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BOARD OF PUBLIC UTILITIES
TRENTON, NJ

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JUL 12 2019

BOARD OF PUBLIC UTILITIES
TRENTON, NJ

July 12, 2019

VIA OVERNIGHT DELIVERY

Ms. Aida Camacho, Secretary
Office of the Secretary
Board of Public Utilities
44 S. Clinton Ave., 9th Floor
Trenton, NJ 08625

EXPEDITED REVIEW REQUESTED

RE: In the Matter of The Petition Of Soundview Paper Company, LLC to Modify the Electric and Natural Gas Societal Benefits Charge Due to Changed Circumstances; Docket No. ER 19070812

Dear Secretary Camacho:

Please find enclosed an original and twenty (20) copies of the Petition of Soundview Paper Company, LLC, and Request for Expedited Review. Also enclosed is a check in the amount of \$25.00 for the requisite filing fee.

We are enclosing an additional copy of this filing. Please date-stamp our copy and return it to us in the enclosed, postage-paid envelope. Thank you.

Very truly yours,

McNEES WALLACE & NURICK LLC

By 
Kenneth R. Stark (NJ Bar I.D.: 003832012)

Counsel to Soundview Paper Company, LLC
Enclosures

CMS
Legal
DAG
RPA
S. Peterson
ENERGY(H)

STATE OF NEW JERSEY
BEFORE THE
BOARD OF PUBLIC UTILITIES

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JUL 12 2019

BOARD OF PUBLIC UTILITIES
TRENTON, NJ

IN THE MATTER OF THE PETITION OF
SOUNDVIEW PAPER COMPANY, LLC TO
MODIFY THE ELECTRIC AND NATURAL GAS
SOCIETAL BENEFITS CHARGE DUE TO
CHANGED CIRCUMSTANCES

: PETITION
:
: DOCKET NO. _____
:

PETITION AND REQUEST FOR EXPEDITED REVIEW

McNEES WALLACE & NURICK LLC

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Attorneys for Petitioner
Marcal Manufacturing, LLC d/b/a
Soundview Paper Company, LLC

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**STATE OF NEW JERSEY
BEFORE THE
BOARD OF PUBLIC UTILITIES**

**BOARD OF PUBLIC UTILITIES
TRENTON, NJ**

IN THE MATTER OF THE PETITION OF : PETITION
SOUNDVIEW PAPER COMPANY, LLC TO :
MODIFY THE ELECTRIC AND NATURAL GAS :
SOCIETAL BENEFITS CHARGE DUE TO : DOCKET NO. _____
CHANGED CIRCUMSTANCES :
:

**TO: THE HONORABLE COMMISSIONERS
OF THE BOARD OF PUBLIC UTILITIES**

PETITION AND REQUEST FOR EXPEDITED REVIEW

Marcal Manufacturing, LLC d/b/a Soundview Paper Company, LLC (“Soundview” or “Petitioner”), a limited liability corporation incorporated in the State of Delaware, registered to do business in New Jersey, owner of the Marcal Mill, and with its principal office at One Market Street, Elmwood Park, New Jersey 07407, hereby petitions this Honorable Board of Public Utilities (“Board” or “BPU”) pursuant to N.J.S.A. § 48:2-40(e) to modify the Board’s existing orders governing the Societal Benefits Charge (“SBC”) paid by Soundview at its Marcal Mill in Elmwood Park, New Jersey for electric and natural gas service provided by Public Service Electric & Gas (“PSE&G”). Due to a unique change in circumstances – a devastating, ten-alarm fire on January 30, 2019 (“January 2019 Fire”) that destroyed 90% of the Marcal Mill’s revenue generating capacity – Soundview, pursuant to N.J.S.A. § 48:3-60(a) requests the Board to determine that Soundview has demonstrated good cause to further modify the amount of the SBC associated with Soundview’s electric and natural gas usage. Soundview requests, on a temporary and limited basis, a reduction of at least 90% of the SBC associated with the electric and natural gas distribution service it receives at the Mill.

To effectuate Soundview's request, Soundview seeks narrow and limited amendments to the following Board Orders governing Soundview's responsibility to pay the SBC associated with the electric and natural gas distribution service it receives from PSE&G:

- *In the Matter of Rate Schedule CSG Transportation Service Agreement Between Public Service Electric and Gas Company and Marcal Manufacturing, LLC and the Potential Discount of Societal Benefits Charges*, Order Approving Stipulation, Docket No. GR15060659 (Nov. 16, 2015) (hereinafter "2015 Gas SBC Order")
- *In the Matter of the Petition of Soundview Paper Company, LLC for Approval of a Reduction of the Societal Benefits Charge*, Decision and Order, Docket No. ER18070706 (Dec. 18, 2018) (hereinafter "2018 Electric SBC Order").

As discussed in Section V., Soundview has a limited amount of time to make a final decision on the Marcal Mill and determine whether permanently restarting operations in New Jersey is economically viable. Therefore, Soundview requests expedited review and processing of the underlying Petition.

In support thereof, Petitioner states as follows:

I. BACKGROUND

1. Founded in 1932, Marcal Paper Products became a leading towel and tissue product manufacturer for private label and retail customers. Nicholas Marcalus first launched the family-owned business, which became regarded as a powerful symbol of advanced manufacturing, customer value, and environmentally-sound economic progress. Marcal has a history of innovation and dedication to the recycled paper manufacturing process, having pioneered technology that recycles wastepaper into pulp. Marcal has received numerous awards and is

known as one of the most environmentally conscious companies operating in the industry.¹ Marcal has served as a vital part of New Jersey's manufacturing base.

