



Agenda Date: 5/10/23

Agenda Item: 2A

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

ENERGY

IN THE MATTER OF THE PETITION OF MARCAL	)	DECISION AND ORDER
MANUFACTURING, LLC FOR A THREE-YEAR	)	APPROVING CSG SERVICE
EXTENSION IN ELECTRIC AND NATURAL GAS	)	AGREEMENT AND SBC
SOCIETAL BENEFITS CHARGES	)	DISCOUNT
	)	
AND	)	DOCKET NO. GR22080486
	)	
IN THE MATTER OF THE RATE SCHEDULE CSG	)	
TRANSPORTATION SERVICE AGREEMENT BETWEEN	)	
PUBLIC SERVICE ELECTRIC AND GAS COMPANY	)	
AND MARCAL MANUFACTURING, LLC	)	DOCKET NO. GR22100657

Parties of Record:

Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel
Kenneth R. Stark, Esq., McNees Wallace & Nurick, LLC, Counsel to Marcal Manufacturing, LLC
Danielle Lopez, Esq., Associate General Counsel, Public Service Electric and Gas Company

BY THE BOARD:

On August 12, 2022, Marcal Manufacturing, LLC ("Marcal"), formerly d/b/a Soundview Paper Company, LLC ("Soundview"), filed a petition with the New Jersey Board of Public Utilities ("Board" or "BPU") seeking a three-year extension in Board-approved agreements governing the Societal Benefits Charge ("SBC") paid by Marcal at its paper mill in Elmwood Park, New Jersey ("Marcal Mill") for electric and natural gas service provided by Public Service Electric and Gas Company ("PSE&G") ("SBC Petition"). The SBC discounts were to expire on December 1, 2022.

On October 20, 2022, PSE&G and Marcal entered into a Rate Schedule Contract Service Gas ("CSG") Amended Service Agreement ("2022 CSG Agreement") for gas service at the Marcal Mill. On October 21, 2022, PSE&G filed a letter petition with the Board requesting approval of the 2022 CSG Agreement ("CSG Petition"). The Rate Schedule CSG Transportation Service Agreement ("2015 CSG Agreement") was set to expire on December 1, 2022.

BACKGROUND

On February 9, 1999, the Electric Discount and Energy Competition Act ("EDECA"), N.J.S.A. 48:3-49 et seq., was enacted. L. 1999, c. 23. Among other provisions, EDECA established the SBC at N.J.S.A. 48:3-60. The SBC constitutes a per unit charge billed to ratepayers by an electric

or gas public utility at a level determined by the Board in accordance with N.J.S.A. 48:3-60. The total amount of the SBC paid by each commercial or industrial ratepayer constitutes its SBC liability, and a portion of those remittances fund the New Jersey Clean Energy Program ("CEP"). In 2010 and 2011, the Board conducted and completed a proceeding in which it examined the standards applicable to gas distribution rate discounts and associated terms and conditions.¹ In the Discount Contract Order, the Board noted that nothing 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.

By Order dated November 16, 2015, the Board approved the 2015 CSG Agreement between Soundview and PSE&G for a term of seven (7) years that expired on December 1, 2022.² In the 2015 Order, the Board approved a discount of the SBC associated with Soundview's natural gas distribution service. Under the discount, Soundview was required to pay only the CEP portion of the SBC.

By Order dated December 18, 2018, the Board approved a discounted SBC for the electric usage of Soundview.³ The 2018 Electric SBC Order approved a 50% reduction to Soundview's electric SBC obligations. The 50% electric SBC reduction also expired on December 1, 2022. The joint position approved by the 2018 Electric SBC Order included a condition wherein Soundview committed to not withdraw funds from the CEP while the SBC reduction was in effect.

On January 30, 2019, a major fire resulted in significant damage to the buildings and equipment at the Marcal Mill site and resulted in a shut-down of the Marcal Mill's production. Out of over 500 employees that were employed at the Marcal Mill prior to the fire, only 100 were retained to assist with efforts to restart operations.

