program and the existing CHP-FC program's unpredictable funding history.

The BPU related that the desire to maximize incentive awards motivated many potential applicants to defer their CHP-FC program application submissions pending the creation of the New Jersey Energy Resilience Bank. On October 20, 2014, the BPU and the Economic Development Authority (EDA) then inaugurated the new initiative with the first \$65 million funding round supporting the installation of distributed energy resource systems, including CHP and FC systems, at water and wastewater treatment facilities in 91 qualified municipalities that were impacted by Superstorm Sandy or another qualifying natural disaster (EDA Discussion Point #11 elaborates on the New Jersey Energy Resilience Bank).

The BPU also opined that funding uncertainty had depressed CHP-FC program participation. The Board cited undisclosed CHP developers who had stated that it would take several months and a significant monetary commitment to plan a CHP project from performing energy audits, engineering studies, and financial analyses to obtaining the necessary permits. Applicants, however, could not rely on CHP-FC program incentive availability upon the conclusion of project planning. This is so because the State used \$44.9 million of CHP-FC program allocations to balance the State budget in FY 2014 and the 18-month period running from January 1, 2012 through June 30, 2013, as the table on the following page illustrates (source for FY 2014 and FY 2015 figures: Board Order dated December 17, 2014, Docket number QO14050489). The \$44.9 million represented 42.8 percent of the \$104.9 million program budget for the 2.5-year period. In reply to BPU Discussion Point #8 in the OLS FY 2014-2015 Department of the Treasury Budget Analysis, the BPU affirmed, however, that the resource diversions concerned only uncommitted balances and that the diversions did not affect any previously concluded incentive agreements or active incentive application.

Budget History of Combined Heat and Power and Fuel Cell (CHP-FC) Program					
Time Period	Budgeted	Expended	Diverted to State General Fund	Year-End Carryover	Committed Expenses 6/30/2014
FY 2015	\$35,400,000	NA	NA	NA	\$11,200,000
FY 2014	\$54,400,000	\$4,000,000	\$17,900,000	\$32,500,000	NA
Jan 2012 to June 2013	\$50,500,000	\$860,000	\$27,000,000	\$22,600,000	NA

Discussion Points (Cont'd)

Historically, the lack of a steady, sustainable funding source has limited the State to devising a series of limited duration CHP-FC incentive programs. (The setup for EDA Discussion Point #12 in the OLS FY 2013-2014 Department of the Treasury Budget Analysis traces the programs' history.) The BPU has therefore charged its Combined Heat and Power/Fuel Cell workgroup with developing concepts for the infusion of funding stability and predictability into the CHP-FC incentive program, as the Board replied to BPU Discussion Point #8 in the OLS FY 2014-2015 Department of the Treasury Budget Analysis. Although the workgroup studied several financing approaches, the BPU ultimately retained the current rebate incentive program for FY 2015. One of the funding alternatives the workgroup had considered was an energy efficiency portfolio standard for CHP-FC projects. The portfolio standard mechanism is already in use to impel solar energy capacity investments. The price support policy has three basic elements: a) the creation of demand for CHP-generated energy by obligating electric power suppliers and providers to meet specific quotas for CHP-generated energy; b) the issuance of certificates for every megawatt-hour of electricity generated by CHP installations, which are then sold separately from the generated electricity; and c) a trading platform on which electric power suppliers and providers can acquire from CHP energy generators the certificates they need to meet their annual CHP targets.

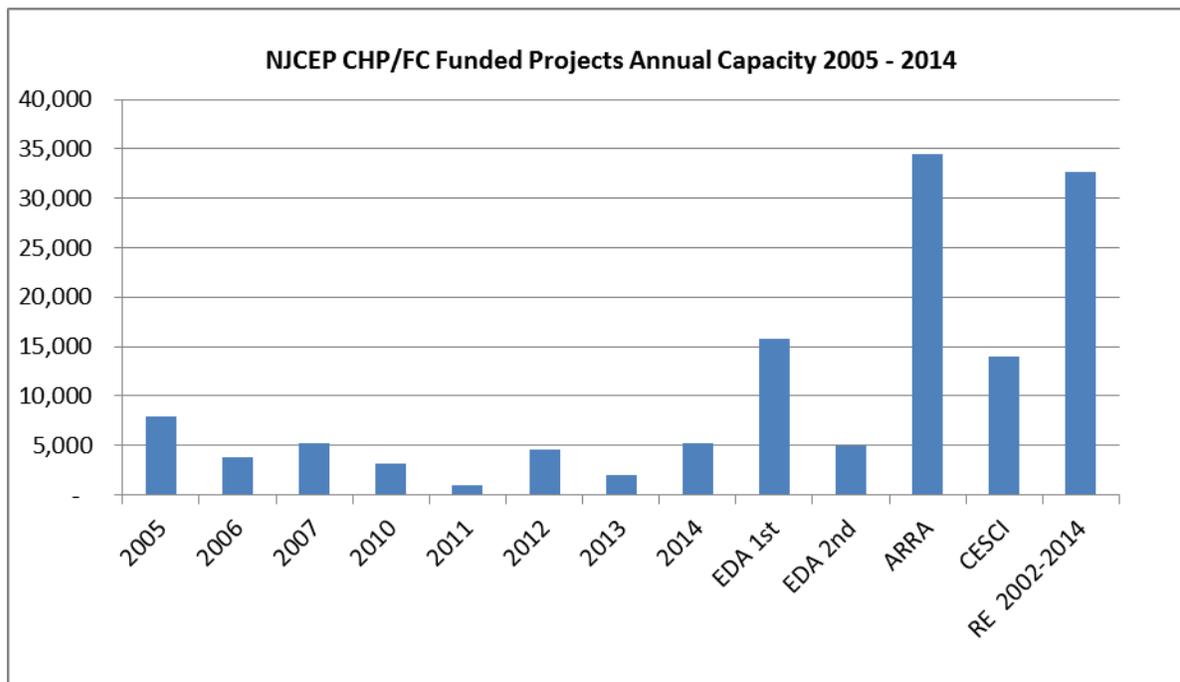
- **Questions:** Please provide an update on the Administration's strategy to reach the 2011 Energy Master Plan target of developing 1,500 megawatts of Combined Heat and Power generation capacity through the end of 2021. Given current policies and trends, does the BPU estimate that the 1,500 megawatts capacity goal is attainable by 2021? What is the statewide generation capacity of currently installed Combined Heat and Power plants?
- Has CHP-FC program participation risen in FY 2015? Has the New Jersey Energy Resilience Bank's launch affected FY 2015 CHP-FC program participation? Is the \$35.4 million FY 2015 program budget sufficient to meet demand? Please set forth by program year: a) the number of applications received; b) the number of projects approved for incentives; c) the total incentive amounts approved; and d) the amount of megawatts of CHP and fuel cell generation capacity that was or is to be created by those projects. Please provide an aggregated status update for projects that were approved for CHP-FC program incentives, indicating: a) the number of projects that are completed, still under construction, and abandoned; b) the incentive amounts for projects that are completed, currently under construction, and abandoned; and c) the generation capacity of projects that are completed, currently under construction, and abandoned.

Discussion Points (Cont'd)

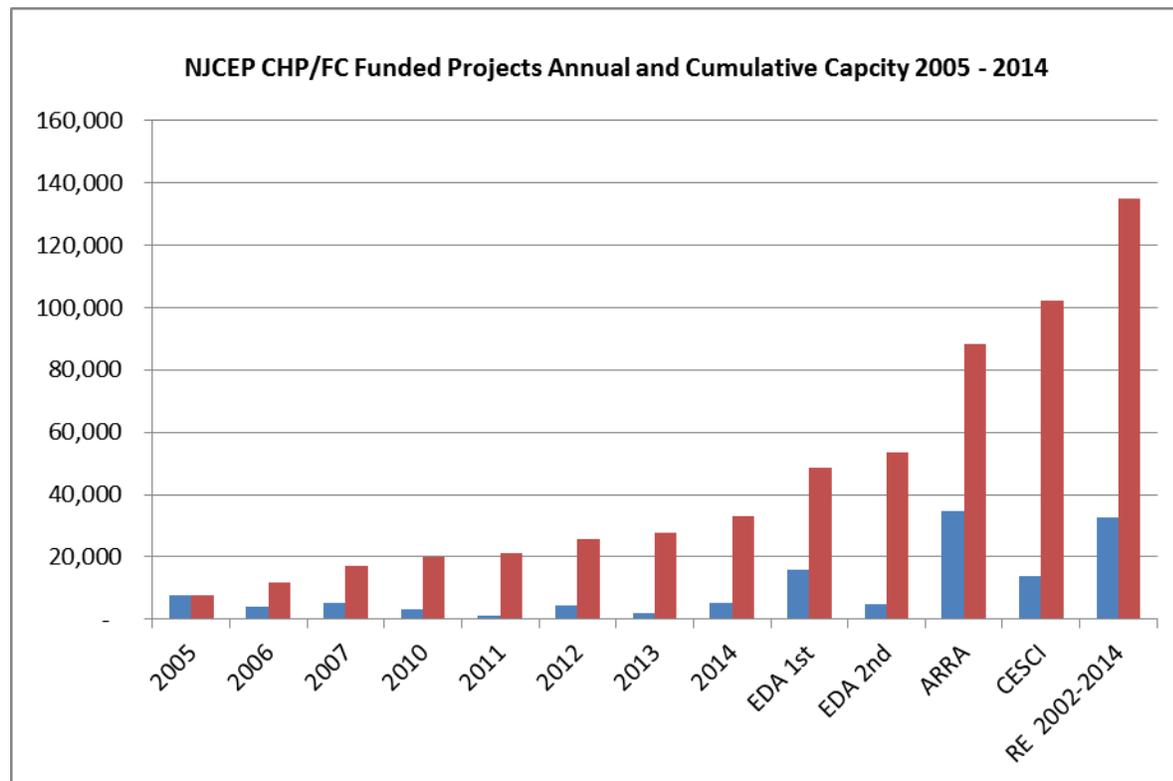
Response:

The study performed by the USDOE CHP Technical Assistance Group for BPU as part of the 2011 Energy Master Plan (EMP) that identified 1,500 MW of new CHP capacity is still a valid assessment of New Jersey's CHP market potential. The BPU does not anticipate changing the goal for developing new CHP as set forth in the 2011 EMP.

Based on the available data New Jersey has almost 70 CHP facilities for over 300 MW that would be defined as a DG facilities. Of these facilities, 15 would be defined as renewable energy CHP. Below are two charts that list the capacity in kilowatts of CHP installed annually and cumulative under the CEP.



Discussion Points (Cont'd)



- **What is the CHP-FC program's anticipated FY 2016 budget and spending level? Does the BPU anticipate changing the program design for FY 2016 and beyond? Does the BPU intend to shift the financing source for CHP-FC project incentives to another funding stream to achieve program funding stability?**

Response:

In FY16, OCE will initiate a stakeholder process intended to assess the barriers to CHP-FC development and to review Board and CEP policies in light of the State's resilience goals. These discussions will include funding, the level of incentives, and related matters such as utility interconnection requirements, standby tariffs and gas tariffs.

- **Is the Administration's proposed transfer of an additional \$157.3 million in Clean Energy Fund balances into the State General Fund in FY 2015 and FY 2016 combined affecting the CHP-FC incentive program account? If so, please set forth the amount of the reduction in the CHP-FC incentive program account. Does the transfer: a) jeopardize the State's ability to reach its target of developing 1,500 megawatts of CHP generation capacity by the end of 2021; and b) impede the BPU from planning and implementing CHP-FC incentive program operations and specifications? Have previously awarded payments**

Discussion Points (Cont'd)

been deferred, scaled back or rescinded because of the proposed transfer? Has the BPU ceased accepting new applications or making new awards because of the proposed transfer? How long is any: a) wait list for program admittance; and b) backlog in disbursing approved assistance? Has the BPU tightened eligibility criteria or lowered assistance payments because of the proposed transfer?

Response:

As noted above, the BPU expects to have sufficient resources to fund CEP needs in FY15 and FY16. No CHP-FC applications or payments have been affected by actual or proposed allocations to the State Budget.

8. On October 23, 2014, the BPU issued the **FY 2015 Renewable Electric Storage Incentive Solicitation** with a December 8, 2014 application submission deadline. It was the first time the Clean Energy Program offered financial assistance to energy storage projects. Energy storage systems turn renewable energy into a more reliable power source by alleviating the mismatch between electricity demand and the intermittent supply of solar and wind energy. In addition, energy storage technology temporarily enables critical facilities to continue operating during electric grid outages.

The FY 2015 Clean Energy Program budget allocated \$3 million to the FY 2015 Renewable Electric Storage Incentive Solicitation (Page 15 of the Board Order dated June 30, 2014, Docket number QO14050489). Incentive awards, which will be paid upon project completion, are capped at \$500,000 per project and each applicant may not receive more than \$750,000 for all its eligible projects combined. To qualify a renewable electric storage project must: a) have a minimum 50 kilowatts capacity; b) be integrated with a renewable energy generation installation; c) be interconnected with the New Jersey electric distribution system; d) be financially and economically viable; and e) be ready to be implemented expeditiously pending funding. In addition, like the FY 2015 Sustainable Biopower Incentive Solicitation (see Discussion Point #9), the solicitation assigns priority to projects whose installation will allow "public and critical" facilities to keep critical electric systems operating during power outages.

It is not clear, however, whether the solicitation's objective of hardening the electric infrastructure of critical facilities complies with the Clean Energy Program's statutory mandate. Notably, subsection (3) of N.J.S.A.48:3-60 mentions only two permissible uses of program resources: "demand side management" (i.e. energy efficiency) and renewable energy programs. Last year, BPU Discussion Point #7 in the OLS FY 2014-2015 Department of the Treasury Budget addressed the issue of possible Clean Energy Program mission creep within the context of the BPU promoting under the Clean Energy Program umbrella Combined Heat and Power systems and other types of distributed generation as a means to

Discussion Points (Cont'd)

strengthen the resilience of the electric infrastructure of critical facilities during power outages. The BPU replied that it believed that doing so was consistent with the Clean Energy Program's mission, goals, and statutory mandate. The Board noted on that point that resilience and electric infrastructure hardening projects provided a benefit to ratepayers by ensuring the reliable delivery of power in the event of a disaster.

- **Questions:** Please provide a status update on the FY 2015 Renewable Electric Storage Incentive Solicitation. How many applications did the BPU receive and for what total incentive award amount? By what date does the BPU expect to complete its application review process? Please list the projects that have already secured an incentive award to date. If the \$3 million program budget does not satisfy all eligible grant applications, what method does the BPU employ to prioritize applications? By what date does the BPU anticipate paying out the first incentive award?

Response:

On October 22, 2014, BPU issued a competitive solicitation for energy storage. The responses to the solicitation provided insight into the emerging market for renewable electric storage in New Jersey. Twenty-two (22) were evaluated according to criteria described in the solicitation including; financial and economic viability, project readiness, technical feasibility, and resilience.

At the March 18, 2015 agenda meeting, the Board approved \$2.9 million in incentive commitments for the thirteen (13) top-ranked applications: Five (5) municipal utility authorities (waste water treatment plants), six (6) public schools, one private school and one local government services building. All thirteen (13) projects proposed the use of lithium ion batteries for emergency backup and frequency regulation applications. The program is designed to pay the incentive after the renewable electric storage system has achieved commercial operations. Several projects are anticipated to come online within the second quarter of 2015 and the average estimated completion time expressed by applicants is forecast to be 2.6 months after project approval.

For the FY16 CRA, BPU plans to reengage the Renewable Electric Storage stakeholder group to refine the program goals and design, and to maximize the opportunity for customer-sited energy storage applications that support New Jersey Class I renewable energy market development.

- **Given the statutory mandate that Clean Energy Program resources be used for demand side management and renewable energy programs, does it represent Clean Energy Program mission creep when the solicitation prioritizes projects**

Discussion Points (Cont'd)

whose installation will allow “public and critical” facilities to keep critical electric systems operating during power outages?

Response:

Under Section 60(a) (3) of EDECA, the Legislature directed the Board to play an active role in determining funding purposes for which SBC monies can be used. As evidenced by the Legislature's requirement that the CRA be conducted periodically and take into consideration existing market barriers and market transformation, these requirements suggest that the Legislature intended for the Board to fund programs that address current market needs and that the Legislature was cognizant that technology and societal needs change and thus necessitate the use of SBC funding for evolving programs. And as those technological and societal changes occur, the uses to which the SBC funds are put – in terms of EE and RE - should also evolve.