2. Between 2006 and 2012 (prior to ownership by Soundview), Marcal experienced significant financial difficulties, leading to substantial downsizing and approximately 300 layoffs between 2008 and 2012. In April 2012, Soundview, believing in the strength of the Marcal asset base, the commitment of Marcal's employees and the State of New Jersey, and the prospects for future opportunity and prosperity at the Elmwood Park location, acquired Marcal and made the determination to invest tens of millions of dollars in the iconic Mill and endeavor to retain hundreds of manufacturing jobs. These efforts ultimately resulted in over 500 jobs being retained in New Jersey.

3. Since 2012, Soundview invested over \$200 million into the company, including over \$50 million in equity contributions, \$130 million in repairs and maintenance and \$30 million in new capital investment focused on modernization and increasing converting capacity at the Mill. That investment reduced Marcal's significant operating losses and returned the Marcal Mill to sales growth. Since 2012, Marcal had grown converted revenue by 30% and, prior to the January 2019 Fire, had been projected to grow another 8% in 2019. Prior to the devastating January 2019 Fire, Soundview employed over 500 employees.

4. The Marcal Paper Mill has served as a vital part of New Jersey's remaining, and shrinking, manufacturing base. The Mill's operations have supported several hundred jobs in related industries across New Jersey. Marcal's New Jersey and regional customers include grocery store chains, convenience store chains, pharmacies, large retailers, supermarkets, and food

¹ Marcal has received the Passaic Valley Sewerage Commission Award of Excellence 15 years in a row from 2003-2017. Marcal is the 2011 recipient of the Environmental Stewardship Award (for energy savings) from the New Jersey Department of Environmental Protection. Marcal is also the 2011 recipient of the Pennsylvania Resources Council Leadership in Conservation Award.

merchandisers. Prior to the January 2019 Fire, Soundview spent approximately \$60 Million annually purchasing goods and services from New Jersey companies. Soundview has supported local charities in New Jersey. In 2018, Soundview paid \$4.75 Million in payroll taxes, sales and use tax, and property taxes. The company had a total payroll of \$34.7 Million.

5. The Marcal Mill is the only tissue and recycling paper mill remaining in New Jersey. The manufacturing operations included fully integrated de-inking; towel, tissue, napkin, and facial tissue production; two paper machines; and converting capabilities. The storage facilities housed finished goods and parent rolls. Marcal's New Jersey and regional customers included grocery store chains, convenience store chains, pharmacies, large retailers, supermarkets, and food merchandisers.

6. The Marcal Mill has been environmentally conscious. The Marcal Mill reduced landfill waste by making paper products from recycled paper and by creatively repurposing discarded paper. The Marcal Mill offers bath tissue, paper towels, napkins, and facial tissue made from 100% recycled materials. During peak operations, each month, the Marcal Mill received 10,000 to 12,000 tons of paper from curbside collection, office buildings, and waste from commercial printing plants—much of which comes from municipalities immediately surrounding the Marcal Mill, thereby limiting fuel usage and emissions. A recipient of the 2009 Corporate Citizen Award from the Reeves-Reed Arboretum, the Mill reduced its environmental impact by optimizing energy, materials, and water use, minimizing air emissions, and maintaining transparency across every aspect of its operations.²

7. Instead of enjoying growth and prosperity, the Marcal Mill endured economic stagnation in recent years and remained threatened by the risk of diminished production or closure.

² See Marcal, *A History of Protecting the Future* (2019), available at <http://soundviewpaper.com/sustainability/>.

As industry margins become more compressed, Soundview worked very hard to control its costs to remain competitive. However, Soundview's energy-related costs were higher than those of competitors in the paper industry, putting the Marcal Mill at a distinct competitive disadvantage. Energy costs, including state-imposed costs like the SBC, account for a significant portion of the Marcal Mill's operating expenses, production costs, and the cost of goods sold. Accordingly, Soundview has petitioned the BPU for relief by requesting reductions to the SBC associated with Soundview's electric and natural gas distribution service from PSE&G.

8. On November 16, 2015, the Board approved a Rate Schedule Contrast Service Gas ("CSG") Transportation Service Agreement ("CSG Agreement") between Soundview and PSE&G for a term of seven years. In that same Board Order, the 2015 Gas SBC Order, the Board approved a discount of the SBC associated with Soundview's natural gas distribution service.³ Under the discount, Soundview is required to pay only the New Jersey Clean Energy Program ("CEP") portion of the SBC. The CSG Agreement and discounted SBC expire on December 1, 2022. The CSG Agreement and discounted SBC helped the Mill in managing its gas costs but did not address the disproportionate and adverse financial impact caused by the high electric SBC charges imposed on Soundview.

9. On July 10, 2018, Soundview filed a petition with the Board seeking a 50% reduction in its SBC obligations for electric service. On December 18, 2018, the Board issued the 2018 Electric SBC Order approving a 50% reduction to Soundview's electric SBC obligations.⁴ The 50% electric SBC reduction also expires on December 1, 2022. In the 2018 Electric SBC

³ See 2015 Gas SBC Order at p. 3-4.

⁴ See 2018 Electric SBC Order at p. 5-6.

Order, the Board conditioned the 50% reduction on Soundview's commitment to not withdraw funds from the CEP while the SBC reduction is in effect.

10. On January 30, 2019, a significant fire damaged the Marcal Mill and destroyed the majority of the Mill's footprint (16 acres of property), including numerous buildings and equipment. The January 30 Fire was widely covered by local, regional, and national news sources. The fire did not cause any loss of life but resulted in a loss of almost 400 jobs at the Mill and a cessation of manufacturing operations. As a result of the fire, Soundview's electricity usage dropped from approximately 20 Megawatts ("MW") of daily electricity demand to 0 MW of demand. Marcal did not consume any electricity from January 31, 2019 until early April 2019.