By Order dated September 27, 2019, the Board approved discounted SBC rates for the electric and natural gas usage of Soundview.⁴ The September 2019 Order approved a 75% discount of the total SBC rate that is billed by PSE&G to Soundview for electric service and natural gas service, which was to expire on December 1, 2022. The Order allowed Marcal to apply for SBC funds, but provided that if Marcal received significant state-funded assistance for a natural gas combined heat and power ("CHP") facility or other clean energy project, the discounts would terminate when the clean energy project became fully operational.

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

² In re the Petition of Soundview Paper Company, LLC for Approval of a Rate Schedule CSG Transportation Service Agreement Between Public Service Electric and Gas Company and Soundview Paper Company, LLC and In re 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, BPU Docket Nos. GR14111287 and GR15060659, Order dated November 16, 2015 ("2015 Order"). Based upon the effective date, the CSG Agreement and gas SBC discount would expire December 1, 2022.

³ In re the Petition of Soundview Paper Company, LLC for Approval of a Reduction of the Societal Benefits Charge, BPU Docket No. ER18070706, Order dated December 18, 2018 ("2018 Electric SBC Order").

⁴ In re the Petition of Soundview Paper Company, LLC to Modify the Electric and Natural Gas Societal Benefits Charge Due to Changed Circumstances, BPU Docket Nos. ER19070812 and GR19070813, Order dated September 27, 2019 ("September 2019 Order").

Marcal restarted manufacturing operations on January 31, 2020. Based on the equipment that was available after the fire, Marcal concentrated on the “Away-From-Home” market segment when it restarted operations. However, shortly after reopening, the COVID-19 pandemic began and many public places were closed, which was especially damaging to the Away-From-Home market segment which targeted products for offices, schools, restaurants, and other public places. As a result, Marcal curtailed its operations. Marcal stated in the SBC Petition that total losses from January 2020 to date are in excess of \$18 million.

SBC Petition / Proceeding

In the SBC Petition, Marcal requested a three-year extension in agreements governing the SBC that Marcal pays for electric and gas service. Marcal sought this relief due to financial hardship associated with both the 2019 fire, the COVID-19 pandemic, and the surge in natural gas and electric prices that occurred in 2022. Concurrently, a Motion for Admission Pro Hac Vice in New Jersey for Robert A. Weishaar, Jr. was filed with the Board.⁵ Marcal stated that it does not seek to change the underlying substantive terms of the 2015 Order or the September 2019 Order. Marcal further stated that it has not withdrawn any CEP funds since the Board approved the current 75% SBC discounts for natural gas and electric service at the Marcal Mill. Marcal indicated that it previously reviewed and considered applying for funds for a natural gas fired, cogeneration facility (“Co-Gen Unit”). However, Marcal does not anticipate further exploring the possibility in the immediate future. Marcal noted that if it decides to further explore the installation and use of a Co-Gen Unit at the mill and finalizes plans to use a Co-Gen Unit, Marcal affirmed that it would surrender any SBC discounts that are currently in place before the Co-Gen Unit is energized.

In addition, Marcal requested expedited review and processing of the matter to avoid further financial strain in the event Marcal does not receive the extensions prior to the SBC discounts’ expiration on December 1, 2022.

On September 30, 2022, PSE&G filed a motion to intervene pursuant to N.J.A.C. 1:1-16.1 – 16.4.

On October 12, 2022, the New Jersey Division of Rate Counsel (“Rate Counsel”) filed a response to PSE&G’s motion to intervene in the SBC Petition and did not object to the motion being granted. By Order dated October 26, 2022, the Board granted PSE&G’s motion to intervene and admitted Robert A. Weishaar, Jr., Esq. pro hac vice on behalf of Marcal.⁶

On October 24, 2022, Marcal filed a letter with the Board requesting a temporary extension in the current SBC rates assessed to Marcal to avoid the lapsing of the current discounted SBC rates on December 1, 2022. On October 25, 2022, Rate Counsel filed comments with the Board stating that the SBC Petition was under review and discovery and additional time was needed to complete a comprehensive review. Rate Counsel stated that it did not oppose a temporary extension of the current SBC discount.

⁵ Robert A. Weishaar, Jr., Esq. is a member of the bars of Pennsylvania, the District of Columbia and Maryland.