9. The Clean Energy Program has financially backed the installation of biomass electric power generation facilities since 2001. The **FY 2015 Sustainable Biopower Incentive Solicitation**, issued on October 23, 2014 with a December 22, 2014 application submission deadline, marks the latest such subsidy round. Sustainable biomass power plants generate electricity through the burning of renewable organic waste, such as wood, plant material, sewage sludge, and animal as well as food waste.

The FY 2015 Clean Energy Program budget allocated \$3 million to the FY 2015 Sustainable Biopower Incentive Solicitation (Page 15 of the Board Order dated June 30, 2014, Docket number QO14050489). Incentive awards, which will be paid upon project completion, are capped at \$900,000 per project and each applicant may not receive more than \$1,375,000 for all its eligible projects combined, except that an additional ten percent bonus award is available for projects that are completed within 12 months of the initial incentive award notification. (A ten percent penalty applies to projects that are completed more than 18 months after the initial incentive award notification.) To qualify a sustainable biopower project: a) can have any capacity; b) must have received a biomass sustainability determination from the New Jersey Department of Environmental Protection; c) must demonstrate that the qualified biomass feedstock is available on a sustainable basis; d) must be interconnected with the New Jersey electric distribution system; e) must be financially and economically viable; and f) must be ready to be installed expeditiously pending funding. In addition, like the FY 2015 Renewable Electric Storage Incentive Solicitation (see Discussion Point #8), the solicitation assigns priority to projects whose installation will allow “public and critical” facilities to keep critical electric systems operating during power outages.

- **Questions: Please provide a status update on the FY 2015 Sustainable Biopower Incentive Solicitation. How many applications did the BPU receive**

Discussion Points (Cont'd)

and for what total incentive award amount? By what date does the BPU expect to complete its application review process? Please list the projects that have already secured an incentive award to date. If the \$3 million program budget does not satisfy all eligible grant applications, what method does the BPU employ to prioritize applications? By what date does the BPU anticipate paying out the first incentive award?

Response:

In FY15 to date, the Board issued two competitive solicitations for eligible biopower projects. In the first solicitation, only two projects submitted applications and neither of the projects met the minimum requirements for evaluation. A third project missed the submittal deadline. At its March 2015 meeting, the Board approved reissuance of the solicitation to enable first-round applicants to resolve application deficiencies and to allow other applicants who may have missed the first deadline. The BPU is awaiting the responses to its second FY15 solicitation.

10. In June 2011, the Administration established the **State Energy Office** in the BPU's Division of Economic Development and Energy Policy as the successor to the Office of Energy Savings in the Department of the Treasury. The State Energy Office is to identify opportunities for reducing the energy consumption in State facilities. Since inception the office implemented energy audits; assisted State agencies with the determination of their energy-related needs and capital budget requests; reviewed energy funding requests with the Office of Management and Budget in the Department of the Treasury; and negotiated lower prices on the State's electricity and natural gas supply contracts that produced \$13.2 million in State energy cost savings from January 2012 through March 2014, according to the BPU reply to BPU Discussion Point #10 in the OLS FY 2014-2015 Department of the Treasury Budget Analysis.

As part of its mission to identify opportunities for reducing the energy consumption in State buildings, the State Energy Office manages the **energy savings improvement program for State-owned and -operated buildings** in accordance with P.L.2009, c.4. The law strives to increase the number of energy conservation projects the State undertakes by allowing two financing mechanisms to defray the projects' up-front cost over a period not exceeding 15 years (or 20 years in certain cases). First, the State may contract with energy service companies that assume the up-front cost of infrastructure improvements with the State repaying its debt over time out of the energy cost savings it realizes from the investments. Alternatively, the State may enter into a lease-purchase financing agreement, whereby the State engages a contractor who will purchase certain energy conservation equipment on behalf of the State and lease them to the State in return for lease payments over a predetermined term. At the end of the term the State will assume ownership of the equipment.

Discussion Points (Cont'd)

The Department of the Treasury deems lease-purchase financing more cost-effective than energy savings improvement contracts, according to the BPU response to BPU Discussion Point #10 in the OLS FY 2013-2014 Department of the Treasury Budget Analysis. Consequently, the State still had yet to sign its first energy savings improvement contract but was implementing a multi-year energy savings project plan for State facilities that was to be financed through a series of lease-purchase financing agreements, as the BPU indicated in addressing BPU Discussion Point #10 in the OLS FY 2014-2015 Department of the Treasury Budget Analysis. Specifically, the State Energy Office intended to implement energy conservation projects at the 30 most energy-consuming State facilities that together accounted for 54 percent of the State's energy usage. The first project round comprised seven facilities and was projected to reduce annual energy use by 20 percent and save \$15 million per year. To finance the capital improvements, the State awarded contract T-2872 to Banc of America Public Capital Corp. on October 7, 2013 in response to Request for Proposal (RFP) 14-X-22599 for "Financial Services: Energy Master Lease Purchase Financing." Under the State's first ever lease-purchase financing agreement for energy conservation projects, the contractor provides up to \$100 million for the State to draw down over a three-year period to finance energy conservation projects. In return, the contractor receives fixed payments for twelve or fifteen years depending on the specific project. The RFP sets forth \$87.4 million worth of projects for which the State intends to use the raised capital:

1) Bayside Prison/Southern State Prison:	\$25.0 Million
2) Hunterdon Developmental Center/Edna Mahan Prison:	\$20.0 Million
3) Department of Transportation Headquarters:	\$12.0 Million
4) Trenton State Prison:	\$11.0 Million
5) Katzenbach School:	\$9.1 Million
6) Vineland Developmental Center:	\$5.3 Million
7) New Jersey State Police Headquarters:	\$5.0 Million

The State Energy Office appears to have since also entered into its first energy savings improvement contract with an energy service company. On December 23, 2014, the Division of Property Management and Construction in the Department of the Treasury awarded project number A1204-00 for \$58,119 to Johnson Controls following a competitive bid solicitation under a September 2, 2014 "Request for Proposal to Select an Energy Services Company to Develop and Implement an Energy Savings Plan through an Energy Savings Improvement Program for the New Jersey State Police Headquarters." The relationship of the contract's scope of work with that of the lease-purchase financing agreement as it pertains to the New Jersey State Police Headquarters is uncertain.

- **Questions: Please describe the State Energy Office's activities since its response to BPU Discussion Point #10 in the OLS FY 2014-2015 Department of the Treasury Budget Analysis. Has the office achieved additional State cost**

Discussion Points (Cont'd)

savings in negotiating the State's electricity and natural gas supply contracts? Please provide an updated estimate of the aggregate and annual State cost savings the office has achieved since its inception in negotiating the State's electricity and natural gas supply contracts.

- Please provide a progress report on the State's energy savings improvement program for State-owned and -operated buildings. For each energy conservation project listed in RFP 14-X-22599 for "Financial Services: Energy Master Lease Purchase Financing," please indicate: a) whether work on the project has commenced, and, if not, the scheduled project start date; and b) the expected project completion date. Is the State Energy Office developing a project list for a second energy master lease-purchase agreement or energy savings improvement contracts? If so, what projects are on the list and by what date does the office anticipate seeking the additional financing? Please detail for each energy savings improvement contract signed the State building benefitting from energy-savings infrastructure improvements, the improvements being undertaken, their capital cost, the amortization period, the projected amount of energy cost savings over the amortization period, and the debt service payments the State is anticipated to make out of the projects' energy savings. How does the scope of work of the December 23, 2014 energy savings improvement contract for the New Jersey State Police Headquarters relate to the scope of work for the headquarters under the October 7, 2013 lease-purchase financing agreement?

Response:

The State Energy Office (SEO) has implemented a number of projects and is working to develop a long-term plan for energy savings in many of the 300-plus State-owned/operated facilities. The SEO has leveraged federal, State, and private-sector resources to deliver the greatest energy, environmental, and cost reduction benefits to the agencies and taxpayers.

Since 2012, the SEO has twice negotiated a reduced rate for electricity and natural gas supply to multiple state agencies and has delivered \$2.1 million annually in electric cost savings through June 2015 and \$2.25 million annually in natural gas savings for a total of \$13 million to-date.

The SEO has also implemented a number of smaller energy efficiency projects at State facilities such as installing new lighting controls at the Justice Complex, new heat pumps in the DEP building, and HVAC replacements in the State House Complex. The energy savings from completed projects total \$5.3 million annually or \$15.9 million to date (through CY14).

Discussion Points (Cont'd)

The SEO has initiated LED lighting projects at seven State facilities as "pilot" programs, and intends to initiate full blown projects in FY16 pending USDOE approval of the use of remaining ARRA funding. These projects are projected to save a total of \$750k annually.

The State has secured a \$100 million line of credit (LOC) to fund energy efficiency projects in State facilities, and the first project (New Jersey State Police Headquarters) is in progress. The SEO expects to implement additional Energy Savings Improvement Projects (ESIPs) on a quarterly basis for the next three years, targeting the State's largest energy users. Anticipated projects include:

- 1) *N.J. State Police Headquarters - awarded*
 - Investment grade audit - in progress*
 - Construction by - 3rd qtr. 2015*
 - Completion by - 4th qtr. 2016*

- 2) *Dept of Transportation HQ*
 - in bid stage*
 - Investment grade audit - 3rd qtr. 2015*
 - Construction by - 4th qtr. 2015*
 - Completion by - 2nd qtr. 2017*

- 3) *Katzenbach School*
 - in scope development*
 - Bid stage - 3rd qtr. 2015*
 - Investment grade audit - 4th qtr. 2015*
 - Construction by - 1st qtr. 2016*
 - Completion by - 3rd qtr. 2017*

- 4) *NJ State Prison (Trenton)*
 - scope by 3rd qtr 2015*
 - Bid stage - 4th qtr. 2015*
 - Investment grade audit - 1st qtr. 2016*
 - Construction by - 2nd qtr. 2016*
 - Completion by - 4th qtr. 2017*

- 5) *Vineland Developmental Center*
 - scope by 4th qtr 2015*
 - Bid stage - 1st qtr. 2016*
 - Investment grade audit - 2nd qtr 2016*
 - Construction by - 3rd qtr. 2016*
 - Completion by -1st qtr. 2018*

Each of the above facilities is comprised of multiple buildings and the final investment grade audit will determine which individual buildings and which energy conservation measures (ECMs) will be included in those projects. The ECMs will be consolidated into the final scope of

Discussion Points (Cont'd)

work to determine total cost savings. Energy cost savings that accrue to agencies as a result of implemented projects will be used to fund debt service on the amount financed via the LOC.

There is no plan for a second master lease; repayment of funds drawn against the LOC will be used to fund future projects.

11. Imposed pursuant to N.J.S.A.48:3-60 as a component of the "Electric Discount and Energy Competition Act" (P.L.1999, c.23), the **societal benefits charge** is embedded in, but separately delineated on, electric and natural gas ratepayers' monthly utility bills. Proceeds finance nuclear plant decommissioning, manufactured gas plant remediation, utilities' uncollectible debts, energy consumer education, energy assistance programs to low-income utility customers via the Universal Services Fund (page 112 of the "Supplementary Information" section in the Governor's FY 2016 Budget, available in the online version only), and energy demand management programs including BPU's Clean Energy Program (page 70 of the "Supplementary Information" section in the Governor's FY 2016 Budget, available in the online version only). From calendar year 2009 to calendar year 2012, societal benefits charge collections fluctuated between a lower bound of \$776.6 million generated in calendar year 2011 and an upper bound of \$792.3 million generated in calendar year 2010. Depending on the utility, the charge represented between 3.59 percent (\$45.84) and 5.56 percent (\$68.15) of the annual bill of the average electric residential ratepayer as of April 2013 and between 5.82 percent (\$63.30) and 7.07 percent (\$83.70) of the annual bill of the average residential natural gas ratepayer.

- **Questions:** Please indicate the amount the societal benefits charge raised in calendar years 2013 and 2014, as well as the amount of societal benefits charge collections that financed each program supported by the charge. Please list, by utility and by societal benefits charge component, the 2014 and 2015 rates of the charge and present the reasons for any increase. The charge represented what percentage of an average residential ratepayer's annual electricity and natural gas bills in calendar years 2013 and 2014 and represents what estimated percentage thereof in calendar year 2015?

Response:

SBC collections by utility and program component are provided below.

Discussion Points (Cont'd)

CY2014 SBC Revenues, including SUT (\$ millions)

	ACE	JCP&L	PSE&G (Electric)	RECO	SJG	PSE&G (Gas)	NJNG	ETG	Total
Consumer Education	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
DSM/Clean Energy	\$ 34.71	\$ 66.90	\$ 162.02	\$ 6.03	\$ 26.64	\$ 97.16	\$ 30.03	\$ 12.12	\$ 435.61
USF	\$ 20.43	\$ 46.30	\$ 90.29	\$ 3.58	\$ 4.30	\$ 23.59	\$ 5.53	\$ 3.87	\$ 197.89
Lifeline	\$ 7.87	\$ 17.90	\$ 34.72	\$ 1.38	\$ 3.53	\$ 18.36	\$ 4.30	\$ 3.14	\$ 91.20
Uncollectible	\$ 16.52	\$ 12.40	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 28.92
Nuclear Decommissioning	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
RAC	\$ -	\$ 2.90	\$ 16.33	\$ -	\$ 14.52	\$ 27.57	\$ 21.35	\$ 11.38	\$ 94.05
Social Programs	\$ -	\$ -	\$ 62.60	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 62.60
Total Collections	\$ 79.53	\$ 146.40	\$ 365.96	\$ 10.99	\$ 48.99	\$ 166.68	\$ 61.21	\$ 30.51	\$ 910.27

CY2013 SBC Revenues, including SUT (\$ millions)

	ACE	JCP&L	PSE&G (Electric)	RECO	SJG	PSE&G (Gas)	NJNG	ETG	Total
Consumer Education	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
DSM/Clean Energy	\$ 32.03	\$ 59.49	\$ 176.80	\$ 5.93	\$ 17.03	\$ 86.50	\$ 15.74	\$ 33.15	\$ 426.67
USF	\$ 20.72	\$ 47.18	\$ 92.30	\$ 3.96	\$ 6.42	\$ 30.00	\$ 7.45	\$ 5.79	\$ 213.82
Lifeline	\$ 5.92	\$ 13.40	\$ 26.80	\$ 1.13	\$ 2.75	\$ 13.60	\$ 3.59	\$ 2.47	\$ 69.66
Uncollectible	\$ 15.02	\$ 11.45	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 26.47
Nuclear Decommissioning	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
RAC	\$ -	\$ 2.73	\$ 15.50		\$ 19.32	\$ 23.70	\$ 21.23	\$ 2.46	\$ 84.94
Social Programs	\$ -	\$ -	\$ 60.30	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 60.30
Total Revenues	\$ 73.69	\$ 134.25	\$ 371.70	\$ 11.02	\$ 45.52	\$ 153.80	\$ 48.01	\$ 43.87	\$ 881.86

SBC rates by utility and program component are provided below.

Discussion Points (Cont'd)

SBC Rates - April 2014

SBC Components	Electric (\$/kWh)				Gas (\$/Therm)			
	PSE&G	JCP&L	ACE	RECO	PSE&G	NJN	SJG	ETG
Clean Energy Program / DSM	0.00409	0.002831	0.003592	0.003658	0.023483	0.01729	0.012056	0.014766
Manufactured Gas Plant Remediation	0.000349	0.00013	0	--	0.003887	0.024299	-0.00299	-0.00187
Universal Service Fund w/ Lifeline	0.002961	0.002961	0.002961	0.002961	0.0258	0.0258	0.0258	0.0258
Nuclear Plant Decommissioning	0	0	0		0	0	0	0
Uncollectibles/Social Programs	0.001325	0.000545	0.00162	--	0	0	0	0
Consumer Education Program	0	0	0	--	0	0	0	0
TOTAL (without Sales and Use Tax)	0.009195	0.006467	0.008172	0.006619	0.05317	0.067389	0.034865	0.038697
TOTAL (w Sales and Use Tax)	\$0.01	\$0.01	\$0.01	\$0.01	\$0.06	\$0.07	\$0.04	\$0.04

SBC Rates, April 2015

SBC Components	Electric (\$/kWh)				Gas (\$/Therm)			
	PSE&G	JCP&L	ACE	RECO	PSE&G	NJN	SJG	ETG
Clean Energy Program / DSM	0.003047	0.003517	0.003466	0.00238	0.023483	0.01729	0.0121	0.014766
Manufactured Gas Plant Remediation	0.000349	0.00013	0	--	0.006729	0.024299	0.011028	-0.00187
Universal Service Fund w/ Lifeline	0.002553	0.002553	0.002552	0.002553	0.0179	0.0179	0.0179	0.0179
Nuclear Plant Decommissioning	0	0	0		--		--	--
Uncollectibles/Social Programs	0.001347	0.000592	0.001724	--	--	--	--	--
Consumer Education Program	0	0	0	--	--	--	--	--
TOTAL (without Sales and Use Tax)	0.007683	0.006792	0.007743	0.004933	0.048112	0.059489	0.041028	0.030797
TOTAL (w Sales and Use Tax)	\$0.01	\$0.01	\$0.01	\$0.01	\$0.05	\$0.06	\$0.04	\$0.03

Definitions:

Clean Energy Program / Demand Side Management: Includes costs for the Clean Energy Program, as approved by the BPU in the Comprehensive Resource Analysis, as well as other Board-approved demand side management programs.