11. On or around April 2, 2019, Soundview CEO Robert Baron announced that Soundview is "exploring options for a successful restart in Elmwood Park."⁵ Soundview began pursuing all strategies and avenues to save the iconic New Jersey paper Mill, and to maintain Soundview's presence in the Garden State.

12. On or around April 4, 2019, Soundview began to use a small amount of baseload power while working on the reconstruction of the infrastructure and machinery at the Mill. Soundview did not consume a significant amount of power until May 2, 2019, when it began the ramp-up to test and start operations for Paper Machine 11 and the Fiber Division.

13. On or around May 2, 2019, Soundview experimented with testing some equipment that survived the fire, including Paper Machine 11. The Fiber Division and Paper Machine 10 also survived the fire. However, Paper Machine 10 is severely damaged and there are no immediate plans of restoration.

⁵ See North Jersey Record, *Marcal Paper fire: CEO 'exploring options' for a restart in Elmwood Park* (Apr. 26, 2019), available at <https://www.northjersey.com/story/news/new-jersey/2019/04/26/marcal-fire-elmwood-park-nj-site-still-undergoing-cleanup/3539145002/>.

14. Since May 2, 2019, Soundview began testing its equipment and now uses about 10 MW of daily demand to see if it is physically and economically viable to rebuild the paper mill. Given that Paper Machine 11 survived the fire, Soundview is pursuing all potential strategies to restart operations at the Mill and hire back dozens of full-time workers. As an additional means to reduce its energy costs, Soundview is considering applying for funding assistance for a natural gas fired, combined heat and power (“CHP”) cogeneration unit. However, any CHP unit, to the extent it would even be financially feasible, would likely not be up and running for about two years.

15. If Soundview restarts permanent operations after it completes its current testing phase, Soundview would use about 10 to 11 MW of demand instead of 20 MW of demand. Marcal would use less demand because the fire destroyed one of the two paper machines and various office buildings. Future operations will involve running only Paper Machine 11 and the Fiber Division. Since the January 2019 fire, the remaining converting equipment and office building, which comprises approximately 4 MW of demand, has been permanently offline. Additionally, Paper Machine 10, which is damaged and remains offline for the foreseeable future, used approximately 5 MW of demand. During the current testing phase, Soundview is making product; however, sales of product are primarily for the purpose of testing and to receive feedback from customers. Soundview’s current monthly revenues are inconsequential and are substantially less than Soundview’s monthly revenues from 2018 (prior to the January 2019 Fire).

16. Soundview is doing everything it can to avoid permanent closure of the Marcal Mill. The January 2019 Fire forced Soundview to lay off hundreds of employees. Soundview retained a temporary complement of 100 core employees (and about 30-50 other employees) to rely on in its efforts to restart operations. With such an uncertain future, Soundview has not only

lost customers and skilled employees, but is also in a difficult position to recruit talent at the Mill and maintain its customer base.

17. Financially, the Marcal Mill has had to resort to operating on fire insurance payments due to the lack of revenue from production and sales. Critical custom-built spare parts were lost in the fire. Soundview has ordered a couple of high dollar spare parts which were lost in the fire with long lead times, including 1) pulper gear drive assembly (\$130,000); 2) screen rotating element (\$62,000), and custom-made hydraulic valves (\$45,000). Those are just a few examples. At this time, Soundview has placed purchase orders for approximately \$6.1 Million in parts.

18. On May 20, 2019, Soundview received another unexpected setback regarding its energy costs when its electric supplier, Constellation NewEnergy Inc. ("Constellation"), preemptively dropped Soundview's account effective May 31, 2019, resulting in Soundview being transferred back to Basic Generation Service ("BGS") with PSE&G. As a result, Soundview is incurring hundreds of thousands in additional monthly costs. The Soundview-Constellation contract had a term that ran through the end of 2022. Constellation did not provide Soundview with the required 30-day customer notice required under the Third-Party Supplier Agreement between PSE&G and suppliers like Constellation. Constellation did not provide Soundview with any grounds for terminating the contract in accordance with New Jersey law. *See* N.J.A.C. § 14:4-7.6. The contract dispute is pending in litigation before the Superior Court of New Jersey, Bergen County, Docket No. BER-C-141-19.

19. Energy costs in New Jersey, including unavoidable regulatory charges that are not associated with a customer's actual usage of electric and natural gas, account for a significant portion of the Marcal Mill's operating expenses, production costs, and the cost of goods sold. New

Jersey's SBC obligations and overall higher energy costs have had a disproportionate impact on the Marcal Mill relative to facilities in other states, including Soundview's facility in Putney, Vermont. In comparison to Soundview's Marcal Mill in Elmwood Park, Soundview's Vermont plant in 2018 had approximately \$30 per paper ton lower energy costs than the facility in New Jersey. In recent years, Soundview has been able to expand and improve the Vermont facility by adding converting lines. Further investments in the Marcal Mill do not make economic sense unless Soundview receives sufficient financial relief on its energy costs in New Jersey.

20. Although Petitioner had historically been one of New Jersey's largest industrial firms, its competitiveness and its contributions to the State's economy diminished in recent years and drastically diminished in 2019 due to the fire. Soundview has limited time to make the final decision on whether or not Soundview can restart operations at the Marcal Mill. If Soundview is not able to establish an economically viable path forward, which includes reasonable energy costs, then Soundview will be forced to close the Marcal Paper Mill. Absent the requested SBC reductions, the Marcal Mill will face the real risk of permanent closure and loss of load in New Jersey.

21. Since the State Legislature enacted the SBC in 1999 through the end of 2018, Soundview has done its part for the State, making substantial annual electric and natural gas SBC payments. From 2007 to 2018, Soundview made electric SBC payments of approximately \$1 million to \$1.4 million per year. In 2015 alone, Soundview contributed over \$1.5 million toward the electric SBC. From 2007 to 2015, Soundview made gas SBC payments of approximately \$600,000-\$650,000 per year. After receiving the gas SBC discount at the end of 2015, Soundview made gas SBC payments of approximately \$250,000-\$260,000 per year from 2016 to 2018.