⁶ In re the Petition of Marcal Manufacturing, LLC for a Three-Year Extension in Electric and Natural Gas Societal Benefits Charges, BPU Docket No. GR22080486, Order dated October 26, 2022.

By Order dated November 9, 2022, the Board found that a temporary extension of the discounted electric and gas SBC rates was appropriate pursuant to N.J.S.A. 48:3-60(a).⁷ The Board further found that until a final determination is rendered regarding the SBC Petition, Marcal must continue to pay 25% of the electric and natural gas SBC charges as billed to Marcal by PSE&G.

CSG Petition / Proceeding

In the CSG Petition, PSE&G requested approval of the 2022 CSG Agreement which sought to continue the rates, terms and conditions under which PSE&G provides natural gas transportation services to the facilities at the Marcal Mill for a three-year period. In the CSG Petition, PSE&G stated that, given the financial challenges faced by Marcal, it is reasonable to extend the rate discount in order to prevent a loss of load, ensure continued revenues, and potentially attract additional investment and additional gas load. The CSG Petition stated that the discounted rate still exceeds PSE&G's marginal costs of providing service to Marcal. The CSG Petition included the Affidavit of Stephen Swetz, Sr. Director - Corporate Rates and Revenue Requirements for PSEG Services Corporation in support of the confidential treatment requested for portions of the 2022 CSG Agreement. PSE&G requested that the Board issue an order approving the 2022 CSG Agreement on an expedited basis.

On October 24, 2022, Marcal filed a motion to intervene in the CSG matter pursuant to N.J.A.C. 1:1-16.1 – 16.4. In addition, Marcal requested expedited approval of the 2022 CSG Agreement, or a temporary extension of the 2015 CSG Agreement to avoid the lapsing of Marcal's current discounted rates on December 1, 2022.

On October 25, 2022, PSE&G filed a letter with the Board requesting a temporary extension of the 2015 CSG Agreement to avoid the lapsing of Marcal's current discounted rates on December 1, 2022. On October 25, 2022, Rate Counsel filed comments with the Board stating that it did not oppose Marcal's motion to intervene in the CSG Petition. Further, Rate Counsel stated that it did not object to PSE&G's request for a temporary extension, and it recommended that a temporary extension of the 2015 CSG Agreement be granted to permit the parties to conduct a comprehensive review of the CSG Petition.

By Order dated November 9, 2022, the Board granted Marcal's motion to intervene.⁸ In addition, the Board approved a temporary extension of the 2015 CSG Agreement until a final determination is rendered regarding the CSG Petition.

Key Terms of the 2022 CSG Agreement

The 2022 CSG Agreement provides for a three (3) year term, subject to early termination as provided in the CSG Tariff, effective December 1, 2022. The 2022 CSG Agreement seeks to continue the rates, terms, and conditions under which PSE&G currently provides natural gas transportation services to the Marcal Mill.

The rates charged to Marcal for service shall consist of a Distribution Charge, plus all other current and future applicable charges that are in, or apply to, the Rate Schedule CSG tariff Other

⁷ In re the Petition of Marcal Manufacturing, LLC for a Three-Year Extension in Electric and Gas Societal Benefits Charges, BPU Docket No. GR22080486, Order dated November 9, 2022.

⁸ In re the Rate Schedule CSG Transportation Service Agreement Between Public Service Electric and Gas Company and Marcal Manufacturing, BPU Docket No. GR22100657, Order dated November 9, 2022.

Considerations alternative for firm CSG gas transportation service, such as the New Jersey Energy Sales and Use Tax ("SUT"), the SBC or the Green Programs Recovery Charge, except as provided by the BPU. It shall include a Service Charge as set forth in Rate Schedule CSG. The Distribution and Maintenance Charges shall be based on the Non-Firm Transportation Gas Service ("TSG-NF") distribution per therm charge reduced by \$0.037515 per therm without SUT delivered, except that a minimum annual distribution charge of \$195,491.00, without SUT, shall be payable to PSE&G.

The 2022 CSG Agreement is not applicable to the delivery of gas to any future CHP facility acquired by or constructed otherwise at the Marcal Mill. Any such facility shall be separately metered and receive service at tariffed rates unless another agreement addressing such rates is in effect. Marcal may make an appropriate application to PSE&G for a Rate Schedule CSG Agreement, or another appropriate mechanism, to be applicable to any such CHP facility, as well as for modifications to the 2022 CSG Agreement.