Manufactured Gas Plant Remediation: Includes the costs for investigations, testing, land acquisition, remediation and/or litigation expenses. Also includes third party claims.

Universal Service Fund w/ Lifeline: Low income energy assistance

Nuclear Plant Decommissioning: Includes the costs of safely removing nuclear plants from service.

Uncollectibles: Includes costs associated with uncollectible accounts

Consumer Education Program: Includes costs associated with the state- mandated Consumer Education Program

*Note: Some utilities may not have a rate for a certain component because that component is not applicable to them. For example, JCP&L and PSE&G are the only electric companies that have Manufactured Gas Plant Remediation costs. This is because they held interests in this type of plant at some point, whereas ACE and RECO did not. For other components (Consumer Education) those without rates have recovered their costs and no longer need that specific rate component.

The impact of SBC rates on average residential bills are estimated below. Major components of the SBC are established as total dollar amounts to be collected; therefore, year-to-year variation in energy usage will lead to variation in rates per unit of energy.

Discussion Points (Cont'd)

Electric (a)	14-Apr	15-Apr	Gas (b)	14-Apr	15-Apr
ACE			ETG		
SBC Portion of Annual Bill	\$68.20	\$64.62	SBC Portion of Annual Bill	\$111.80	\$73.00
Average Annual Bill	\$1,332.33	\$1,452.96	Average Annual Bill	\$1,197.54	\$992.36
SBC% of Annual Bill	5.12%	4.45%	SBC% of Annual Bill	9.34%	7.36%
JCP&L			NJNG		
SBC Portion of Annual Bill	\$53.97	\$56.67	SBC Portion of Annual Bill	\$84.80	\$89.10
Average Annual Bill	\$1,080.35	\$1,058.05	Average Annual Bill	\$1,114.50	\$1,016.40
SBC% of Annual Bill	5.00%	5.36%	SBC% of Annual Bill	7.61%	8.77%
PSE&G- Electric			PSE&G- Gas		
SBC Portion of Annual Bill	\$76.74	\$64.12	SBC Portion of Annual Bill	\$57.52	\$54.46
Average Annual Bill	\$1,408.07	\$1,456.59	Average Annual Bill	\$1,041.68	\$631.15
SBC% of Annual Bill	5.45%	4.40%	SBC% of Annual Bill	5.52%	8.63%
RECO			SJG		
SBC Portion of Annual Bill	\$55.24	\$41.17	SBC Portion of Annual Bill	\$83.80	\$76.20
Average Annual Bill	\$1,332.33	\$1,486.69	Average Annual Bill	\$1,290.09	\$1,418.03
SBC% of Annual Bill	4.15%	2.77%	SBC% of Annual Bill	6.50%	5.37%

*NOTE: The rates and bill impacts include Sales and Use Tax of 7%

(a) The following usage was used: Residential- 7800 kWh per year

12. New Jersey ratepayers fund the **Universal Service Fund (USF)** via the societal benefits charge included in their electric and natural gas bills. The USF finances several State energy assistance programs: the USF, the "Fresh Start", and Lifeline credit programs, the Tenants' Assistance Rebate Program, as well as energy assistance payments under the Temporary Assistance for Needy Family (TANF) program. The Governor's FY 2016 Budget anticipates \$253.6 million in USF expenditures for FY 2016 (page 112, available in the online version of the Governor's FY 2016 Budget only). Of this amount, the Governor proposes \$170.9 million in direct fund expenditures as well as a transfer of \$82.8 million to other funds, of which \$67.3 million would finance the "Lifeline Credit Program" (N.J.S.A.48:2-29.15 et seq.) and the "Tenants' Lifeline Assistance Program" (N.J.S.A.48:2-29.31 et seq.), under which an estimated 302,345 low-income households would receive up to \$225 in electric and gas utility credits in FY 2016. An additional \$6.9 million would finance energy assistance payments for Work First New Jersey recipients (Work First New Jersey is the State's TANF program) and the Department of Community Affairs would receive another \$8.6 million to administer the USF and "Fresh Start" credit programs.

The USF credit program is an energy assistance program seeking to ensure that eligible utility customers pay no more than six percent of their annual income for their natural gas and electric service. The "Fresh Start" credit program, on the other hand, allows first-time USF credit recipients with at least \$60 in arrears on their energy bills to retire their outstanding balances by paying their USF-adjusted affordable energy bill in full for 12 consecutive months following program admittance. The BPU carries the financial responsibility for the programs, the Department of Community Affairs administers them, and the electric and natural gas utilities credit the benefits to customer accounts. In program year 2013, the two programs disbursed \$182.4 million in benefits and incurred \$9.1 million in

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administrative expenses (reported program expenditures less reported benefit payments), as related by the BPU in response to BPU Discussion Point #12 in the OLS FY 2014-2015 Department of the Treasury Budget Analysis. For program years 2010 through 2013 the tables below display for each of the two credit programs the number of beneficiary households, total credit expenditures, and the average benefit per household. The timing of the program year was changed effective for program year 2012. The 2010 and 2011 program years started on November 1 and ended on October 31 the following year. Program year 2012, however, began on November 1, 2011 and ended on September 30, 2012, resulting in a one-time eleven-month program year. The 2013 program year then ran a full twelve months from October 1, 2012 to September 30, 2013. The average electric residential ratepayer paid \$16.01 in program year 2011 to support the USF, \$20.02 in program year 2012, \$18.94 in program year 2013, and \$17.80 in program year 2014. In turn, the average natural gas residential ratepayer paid \$17.04 in program year 2011, \$16.08 in program year 2012, \$16.32 in program year 2013, and \$7.80 in program year 2014. In addressing BPU Discussion Point #12 in the OLS FY 2014-2015 Department of the Treasury Budget Analysis, the Board stated that the decline in electricity and natural gas prices in recent years might explain in part the drop in program participation and cost.

Universal Service Fund Credit Program Metrics for Program Years 2010 through 2013				
Program Year	Households Enrolled	Total Credit Cost	Average Benefit per Household	
2009 - 2010	194,660	\$193,477,000	\$993.92	
2010 - 2011	223,088	\$200,956,254	\$900.79	
2011 - 2012	221,451	\$196,935,385	\$889.30	
2012 - 2013	215,121	\$173,737,308	\$807.63	

"Fresh Start" Credit Program Metrics for Program Years 2010 through 2013				
Program Year	Households Enrolled	Total Credit Cost	Average Benefit per Household	
2009 - 2010	23,359	\$13,447,945	\$575.71	
2010 - 2011	26,770	\$15,299,127	\$571.50	
2011 - 2012	24,360	\$12,411,258	\$509.49	
2012 - 2013	17,210	\$8,631,532	\$501.54	

- **Questions:** For each of the USF credit and "Fresh Start" programs, please provide actual expenditures for the 2013-2014 program year and estimated expenditures for the 2014-2015 program year. What are the USF rates built into the societal benefits charge for those years and what does the program

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cost the average residential and non-residential energy utility customer? What is the number of USF credit and "Fresh Start" beneficiaries in program years 2013-2014 and 2014-2015?

Response:

USF/Fresh Start Actual Expenditures for 2013-2014 and Estimates for 2014-2015:

- Actual USF/Fresh Start Expenditures 2013-2014: \$200,825,458
- Estimated USF/Fresh Start Expenditures 2014-2015: \$183,523,038

- Fresh Start Expenditures 2013-2014: \$8,905,039
- Estimated Fresh Start Expenditures 2014-2015: \$8,300,930

USF Rates for 2013-2014 and 2014-2015 and Cost to Residential Customers:

2013-2014: Residential Rates and Bill Impact*

Average Residential Customers	Gas	Electric	Total
Rates After Tax	\$0.0065	\$0.002282	
Monthly Bill Impact	\$0.65	\$1.48	\$2.13
Annual Bill Impact	\$7.80	\$17.80	\$25.60

**Based on annual residential usage of: Electric- 7,800 kWh; Gas – 1,000 therms*

2014-2015: Residential Rates and Bill Impact*

Average Residential Customers	Gas	Electric	Total
Rates After Tax	\$0.0110	\$0.001993	
Monthly Bill Impact	\$1.10	\$ 1.30	\$ 2.40
Annual Bill Impact	\$13.20	\$15.55	\$28.75

**Based on annual residential usage of: Electric- 7,800 kWh; Gas – 1,000 therms*

Program Revenue Derived from Non-Residential Customers:

Commercial & Industrial Customers (C&I) Gas

Program Year	Total Gas USF/Lifeline	Gas Revenues from C&I: Apx 63.4% of	Bill Impact of USF and Lifeline

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	Revenues from all Gas Customers	total Gas Revenues	
2013-2014	\$61,509,229	\$28,740,144	Not available*
2014-2015**	\$82,137,707	\$39,522,362	Not available*

*The usage patterns for commercial customers vary considerably and thus are difficult to calculate on an average for the class.

** Based on actual and estimated data.

Commercial & Industrial Customers (C&I) Electric

Program Year	Total Electric USF/Lifeline Revenues from all Electric Customers	Electric Revenues from C&I: Apx 52.3% of total Electric Revenues	Bill Impact of USF and Lifeline
2013-2014	\$230,001,113	\$141,471,682	Not Available*
2014-2015**	\$195,916,265	\$119,722,147	Not Available*

*The usage patterns for commercial customers vary considerably and thus are difficult to calculate on an average for the class.

** Based on actual and estimated data.

Program Enrollment:**USF:**

Program Year	USF Enrollment by Household	USF Enrollment by Utility Account	\$ USF Credits Provided to Clients
2013-2014	212,898	238,494	\$170,578,473
2014-2015*	169,447	232,459	\$65,689,025

* October 2014 – February 2015 data from USFHEA database system and utility companies

Fresh Start:

Program Year	Fresh Start Enrollment by Household (estimated)	Fresh Start Enrollment by Utility Account	\$ Fresh Start (Debt Forgiveness) Amount
2013-2014	19,161	21,904	\$7,991,585
2014-2015*	11,861	17,777	\$2,938,344

* Based on October 2014 – February 2015 data from utility companies

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- **What factor(s) drove the: a) \$93.16, or 10.3 percent, decline in the average USF household benefit from \$900.79 in the 2010-2011 program year to \$807.63 in the 2012-2013 program year; b) \$69.96, or 12.2 percent, drop in the average "Fresh Start" household benefit from \$571.50 in the 2010-2011 program year to \$501.54 in the 2012-2013 program year; and c) 9,560, or 35.7 percent, decline in the number of households enrolled in the "Fresh Start" program from 26,770 households in the 2010-2011 program year to 17,210 households in the 2012-2013 program year? To what extent do the decreases reflect improving household incomes and falling prices for electricity and natural gas? Were the participation and benefit declines more pronounced for benefits paid towards beneficiaries' electricity or natural gas bills?**

Response:

As USF eligibility and benefit levels are based on income as well as the percentage of income spent on electric and natural gas service, decreased enrollment and/or benefit levels can be explained by: 1) increased income; or 2) decreased energy expenses. Decreased energy expenses can be caused by a decrease in cost for energy or a decrease in energy usage (caused by mild winters, conserving energy due to economic constraints, or energy efficiency efforts such as participation in the federal Weatherization Assistance Program or the Board's Comfort Partner's Program). To help clarify the impacts of these variables on USF enrollment and benefit levels, below are two tables. The first contains client data taken from the USF database. The second provides median New Jersey income and average costs for residential electricity and gas in New Jersey provided by our utility companies:

USF/HEA* Program Year	Average Income of USFHEA Applicants	Average Annual Electric Costs of USFHEA Applicants	Average Annual Natural Gas Costs of USFHEA Applicants
2010-2011	\$13,773	\$1,425	\$1,240
2011-2012	\$13,531	\$1,382	\$1,168
2012-2013	\$13,570	\$1,341	\$1,103
2013-2014	\$13,842	\$1,344	\$1,166

**The Universal Service Fund (USF) and Home Energy Assistance (HEA) programs share an application, database, hotline and application agency network. Therefore an applicant applies for both programs at the same time.*

Year	Median NJ Income*	Average Residential Electric Costs**	Average Residential Gas Costs**
2010	\$67,681	\$1,455.84	\$1,377.69
2011	\$67,458	\$1,410.86	\$1,320.91
2012	\$70,442	\$1,345.87	\$1,158.99

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2013	\$70,165	\$1,331.78	\$1,203.54
2014	unknown	\$1,289.03	\$1,160.95
2015	Unknown	\$1,363.50	\$1,014.49

**Taken from American Community Survey*

***Based on annual residential usage of: Electric- 7,800 kWh; Gas – 1,000 therms*

As shown by the USFHEA income data, when comparing 2010-2011 program year applicant households with the 2013-2014 program year there was: a 5% increase in average household income; a 5.7% decrease in the average annual cost of electricity and a 6% decrease in the average annual cost of natural gas. Further, as shown in the chart above, the average annual energy cost for all residential customers has declined significantly over the past five years.

In regards to Fresh Start, eligibility for enrollment is based on first time USF participation and also having \$60 or more in arrearages at the time of program enrollment. Therefore decreased enrollment can be explained by: 1) a decrease in USF enrollment; 2) a decrease in first-time participation in USF (more repeat enrollment than first time enrollment); 3) or a decrease in overdue balances when entering USF for the first time. Furthermore, Fresh Start credits are equal to the amount of energy debt forgiveness the customer "earns" on pre-existing arrearages they had incurred at the time of USF enrollment. If a client pays their USF-supplemented bill on time and in full each month for 12 months, they can achieve 100% forgiveness of their pre-USF program energy debt. However, the amount of Fresh Start credit (energy debt actually forgiven), is based on the client's ability or choice to pay their current bills on time and in full during their first year of enrollment in USF. One client may achieve 100% forgiveness of their energy debt and another client may only achieve 60% energy debt forgiveness because they did not meet the program requirements.

13. P.L.2009, c.207 directs the BPU to make a one-time \$25.0 million allocation out of unexpended and uncommitted societal benefits charge balances to an electric and gas utility assistance grant program for households experiencing a temporary financial crisis. The program has to be operated by a non-profit organization, which must submit a report to the Board detailing program statistics and other administrative information within one year of receiving the final tranche of the \$25.0 million program budget. In application of the law, the BPU established the **Temporary Relief for Utility Expenses (TRUE) program** under the Clean Energy Program banner and, in March 2011, selected the non-profit Affordable Housing Alliance (AHA) as the program administrator. According to the Board Order dated December 19, 2012, Docket number EG10100740, the contract with AHA obligates the non-profit organization to submit the final program report within 90 days of program budget exhaustion or the contract's March 4, 2015 expiration date, whichever would come first.

According to the AHA website, the TRUE program was an assistance program designed to help low- and moderate-income households who newly faced financial hardship. In order to qualify, applicants had to meet income guidelines. For example, a three-person household

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had to have an annual income ranging from \$39,588 to \$88,617. In addition, applicants had to not have received energy assistance under the Universal Service Fund credit program and the Low Income Home Energy Assistance Program in the past 12 months. They also had to demonstrate that balances in their electric and gas accounts were at least 45 days overdue or that they had received a disconnection notice for their electric or gas service. Lastly, they had to demonstrate that they had made four electric or gas bill payments of at least \$25 each within the past six months. Replying to BPU Discussion Point #13 in the OLS FY 2014-2015 Department of the Treasury Budget Analysis, the BPU noted that through March 2014 some 13,539 households had received one or more TRUE grants and that \$19.6 million of the \$25.0 million program budget had been released to AHA. The BPU anticipated the program budget's depletion by the end of calendar year 2014 and did not intend to make the program permanent.