22. In 2019, Soundview's contributions to the SBC drastically diminished due to the January 2019 Fire and Soundview's abrupt and significant drop in electric and natural gas usage. Soundview has obtained approximately \$420,450 in total rebates from New Jersey's CEP, which is funded from SBC revenue. Consequently, the Marcal Mill's contributions to the SBC fund far exceed its SBC withdrawals since the SBC fund's inception.

II. **THE BOARD HAS AUTHORITY TO AMEND PRIOR BPU ORDERS BASED ON THE CHANGED CIRCUMSTANCES AT THE MARCAL MILL**

23. In carrying out its duties, the Board enjoys general powers of supervision and regulation of jurisdictional public utilities. N.J.S.A. § 48:2-13. The New Jersey Supreme Court has explained that this broad and "sweeping grant of power is 'intended to delegate the widest range of regulatory power over utilities to the BPU.'" *Bd. Of Pub. Utils. v. Valley Rd. Sewerage Co.*, 712 A.2d 653, 658-9 (N.J. 1998) (quoting *Twp. of Deptford v. Woodbury Terrace Sewerage Corp.*, 255 A.2d 737 (1969) (internal citations omitted)). The Board's authority "extends beyond powers expressly granted by statute to include incidental powers that the agency needs to fulfill its statutory mandate." *See id.* (citing *A.A. Mastrangelo, Inc. v. Comm'r of Dept. Evt'l Prot.*, 449 A.2d 516 (1982)). Furthermore, the Board is afforded great deference to decide policy matters within its expertise. *Sudler v. Evt'l Disposal Corp.*, 529 A.2d 1022, 1026 (N.J. Super. Ct. 1987).

24. Per N.J.S.A. § 48:2-40(e), the "board at any time may order a rehearing and extend, revoke or modify an order made by it." Therefore, the New Jersey Legislature provided the BPU with clear and definitive power to permit the Board to allow a rehearing and grant modification of an order "at any time." *Bd. of Pub. Utils. v. Valley Rd. Sewerage Co.*, 712 A.2d at 659 (quoting N.J.S.A. § 48:2-40(e)).

25. Absent any legislative restriction, an administrative agency has the inherent power to reopen, rehear, and modify its prior decisions. *In the Matter of the Long-Term Capacity*

Agreement Pilot Program, Order on Motion for Reconsideration, Docket No. EO11010026 (May 20, 2011). The Board has held that deciding to permit reconsideration of a prior order involves the exercise of sound discretion, and considerations of fairness and reasonableness. *In the Matter of the Board's Investigation As To Whether Ratepayers Should Share in Proceeds et al.*, Decision and Order, Docket No. TX04080749 (Aug. 12, 2005) (citing *In re. Trantino Parole Application*, 446 A.2d 104, 113 (N.J. 1982) and *Handlon v. Town of Belleville*, 71 A.2d 624 (N.J. 1950)). The Board has explained that an administrative agency may invoke its inherent power to rehear a matter “to protect the public interest and thereby to serve the ends of essential justice.” *In the Matter of the Long-Term Capacity Agreement Pilot Program*, Order on Motion for Reconsideration, Docket No. EO11010026 (quoting *Trap Rock Industries v. Sagner*, 335 A.2d 574, 580 (N.J. Super. Ct. 1975)).

26. In the event of changed circumstances, the Board may freely reconsider and modify its prior orders. *In the Matter of the Petition of South Jersey Gas Company for Authorization to Construct a 24" Pipeline et al.* (Docket No. GO13030202) (June 23, 2015) (quoting *Sudler v. Env'tl Disposal Corp.*, 529 A.2d 1022, 1026 (N.J. Super. Ct. 1987)). The Board also retains the power to waive its regulations if it demonstrates that “full compliance with the rule(s) would adversely affect the ratepayers of a utility or other regulated entity, the ability of said utility or other regulated entity to continue to render safe, adequate and proper service, or the interests of the general public.” N.J.A.C. § 14:1-1.2(b)(1).

27. Through this Petition, Soundview seeks narrow, fair, and reasonable amendments to the 2015 Gas SBC Order and the 2018 Electric SBC Order. The January 2019 Fire, which occurred after the issuance of the 2015 and 2018 SBC orders, significantly impacted and materially altered the operations and the financial circumstances at the Mill and the welfare of the Mill's

employees. The Marcal Mill is in an even more vulnerable and precarious position than in 2015 and 2018 when Soundview sought and petitioned for the SBC reductions associated with the delivery of natural gas and electric distribution services respectively. Critically, Soundview has only realized limited financial benefit from the existing SBC reductions because the electric SBC reduction was in effect for less than one month before the January 2019 Fire. Considering the fire and the limited amount of time by which Soundview must make a final decision on the future of the Marcal Mill, Soundview requests Board approval for at least a 90% reduction of the SBC associated with both electric and natural gas distribution service from PSE&G.

28. Critically, Soundview's requested relief will be temporary because the term for the current gas and electric SBC reductions ends on December 1, 2022. Even though the Board has approved longer terms (*e.g.*, seven to ten years) for SBC reductions for industrial customers, Soundview does not seek to modify or extend the term for the existing SBC reductions. Therefore, Soundview's request for relief is narrow and of limited duration.