COMMENTS

Rate Counsel

On March 22, 2023, Rate Counsel submitted a letter of non-objection in connection with the SBC Petition and the CSG Petition.

Rate Counsel stated that is satisfied that the requested rate discounts are justified. Therefore, Rate Counsel does not object to the granting of the proposed SBC discounts, or the approval of the 2022 CSG Agreement. However, Rate Counsel asserted that such approval should be subject to the conditions set forth below.

Rate Counsel recommended that the discounted electric and gas SBC charges should be subject to the following conditions:

1. The discounted SBC rates will become effective on the date specified in the BPU's Order, and will terminate on December 1, 2025. If Marcal determines the need for an uninterrupted extension of the reduced SBC rate based on substantially similar financial conditions underlying Marcal's SBC Petition before the Board, Marcal will file a new petition six (6) months in advance of December 1, 2025.
2. Marcal may apply for grants under the CEP offered by the Board or PSE&G while the discounts are in effect. If Marcal elects to apply and then receives significant state-funded or ratepayer-funded assistance for a CHP facility or other clean energy project, then the discounts for the gas and electric SBC will immediately terminate when such CHP facility or other clean energy project becomes fully operational.
3. The discounted SBC rate will apply only to electric and gas utility service provided in connection with Marcal's paper production operation and related activities. Marcal should be required to report any change to the Board if it engages in business activities that are separate from its present production operation.

Rate Counsel stated that the first two (2) conditions are similar to the conditions established by the Board in the September 2019 Order. Rate Counsel proposed the third condition in order to ensure that the discounted SBC rate will not apply to any separate business venture that may be undertaken by Marcal at the Elmwood Park site.

Rate Counsel noted that the 2022 CSG Agreement includes a provision that, in the event Marcal acquires a CHP facility at the Elmwood Park site, the discounted rate will not apply to service provided to the CHP.

In addition, Rate Counsel recommended that the Board's approval of the 2022 CSG Agreement should be subject to the following conditions:

1. The 2022 CSG Agreement will become effective on the date specified in the BPU's Order, and will terminate on December 1, 2025. If Marcal determines the need for an uninterrupted extension of the discounted rates for gas distribution service, based on substantially similar financial conditions underlying Marcal's CSG Petition before the Board, Marcal will file a new petition in advance of December 1, 2025.
2. The discounted SBC rate will apply only to electric and gas utility service provided in connection with Marcal's paper production operation and related activities.

Marcal

On March 31, 2023, Marcal submitted a letter stating that it accepts the conditions recommended by Rate Counsel as summarized above. Marcal requested that the Board proceed to issue orders approving the proposed SBC discounts and the 2022 CSG Agreement subject only to the conditions recommended by Rate Counsel.

PSE&G

On March 31, 2023, PSE&G submitted a letter stating that it requested that the Board grant its request for extension of the Marcal CSG agreement. Additionally, PSE&G took no position with respect to Marcal's request for extension of its electric and gas SBC.

DISCUSSIONS AND FINDINGS

As mentioned in the Discount Contract Order, nothing 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 re-affirms that it has the necessary authority to approve discounted SBC discount rates in appropriate circumstances.

The Board's authorization to provide discounted SBC rates covers providing such rates to avoid a loss of load. In 2014, the Board determined that a CHP facility qualified for a discounted gas service rate on the basis of "other considerations" under the PSE&G gas tariff.⁹ In effect, the Board discounted the SBC applicable to gas distribution service to avoid the loss of the customer and its entire contribution to the SBC.

The Board has carefully reviewed the record in these proceedings, including the SBC Petition, the CSG Petition, the 2022 CSG Agreement, Rate Counsel's March 22, 2023 comments, Marcal's March 31, 2023 letter, and PSE&G's March 31, 2023 letter. The Board is satisfied that the 2022

⁹ In re Rate Schedule CSG Transportation Service Agreement Between Public Service Electric and Gas Company and Homasote Company and the Potential Discount of Societal Benefits Charges, Order dated April 15, 2015 and Decision and Order Approving Gas Service Agreement, BPU Docket No. GR14030266, Order dated December 17, 2014.