- **Questions:** For the Temporary Relief for Utility Expenses (TRUE) program, please indicate, by program year, the number of beneficiary households, the average benefit amount, and the total budgetary outlay. Has the program been terminated and has the full \$25.0 million program budget been spent? If the program has ended and unexpended balances remain, what uses does the BPU envision for the unexpended balances? Has the BPU received the final report from the Affordable Housing Alliance, as required by P.L.2009, c.207? If not, by what date must the alliance submit the report? Does the BPU still intend not to renew the program? If the Board is considering a renewal, what would be the program's funding source?

Response:

Drawdown Schedule	# Grants Distributed by Account *	Average combined gas/electric benefit	Disbursement Amount
March 2011 Initial payment	--	--	\$4,625,500M
October 2011	3,003	\$894	\$3M
April 2012	7,085	\$898	\$3M
October 2012	10,307	\$886	\$3M
June 2013	12,523	\$873	\$3M
March 2014	15,413	\$895	\$3M
March 2015	18,268	\$877	\$0.00
Total	18,268		\$19,625,500.00

* Reported cumulatively

The TRUE contract between the Board and the AHA expired on March 4, 2015 and the BPU is waiting on final expense and performance reports to close out the contract. However it is estimated that of the \$19,625,500.00 disbursed to AHA, approximately \$800,000.00 will be

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returned unspent. Currently the Board is considering issuing a Notice of Availability of Grants to determine the most appropriate non-profit to expend the remaining funds. As the money is not yet fully expended there are no plans for program renewal at this time.

14. N.J.S.A.46:30B-74 created the off-budget Unclaimed Utility Deposits Trust Fund to hold unclaimed electric and natural gas utility customer deposits that escheat to the State. A contracted statewide non-profit energy assistance organization receives 75 percent of the fund's annual balances to provide assistance to utility ratepayers who have fallen behind on their electricity or natural gas bills. New Jersey Statewide Heating Assistance and Referral for Energy Services (NJ SHARES) was the contractor from 2001 through 2013 (Board Order dated February 2, 2001, Docket number EO00120976U). According to NJ SHARES' annual reports, it received \$1.4 million from the Unclaimed Utility Deposits Trust Fund in calendar year 2012 for its general energy assistance program, \$2.5 million in calendar year 2011, and \$2.9 million in calendar year 2010. In July 2013, the BPU awarded the contract instead to the non-profit Affordable Housing Alliance (AHA) for the operation of the new **Payment Assistance for Gas and Electric (PAGE) program** from FY 2014 to FY 2018 (Board Order dated July 19, 2013, Docket number EG13030195). According to the Board's answer to BPU Discussion Point #14 in the OLS FY 2014-2015 Department of the Treasury Budget Analysis, the PAGE program received its first \$2.7 million Unclaimed Utility Deposits Trust Fund payment in December 2013.

The PAGE program is to help pay the electric and natural gas bills of low- and moderate-income households whose incomes are too high to qualify for federal and State energy assistance programs. Applicants must be behind on their energy and natural gas bills and must otherwise have a history of regular payments to their energy provider. In order to qualify, applicants have to meet income guidelines. For example, a three-person household must have an annual income ranging from \$39,588 to \$88,617. In addition, applicants must not have received energy assistance under the Universal Service Fund credit program in the past six months and the Low Income Home Energy Assistance Program in the last heating season before applying for PAGE grants. They also must demonstrate that balances in their electric and gas accounts are at least 45 days overdue or that they received a disconnection notice for their electric or gas service. Lastly, they must demonstrate that they made two electric or gas bill payments of at least \$25 each within the past six months or one payment of at least \$100 within the past 90 days. According to the Board's answer to BPU Discussion Point #14 in the OLS FY 2014-2015 Department of the Treasury Budget Analysis, PAGE grants per household equal the amount the utility company needs so as to not discontinue the household's utility service, capped at \$700 each for electricity and natural gas service in a one-year period.

- **Questions:** For the Payment Assistance for Gas and Electric (PAGE) program, please indicate, by program year, the number of beneficiary households, the average benefit amount, and the total budgetary outlay. Is the PAGE program

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fully operational? Has the shift of Unclaimed Utility Deposits Trust Fund support from NJ SHARES to the PAGE program been seamless from the vantage point of program beneficiaries? If not, what problems needed to be resolved in carrying out the transition? Are there any deficiencies in program operations and performance that the Affordable Housing Alliance still has to address? Is the number of annual benefit approvals roughly stable following the funding shift from NJ SHARES to the PAGE program? What was the number of applications in FY 2013 (NJ SHARES)?

Response:

In December 2013, PAGE was provided with \$2,693,371.00 for CY14. AHA reported actual expenditures for CY14 in the amount of \$2,451,790.00 leaving a balance of \$241,581.00 unspent which they carried over into the 2015 PAGE program year budget. In CY14 AHA provided 2,755 grants to eligible applicants' gas and electric accounts, assisting 2,379 households. The average combined electric/gas benefit amount was \$980. In January 2015 PAGE was provided with \$4,039,468.00 escheated dollars which, in addition to the \$241,581.00 carryover, totals \$4,281,049.00. PAGE was fully operational by the end of January 2014. AHA had the basic infrastructure for PAGE in place through their concurrent operation of the TRUE program, which has similar eligibility criteria. Both programs shared a joint application, an application agency network and a robust database, which provides the capability of processing applications online. These factors helped save on PAGE start-up costs and compressed the time usually associated with ramping up a new program. The one-stop shopping for TRUE and PAGE in 2014 as well as the online capabilities of the AHA provided a streamlined application process for households in need. Any TRUE/PAGE applicant who was denied benefits was referred to either USF/HEA or NJ SHARES depending on the reasons for their ineligibility. Comparing the number of applications processed by NJ SHARES and AHA would not provide a clear comparison as the eligibility requirements, funding levels and program structure are different.

15. The 2011 Energy Master Plan reaffirmed the State's commitment to sourcing 22.5 percent of the electricity used in New Jersey from renewable energy sources by 2021. That percentage reflects the pre-existing objective under the State's **Renewable Portfolio Standards (RPS)**. P.L.1999, c.23 (N.J.S.A.48:3-49 et seq.) established the RPS, which prescribe a minimum percentage of total kilowatt-hours sold in New Jersey by each electric power supplier and basic generation service provider that must be generated from renewable energy sources. While the law prescribes specific minimum RPS targets for some years and forms of alternative energy, it leaves the formulation of the overall RPS schedule to the BPU's discretion (subsection d. of N.J.S.A.48:3-87). Current RPS targets are outlined in N.J.A.C.14:8-2.3. The regulatory RPS schedule does not specify solar energy targets, however, as they are set forth in permanent statutes in accordance with P.L.2012, c.24. In energy years 2010 through 2013 all electric power suppliers and basic generation service

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providers complied with the RPS requirements, according to the BPU's answers to BPU Discussion Point #2 in the OLS FY 2013-2014 Department of the Treasury Budget Analysis and BPU Discussion Point #15 in the OLS FY 2014-2015 Department of the Treasury Budget Analysis. Had they not, they would have been subject to penalties, such as license suspension or revocation, fines, the disallowance of cost recoveries, and a prohibition on accepting new customers.

For energy years 2010 through 2021, the table on the following page lists the percentages of energy supplied in New Jersey that must be either from Class I or Class II renewable energy, with solar energy being a carve-out of the Class I percentage. The Class I and Class II targets reflect the RPS as delineated in N.J.A.C.14:8-2.3. The solar energy figures represent the RPS for energy year 2010; the gigawatt-hours-based (Gwhrs) targets for energy years 2011, 2012, and 2013 in accordance with P.L.2009, c.289; and starting in energy year 2014 the percentage targets set forth in the superseding P.L.2012, c.24. Class I energy sources are solar technologies, wind energy, photovoltaic technologies, geothermal technologies, fuel cells, wave or tidal action, the combustion of methane gas captured from landfills or biomass facilities, and hydropower facilities with a capacity not exceeding three megawatts. Electricity from hydroelectric facilities with a capacity exceeding three megawatts constitutes a Class II energy source. As to the nomenclature for an energy year, energy year 2010, for example, started on June 1, 2009 and ended on May 31, 2010.

Renewable Portfolio Standards: Percentage of Energy Sold in New Jersey that Must Be from Renewable Energy Sources				
Energy Year	Class I Energy	Solar Energy's Share of Class I Energy Targets	Class II Energy	Total Renewable Energy
2010	4.685%	0.221%	2.50%	7.185%
2011	5.492%	306 Gwhrs	2.50%	7.992%
2012	6.320%	442 Gwhrs	2.50%	8.820%
2013	7.143%	596 Gwhrs	2.50%	9.643%
2014	7.977%	2.050%	2.50%	10.477%
2015	8.807%	2.450%	2.50%	11.307%
2016	9.649%	2.750%	2.50%	12.149%
2017	10.485%	3.000%	2.50%	12.985%
2018	12.325%	3.200%	2.50%	14.825%
2019	14.175%	3.290%	2.50%	16.675%
2020	16.029%	3.380%	2.50%	18.529%
2021	17.880%	3.470%	2.50%	20.380%

In addressing last year's BPU Discussion Point #15, the Board reaffirmed its previous estimate that the RPS requirements for energy year 2021 were likely to be attained and that the RPS requirements would help develop cost-competitive renewable energy markets at the least cost to ratepayers. All ratepayers combined paid an estimated \$118.4 million in energy

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year 2010 to comply with the RPS targets, \$197.5 million in energy year 2011, \$148.6 million in energy year 2012, and \$146.9 million in energy year 2013; according to the Board's replies to BPU Discussion Point #2 in the OLS FY 2013-2014 Department of the Treasury Budget Analysis and BPU Discussion Point #15 in the OLS FY 2014-2015 Department of the Treasury Budget Analysis. Furthermore, the Board noted in response to BPU Discussion Point #16 in the OLS FY 2014-2015 Department of the Treasury Budget Analysis that it estimated the energy year 2014 RPS cost to exceed more than \$280 million. The Board attributed the near doubling in RPS costs over energy year 2013 mostly to the accelerated increase in the energy year 2014 RPS solar target under P.L.2012, c.24. Moreover, the BPU shared in reply to BPU Discussion Point #2 in the OLS FY 2013-2014 Department of the Treasury Budget Analysis that the average residential ratepayer paid \$15.3 in energy year 2010 to meet the RPS targets, \$24.3 in energy year 2011, and \$19.3 in energy year 2012, assuming an average annual energy consumption of 10,000 kilowatt-hours. The BPU did not provide an energy year 2013 figure last year.

- **Questions:** For energy year 2014, please indicate: a) the actual percentage of electricity sold in New Jersey that was generated from renewable energy sources; b) whether the electric power suppliers and basic generation service providers complied with the Class I, Class II, and solar energy targets of the Renewable Portfolio Standards (RPS); c) the breakout of the creditable components that electric power suppliers and basic generation service providers used to meet the Class I, Class II, and solar energy RPS requirements; and d) the RPS' total cost to ratepayers, and average cost per residential ratepayer, assuming an average annual energy consumption of 10,000 kilowatt-hours. For energy year 2013, please indicate the RPS' average cost per residential ratepayer, assuming an average annual energy consumption of 10,000 kilowatt-hours. Has the BPU revised its estimate from last year that the attainment of the energy year 2021 RPS targets is likely? If so, please share the revised estimate.

Response:

The Renewable Energy Portfolio Standard (RPS) data report for all energy years is available at www.njcleanenergy.com/renewable-energy/program-updates/rps-compliance-reports.

16. New Jersey must expand its solar energy generation capacity substantially to meet the gradually rising solar targets of the statutory Renewable Portfolio Standard (RPS) (subsection d. of N.J.S.A.48:3-87): solar energy must comprise 2.05 percent of New Jersey electricity sales in energy year 2014 (June 2013 through May 2014), 2.45 percent in energy year 2015, 2.75 percent in energy year 2016, and 4.1 percent by energy year 2028.

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The State has set up a price-support system to impel the solar capacity investments needed to meet its solar targets. The system has three basic elements: a) solar targets, which create a demand for solar energy by obligating electric power suppliers and basic generation service providers to meet specific solar quotas; b) **Solar Renewable Energy Certificates (SRECs)**, which are issued for every megawatt-hour (MWh) of electricity generated by solar power installations and are sold separately from the generated electricity; and c) a trading platform on which electric power suppliers and providers can acquire from solar energy generators the SRECs they need to meet their annual solar targets. To limit the price-support system's cost to ratepayers, a gradually declining price ceiling applies to SRECs in the form of Solar Alternative Compliance Payments (SACP). Electric power suppliers and providers may make such alternative payments to the BPU in lieu of purchasing SRECs to meet their solar quotas. The OLS calculates that the solar targets would cost ratepayers \$287 million in energy year 2014, \$343 million in energy year 2015, and \$385 million in energy year 2016; based on the Board response to BPU Discussion Point #16 in the OLS FY 2014-2015 Department of the Treasury Budget Analysis that it expected the cost of RPS compliance to increase by \$56 million in energy year 2015 as a consequence of the RPS solar target rising from 2.05 percent of all electricity sold in New Jersey to 2.45 percent, all other variables held constant.

Turbulence rocked the SREC market until recently. After a precipitous drop that prompted statutory revisions to the SREC market infrastructure in 2012, the weighted average monthly SREC price has stabilized at around \$180 per MWh for the last year-and-a-half. In fact, the weighted average monthly SREC price for December was \$612 per MWh in 2010, \$369 in 2011, \$215 in 2012, \$176 in 2013, and \$179 in 2014. SREC prices tumbled in 2011 and 2012 in response to an unanticipated surge in solar energy supply. The surging supply, in turn, arose from market responses to previously high SREC prices, temporarily enhanced federal incentives, and declining prices for photovoltaic panels. Concerned that the low SREC price levels might deter the installation of additional solar energy generation capacity and thereby jeopardize the attainment of long-run RPS solar targets, the State enacted P.L.2012, c.24 so as to stabilize the market. Most significantly, the law altered the market's structure by: a) restricting future SREC supply through a new limitation on the construction of large-scale solar power generation facilities on farmland; and b) lifting SREC demand through the imposition of more aggressive RPS solar targets starting in energy year 2014. But the law also sought to control the solar targets' cost on ratepayers by replacing the previous regulatory ceilings on SREC prices with significantly lower statutory caps. With the average SREC price hovering around \$180 per MWh, the BPU observed in reply to last year's BPU Discussion Point #16 that SREC prices appeared to be sufficient to induce continued investments in solar energy. Overall, the Board projected a gradually accelerating SREC oversupply so that retail electricity suppliers and basic generation service providers should have no difficulty finding SRECs on the spot market for the foreseeable future.

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- **Questions:** Please comment on the current state of the Solar Renewable Energy Certificates (SRECs) market. How many registered SRECs have and have not been traded in energy year 2015? By what month were all the SRECs sold that are required to meet the energy year 2015 solar quota? How much solar energy generation capacity has been added to the market in energy year 2015? Does the BPU detect an acceleration or slowdown in the construction of new solar energy generation capacity? If so, what factor(s) account for the acceleration or slowdown? If not, is it defensible to assume that solar generators find the creation of new solar capacity sufficiently profitable at current SREC prices? What percentage of the energy year 2014 solar target of 2.05 percent of electricity sales in New Jersey did electric power suppliers and basic generation service providers meet through SRECs and through the alternative SACP payments to the BPU?
- How significant is the risk that the SREC supply will be insufficient to meet the rising solar targets in energy years 2016 and 2017 and that electric power suppliers and basic generation service providers will have to make alternative SACP payments to the BPU? What will be the estimated annual cost to the average residential ratepayer of meeting the energy year 2015, 2016 and 2017 solar quotas?

Response:

The New Jersey Solar Renewable Energy Certificate (SREC) market is strong and stable. The cumulative weighted average SREC price for transactions conducted thus far in EY15 has fluctuated between \$167 and \$185 per SREC. Through February 2015, nearly 967,000 SRECs had been created with these SRECs being traded in over 1.1 million transactions. SRECs can be transacted multiple times before retirement which generally does not occur until the end of the RPS compliance period. Not all SRECs are "sold." Some SRECs are transacted once before retirement but most are transacted more freely.

As there is no requirement for a solar generator to create SRECs within a certain time after the underlying electricity is generated, there will be additional SRECs created for electricity generated during this time period. Additionally, there were over 590,000 SRECs left unretired and available after EY14 compliance reports were due on December 1. If retail sales in EY15 remain at the level reported in EY14, the solar obligation is anticipated to be 1.87 million SRECs. Therefore, the EY15 solar obligation could likely be met with the existing supply of SRECs and those expected to be created based on electricity produced to date.