29. Aside from the percentage reduction modification, Soundview also seeks modification of the condition in the 2018 Electric SBC Order that restricts Soundview from withdrawing funds from the CEP while the electric SBC reduction is in effect. Therefore, Soundview now petitions to modify and eliminate this restriction because Soundview desires the option to apply for CEP grants to assist with the funding of a cogeneration facility ("Co-Gen Unit"). If Soundview receives significant state-funded assistance for the Co-Gen, then Soundview would agree to terminate the exemption for the gas and electric SBC when the Co-Gen unit becomes fully operational (which would occur in approximately two years). Thus, Soundview could end up paying the full gas and electric SBC prior to December 1, 2022, when the SBC discounts currently expire. While Soundview would enjoy more substantial, 90% SBC reductions

in the short-term over the next one to two years, Soundview could be in a position (assuming the Mill restarts operations and becomes economically viable and sustainable) to make more valuable contributions to the SBC in the long-term.

III. SOUNDVIEW QUALIFIES FOR FURTHER MODIFICATIONS OF ITS SBC CHARGES

30. Section 48:3-60 of the New Jersey Annotated Statutes, N.J.S.A. § 48:3-60, established the SBC and enables electric and gas public utilities to recover all or a portion of the following costs from their customers, including industrial customers like Soundview, through an SBC: social program costs and demand side management costs for which rate recovery was approved by the Board; nuclear plant decommissioning costs; manufactured gas plant remediation costs; and consumer education costs. *See* N.J.S.A. § 48:3-60(a)(1)-(5).

31. The New Jersey Legislature entrusted the Board with ensuring just and reasonable utility rates. N.J.S.A. § 48:2-21; *In re N.J. Am. Water Co.*, 777 A.2d 46, 50 (2001). New Jersey public policy favors energy competition and stable and reasonable prices. The State Legislature has found that “a secure, stable and adequate supply of energy at reasonable prices is vital to the State’s economy and for the promotion of economic opportunity in the State, as well as for ensuring the public health, safety and welfare.” N.J.S.A. § 52:27H-2. “[R]educing energy costs is essential to reducing the costs of doing business in [the] State, which in turn will promote and maximize economic growth, speed business development, promote employment and ensure general prosperity in the State.” *Id.* The State’s policy is to “[l]ower the current high cost of energy, and improve the quality and choices of service, for all of [the] State’s residential, business and institutional consumers, and thereby improve the quality of life and place [the] State in an improved competitive position in regional, national and international markets.” N.J.S.A. § 48:3-50(a)(1). In light of Soundview’s unique and changed circumstances and in the spirit of fulfilling

the State Legislature's goals and policies, Soundview respectfully requests that the Board determine that Soundview has demonstrated good cause for a reduction of at least 90% in the SBC paid for electric and natural gas service at the Marcal Mill, starting in 2019.

32. In the 2018 Electric SBC Order, the Board affirmed that "it has the necessary authority to approve discounted SBC discount, rates in appropriate circumstances." 2018 Electric SBC Order at p. 5. The Board explained that nothing in the SBC statute, N.J.S.A § 48:3-60(a), shows a legislative intent that the SBC be applied to all customers at the same level, and in practice the SBC charge varies between the utilities. *Id.* The Board explained that it has approved SBC discounts "to avoid a loss of load." *Id.* Therefore, the Board determined that the discounted electric SBC rate set out in the Joint Petition "will also benefit the State of New Jersey, and ultimately its ratepayers, by avoiding the loss of [Soundview's] load so that [Soundview] continues to contribute to the maintenance of PSE&G's distribution system." *Id.* at 6.

33. Furthermore, in *In re. Generic Proceeding to Consider Prospective Standards for Gas Distrib. Util. Rate Disc. and Associated Contract Terms and Conditions*, 2011 N.J. PUC LEXIS 193 (N.J. Bd. of Pub. Utils. 2011) ("*Discount Contract Order*"), the Board determined that N.J.S.A. § 48:3-60(a) does not reflect a legislative intent that the SBC be applied at the same level to all customers:

*While the Board agrees that the SBC is a broad-based charge, there is nothing in the statute that shows a legislative intent that the SBC be applied to all customers at the same level, and in practice the SBC charge varies between the utilities. As the agency 'with the responsibility of making it work,' the Board believes that in the appropriate circumstances, it can permit variation from the strict standard rate per therm that has been the norm for assessing the SBC from gas customers. Discount Contract Order at *68 (emphasis added) (internal citations omitted).*

The Board made a similar finding in the 2015 Gas SBC Order when it approved Soundview's request for a discount on the SBC associated with natural gas distribution service from PSE&G. See Gas SBC Order at p. 4. In practice, the SBC paid by electric consumers in New Jersey has varied by utility, customer rate class, customer service voltage, and other factors.

34. The Board has approved modified SBC rates for different ratepayers, such as in the Gas SBC Order and in *In re. Petition of Gerdau Ameristeel Sayreville, Inc. for Waiver of Requirements Concerning the Societal Benefits Charge*, 2018 N.J. PUC LEXIS 76 (N.J. Bd. Of Pub. Utils. 2018) ("Gerdau"). In *Gerdau*, the Board held:

[N]othing in N.J.S.A. 48:3-60(a) shows a legislative intent that the SBC be applied to all customers at the same level, and in practice the SBC charge varies between the utilities. In addition, the Board affirms that it has the necessary authority to approve discounted SBC discount rates in appropriate circumstances . . . The Board is authorized to provide discounted SBC rates, including to avoid a loss of load... The Board is further satisfied that the discounted SBC rate will benefit the State of New Jersey and ultimately its ratepayers by avoiding the loss of load that contributes to the maintenance of JCP&L's distribution system. Based on the information submitted in the filing, the Board **FINDS** that a discounted electric SBC rate is appropriate pursuant to N.J.S.A. 48:3-60(a). Should the customer leave the system for economic reasons, there would be no contribution to the SBC, further reducing the benefit to other ratepayers. The Board further **FINDS**, that for a term of ten (10) years, Gerdau must continue to pay the portion of the electric SBC that is attributable to the NJCEP at the level set each year by the Board collected through JCP&L's Rider DSF. *Gerdau* at *12-15.