CSG Agreement, and the SBC discounts will have a financial impact that is beneficial to the State of New Jersey and PSE&G's ratepayers. This is accomplished by avoiding the loss of load that contributes to the maintenance of PSE&G's distribution system since PSE&G has represented that the rates to be charged under the 2022 CSG Agreement exceed marginal costs and Marcal is required to make a minimum payment each year. Additionally, permitting PSE&G to provide interruptible transportation service at a discount may foster Marcal's potential to increase production at the facility, resulting in increased job creation. The Board is also satisfied that the 2022 CSG Agreement meets the requirements of PSE&G's previously approved CSG tariff.

Therefore, the Board **HEREBY FINDS** that Marcal qualifies for a discounted gas service rate on the basis of other considerations under Rate Schedule CSG, and the rate to be charged satisfies the requirements of the tariff. Therefore, subject to the conditions stated herein, the Board **HEREBY APPROVES** the 2022 CSG Agreement effective on the first day of the month following the effective date of Board approval and expiring on December 1, 2025. If Marcal determines the need for an uninterrupted extension of the discounted rates for gas distribution service, based on substantially similar financial conditions underlying the CSG Petition before the Board, Marcal **SHALL** submit its application to PSE&G at least eight (8) months in advance of December 1, 2025 so that PSE&G can submit a new petition to the Board at least six (6) months in advance of December 1, 2025.

Further, the Board **HEREBY FINDS** that approval of the discounted electric and gas SBC rates is appropriate pursuant to N.J.S.A. 48:3-60(a). Therefore, subject to the conditions set forth below, the Board **HEREBY APPROVES** the continuation of the discounted electric and natural gas SBC rates applicable to Marcal for services until the expiration of the 2022 CSG Agreement on December 1, 2025. If Marcal determines the need for an uninterrupted extension of the reduced SBC rate based on substantially similar financial conditions underlying Marcal's SBC Petition before the Board, Marcal shall file a new petition at least six (6) months in advance of December 1, 2025.

Marcal has not withdrawn any CEP funds since the Board first approved the current 75% SBC discounts for natural gas and electric service at the Marcal Mill. In addition, Marcal stated that it does not anticipate exploring the possibility of a cogeneration facility in the immediate future. However, Marcal is not precluded from applying for grants under the CEP offered by the Board or PSE&G while the discounts are in effect. Marcal affirmed in its SBC Petition that it would surrender any SBC discounts that are currently in place before any cogeneration facility is energized. Therefore, should Marcal file a request with the Board for state-funded assistance for a cogeneration facility or other clean energy project, then Marcal **SHALL** include in that request a copy of this Board order and a request that the SBC discounts terminate upon receipt of any substantive state-funded assistance or CEP grant prior to the time that the underlying project is energized.

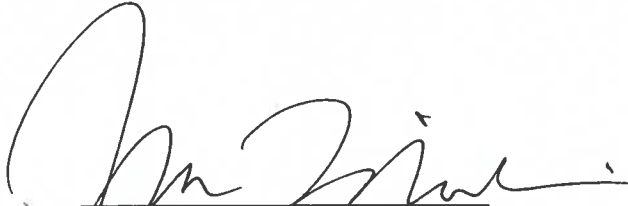
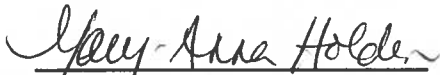
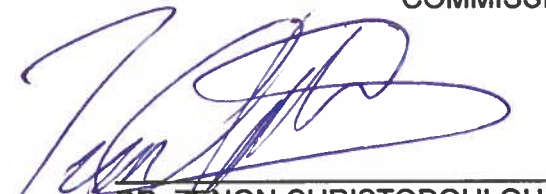
The discounted SBC rate **SHALL** apply only to electric and gas utility service provided in connection with Marcal's paper production operation and related activities. Marcal **SHALL** provide written notification to the Board, the Director of the Division of Water and Energy, and PSE&G prior to engaging in business activities that are separate from its present production operation.