Through February, over 159 MWdc of solar generating capacity has been added to the market in EY15. The 17 MW per month average of new capacity additions is slightly lower than the 20 MW per month average exhibited in CY14. Due to the seasonal nature of solar installation

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activity and the continued strength of the new project pipeline, the final months of EY15 are anticipated to have higher installation rates. Registration in the SREC registration program has exceeded the forecasted level of participants. SREC prices have been sufficient based upon the continuous addition of new registrants in the SREC registration program.

Compliance with the solar obligations in the RPS for EY14 was achieved almost entirely through retirement of SRECs. One load serving entity made a Solar Alternative Compliance Payment (SACP) at \$339. Oversupply is estimated to continue through at least EY17, and the risk of insufficient supply is very low. The annual cost of meeting the EY15 solar obligation is estimated at \$329 million based upon the requirement of 2.45%, the assumption that retail electricity sales will remain constant and an SREC price at the EY14 level of \$176 per MWh.

17. An unanticipated surge in the supply of installed solar energy capacity in 2011 and 2012 sent New Jersey Solar Renewable Energy Certificate (SREC) prices spiraling downward. The weighted average monthly SREC price for December stood at \$612 per MWh in 2010. By December 2013 it was down to \$176. Collapsing SREC prices led to the enactment of P.L.2012, c.24, which was to stabilize the solar market and ensure the installation of additional solar energy generation capacity. The law included measures to up SREC demand and restrict the supply of additional solar capacity. In addition, the law directed the BPU to prepare a report on the mitigation of solar market development volatility. In May 2014, Meister Consultants Group, Inc. and Sustainable Energy Advantage, LLC submitted their "Solar Market Development Volatility in New Jersey" report to the BPU, which forwarded the document along with the Board's findings and recommendations to the State Legislature in July 2014.

The consultants identified several **potential sources of future volatility in New Jersey's solar market that might hamper the development of solar power generation capacity in the state.** But the consultants also warned of substantial uncertainties that made it "difficult to develop a precise estimate of future solar market development over the course of the next 15 years" (page 28). The consultants noted that the current fixed solar demand schedule, as codified in the Renewable Portfolio Standard solar targets, might significantly contribute to future market volatility and undermine sustained, orderly market growth owing to: a) a built-in period of decreasing or flat annual incremental targeted capacity additions in the out-years that could foster persistent oversupply conditions; b) the apparent omission to appropriately account for the need to replace in the SREC market solar installations built in the 2011-2012 boom period when the installations lose their SREC eligibility after 15 years of operation; c) the expiration of the current 30 percent Federal Investment Tax Credit for eligible systems placed in service after December 31, 2016, which has the potential to accelerate solar capacity additions as developers race to meet the incentive deadline; and d) the rigid, statutory long-range solar demand curve potentially being suboptimal for market conditions prevailing in the future.

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The consultants presented four policy options that the State may wish to pursue to address concerns about future volatility in New Jersey's solar market: 1) no substantial policy changes; 2) the implementation of complementary initiatives, such as the expansion of existing solar programs operated by New Jersey electric distribution companies and the creation of a green bank financing program for solar projects; 3) the replacement of the current fixed statutory solar demand schedule with a flexible regulatory supply-responsive demand formula that adapts to prevailing market conditions; and 4) the implementation of a capped-quantity incentive under a competitive procurement structure whereby a central authority controls the incentive supply by offering pre-determined quantities of long-term SREC purchase contracts.

Informed by the report, the BPU recommended no proactive policy change to the Legislature. The Board would continue to monitor market developments. If quarter-over-quarter solar power generation capacity additions change by at least 40 percent for more than three consecutive quarters the BPU would: a) evaluate whether regulatory intervention might be warranted; b) engage stakeholders in developing appropriate policy responses; and c) consider further restricting the SREC eligibility of large, potentially market-moving solar projects.

- **Questions:** Please explain the rationale for the Board's recommendation to make no changes at the present time to the existing solar market structure when the "Solar Market Development Volatility in New Jersey" report by Meister Consultants Group, Inc. and Sustainable Energy Advantage, LLC included other policy options. For what reason(s) did the BPU reject the alternative policy options?
- In the BPU's estimation, do the Renewable Portfolio Standard solar targets of P.L.2012, c.24 adequately reflect current solar market conditions, given the objective of sustained, orderly solar market growth? Is the BPU confident that the existing statutory solar targets will still be adequate in five years and beyond or does the BPU anticipate the need for future legislative changes to the solar demand curve to respond to future market conditions?

Response:

The "Solar Market Development Volatility Report" ("Report"), along with the Board's findings and recommendations resulting from the two-year public proceeding, was transmitted to the legislature on July 23, 2014. Because the term had not been defined in the legislation and the public process did not reach consensus, the authors provided a definition of "solar market development volatility." The Report established a historic basis for analyzing solar development volatility, identified factors contributing to the market's volatility, and identified mitigants to

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future volatility. The Report identified provisions within the Solar Act which were likely to reduce future volatility, such as a five year SREC life, proposals to limit future grid supply project development, and the reduction in the SACP level. The Report also identified pre-existing tools established by the Board that mitigate solar development volatility, such as the Electric Distribution Companies' SREC-based finance programs.

The Report described alternative policy options based on those identified in the stakeholder proceedings as well as from research on national and international best practices. The authors acknowledged that there was no consensus among stakeholders on the need for policy change or what a change would entail. As a result, they included an option characterized as "a hands-off policy that allows the market to fully integrate the changes created by the Solar Act." The Report concluded with the caution that "policymakers must weigh cost and benefits of future policy changes based on their impacts on multiple stakeholders, from individual ratepayer to existing system owners and the state's EDCs. Any future comprehensive evaluation of these policy options should weigh policymaker priorities related to market development volatility against other potentially competing policy priorities as well as the varies interests of New Jersey's many solar stakeholders." (Report, pg. 66 & 67)

Given the short timeframe for observing the market's reaction to the Solar Act and the relative stability in the market that has been observed during those two years, it is premature to recommend discarding the current system of solar incentives in New Jersey.

Based on the results of its public proceeding and the commissioned Report, the Board directed staff to continue to monitor the market and work with stakeholders to identify gaps in market data toward improving transparency for all participants, decision makers and stakeholders. The Board also recommended that should significant volatility be exhibited in the future, it would evaluate whether the changes in installation rates reflected typical market cycles or require regulatory intervention. The Board advised that it would engage stakeholders in developing appropriate responses to solar market development volatility.

The RPS solar targets adequately reflect current solar market conditions given the objective of sustained, orderly solar market growth. There are no indications that the solar targets will be inadequate in the short term. Estimating solar market conditions five years and beyond is problematic given that the life of the market in New Jersey is only slightly longer than ten years and any projections must take into account a myriad of interrelated economic and energy indices including, at a minimum, retail electricity sales, retail electricity costs, federal solar energy incentive policies, solar equipment costs, solar equipment efficiencies, inflation, and interest rates.

18. On October 21, 2013, the **New Jersey Solar Grid Supply Association and ten solar energy grid-supply developers filed a lawsuit against the State and the BPU** in Burlington County Superior Court seeking \$500 million in compensatory damages (*New*

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Jersey Solar Grid Supply Association v. State of New Jersey). The plaintiffs challenged the BPU's implementation of P.L.2012, c.24, which had changed qualifying criteria for participation in the Solar Renewable Energy Certificates (SRECs) program. In applying the new law, the BPU had denied or deferred approval for participation in the SREC program for solar energy generation projects that the plaintiffs had planned or begun to realize based on previous eligibility criteria. The plaintiffs reportedly sought compensatory damages for some \$43 million in stranded investments, some \$58 million in foregone development income, and some \$400 million in lost profits. In reply to BPU Discussion Point #17 in the OLS FY 2014-2015 Department of the Treasury Budget Analysis, the Board reported that the Burlington County Superior Court dismissed the case on April 11, 2014. It is not clear whether the plaintiffs appealed the decision. The BPU noted further in its discussion point reply that any court decision compelling the Board to approve all or most of the concerned solar projects could increase the current SREC oversupply in the market, which could deter future investments in solar power generation capacity.

P.L.2012, c.24 intends to correct an SREC market experiencing a substantial oversupply of solar electric power generation and to newly restrict the construction of large-scale solar power generation facilities on farmland. The law does not exempt from the new requirements solar facilities on farmland that were in the planning stages or under construction on the date of the law's enactment and that still had to receive final BPU approval for SREC program participation. Nevertheless the law instituted a special application process for such projects under subsection s. of N.J.S.A.48:3-87. One of its three conditions was BPU project approval; however, the law did not stipulate any guidelines concerning the evaluation of project applications. The BPU then used its discretion in a manner it deemed consistent with two objectives of P.L.2012, c.24: "limiting solar development on farmland and mitigating [SREC price] volatility" (page 19 of the Board Order dated May 8, 2013, Docket numbers EO12080832V, EO12090880V, EO12121101V, EO12121106V, and EO12121142V). It reviewed 57 applications for grid-supply solar projects on farmland under subsection s. of N.J.S.A.48:3-87. It approved three for SREC program participation owing to their advanced stage of development, deferred a decision on 20 projects, and denied 34 applications. The BPU pointed out that rejected projects could still seek approval for SREC market participation under a different provision of P.L.2012, c.24 that dealt with solar projects on farmland, namely subsection q. of N.J.S.A.48:3-87. (Board Order dated May 8, 2013, Docket numbers EO12080832V, EO12090880V, EO12121101V, EO12121106V, and EO12121142V concerns the three projects the BPU approved; and Board Order dated May 10, 2013, Docket numbers EO12090832V, EO12090880V, EO12121089V -- EO12121144V the projects the BPU denied or deferred). In reply to last year's BPU Discussion Point #17, the Board related that it subsequently approved 18 of the 54 previously rejected or deferred projects under subsection q. of N.J.S.A.48:3-87.

- **Questions: Have the New Jersey Solar Grid Supply Association and ten solar energy grid-supply developers appealed the April 11, 2014 Burlington County**

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Superior Court decision to dismiss their complaint against the State and the BPU? If so, please indicate the current status of the appeal. Have briefing or filing deadlines and oral arguments been scheduled? What are the expected decision date and the BPU's expectation of likelihood of success? What has been the State's cost to date of engaging in the court proceeding?

Response:

Neither the New Jersey Grid Supply Association nor the grid-supply developers appealed the April 11, 2014 Superior Court Order dismissing the complaint against the State and the BPU. Accordingly, there are no briefings, filings deadlines or oral argument(s) scheduled. Since the legal proceedings have concluded, there are presently no costs.

- **Other than the 18 solar power generation projects whose construction the BPU approved in the first two application rounds under subsection q. of N.J.S.A.48:3-87, have solar grid-supply developers submitted any applications for SREC market participation under subsection q. of N.J.S.A.48:3-87 for any solar power generation projects for which the BPU had denied approval under subsection s. of N.J.S.A.48:3-87? If so, how many projects fall into that category and by what date does the BPU anticipate ruling on the applications?**

Response:

The Board has not conducted an application window pursuant to Subsection q since it approved the results from Round 2 in January 2014. The approvals and conditional approvals made in the first two application windows allocated nearly all of the 240 MW of capacity provided for in this provision of Solar Act. In the Order memorializing the actions related to the second application window, the Board directed staff to monitor projects that were provided conditional approvals towards making a recommendation to the Board on or after June 1, 2014 on the need for additional application windows under Subsection q. To date, nine (9) Subsection q projects have achieved commercial operation and most of the remaining projects report progress toward completion.

In April 2013, when the Board deferred a decision on twenty (20) applications filed pursuant to Subsection s, it directed staff to work with stakeholders to develop recommendations for additional information and milestone reporting requirement, to enable further consideration of the deferred applications. In October 2014, the Board approved additional criteria for evaluation of the deferred applications and directed applicants to submit that information by December 8, 2014. Seven (7) of twenty (20) deferred applications submitted supplemental filings. The Board approved five (5) of the seven applications. Staff requested additional information from the developer of two (2) of the remaining Subsection s deferred applications and is currently finalizing its recommendation to the Board.

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19. In March 2011, the BPU suspended the **incentive program for small on-shore wind energy installations** over safety concerns following the failure of three New Jersey small-scale wind systems. Although the BPU ceased to accept new applications, it honored previously concluded incentive agreements and paid the final rebate commitments in FY 2014, according to section 3.2 of the BPU's "Comprehensive Resource Analysis — Staff Straw Proposal: Proposed Funding Levels FY15," dated May 23, 2014. In all, the program supported the construction of 42 wind installations.

The FY 2015 Clean Energy Program budget does not fund any on-shore wind energy project incentives (Board Order dated June 30, 2014, Docket number QO14050489). But the BPU reported in its "Comprehensive Resource Analysis — Staff Straw Proposal: Proposed Funding Levels FY15," that it anticipated reconvening the dormant NJ Small Wind Working Group in FY 2015 once it receives a contracted study of the performance and cost effectiveness of New Jersey's existing 42 small wind turbine installations. The working group was to make a recommendation to the Board whether to permanently forgo on-shore wind energy project incentives or whether to reinstate the suspended program in its previous or an altered form. In arriving at its recommendation, the working group was to consider the findings and recommendations of the aforementioned performance study and of a 2013 National Renewable Energy Lab forensic study that concluded that manufacturing design flaws caused the New Jersey wind turbine failures that prompted the 2011 suspension of the on-shore wind energy incentive program.

- **Questions: Please provide a status update on New Jersey's small wind rebate program. Has the study of the performance and cost effectiveness of New Jersey's 42 existing small wind turbine installations been completed? If so, what are its findings and recommendations? If not, by what date does the BPU expect the study's completion? Has the BPU reconvened the NJ Small Wind Working Group? If so, by what date does the BPU expect the working group to make recommendations regarding any future on-shore wind incentive program? Does the BPU anticipate the FY 2016 Clean Energy Program budget to fund on-shore wind incentives?**

Response:

In March, 2015, Cadmus reported to the RE Committee Meeting the findings of its impact study on small-scale (onshore) wind. Cadmus' evaluation of the sample population of 18 small-scale wind projects (and a subset of 11 projects with minimal downtime) show that ratepayer-funded wind systems are generating 64% of their pre-installation estimated output, normalized for wind speed.

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The analysis of customer reports of turbine downtime and lost generation found that half of the twenty (20) turbine owners that completed surveys reported at least some downtime due to mechanical, structural, electrical, or grid-related malfunctions.

Cadmus also reported customer satisfaction based on interviews with the 22 turbine owners willing to participate (of 39). Twenty (20) of the survey participants provided useful data, with half reporting some satisfaction and half some dissatisfaction. Eight (8) participants were extremely dissatisfied. Similar sentiments were expressed about satisfaction with energy savings.

20. a. The "Offshore Wind Economic Development Act," P.L.2010, c.57, directs the BPU to establish an **Offshore Renewable Energy Certificate (OREC)** program. A price-support system similar to the Solar Renewable Energy Certificate program addressed in Discussion Point ~~#X~~ above, the OREC program is intended to contribute to meeting the 2011 Energy Master Plan goal of building at least 1,100 megawatts of offshore wind electric generation capacity. Under the OREC financing mechanism, the BPU would first determine the generation capacity of offshore wind installations approved for OREC program participation and convert that capacity into an annual percentage of New Jersey electricity sales that must be from offshore wind installations. Electric power suppliers and providers would then have to source that percentage of their New Jersey electricity sales from offshore wind farms. They would do so through the purchase of ORECs, which represent power generated by owners of offshore wind electric generation systems at prices that reflect the higher cost of renewable energy. ORECs would be sold separately from the electricity actually generated by the wind farms. To limit the price-support system's cost to ratepayers, the BPU would set a *de facto* price ceiling for the certificates in the form of Offshore Wind Alternative Compliance Payments. Electric power suppliers and providers could make such alternative payments to the BPU in lieu of purchasing ORECs to meet their offshore wind requirements.

The OREC program is not yet operational. To date, the BPU has promulgated regulations on the OREC application process and has begun to accept and review applications. But the Board still has to adopt regulations setting up the infrastructure for an OREC market. In reply to BPU Discussion Point #18 in the OLS FY 2014-2015 Department of the Treasury Budget Analysis, the BPU noted that it had retained Boston Pacific to develop the OREC market model and that it anticipated releasing a detailed proposal thereof for public review in mid-2014. The Board added that based on conversations with stakeholders and federal regulators it expected up to 12 developers to ultimately apply for ORECs.