35. Likewise, in *In re The Rate Schedule CSG Transp. Serv. Agreement Between Pub. Serv. Elec. & Gas Co. and Holcim (US) Inc. a/k/a St. Lawrence Cement and the Related Request for a Disc. in the Applicable Societal Benefits Charge (SBC)*, 2014 N.J. PUC LEXIS 245, (N.J. Bd. of Pub. Utils. 2014) ("Holcim"), the Board stated:

Nothing in N.J.S.A. 48:3-60[(a)]^[6] demonstrates a legislative intent that the SBC be applied to all customers at the same level, and in practice the SBC charge varies between the utilities. Discount Contract Order at 23[.] [I]n addition, the Board stated that in the appropriate circumstances, it can permit variation from the strict standard rate per therm that has been the norm for assessing the SBC from gas customers. Ibid. In this case, based on the information submitted in the filing, the Board **FINDS** that it is appropriate to approve a discounted SBC rate of \$0.0375 per therm inclusive of SUT for the service to be provided under the Service Agreement. Should the customer bypass the system, there would be no contribution to the SBC, further reducing the benefit to the Company's other ratepayers. *Holcim* at *7.

36. Like the petitioners in *Holcim* and *Gerdau*, Soundview presents good cause for a modification of the amount of the SBC paid for electric and natural gas service provided to Soundview's Marcal Mill. In *Gerdau*, the customer explained that high energy costs, including electric SBC charges, threatened the customer's ability to operate and increased the risk of plant closure. In approving an SBC reduction for charges associated with electric distribution service for a ten-year term, the Board emphasized that the discounted SBC rate will benefit the State of New Jersey and ultimately all ratepayers by avoiding the loss of load from a customer that contributes substantially to total SBC revenue. *Gerdau* at *14-15. Similarly, in *Holcim*, the Board approved a modified SBC charge in recognition that, if such modification were not approved, the customer would bypass the utility's system and there would be "no contribution to the SBC, further reducing the benefit to the Company's other ratepayers." *Holcim* at *7.

37. Like the facility in *Gerdau*, Soundview's Marcal Mill has been in a precarious financial position. Beginning in 2012, Soundview's substantial investment in Marcal enabled sustained operations at the Mill and had saved over 500 manufacturing jobs. In its 2018 petition

⁶ The *Holcim* quote above had a typographical error and suggested the *Discount Contract Order* language discussed N.J.S.A. § 48:3-60.1. However, the cited language of the *Discount Contract Order* pertains to N.J.S.A. § 48:3-60(a). See *Discount Contract Order*, 2011 N.J. PUC LEXIS 193 at *68.

seeking a reduction of electric SBC charges, Soundview explained that the Marcal Mill continued to face strong headwinds from energy costs that noticeably exceeded the levels paid by its competitors. Soundview explained that if it was unable to reduce its energy costs, including the state-mandated portion of its energy costs, Soundview faced the prospects of reduced operations, potential closure of the Marcal Mill, and associated loss of jobs. The Board recognized these economic circumstances and approved a reduction for Soundview's electric SBC in December 2018. Now, in light of the January 2019 Fire, Soundview's prospects of closure are more imminent and more likely if Soundview is not able to reduce its energy and operational costs to a level that is sustainable, competitive, and justifies an effort to permanently restart operations at the Mill.

38. As the Board recognized in *Holcim* and in the 2018 Electric SBC Order, modifying the SBC charges paid by a customer like Soundview benefits other ratepayers by helping to prevent further erosion of the customer load over which SBC program costs are spread. Rather than Soundview paying 0% of its load-based allocation of SBC costs, PSE&G's customers would prefer that Soundview pay a reduced rate for the next two and a half years and then pay the full SBC rate thereafter. Consequently, granting the modified SBC charges to Soundview should be a preferred outcome by the Board considering the net positive impact on all other PSE&G electric customers relative to likely alternatives.

39. Furthermore, in the 2015 Gas SBC Order, the Board recognized that Soundview's participation in an SBC-funded energy efficiency and conservation program is good cause for approving a modified SBC charge for gas service provided by PSE&G. 2015 Gas SBC Order at p. 4. In 2012, Soundview embarked on a complete drive and motor upgrade at the Marcal Mill by adding Variable Frequency Drives ("VFDs") and Vacuum Pump Motors at a net cost of \$163,390, which has generated approximately \$117,571 in savings per year. Since 2015, Soundview

implemented additional energy efficiency and conservation investments, reducing the Marcal Mill's energy consumption, lowering its energy costs, and bolstering Marcal's manufacturing capabilities. In 2016, Soundview added light-emitting diode ("LED") lights to the Marcal Mill at a net cost of \$74,715, thereby generating approximately \$37,142 in savings per year. In 2016, Soundview also added LED lights to Building 37 at a net cost of \$121,714, thereby generating approximately \$22,600 in savings per year. Soundview received rebates from the New Jersey CEP for these investments. Additionally, in 2016, Soundview installed a Paper Machine 10 Triple Doctor, which removes and isolates the water during the paper manufacturing process. The Triple Doctor cost Soundview \$110,883 and had produced approximately \$43,800 in savings per year. Soundview is currently experiencing little to no benefit from these investments. Paper Machine 10 is down due to damage from the fire and Building 37 is not running 24/7 because of lost sales volume due to the fire.

40. Since the State Legislature enacted the SBC in 1999 through the end of 2018, Soundview has made substantial electric and natural gas SBC payments.⁷ Between 2006 and January 2019, the Marcal Mill paid \$15,650,490 in total electric SBC charges and \$6,814,938 in total gas SBC charges. Since 1999, Soundview has only withdrawn \$420,450 in SBC funds. Consequently, Soundview's contributions to the SBC fund far exceed Soundview's withdraws from the SBC fund. In recognition of its past investment in energy efficiency measures, its current financial condition, the operational and financial struggles caused by the January 2019 Fire, and its significant net contribution to the SBC fund since 1999, a significant (albeit short-term) reduction in Soundview's SBC charges for electric service is reasonable, fair, and warranted.