PSE&G's rates, including those related to its Rate Schedule CSG tariff, remain subject to audit. This Decision and Order shall not preclude nor prohibit the Board from taking any actions determined to be appropriate as a result of any such audit.

The effective date of this Board Order is May 17, 2023.

DATED: May 10, 2023

BOARD OF PUBLIC UTILITIES
BY:


JOSEPH L. FIORDALISO
PRESIDENT
MARY-ANNA HOLDEN
COMMISSIONER
DIANNE SOLOMON
COMMISSIONER
DR. ZENON CHRISTODOULOU
COMMISSIONER

ATTEST:


SHERRI L. GOLDEN
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public Utilities.

IN THE MATTER OF THE PETITION OF MARCAL MANUFACTURING, LLC FOR A THREE-
YEAR EXTENSION IN ELECTRIC AND NATURAL GAS SOCIETAL BENEFITS CHARGES
DOCKET NO. GR22080486

IN THE MATTER OF THE RATE SCHEDULE CSG TRANSPORTATION SERVICE
AGREEMENT BETWEEN PUBLIC SERVICE ELECTRIC AND GAS COMPANY AND MARCAL
MANUFACTURING, LLC
DOCKET NO. GR22100657

SERVICE LIST

MARCAL MANUFACTURING, LLC

One Market Street
Elmwood Park, NJ 07407

Robert Baron, Chief Executive Officer
rbaron@marcalpaper.com

MCNEES WALLACE & NURICK, LLC

Kenneth R. Stark, Esq.
100 Pine Street
Harrisburg, PA 17101
kstark@mcneeslaw.com

Robert A. Weishaar, Jr., Esq.
1200 G Street, NW, Suite 800
Washington, DC 20005
bweishaar@mcneeslaw.com

**PUBLIC SERVICE ELECTRIC & GAS
COMPANY**

80 Park Plaza, T5, P.O. Box 570
Newark, NJ 07102

Danielle Lopez, Esq.
danielle.lopez@pseq.com

Katherine Smith, Esq.
katherine.smith@pseq.com

Matthew Weissman, Esq.
matthew.weissman@pseq.com

Caitlyn White
caitlyn.white@pseq.com

Michele Falcao
michele.falcao@pseq.com

Bernard Smalls
bernard.smalls@pseq.com

DIVISION OF RATE COUNSEL

Division of Rate Counsel
140 East Front Street, 4th Floor
Trenton, NJ 08625-0003

Brian O. Lipman, Esq., Director
blipman@rpa.nj.gov

Maura Caroselli, Esq., Managing Attorney
mcaroselli@rpa.nj.gov

Megan Lupo, Esq.
mlupo@rpa.nj.gov

Sarah Steindel, Esq.
ssteinde@rpa.nj.gov

Carlena Morrison
cmorrison@rpa.nj.gov

Rate Counsel Consultants

Andrea C. Crane
The Columbia Group, Inc.
2805 East Oakland Park Boulevard, #401
Fort Lauderdale, FL 33306
ctcolumbia@aol.com

David E. Peterson
Chesapeake Regulatory Consultants, Inc.
1815 Fenwicke Ct.
Huntingtown, MD 20639
davep@chesapeake.net

DIVISION OF LAW

Department of Law and Public Safety
Richard J. Hughes Justice Complex
Public Utilities Section
25 Market Street, P.O. Box 112
Trenton, NJ 08625

Terel Klein, DAG
terel.klein@law.njoag.gov

Matko Ilic, DAG
matko.ilic@law.njoag.gov

BOARD OF PUBLIC UTILITIES

44 South Clinton Avenue, 1st Floor
Trenton, NJ 08625-0350

Sherri L. Golden, Board Secretary
board.secretary@bpu.nj.gov

Stacy Peterson, Deputy Executive Director
stacy.peterson@bpu.nj.gov

Division of Water and Energy

Mike Kammer, Director
mike.kammer@bpu.nj.gov

Malike Cummings, Deputy Director
malike.cummings@bpu.nj.gov

Jacqueline Galka
jacqueline.galka@bpu.nj.gov

Counsel's Office

Michael Beck, General Counsel
michael.beck@bpu.nj.gov

Rachel Boylan, Legal Specialist
rachel.boyland@bpu.nj.gov