Yet even if the OREC program were operational, applicants would find it difficult to qualify for two reasons. First, projects to be sited in federal waters, which begin three miles off the State's coast, must receive federal permits. The United States government, however, has been slow to issue rules and permits for offshore wind energy activity. This barrier to OREC program participation may soon be moot, however, as the Bureau of Ocean Energy

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Management in the United States Department of the Interior issued a proposed sale notice in the Federal Register on July 21, 2014 for two commercial wind energy leases in a 344,000-acre New Jersey Wind Energy Area off the coast of Atlantic City ("Atlantic Wind Lease Sale 5 (ATLW5) for Commercial Leasing for Wind Power on the Outer Continental Shelf Offshore New Jersey—Proposed Sale Notice," Docket No. BOEM—2014—0029; MMAA104000). Second, the "Offshore Wind Economic Development Act" requires OREC-eligible projects to yield positive economic and environmental net benefits to the State. But complying with the economic net benefit requirement has posed a challenge. (Discussion Point #20 b. below elaborates on the economic net benefit test.)

- **Questions:** Please report on the BPU's progress in establishing the Offshore Renewable Energy Certificate (OREC) program. By which date does the BPU expect to have OREC rules promulgated, the market infrastructure set up, and the first certificates ready to trade? If an OREC funding mechanism proposal has not yet been released for public review, please explain the reason(s) for the delay. Please comment on the ways in which the anticipated federal sale of two commercial wind energy leases in the New Jersey Wind Energy Area has affected the content formulation and adoption timetable of the anticipated OREC rules.
- Please list the OREC applications the BPU has received to date, including the date of receipt and the status of the application evaluation process. Does the BPU foresee receiving additional OREC applications from future holders of the two federal commercial wind energy leases in the New Jersey Wind Energy Area?

Response:

On February 10, 2011, the Board adopted N.J.A.C. 14:8-6.1 et seq., providing for an application process for proposed projects and a framework under which the Board will review any application. On February 20, 2013, the Board readopted these rules with amendments to clarify the requirements and improve the application process. The offshore wind stakeholders were given the opportunity, through multiple stakeholder meetings prior to publication of the proposed re-adoption and through the public comment period, to provide input and recommendations regarding the rules.

BPU staff is continuing to develop the funding mechanism – the means by which payment for the OREC revenue will move from suppliers to the developers of operating facilities. In February 2013, Board staff and its consultant, Boston Pacific, met with stakeholders to present an OREC funding mechanism proposal that provided for regulatory certainty and funding security. The stakeholders raised significant objections to the proposal and were given the opportunity to provide their comments. Board staff received three competing proposals which

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demonstrated a lack of consensus among the stakeholders on how to proceed. Staff continues to work to develop a revised proposal that would provide regulatory certainty to all OSW stakeholders while withstanding review by the Attorney General's Office.

The Board is encouraged by the upcoming federal lease auction for possible future projects in federal waters off of New Jersey. The rule adoption is proceeding independently of that auction.

The Board has not received any other applications under OWEDA other than the Fishermen's Energy application because an application window for federal waters projects has not been opened pursuant to N.J.A.C. 14:8-6.3. Acquisition of a federal lease on the Outer Continental Shelf offshore New Jersey is a prerequisite for Board approval of a project in federal waters and the federal government's anticipated lease auction has yet to occur. The Board has informed BOEM that it would prefer that the federal government conduct the auction prior to the opening of the application window. The Board does anticipate opening an application window for auction winners and/or any other applicants who choose to submit an application at some point following the lease auction and the promulgation of the OREC funding mechanism rules.

20. b. OREC-eligible projects must yield positive economic and environmental net benefits to the State (N.J.S.A.48:3-87.1b.(1)(b)). But complying with the economic net benefit requirement poses a challenge, according to unidentified wind project developers cited in the NJSpotlight January 22, 2013 article "New Funding Mechanism Could Stop State from Raiding Offshore Wind Revenue." In fact, the only project for which the BPU has received an OREC application thus far, Fishermen Energy's planned 25-megawatt Atlantic City Wind Farm, failed the **OREC economic net benefit analysis** in December 2012. Subsequent project modifications could not alter the outcome and so the BPU denied the project's application definitively on March 19, 2014 and again on November 21, 2014. Moreover, in reply to BPU Discussion Point #18 in the OLS FY 2014-2015 Department of the Treasury Budget Analysis, the BPU stated that even though it expected up to 12 developers to apply for ORECs based on conversations with stakeholders and federal regulators, it did not know whether any particular project would pass the economic net benefit test. A year earlier, the Board had supported the statutory net benefit requirement as an "essential" ratepayer protection and had not recommended amending the enabling law to facilitate projects' entry into the OREC program (BPU response to BPU Discussion Point #4 in the OLS FY 2013-2014 Department of the Treasury Budget Analysis).

The BPU appears to use a different economic net benefit test in evaluating proposed offshore wind installations than the Economic Development Authority (EDA) routinely employs in analyzing project applications under its economic development incentive programs. For example, in the Board Order rejecting Fishermen Energy's OREC application for a second time (BPU Board Order dated November 21, 2014, Docket number EO11050314V), the BPU noted on page 6 that Boston Pacific conducted the net economic benefit test as the BPU's consultant in the case. Moreover, according to section 2.1 of the BPU's "Comprehensive Resource Analysis — Staff Straw Proposal: Proposed Funding Levels FY15," dated May 23,

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2014, the Center for Energy, Economic and Environmental Policy (CEEPP) at Rutgers, the State University of New Jersey, performed an offshore wind analysis in FY 2014, which was to provide the BPU "with an integrated set of tools" for evaluating the economic impact of proposed offshore wind projects. The CEEPP was also in the process of linking various environmental and economic models to calculate the economic impacts of a generic offshore wind project in New Jersey.

- **Questions:** Please explain the BPU's rationale for not using the EDA's existing economic net benefit test in evaluating the economic impacts of proposed offshore wind projects. Does the EDA's model have biases that affect the likelihood of proposed offshore wind projects passing the test? How does the economic net benefit test that Boston Pacific used in analyzing Fishermen Energy's OREC application for its planned Atlantic City Wind Farm differ in method and assumptions from the EDA's economic net benefit test? For what reason(s) has the BPU called on the CEEPP to develop a separate methodology and how is the CEEPP's model different from the EDA's and Boston Pacific's? Please provide a description of the methodology of the economic net benefit test the BPU is currently using.

Response:

The BPU recognizes there are multiple methodologies and models available to OREC applicants to estimate an offshore wind project's net economic and environmental benefits. An OREC applicant may choose the input-output model it deems best demonstrates the net benefits of its project. It is then up to the applicant to validate the assumptions and inputs used in the model in order to substantiate the results. The BPU is required to evaluate the credibility of the asserted benefits and may use its own model to do so.

OWEDA requires applicants to submit a cost-benefit analysis for the project "to show net benefits for the State" which shall include "a cost-benefit analysis including at a minimum . . . an input-output analysis of the project on income, employment, wages, indirect business taxes and output in the State with particular emphasis on in-State manufacturing employment." N.J.S.A. 48:3-87.1a(10)(a); see also N.J.A.C. 14:8-6.5(a)(11). The Board will not specify what input-output models are acceptable, but will allow applicants to use any model that successfully captures New Jersey benefits. Suggested models include, but are not limited to: Rutgers R/ECON; Regional Economic Models, Inc. (REMI); MIG Inc. IMPLAN model; and the Bureau of Economic Analysis RIMS II model. N.J.A.C. 14:8-6.5(a)(11)(i)(1)(A)-(D). OWEDA requires that the Board "conduct a thorough evaluation of the proposal." N.J.S.A. 48:3-87.1a(14). To do so, "[t]he Board staff may test an applicant's cost benefit analysis on its own model, which, preferably, would be the same one used by an applicant but it could be a different one, by replicating the analysis using model inputs supplied by the applicant." N.J.A.C. 14:8-6.5(11)(xii).

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The BPU has engaged consultants, including Boston Pacific and Rutgers CEEEP, to evaluate the credibility of an applicant's assumptions, inputs and asserted economic benefits. Per the rules cited above, the consultant tests an applicant's results using the same model or by using a different model. Boston Pacific examined the cost/benefit analysis submitted by FACW and evaluated the validity of the assumptions and inputs as detailed in its report "Evaluating the Economics of Offshore Wind Projects: Evaluation of the Amended Application by Fishermen's Atlantic City Wind Farm, LLC." (December 12, 2012). In that report, Boston Pacific concluded that "net benefits were not demonstrated because key underlying assumptions of the Applicant's cost benefit analysis were not adequately substantiated." (pg.19) Boston Pacific relied on the input/output model submitted by the applicant (FACW) and evaluated the validity of the inputs and cost benefit calculations. FACW selected the R/ECON model to calculate the impact that the Project would have on the New Jersey economy. As noted in its December 12, 2012 report, Boston Pacific found that "The R/ECON model adds credibility to the calculation of economic benefits to New Jersey. However, the R/ECON model relies on input assumptions that are provided by the Applicant." Boston Pacific then detailed the assumptions, inputs and/or outputs it challenged and why.

In anticipation of an OREC application window for projects located in federal waters, BPU has engaged Rutgers CEEEP and Rutgers Institute of Marine and Coastal Studies (IMCS) to help evaluate the net benefits of OSW projects using multiple models. Rutgers CEEEP is able to perform multifactorial analysis linked to an OSW characterization model, electricity generation power curve/model, and PJM unit commitment/dispatch model. In other words, Rutgers CEEEP is able to test the assumptions about wind generation and the impact of those resources in the generation of electricity and delivery to the grid, in addition to the economic impacts tied to project construction and operation. This work will enable the Board to assess the site-specific impacts of the items such as sea breeze circulation and coastal storms on the offshore wind resource characteristics and power production potential associated with the proposed BOEM NJ WEA Lease Zones. The hourly results of the sea breeze and coastal storm modeling efforts will then be provided to Rutgers CEEEP to be used as input for their energy/economic evaluations.

The NJ Economic Development Authority (NJEDA) analysis utilizes the RIMS II input/output model, and uses the applicant's own assumptions about wind resources, revenue forecasts and other inputs. Rutgers CEEEP uses other assessments of such revenue streams.

21. Pilgrim Pipeline Holdings, LLC is seeking to construct two parallel 24-inch underground pipelines to transport crude oil and refined petroleum products over 178 miles from Albany, New York to Linden, New Jersey. The pipeline's exact routing has not yet been made public. The developer contends that the project would provide New York and New Jersey with a safer, more reliable, and more environmentally friendly shipment mode for crude oil and refined petroleum products than their current transportation on Hudson River

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barges. Opponents reject the project on environmental, safety, and "not-in-my-backyard" grounds.

Several federal and State government agencies share the responsibility for permitting and regulating interstate pipelines. The New Jersey Department of Environmental Protection would be at the forefront of the permitting process concerning the New Jersey siting of the **proposed Pilgrim oil pipeline**, given the absence of a comprehensive federal permitting process for the routing of interstate oil pipelines. Once approved and built, the pipeline would be subject to the inspection and enforcement of federal safety regulations for hazardous liquid pipelines by the Office of Pipeline Safety in the Pipeline and Hazardous Materials Safety Administration in the United States Department of Transportation. New Jersey currently does not regulate and monitor oil pipelines located in its territory post-construction.

It is not clear, however, to what extent the BPU might want to assert jurisdiction over the permitting process or the post-construction regulation and monitoring of the proposed Pilgrim oil pipeline. While the Board currently does not regulate oil pipelines, it has dormant statutory authority to do so. N.J.S.A.48:2-13 states that the "board shall have general supervision and regulation of and jurisdiction and control over all public utilities" and defines the term "public utility" to include every entity that may own, operate, manage or control within this State any pipeline. Moreover, in several other states, state agencies perform regulatory oil pipeline safety, security, monitoring, and compliance duties pursuant to agreements with the federal Pipeline and Hazardous Materials Safety Administration. In operating the Pipeline Safety Program, the BPU already performs that role with regards to natural gas pipelines in accordance with N.J.S.A.48:10-2 et seq. The law charges the board with the general supervision and regulation of natural gas pipeline utilities and their property, equipment, and facilities.

- **Questions:** Please comment on the BPU's actual and planned involvement in the permitting process for the construction and operation of the Pilgrim oil pipeline. What is the nature of any involvement? If the BPU intends not to exercise jurisdiction, please provide the rationale for not doing so. If the oil pipeline were to be built, does the BPU intend to conclude an agreement with the federal government, whereby the BPU would perform the regulatory oil pipeline safety, security, monitoring, and compliance duties of the federal Pipeline and Hazardous Materials Safety Administration within the context of an expanded Pipeline Safety Program or a new program? Do the federal hazardous liquid pipeline safety regulations and their enforcement afford adequate protection to New Jersey residents?

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Response:

The citation to the Board's jurisdiction under N.J.S.A. 48:2-13 omits the last section of the statute which states: "for public use, under privileges granted or hereafter to be granted by this State or by any political subdivision thereof". Based on the fact that the pipeline is interstate (Albany, New York to Linden, New Jersey) and in the absence of a finding of "public use" the Board does not have jurisdiction over the pipeline. Therefore, the Board has no planned involvement in the pipeline at this time.

22. Hurricane Irene made landfall in New Jersey on August 28, 2011 and disrupted service to 1.9 million of the State's 3.9 million electric customers with some not having their electricity restored for eight days. Two months later, an October 29, 2011 snowstorm caused 1.0 million customers to lose power with the most unfortunate being without electric service for seven days. The **power restoration performance of electric distribution companies** in the wake of the two storms attracted the BPU's scrutiny. On December 14, 2011, the Board released its "Hurricane Irene Electric Response Report" in which it found that all electric utilities experienced challenges in their storm response and that some practices established in accordance with prior BPU actions were ineffective in the face of large-scale extreme weather situations. Accordingly, the BPU issued several directives so as to avert similar widespread and lengthy power outages in the future. They touched electric utility practices in the areas of communications, estimating outage restoration, supplemental crew mobilization, and mitigation of tree-related damages. The BPU also hired Emergency Preparedness Partnerships to review the electric utilities' performance in-depth. On August 9, 2012, the contractor submitted its final report. Its findings and recommendations led to the issuance of a Board Order containing 103 additional BPU directives New Jersey's electric distribution companies had to implement, mostly, by September 2013 to improve their preparedness for and restoration efforts following large-scale extreme weather events. The measures fell into five categories: preparedness efforts, communications, restoration and response, post event, and underlying infrastructure issues (Board Order dated January 23, 2013, Docket number EO11090543). The Board responded to BPU Discussion Point #19 in the OLS FY 2014-2015 Department of the Treasury Budget Analysis that all electric utilities had implemented the 103 directives from January 23, 2013.

Prior to the issuance of the January 2013 Board Order, Hurricane Sandy made landfall in New Jersey on October 29, 2012 and took a significantly larger toll on the State's electric infrastructure than the 2011 storms. In response to BPU Discussion Point #1 in the OLS FY 2013-2014 Department of the Treasury Budget Analysis, the BPU specified that 49 major substations were flooded, over 3,000 distribution circuits damaged, and more than 100,000 trees and 9,000 utility poles felled. The number of electric customers without power peaked at 2.9 million. In general, the Board acknowledged improvements in the utilities' restoration performance relative to the 2011 storms. It found restoration efforts to have been more focused, the mobilization of supplemental mutual aid assets unprecedented, the level of

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preparedness and response higher, and communications between State and utility officials more fluid and functional. The BPU, however, continued to express misgivings regarding the accuracy and content of information the utilities transmitted to ratepayers and issued a Board Order on May 29, 2013 that directed the electric utilities to implement eight communications-related measures in addition to those included among the 103 BPU directives from January 23, 2013 (Board Order dated May 29, 2013, Docket number EO12111050). The directives aimed at enhancing the content, accuracy, and timeliness of service restoration information given on the electric utilities' public outage websites and to municipal officials. In addition, the electric utilities had to make outage status information available to customers via text messaging, mobile applications or other similar methods. According to the Board's response to BPU Discussion Point #19 in the OLS FY 2014-2015 Department of the Treasury Budget Analysis, the electric utilities had already implemented two of the eight directives and had through June 10, 2014 to put the remaining six mandates into practice.

The service restoration expenses of investor-owned utilities are ineligible for federal emergency aid so the utilities have sought recovery from ratepayers in BPU base rate filings. To organize and streamline the approval process, the Board directed all utilities to file by July 1, 2013 a detailed report of their preparation, recovery, and restoration expenses for all recent storms (Board Order dated March 20, 2013, Docket number AX13030196). The BPU would then examine the prudence, cost-efficiency, and effectiveness of the utilities' restoration activities. Electric utilities ultimately petitioned the BPU to authorize the recovery of \$896.5 million in Hurricane Sandy restoration expenditures and natural gas utilities of \$49.6 million in such expenses, according to the Board's response to BPU Discussion Point #19 in the OLS FY 2014-2015 Department of the Treasury Budget Analysis. The BPU detailed that it had already approved storm-related recovery costs for Jersey Central Power & Light (\$572.7 million) and Atlantic City Electric (\$48.4 million). It had not yet ruled on storm-related recovery costs of the other electric and natural gas utilities. Atlantic City Electric recovery costs were already, and Jersey Central Power & Light recovery costs not yet, included in the respective utility's base rates.

- **Questions: Please comment on the electric distribution companies' implementation of the eight directives the BPU issued in the Board Order dated May 29, 2013, Docket number EO12111050 to improve the utilities' future service restoration communications following large-scale extreme weather events. Have all companies implemented the eight directives? If not, please indicate which electric distribution company must still put into practice which of the directives and provide an estimate as to the expected implementation date.**

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Response:

Board staff has tracked the implementation of these directives. All of the Electric Distribution Companies (EDCs) have implemented the eight directives in the Board's May 29, 2013 Order in Docket No. EO120111050. The EDCs have implemented the required changes to their Emergency Response Plans and procedures are in place to include the required information on the EDC websites.

- **Please indicate by electric and natural gas utility: a) the amount of service restoration expenses that each utility has sought to recover from ratepayers, according to filings under Board Order dated March 20, 2013, Docket number AX13030196; b) the recovery amount the BPU has already approved; and c) the impact on ratepayers of the requested and approved cost recoveries. Please set forth the timeline and process the Board intends to follow in reviewing and ruling on any outstanding service restoration cost recovery petitions submitted in accordance with the March 20, 2013 Board Order.**

Response:

The service restoration expenditures associated with the Major Storm Events specified in Docket No. AX13030196, and authorized for recovery in company-specific Board orders, are all but completed. In most cases the expenditures, summarized here, have been deferred and made eligible for recovery via resolution of the companies' next base rate cases:

MAJOR STORM RESTORATION SPENDING BY UTILITY							
(\$000)							
04/16/15	HURRICANE SANDY			OTHER MAJOR STORMS			Total
COMPANY	Expense	Capital	Total	Expense	Capital	Total	Expenditures
PSE&G - E	\$172,400	\$75,000	\$247,400	\$56,600	\$45,400	\$102,000	\$349,400
JCP&L	\$247,003	\$333,185	\$580,188	\$74,007	\$81,912	\$155,919	\$736,107
RECO	\$17,115	\$4,426	\$21,541	\$8,531	\$1,175	\$9,706	\$31,247
ACE	\$11,864	\$22,550	\$34,414	\$13,940	\$21,662	\$35,602	\$70,016
PSE&G - G	\$7,000	\$3,800	\$10,800	\$4,100	\$1,600	\$5,700	\$16,500
NJNG	\$15,200	\$33,500	\$48,700	\$0	\$0	\$0	\$48,700
ETG	\$0	\$0	\$0	\$0	\$0	\$0	\$0
SJG	\$737	\$10,000	\$10,737	\$0	\$0	\$0	\$10,737
	\$471,319	\$482,461	\$953,780	\$157,178	\$151,749	\$308,927	\$1,262,707

Those storm costs found prudent by the Board have been allowed to be reflected in the utility's rates, although Public Service Electric and Gas' recovery remains pending a new rate case. The

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annual revenue requirements related to the gross storm costs reflected in the table above are significantly lower than those gross amounts since the costs will be recovered over a number of years. The rate treatment of the storm costs found prudent for PSE&G will be determined in its next base rate case.

23. Hurricane Sandy's large-scale damage prompted the BPU to examine the feasibility of different options to **enhance the resilience of electric utilities' infrastructure in future severe weather episodes**. To that end the Board instructed electric distribution companies to provide detailed cost-benefit analyses for several specific infrastructure upgrades, examine their infrastructure, and use data to determine more effective mitigation measures and procedures (Board Order dated January 23, 2013, Docket number EO11090543). The Board engaged General Electric Energy Consulting to review the companies' submissions and analyze possible options to shore up the reliability of New Jersey's electric distribution system in extensive, violent storms. The contractor presented its "Final Report for: NJ Storm Hardening Recommendations and Review/Comment on EDC Major Storm Response Filings" on November 26, 2014 replete with 22 policy recommendations:

Subject Area	Recommendation
Electric Distribution Company (EDC) Major Event Reports	Enhance EDC Major Event Reporting requirements to enable comparative and quantitative assessments of EDC performance.
Electrical Infrastructure Hardening	<p>Track trees sited outside of right-of-way that risk causing power outages; predict and report associated damage, number of customer interruptions, and restoration time by danger tree.</p> <p>Segment customers by restoration priority; calculate and report for each customer an estimate of hours out of service due to damage caused by trees sited outside of right-of-way during normal weather.</p> <p>Communicate to customers estimates of hours out of service due to damage caused by trees sited outside of right-of-way during normal weather and provide convenient mechanisms for customers to report danger trees.</p> <p>Where justified, grant EDCs the authority (for example via eminent domain) to remove danger trees outside of right-of-way.</p> <p>Determine the most cost-effective level of tree-trimming and optimal corridor width by circuit or segment.</p> <p>Underground the most critical distribution feeders and tap lines, where practical, to improve reliability and reduce storm restoration time.</p> <p>Determine the most cost-effective inspection cycle and method for poles and associated equipment by circuit, and prioritize based on criticality and condition.</p>

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	Upgrade electric transmission and distribution structures near coastal areas, and incorporate extreme wind and ice loading criteria in all transmission and distribution structure designs, regardless of height.
	Insert steel or concrete structures in long straight circuits with wood structures to prevent cascading failures (domino effect); alternatively reinforce wood poles with steel bands.
Electrical Substation Hardening	Add elevation attributes to every flood-prone asset in a substation equipment database; report number of assets below the 100-year flood and storm surge elevation plus 1 foot.
	Perform limited Failure Modes and Effects Analysis (FMEA) for substations using weather events as the modes with customer outages and substation equipment failure as an effect; report findings.
	Rank FMEA findings, estimate and report costs of hardening substation equipment to eliminate the top 20 percent of equipment failures leading to customer outages.
	Estimate and report costs of regular inspection for critical assets; optimize inspection cycles to achieve highest impact with lowest cost.
	Identify and report communications facilities critical to restoration process; estimate and report costs of providing backup power thereto.
	Require EDCs to include quick deployment of mobile substations and mobile backup generator equipment in emergency response plans.
Smart Grid and Distribution Automation Technologies	Mandate that EDCs assess impact of reliability-oriented smart grid and distribution automation technologies and create investment and deployment plans for the most impactful technologies.
	Target smart grid and distribution automation technologies deployment plans to evaluate the technologies' effectiveness for resiliency by strategic deployment on subsets of circuits with similar storm exposure and physical attributes.
	Define and mandate reporting requirements to track effectiveness of smart grid and distribution automation technologies in storm recovery activities.
	Require EDCs to quantify potential improvement in damage forecasts using storm tracking and damage prediction tools, and assess resulting improvement in storm response.
	Continue to look at the value of microgrids and back-up generation to the state, consistent with the Energy Master Plan, and initiate techno-economic feasibility studies where practical.
	Mandate enhanced EDC smart grid and distribution automation plan submissions to ensure completeness, and to enable comparative

Discussion Points (Cont'd)

	evaluation and benchmarking of investment plans.
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- Questions:** Please indicate the implementation status of each of the 22 policy recommendations that General Electric Energy Consulting made in its November 26, 2014 BPU-commissioned report to shore up the reliability of New Jersey's electric distribution infrastructure in extensive, violent storms. For each policy recommendation that the BPU does not intend to implement, please provide the rationale for not carrying out the recommended action item.

Response:

The Board's Order dated January 23, 2013 in Docket No. EO011090543 required the EDCs to cooperate with Board staff in standardizing the content of the submittals of the Major Event Reports. Board staff has had conversations with the EDCs about this topic and is moving toward a consensus in this area among the EDCs which will result in a revised major event format. Regardless of the format of the Major Event Report, Board staff employs other methods to obtain the necessary information to investigate EDC performance before, during and after a Major Event. The Major Event Report is one component of a multifaceted data and performance review process.

The Board has recently issued a proposed re-adoption with amendments of N.J.A.C. 14.5 which is the part of the rules and regulations dealing with utility reliability and security including vegetation management rules. Those proposed rules have been published in the New Jersey Register and will be finalized by August of 2015. A series of stakeholder meetings were held during the course of the previous year that sought to provide for input from all relevant stakeholders. The GE Report was issued on the eve of the issuance of the proposed rule amendments. However, many of the recommendations that were made in the GE report were addressed in the proposed rule amendments.

The Board has proposed that a new subsection be added to the rules that would have the EDCs track and report on "Hazard" trees on the distribution system that cannot be mitigated by the EDCs. The inclusion of hazard tree tracking and reporting will enable the Board to more accurately track tree threats on the distribution systems. A new section requires the EDCs to report customer and substation outages on a quarterly basis. The information will allow the Board staff to react more quickly to identify problem areas. An amendment will increase the number of distribution circuits identified as worst performing from four (4) percent to eight (8) percent, which will enable the EDCs to become more proactive in enhancing overall reliability. A new addition would spell out the steps to be taken when hazard trees are identified depending on whether such trees are in or out of the right-of-way. A new addition to the rules would require the removal of all overhanging vegetation on the distribution line from the substation to the first protective device on the circuit. The new requirement should improve

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performance during storm events while also allowing discretion to the EDCs by exempting mature trees from the requirement.

The Board is also addressing the infrastructure issues mentioned in the GE Report. In addition to the Energy Strong program approved by the Board in May 2014, there is presently before the Board a proposal by Rockland Electric Company that seeks to make storm mitigation investments and to improve the resilience of its system. The other two EDCs, JCP&L and ACE have responded to the Board's January 23, 2013 order by describing steps that have been and will be taken with respect to storm hardening and system resilience. The Storm mitigation measures approved by the Board for the GDCs are discussed in the answer to Question 24.

In regard to the Smart Grid and Distribution Automation (SG/DA) Technologies recommendations, the BPU will be working with the four electric distribution companies to follow up on the GE SG/DA recommendations. The goal is to enhance the modernization of the grid that allows for a two-way flow of energy and communications between the EDCs and their customers which can improve the resiliency of the electric distribution system.

24. On March 20, 2013, the BPU opened proceedings inviting all regulated utilities to submit, by September 3, 2013, **proposals for capital investments that would strengthen the ability of the utilities' infrastructure to withstand major storm events**, including detailed cost-benefit analyses for each proposed infrastructure upgrade (Board Order dated March 20, 2013, Docket number AX13030197). The BPU replied to BPU Discussion Point #20 in the OLS FY 2014-2015 Department of the Treasury Budget Analysis that it had received capital investment funding requests through the rate-setting process from three natural gas utilities and one electric distribution company: Elizabethtown Gas, \$15 million; New Jersey Natural Gas Company, \$102.5 million; South Jersey Gas Company, \$280 million; and Public Service Electric and Gas Company (PSE&G), \$3.9 billion.

On May 21, 2014, the BPU adopted a Stipulation of Settlement concerning **PSE&G's "Energy Strong Program,"** the most expansive of the proposed utility capital improvement plans (Board Orders dated May 21, 2014, Docket numbers EO13020155 and GO13020156). Originally, PSE&G had petitioned the BPU for approval of a \$3.9 billion, ten-year capital improvement plan to fortify its electric and natural gas distribution infrastructure (Board Orders dated March 20, 2013, Docket numbers EO13020155 and EO13020156). In the end, the Stipulation of Settlement allows the company to recover only \$1.0 billion in investments from ratepayers (\$600 million for the Electric Investment Program and \$400 million for the Gas Investment Program). But PSE&G will spend an additional \$220 million in its Electric Investment Program that the company will seek to recover from ratepayers at its next base rate case, which the company agreed to file not later than November 1, 2017. As to ratepayer costs, on its website, PSE&G estimates that the scaled-back "Energy Strong Program" will add \$4 to the average residential ratepayer's monthly bill by 2018. The Stipulation of Settlement lists the following sanctioned projects and requires PSE&G to

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provide quarterly performance, progress, and cost reports thereon to the BPU and the New Jersey Division of Rate Counsel:

1. Electric Station Flood Mitigation – Five-year program to wall, raise, and rebuild 29 switching or substations that had recent water intrusion events; \$400 million Energy Strong plus \$220 million PSE&G money;
 2. Electric Distribution Contingency Reconfiguration Strategies – Three-year investment of up to \$100 million in technologies that are to contain power outages to smaller geographic areas if electricity distribution infrastructure sustains damage;
 3. Electric Advanced Technologies – Three-year investment of up to \$100 million to equip electric stations with smart grid technologies that would continuously relay information on system operations to PSE&G, thereby improving the company's infrastructure monitoring, management, and restoration processes;
 4. Gas Utilization Pressure Cast Iron – Three-year investment of up to \$350 million to replace 250 miles of low-pressure cast iron main and related services with higher operating pressure systems in or near flood areas, so as to eliminate future water infiltrations; and
 5. Gas Metering and Regulating Station Flood Mitigation – Five-year investment of up to \$50 million to implement flood mitigation measures at five natural gas metering stations that had water intrusion from Hurricane Sandy and to provide an auxiliary generator at the Burlington Liquefied Natural Gas Plant station.
- **Questions: Please present the reason(s) for approving only a scaled-back \$1.0 billion, instead of the requested \$3.9 billion, recovery from ratepayers for PSE&G's "Energy Strong Program." Does the non-approval of the remaining \$2.9 billion in infrastructure hardening investments put PSE&G's customers at an increased risk of prolonged power outages in future severe weather events? Does the BPU expect PSE&G to seek Board approval once more as part of the company's anticipated 2017 base rate proceedings for the "Energy Strong Program" components that were not included in the 2014 Stipulation of Settlement? Is the approved "Energy Strong Program" consistent with the policy recommendations General Electric Energy Consulting made in its "Final Report for: NJ Storm Hardening Recommendations and Review/Comment on EDC Major Storm Response Filings" that the BPU plans to implement (See Discussion Point #23)?**
 - **Please provide a status update for PSE&G's approved "Energy Strong Program." Are the projects running on schedule and on budget? Please relate the cause(s) of any cost overrun or implementation delay, and, if applicable, provide updated project budgets and timetables. Would PSE&G be allowed to recoup**

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any cost overrun from ratepayers or is the approved \$1.0 billion program budget a hard cap?

- Please indicate whether the BPU has ruled on the funding requests through the rate-setting process for the following natural gas infrastructure hardening investment programs: Elizabethtown Gas, \$15 million; New Jersey Natural Gas Company, \$102.5 million; and South Jersey Gas Company, \$280 million. What is the size of any BPU-approved capital programs and what is their current implementation status? If the BPU has not yet ruled on the infrastructure upgrade proposals, by what date does the Board anticipate doing so and what factor(s) account for the decision delay?

Response:

The request made by the company in its "Energy Strong" proposal was for a \$2.7 billion investment over a 5-year period. While the company alluded to a larger \$3.9 Billion program, that larger program was not before the Board. The Board approved a program that would cost an estimated \$1.22 billion. No restrictions were placed on the ability of the company to file for additional programs and investments similar to Energy Strong in the future. The parties agreed that the investments and construction necessary for the enhanced infrastructure on PSEG's system could be reasonably undertaken within the time frame agreed to on a safe and reliable basis. The Energy Strong programs that were approved by the Board include investments discussed in the GE Report including investments to mitigate potential flooding of substations, investments to enhance resilience, and investments to better automate the system.

The Board's order required the company to hire a monitor to review the progress of the Energy Strong programs including how actual costs compared to estimated costs. The monitor recently issued its first annual report providing, inter alia, the status of each of the programs. The report indicated that, while each program was at different stages of development, overall the program was on schedule and within the amounts budgeted for each program. One substation has been eliminated; the other substations are at various stages of permitting and engineering development. With respect to the replacement of gas mains, 98 miles have been replaced through 2014 with another 152 miles scheduled for 2015. The Contingency Reconfiguration program (pole and wire strengthening) is well over 50 percent complete. The system automation upgrades are still in the design stage but are anticipated to be completed on schedule and within budgeted amounts. The \$1.0 billion is a hard cap and the company would not be able to collect any cost overruns under the rules of the Energy Strong program.

The BPU has ruled on the infrastructure hardening proposals of the GDCs. Each of the companies' programs is underway. The Board approved Elizabethtown Gas' "Endure" proposal at the spending levels requested (\$15 million). The Board also approved New Jersey Natural Gas Company's "Rise" proposal at the spending levels requested (\$102.5 million). The Board

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approved South Jersey Gas Company's "Sharp" proposal but at reduced spending levels (\$103.5 million approved versus \$280 million requested) and time period (from seven to three years).

25. On September 11, 2014, the United States Court of Appeals for the Third Circuit affirmed a lower court ruling that the **Long-Term Capacity Agreement Pilot Program (LCAPP)** violated the Supremacy Clause of the United States Constitution. The Supremacy Clause establishes the primacy of federal law whenever state and federal law clash. Specifically, the appeals court held that in establishing electricity capacity prices for participating power generators the LCAPP breached the Federal Power Act through which the United States Congress had granted the Federal Energy Regulatory Commission the exclusive jurisdiction over the regulation of wholesale electricity sales and the transmission of energy in interstate commerce (*PPL EnergyPlus, LLC v. Solomon*, --- F.3d ---- (2014) (3d Cir. 2014)). On December 10, 2014, the BPU filed a petition for a writ of certiorari with the United States Supreme Court asking the court to review the appeals court decision.

Although the United States Court of Appeals for the Third Circuit affirmed the LCAPP's unconstitutionality, it did so on narrower grounds than the lower court with potentially significant policy implications. In its October 11, 2013 decision, the United States District Court for the District of New Jersey had effectively ruled that any State action affecting interstate wholesale electricity sales and the transmission of energy, even if just incidentally, was preempted and unconstitutional (*PPL EnergyPlus, LLC v. Hanna*, 977 F.Supp.2d 372 (D.N.J. 2013)). The absolute prohibition extended to all state financial support for the construction of power plants, as the support distorted the electricity market. The appeals court disagreed in clarifying that states retained a regulatory role in the nation's electric energy markets and that the Federal Energy Regulatory Commission's "authority over interstate rates does not carry with it exclusive control over any and every force that influences interstate rates." Consequently, the appeals court reestablished the State's authority to provide financial incentives to support power plant construction. But it differentiated between constitutional and unconstitutional forms of support. Incentives are permissible as long as they do not set wholesale capacity prices, considering that the Federal Energy Regulatory Commission exercised exclusive control of that field. The LCAPP, however, failed that test in fixing wholesale capacity prices for the owners of the subsidized power plants.

The State originally enacted P.L.2011, c.9 to foster the construction of new electric generation facilities through the LCAPP. The BPU later selected three gas-fired combined cycle projects for program participation: NRG Energy Inc.'s Old Bridge Clean Energy Center, Competitive Power Ventures LLC's Woodbridge Energy Center, and Hess Corp.'s Newark Energy Center. The projects were supposed to add 1,950 megawatts to New Jersey's generation capacity and provide an estimated \$1.8 billion in net economic benefits on a present value basis over 15 years. In general, combined cycle power facilities produce

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electric power via the combustion of fuel and use the resulting waste heat by-product to generate additional electric power.

To subsidize the projects, P.L.2011, c.9 provided for "Standard Offer Capacity Agreements" (SOCAs). A SOCA is a contract in which participating power generators would receive BPU-approved payments from electric public utilities for a defined amount of electric capacity at a guaranteed, fixed price for a term not to exceed 15 years. But in order to ultimately qualify for SOCA payments, the BPU-selected generation companies had to succeed at selling their capacity in interstate electricity auctions conducted by PJM Interconnection LLC, the regional transmission organization operating the wholesale competitive electricity market and power grid across thirteen Mid-Atlantic and Midwestern states and the District of Columbia. Two of the three projects cleared the 2012 capacity auction: the Woodbridge Energy Center and Newark Energy Center. NRG Energy's Old Bridge Clean Energy Center, however, failed the 2012 and 2013 capacity auctions. As a result, NRG Energy had already abandoned the project prior to the ruling by the United States District Court for the District of New Jersey.

The adverse court decisions therefore only affected the other two projects. According to the Board's response to BPU Discussion Point #21 in the OLS FY 2014-2015 Department of the Treasury Budget Analysis, Hess Corp. planned to finish the ongoing construction of the Newark Energy Center in June 2015, the court decision notwithstanding. As to Competitive Power Ventures LLC's Woodbridge Energy Center, the BPU reported that construction had commenced and that the company expected to take the plant into operation by June 2017. The BPU noted that neither operator had sued, or made known their intention to sue, the State for damages they would incur from the invalidation of the LCAPP price-support mechanism. Moreover, the BPU did not provide the plant operators with an alternative form of financial support, as the 2013 district court decision did not permit any financial incentive or price-support.

- **Questions:** Please indicate the current status of the petition for a writ of certiorari that the BPU filed with the United States Supreme Court asking the court to review the United States Court of Appeals for the Third Circuit's September 2014 decision that declared the Long-Term Capacity Agreement Pilot Program (LCAPP) to be in violation of the United States Constitution. What is the status of the BPU's petition? If the Supreme Court has granted the petition: a) has it scheduled briefing or filing deadlines and oral arguments; b) what is the expected decision date; and c) what is the BPU's expectation of likelihood of success?
- Please comment on the effects of the appeals court decision. Is the Newark Energy Center still anticipated to be operational by June 2015 and the Woodbridge Energy Center by June 2017? Given that the appeals court reestablished the State's authority to offer certain forms of financial support to

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develop new generation capacity, is the BPU in negotiations with the two power plant owners concerning State financial assistance? In general, is the BPU planning any new financial incentive or price-support programs to develop new generation capacity in the State?

Response:

Currently, the petition for the writ of certiorari remains pending, and the United States Supreme Court recently invited the Solicitor General to provide a brief on the matter.

To the best of our knowledge, both the Newark Energy Center and the Woodbridge Energy Center remain on schedule for operations. The BPU is not negotiating with any entity at this time, and is instead awaiting the outcome of the litigation. As you are aware, the LCAPP process was not BPU directed, but was legislatively set. The BPU is unaware of any additional legislative action on this topic.

26. The Oyster Creek nuclear power plant in Lacey Township, Ocean County, is expected to be decommissioned at the end of 2019. Its 615 megawatt (MW) capacity represents 15 percent of 4,108 MW in total statewide nuclear power generation capacity from four licensed nuclear power plants. In 2011, nuclear power accounted for 51.9 percent, or 39 million megawatt hours (MWh) of the 75 million MWh of electricity generated in New Jersey.

Because nuclear power is a carbon-free electricity generation resource the authors of the 2011 Energy Master Plan contend that Oyster Creek's closure jeopardizes the attainment of the greenhouse gas reduction targets of the Global Warming Response Act, P.L.2007, c.112: 2020 New Jersey greenhouse gas emissions are not to exceed their 1990 level and 2050 emissions 20 percent of their 2006 level. The plan's authors state that, consequently, "the Christie Administration supports the consideration of new nuclear generation as a potential baseload resource." They relate further that a planning process has begun to explore **substitution options for Oyster Creek's generation capacity** and that a State agency panel will be established to assess the **role of nuclear power in New Jersey's future in-state electricity generation**. In addressing BPU Discussion Point #22 in the OLS FY 2014-2015 Department of the Treasury Budget Analysis, the Board noted that the panel had not yet been created. The BPU was first awaiting an analysis from PJM Interconnection LLC on the effects of Oyster Creek's closure on New Jersey's energy requirements and infrastructure. PJM is the regional transmission organization operating the wholesale competitive electricity market and power grid across thirteen Mid-Atlantic and Midwestern states and the District of Columbia. But the BPU cautioned that, in general, its ability to promote new power generation capacity was curtailed by existing Federal Energy Regulatory Commission-approved PJM tariff rules. Nevertheless, the United States Court of Appeals for the Third Circuit just removed a second barrier to State-provided financial support for the construction of new power plants when its September 11, 2014 *PPL EnergyPlus, LLC v. Solomon* decision

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reestablished the federal constitutionality of certain such State incentives (see Discussion Point #25).

As to the region around the Oyster Creek nuclear power plant, the State, led by the Office for Planning Advocacy in the Business Action Center in the Department of State, intends to craft a specific redevelopment plan after holding two public information sessions in May 2013. The redevelopment was likely to include the construction of a new power plant. According to a footnote on page 84 of the 2011 Energy Master Plan, the new plant could be another nuclear power plant, as the location benefits from the presence of a highly-skilled workforce, community support for such an initiative, and the existing electrical transmission infrastructure. But a 650 to 850 MW natural gas-fired combined cycle generating plant was the most likely option, as maintained in a PowerPoint presentation on the Office for Planning Advocacy's website. The production of the Oyster Creek redevelopment plan was still ongoing, according to the Board's response to last year's BPU Discussion Point #22.

- **Questions: Please provide a status update on the work of the committee that is to craft a redevelopment plan for the region around the Oyster Creek nuclear power plant. By what date is the planning process supposed to yield a redevelopment strategy? If already available, please summarize the strategy and the reason(s) for its selection. Is the committee considering erecting a new nuclear power plant at Oyster Creek? Is the State considering offering financial incentives to develop new generation capacity at Oyster Creek?**

Response:

The BPU is part of the team lead by the Department of State, Office of Planning Advocacy in the Business Action Center. The BPU directs OLS to the Department of State for specific details of the Oyster Creek region redevelopment plan. The BPU in 2012 provided input on the redevelopment plan related to the energy component. The redevelopment reports are available at www.nj.gov/state/planning/oyster-creek.html. Currently there are no BPU plans to erect a new nuclear power plant at Oyster Creek. The BPU is currently not considering offering new financial incentives other than the current incentives within the Clean Energy Program or the Energy Resilience Bank for new generation at Oyster Creek.

- **Has the State agency panel been established that is supposed to assess the role of nuclear power in New Jersey's future electricity generation pursuant to the 2011 Energy Master Plan? If so, please outline the composition of its membership and set forth by which date the panel is supposed to submit a report or make recommendations. Has the BPU received the anticipated analysis from PJM Interconnection LLC on the effects of Oyster Creek's closure on the State's energy requirements and infrastructure?**

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Response:

Other than the redevelopment team, the BPU has not established a panel to assess the role of nuclear power in New Jersey's future electricity generation. The above noted redevelopment reports indicated that the energy component would need analysis by PJM energy markets as part of the Transmission Expansion Advisory Council (TEAC) and annual Regional Transmission Expansion Plan (RTEP) process.

PJM's TEAC advises the PJM Office of Interconnection on the preparation of the PJM RTEP for review and approval by the PJM Board. The TEAC is responsible for providing comments and recommendations on the scope of assumptions for the RTEP. PJM's RTEP process identifies transmission system additions and improvements needed to keep electricity flowing to all the utility customers within 13 states and the District of Columbia that comprise the PJM area.

Transmission studies are conducted that test the transmission system against national reliability standards. The PJM transmission studies look 15 years into the future to identify transmission issues that could impact reliability of the transmission system and potentially the reliability standards. PJM coordinates with the transmission owners and develops transmission plans to resolve the potential violations that could otherwise lead to overloads and black-outs in the RTEP process. This annual RTEP is presented to PJM's Board for their review and approval.

The 2014 TEAC assumptions in its February 6, 2014 report did not include Oyster Creek as operational in their summer 2019 baseload model. The 2014 RTEP date February 28, 2015 did not identify any issues as a result of this assumption including all the other assumptions from the TEAC in the 2014 RTEP. The BPU is in the process of reviewing and evaluating the 2014 RTEP. These reports are available at www.PJM.com.

27. On April 29, 2014, the BPU adopted a **Stipulation of Settlement concerning Verizon New Jersey, Inc.'s compliance with a 1993 BPU requirement that the company deploy broadband digital service to 100 percent of the customers in its service territory by 2010** (Board Order dated April 29, 2014, Docket number TO12020155). The New Jersey Division of Rate Counsel appealed the agreement to the New Jersey Superior Court, Appellate Division on May 27, 2014, contending that: a) substantively, the Board Order was contrary to law, arbitrary, and capricious; and b) procedurally, the BPU had denied ratepayers due process rights by not handling the matter as a contested case, which deprived affected parties of having material and factual issues properly adjudicated in a hearing.

The controversy revolves around the transmission media that Verizon may use to satisfy its obligation under a 1993 Board Order to bring broadband digital service to 100 percent of the customers in its service territory by 2010 (Board Order dated May 6, 1993, Docket

Discussion Points (Cont'd)

number TO92030358, reaffirmed by Board Order dated August 19, 2003, Docket number TO01020095). The Board Order defined "Broadband Digital Service" as "[s]witching technologies matched with transmission capabilities support data rates up to 45,000,000 bits per second and higher, which enables services, for example, that will allow residential and business customers to receive high definition video and to send and receive interactive (i.e., two way) video signals." Given that the language prescribes neither a transmission medium nor a minimum bandwidth speed, Verizon argued that it fully complied with the 100 percent broadband service requirement through a combination of its FiOS fiber-optic network, Digital Subscriber Line Services (DSL), and 4G-based wireless service. This technology-neutral interpretation of the term "broadband" is consistent with the Federal Communications Commission broadly defining the concept as: "high-speed Internet access that is always on and faster than the traditional dial-up access" that may be delivered through several high-speed transmission technologies, including DSL, fiber, and wireless. Adversaries contend to the contrary that the 1993 requirement meant that Verizon had to provide high-speed Internet access through a fiber-optic network. Although the wording of the 1993 Board Order does not seem to support such a reading, this view may be based on statements by New Jersey Bell officials at the time. New Jersey Bell was the predecessor to today's Verizon New Jersey. For example, a September 5, 1993 Associated Press article stated that New Jersey Bell planned "to bring fiber-optic cable ... to the curb outside every home and office by the year 2010," as part of its "Opportunity New Jersey" program. The article cited the company's then-President and Chief Executive Officer, who in referring to the plan to replace the company's copper wires with a fiber-based network said that: "There is no one else with so bold a plan."

The 2014 Stipulation of Settlement resolved the BPU's investigation into Verizon's compliance with the 100 percent broadband service deployment by 2010 requirement. In so doing, however, the agreement as well as its ratifying Board Order avoids an explicit statement as to whether the BPU agrees or disagrees with Verizon's assertion that the company fully complied with the requirement. Some observers may characterize the agreement as an implicit admission that the company had fallen short of its 100 percent obligation, as the agreement sets forth a procedure for the provision of broadband service, through any technological medium of Verizon's choosing, to customers who currently do not have access to broadband service. The Board also alluded to the contentious nature of Verizon's full compliance claim in the minutes of the April 23, 2014 Board Agenda Meeting. Specifically, the BPU noted that the Stipulation of Settlement would forestall protracted litigation over the exact meaning of the 100 percent broadband service requirement and that the greater legal certainty would allow Verizon to continue the deployment of broadband capabilities in New Jersey.

- **Questions:** Please indicate the current status of the appeal the New Jersey Division of Rate Counsel filed against the Board Order adopting the 2014 Stipulation of Settlement that resolved the BPU's investigation into Verizon

Discussion Points (Cont'd)

- New Jersey's compliance with the requirement that the company provide broadband service to 100 percent of the customers in its service territory by 2010. Have briefing or filing deadlines and oral arguments been scheduled? What are the expected decision date and the BPU's expectation of likelihood of success?
- Does the BPU agree with Verizon's assertion that the company fully complied with its obligation to bring broadband digital service to 100 percent of the customers in its service territory by 2010 under Board Order dated May 6, 1993, Docket number TO92030358 and Board Order dated August 19, 2003, Docket number TO01020095? If Verizon is in full compliance therewith, for what reason(s) did the Board not limit itself to a declaration affirming Verizon's compliance instead of concluding the 2014 Stipulation of Settlement that sets forth a procedure for the provision of technology-neutral broadband service to customers who currently do not have access to broadband service? Does the Stipulation of Settlement represent an implicit admission that Verizon had not fully reached the 100 percent mark and was exposed to potential litigation in the matter?

Response:

Due to the pending litigation in this matter, the Board is constrained to respond with its position only as set forth in the briefs which are a matter of public record.