⁷ In 2019, Soundview's contributions to the SBC drastically diminished due to the January 2019 Fire and Soundview's abrupt and significant drop in electric and natural gas usage.

41. The Marcal Mill's precarious and challenging financial condition is similar to the conditions facing the steel Mill in *Gerdau*. Since 2016, increased competition in paper manufacturing in the United States has compressed operating margins industry-wide, thereby further threatening Marcal's viability due to the uncompetitive cost of energy in New Jersey. In the past few years, many new paper mills have recently initiated plans to begin new operations in other Eastern and Midwestern states. Much of this additional new capacity now competes with the Marcal Mill in the markets that are served by Marcal.

42. Notably, paper mills in other states are not subjected to the same degree of high state-imposed energy costs. The long-term viability of the Marcal Mill in New Jersey requires a competitive cost structure. Historically, New Jersey's high energy costs have been a significant contributing factor to the Marcal Mill's financial difficulties and continue to threaten its viability. Prior to the January 2019 Fire, 78% of Soundview's cost of goods sold came from three sources: energy, labor, and materials. These three areas historically represented 77% of Soundview's net sales. Because energy costs are not competitive, Soundview remains at a distinct and significant competitive disadvantage. The Marcal Mill has one of the highest energy cost profiles among tissue manufacturers in North America and is consistently in the highest 10th percentile with costs that are twice those faced by competitors.

43. The Marcal Mill's annual energy expense in 2018 was, on average, \$6 Million higher than it would be if Marcal were operating in the states where Marcal's competitors are operating. For example, if Marcal were operating in Virginia, its annual energy expense would be \$10.7 Million instead of \$16.8 Million.

44. Soundview invests where it receives the optimal return on its investment. The high cost of energy in New Jersey produces lower-than-needed returns for investment in non-energy

related expansion projects. High energy costs will drive investment to Soundview's Vermont facility and force Soundview to seek investment in other areas of the country.

45. The high energy costs that presently burden the Marcal Mill have grown worse since Soundview petitioned the Board for SBC relief in 2015 and 2018. In May 2018, the New Jersey Legislature established a Zero Emissions Credit ("ZEC") program for the state's nuclear plants.⁸ The ZEC program will be funded by a 0.4 cents per kilowatt-hour tariff charge on retail distribution customers, which could lead to approximately \$300 Million per year in ratepayer subsidies to the nuclear plants.⁹ Under a scenario where Soundview runs one paper machine at the Marcal Mill, the ZEC charge imposes approximately \$330,000 in additional annual energy costs. If Soundview runs two paper machines at the Mill, then the ZEC charge imposes approximately \$540,000 in additional annual energy costs.

46. Soundview is committed to New Jersey and supports the State directly through taxes paid and persons employed, and by purchasing goods and services from New Jersey companies. In 2018, Soundview paid \$4.75 Million in payroll taxes, sales and use tax, and property taxes. The company had a total payroll of \$34.7 Million and employed over 500 people who, in turn, consumed goods, payed taxes, and supported New Jersey's economy and society. Through the end of 2018, Soundview spent approximately \$60 Million annually purchasing goods and services from New Jersey companies. Soundview has supported local charities in New Jersey. A healthy and growing Soundview would directly benefit the state, surrounding communities, and New Jersey companies. If Soundview is able to restart operations, those operations would be more

⁸ Senate Bill No. 2313 was signed by the Governor on May 23, 2018. See N.J.S.A. §§ 48:3-87.3 to 48:3-87.7

⁹ *Id*; see also Power, *New Jersey Nuclear and Renewable Energy Bills Signed by Governor* (May 23, 2018), available at <http://www.powermag.com/new-jersey-nuclear-and-renewable-energy-bills-signed-by-governor/?printmode=1>.

streamlined and Soundview would have a smaller employee complement; however, Soundview would still be making significant contributions to the local and regional economy.

47. Soundview respectfully requests that the Board ease the regulatory burden imposed on the Marcal Mill by reducing, by at least 90% and starting in 2019 through the end of the current term on December 1, 2022, the SBC that is assessed for electric and natural gas service to the Marcal Mill. Reducing the Marcal Mill's state-imposed energy costs will better enable the Marcal Mill to restart and to be competitive in the regional, national, and global economy. The New Jersey facility competes with many companies benefiting from significantly lower energy costs. If Soundview receives the requested SBC reduction for its electric service, Soundview will be better-positioned to restart operations and maintain steady employment and production. The viability of restarting operations and protecting jobs at the Mill hinges on Soundview's ability to achieve significant reductions in the operating costs it incurs to manufacture paper products at the Marcal Mill. Soundview's ability to be competitive is directly related to its ability to control its energy costs. The short-term, requested 90% SBC reduction of Soundview's SBC charges for electric and natural gas service will assist Soundview's efforts to rebuild and maintain the Marcal Mill's presence in New Jersey.

48. Soundview faces challenging financial conditions and competition from regional and global entities with lower energy costs. Providing modified SBC charges to Soundview pursuant to N.J.S.A. § 48:3-60(a), the *Discount Contract Order*, other applicable case precedent, and the Board's regulatory authority is in the public interest. Approving the requested modification of SBC charges for Soundview's electric charges will help ensure the future viability of an iconic New Jersey brand, spur the New Jersey economy, and further the energy competitiveness goals advocated by the Legislature.

49. Through this Petition, Soundview seeks more immediate relief through the requested 90% reductions in the electric and natural gas SBC. Soundview arrived at the 90% discount figure because Soundview needs maximum relief on its energy costs in the short-term. Soundview did not request a 100% reduction from the SBC because Soundview understands the importance of making customer contributions to the SBC-funded programs. Importantly, Soundview only seeks a 90% reduction through the end of the existing term in 2022.¹⁰ Although the Board has previously granted SBC reductions for longer terms (e.g., seven to ten years), Soundview purposefully does not request to extend the term for relief. Rather, Soundview requests a higher degree of more immediate relief because the future of the Mill will be determined in the next few months, not the next few years.

IV. SOUNDVIEW REQUESTS THE ABILITY TO SEEK FUNDING FROM THE NJ CLEAN ENERGY PROGRAM

50. As an additional means to reduce its energy costs, Soundview is considering applying for funds for a natural gas fired, Co-Gen Unit. If Soundview seeks and obtains such funding, the Co-Gen Unit would likely not be up and running for two years or longer. The 2018 Electric SBC Order restricts Soundview from withdrawing funds from the CEP while the SBC reduction is in effect. *See* 2018 Electric SBC Order at p. 6. Specifically, the 2018 Electric SBC Order states: “The Board notes that Soundview has affirmed that it will not withdraw any funds from any SBC-funded program during the period in which it receives the SBC reduction.” *Id.*

51. **Circumstances at the Marcal Mill have drastically changed since Soundview made that commitment to not withdraw SBC funds while the electric SBC discount was in effect.** If Soundview restarts operations, Soundview would only use about 10.5 MW of daily load

¹⁰ If the mill restarts operations, Soundview could be in a position to make full SBC contributions in a few years.

instead of the 20 MW of daily load consumed by Marcal prior to the January 2019 Fire. In order to keep its energy costs more contained and under control, Soundview is considering on-site generation and applying for state funding for a Co-Gen Unit. Therefore, in order to have the opportunity to seek funding from the NJ CEP, Soundview requests elimination of the condition in the 2018 Electric SBC Order that restricts Soundview from withdrawing any SBC funds during the time when the SBC reduction is in effect.

52. Importantly, if Soundview receives significant state-funded assistance for the Co-Gen Unit, then Soundview would agree to terminate any effective reductions and exemptions for the gas and electric SBC when the Co-Gen Unit becomes fully operational (which would occur in approximately two years). Thus, Soundview could end up paying the full gas and electric SBC prior to December 1, 2022, when the SBC discounts currently expire. Importantly, the electric SBC would still apply to any imports of power from the grid. Because the Co-Gen Unit would be natural gas-fired, the natural gas SBC would apply to natural gas consumed by the Marcal Mill and by the Co-Gen Unit. If this Petition is approved, Soundview would enjoy more substantial, 90% SBC reductions in the short-term over the next one to two years. However, Soundview could then be in a position (assuming the Mill restarts operations and becomes economically viable and sustainable) to make more valuable contributions to the SBC in the long-term.

53. The Board has previously approved SBC discounts for customers that have previously withdrawn funds from the CEP. The Board approved Soundview's request for a discount on the SBC associated with natural gas distribution service from PSE&G even though Soundview had received funds from the NJCEP, which funds the SBC. *See Gas SBC Order at p. 4.*

54. The CSG Agreement that the Board approved in the 2015 Gas SBC Order expressly excludes the discounted CSG rate from applying to the delivery of gas to any CHP facility at the Marcal Mill. *See* 2015 Gas SBC Order, Rate Schedule CSG Transportation Service Agreement, Section 2.4. If Soundview installs a Co-Gen Unit prior to the expiration of the CSG Agreement on December 1, 2022, then Soundview reserves the right to seek modification of Section 2.4 in the CSG Agreement so that the discounted CSG rate may apply to the delivery of gas to the Co-Gen Unit at the Marcal Mill in Elmwood Park. If the non-SBC portion of the CSG Agreement is extended, then Soundview reserves the right to seek to modify the exclusion of the discounted CSG rate from applying to the delivery of gas to any CHP facility at the Marcal Mill.

V. REQUEST FOR EXPEDITED REVIEW AND PROCESSING

55. Soundview has a limited amount of time to make a final decision on the Marcal Mill and determine whether permanently restarting operations in New Jersey is economically viable. Therefore, Soundview requests expedited review and processing of the underlying Petition. Importantly, the Board recently reviewed in the 2018 Electric SBC Order a full record supporting Soundview's request for an electric SBC reduction based on the economic circumstances at the Mill.

VI. CONCLUSION

WHEREFORE, Soundview respectfully requests that the Board find and determine that Soundview has demonstrated good cause for a reduction of at least 90% in the Societal Benefits Charges paid for electric and natural gas service to its Marcal Mill in Elmwood Park, New Jersey. Soundview also requests elimination of the condition in the 2018 Electric SBC Order that restricts Soundview from withdrawing funds from the New Jersey Clean Energy Program while any SBC discount is in effect.

Respectfully submitted,

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By 

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Attorneys for Petitioner Soundview Paper Company, LLC

Dated: July 12, 2019

VERIFICATION

In accordance with N.J.A.C. § 14:1-4.6, I, Robert Baron, of full age, being duly sworn according to law, upon my oath, depose and say:

1. I am the Chief Executive Officer of Marcal Manufacturing, LLC d/b/a Soundview Paper Company LLC (“Soundview”) and am authorized to make this Verification on behalf of Soundview.
2. I have reviewed the Petition to Modify the Electric and Natural Gas Societal Benefits Charge Due to Changed Circumstances and attest that the information contained therein is true and correct to the best of my knowledge, information, and belief.


ROBERT BARON

Sworn to and subscribed before

me this 26 day of June, 2019.



(SEAL)

MY COMMISSION EXPIRES:

