APPENDIX D

Administration and Governance of Mandated SBC Public Benefit Programs

Davies Associates, Inc

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Section I

Administrative Approaches

Table 1 provides a state-by-state listing of the administrators of the various SBC public benefit programs. The 23 states that have mandated SBC EE&RE programs as part of their restructuring use one of four administrative models: Utility administration with regulatory oversight, administration by a state agency, administration by a statewide or regional nonprofit institution -- an independent statewide administrator (ISA), or a hybrid combination of the above options. Specifically:

- Four states are having individual utilities administer their EE/RE programs (although usually with some type of collaborative advisory process): Maine, Maryland, New Hampshire, and Pennsylvania.
- Four states have chosen an ISA: Arizona, Oregon, Vermont, and Wisconsin.
- Nine use a state government agency: Delaware, District of Columbia, Illinois, Montana, New Mexico, New York, Ohio, Texas, and West Virginia.
- Four states fall into a "hybrid" category, where utilities have some administrative role, but the approach cannot really be categorized as simple utility administration. In that group, approaches range from utility administration within a system of substantial planning and direction from a regulatory-appointed body and requirements for certain "statewide" programs, to a system whereby utilities get "credit" for any programs they run themselves and only need to remit any remaining portion of the total spending requirement to a state agency for administration. These states are California, Connecticut, Massachusetts, and Rhode Island.
- Two states are in the process of determining the administrative structure for their SBCs: Nevada and New Jersey.

It should be noted that although it is possible to sort states into three general categories, most states have various elements and features that make their approach somewhat unique.

Table 1
Summary Of States With Mandated Systems Benefits Charges

State	Year Started	Energy Efficiency Programs	Renewable Energy Programs	Low Income Programs	R&D Programs	Renewable Portfolio Standard	Trust Fund	Admini-stration	Remarks
Arizona	2001	Yes	Yes	Yes	No	Yes	No	ISA: A quasi-public entity	Programs are administered by the quasi-public Utility Distribution Company, and are budgeted at about $24 million / yr.
California	1998	Yes	Yes	Yes	Yes	No	No	Hybrid	EE programs were originally administered by the PUC-selected California Board for Energy Efficiency, but they are now administered by the utilities with oversight by the PUC; the California Energy Commission administers the RE and R&D programs; the PUC-selected Low-Income Advisory Board administers the LI programs. Programs are budgeted at about $700 million / yr.
Connecti-cut	2000	Yes	Yes	Yes	Yes	Yes	No	Hybrid	EE programs are administered by the utilities with PUC oversight -- administrative costs cannot exceed 5%; RE programs are administered by the quasi-public Connecticut Innovations, Inc., with oversight by an advisory board; LI programs are administered by the PUC.

State	Year Started	Energy Efficiency Programs	Renewable Energy Programs	Low Income Programs	R&D Programs	Renewable Portfolio Standard	Trust Fund	Admini-stration	Remarks
Delaware	1999	Yes	No	Yes	No	No	Yes	State agencies	EE programs are being administered by the Delaware Economic Development Office and the PUC Division of Public Advocate; LI programs are being administered by the state Dept. of Health and Human Services; programs are budgeted at about $2.5 million / yr.
D.C.	2000	Yes	Yes	Yes	No	Yes	Yes	D.C. agencies	Programs are being administered by the D.C. Office of Energy
Illinois	1998	Yes	Yes	Yes	No	No	No	State agencies	Programs are administered by the state Dept. of Commerce and Community Affairs, with oversight by a Policy Advisory Council and an Energy Assistance Program Design Group; SBC also funds the Coal Technology Development Assistance Fund. Programs are budgeted at $83 million / yr.
Maine	1999	Yes	No	Yes	No	Yes	No	Utilities	Utilities administer the programs through service providers, and oversight is provided by the State Planning Office.

State	Year Started	Energy Efficiency Programs	Renewable Energy Programs	Low Income Programs	R&D Programs	Renewable Portfolio Standard	Trust Fund	Admini-stration	Remarks
Maryland	2001	Yes	Yes	Yes	No	Yes	No	Utilities	EE&RE programs are administered by the utilities with PUC oversight; LI programs are administered by the state Dept. of Human Resources. Programs are funded at $34 million / yr.
Massa-chusetts	1998	Yes	Yes	Yes	No	Yes	No	Hybrid	EE and LI programs are administered by the utilities with oversight by the state Dept. of Consumer Affairs; RE programs are administered by the Massachusetts Technology Park Corporation. Programs are funded at $40 million / yr.
Montana	1999	Yes	Yes	Yes	Yes	No	Yes	State agencies	EE&RE programs are being administered by the state Dept. of Environmental Quality; the LI programs are being administered by the state Dept. of Public Health and Human Services.
Nevada	2002	Yes	No	No	Yes	Yes	No	Unclear	Programs are in the process of being established; funding levels and administration have yet to be determined.
New Hamp-shire	1998	Yes	Yes	Yes	Yes	No	No	Utilities	EE, RE, and R&D programs are administered by the utilities with PUC oversight; LI programs are administered by the state's Community Action Agencies

State	Year Started	Energy Efficiency Programs	Renewable Energy Programs	Low Income Programs	R&D Programs	Renewable Portfolio Standard	Trust Fund	Admini-stration	Remarks
New Jersey	2001	Yes	Yes	Yes	Yes	Yes	No	To be determined	A utilities / NRDC Collaborative is temporarily administering the programs, but the final decision on program administration is contingent upon receipt of consultant study. Programs are budgeted at about $120 million / yr.
New Mexico	2002	No	Yes	Yes	No	No	Yes	State agency	The state Dept. of Environment administers the programs.
New York	1998	Yes	No	Yes	Yes	No	No	State agency	Programs are administered by the NY State Energy Research and Development Authority, with oversight by an SBC Advisory Group. Programs are budgeted at $78 million / yr.
Ohio	2000	Yes	No	Yes	No	No	Yes	State agency	The state Director of Development administers the programs with oversight by PUCO and the Public Benefits Advisory Board. Programs are budgeted at $15 million / yr.
Oregon	2001	Yes	Yes	Yes	No	No	No	ISA: Non-profit entity	The PUC is creating a new nonprofit organization to administer the programs. Programs are budgeted at $30 million / yr.
Pennsyl-vania	1999	Yes	Yes	Yes	No	Yes	Yes	Utilities	Utilities administer the programs with PUC oversight. Programs are budgeted at $115 million / yr.

State	Year Started	Energy Efficiency Programs	Renewable Energy Programs	Low Income Programs	R&D Programs	Renewable Portfolio Standard	Trust Fund	Admini-stration	Remarks
Rhode Island	1998	Yes	Yes	Yes	Yes	No	No	Hybrid	EE programs are administered by utility-based collaboratives (including non-utility representatives); RE programs are administered by the statewide Renewable Cooperative. Programs are budgeted at $20 million/yr.
Texas	2002	Yes	No	Yes	No	Yes	No	State agency	Programs are administered by the PUC.
Vermont	2000	Yes	No	Yes	No	No	No	ISA: Non-profit entity	Programs are administered by the Energy Efficiency Utility, a state-sponsored nonprofit corporation (a Burlington-based consortium), with oversight provided by a PUC-appointed advisory committee. Programs are budgeted at $17.5 million/yr.
West Virginia	2002	No	No	Yes	No	No	Yes	State agency	Programs are administered by the Governor's Office of Economic Opportunity
Wisconsin	2000	Yes	Yes	Yes	Yes	Yes	Yes	ISA: Non-profit entities	Programs are administered by nonprofit organizations selected by the state Dept. of Administration, with oversight by the Council on Utility Public Benefits. Programs are budgeted at $111 million/yr.

Source: U.S. Energy Information Administration, American Council for an Energy Efficient Economy, and Davies Associates, Inc., 2002.

Section II

Assessing Options for Administration and Governance

One of the most complicated and critical issues associated with the New Jersey EE and RE initiatives in a restructured electricity industry is assessing the advantages and disadvantages of various administrative and governance options. Over the past decade, many state PUCs developed policies that gave utilities a central robe in pursuing energy efficiency objectives through DSM programs. Utilities were given responsibility for a variety of activities, including general administration, program design, implementation, program evaluation, and cost recovery. However, in a restructured industry, the past performance of and the changing incentives now faced by these former administrators requires that we carefully consider all options for administration and governance in New Jersey, including:

- Vesting authority to administer programs in existing or newly created state government agencies
- Creating nonprofit ISA corporations or authorities with boards of directors

Review of the experiences in other states clearly indicates that there is no one "correct" answer for all situations. Before a definitive recommendation can be made for New Jersey, the four generic options available must be assessed -- utility, state agency, nonprofit ISA, and hybrid, and develop criteria for evaluating the advantages and disadvantages of each governance structure.

Issues Relating to Alternative Administrative and Governance Structures

The Generic Options

There are important advantages, disadvantages, and tradeoffs associated with the alternative institutional and governance options available for administration and management of the Customer-sited Clean Energy Generation Program in New Jersey. Based on previous DAI work in this area, analysis of the administrative and management options, review of the literature, and the recent relevant experiences of a number states, we assessed the four generic options:

- Utility administration with regulatory oversight
- Administration by a state agency
- Administration by a statewide or regional nonprofit institution -- an ISA
- A hybrid combination of the above options

These options reflect the broad categories of approaches available and in use in different states, although many variants are possible. Criteria that should be considered in deciding on the appropriate administrative and management structure in New Jersey include compatibility with broader public policy goals, accountability and oversight, administrative effectiveness, and feasibility and transition issues -- see Table 2.

Option 1: Utility Administration

Under this option, New Jersey utilities would play the central role in administering the Customer-sited Clean Energy Generation Program, providing general administration, program design, oversight of implementation (significant elements of which could be contracted out to private firms), evaluation, and cost recovery subject to regulatory oversight. A utility could submit an overall plan with proposed program designs and budgets, and budgets and use of ratepayer funds could be reviewed and approved by the PUC. Utility management would design individual programs and would be responsible for overall program management and administration. Utility plans generally reflect input from major stakeholders and could include a consensus settlement -- similar to the approach in Rhode Island.

A major advantage of utility administration of EE and RE programs is that the approach has been successful in some states and with certain utilities, particularly since the advent of DSM shareholder incentives. Many utilities have developed significant expertise in administering EE and RE programs, so new institutional arrangements may not be necessary, particularly where state policymakers have determined that public benefits funds are likely to be available only during a short transitional period -- as noted, the four year New Jersey pilot is on the boarder line. Some utilities have proven track records that show their strengths as program administrators, even if the policy goals for energy efficiency have changed from resource acquisition to market transformation. These strengths include name recognition among customers, influence with manufacturers and trade allies, acknowledged technical expertise, lack of direct financial interest in promoting particular EE and RE products or

services, access to detailed information on customer energy use patterns, and a system for billing customers.

Another advantage of reliance on utilities for administration is that accountability and oversight mechanisms are well established, and there are also well-developed mechanisms for input and feedback from key stakeholders through collaborative working or advisory groups. Further, in part because of regulatory requirements, utilities have been compelled to document a standard of performance in their EE and RE programs that is often much higher than that required for comparable programs administered by government agencies or independent ISAs.

Table 2
Factors That Should be Considered in Choosing Among Administrative/Management Options for EE and RE Programs in New Jersey

Criteria	Objectives
Compatibility with Broad Public Policy Goals	1. Support market transformation goals 2. Facilitate delivery of energy-efficiency services by private firms 3. Minimize all costs, including administrative, regulatory, evaluation, marketing, and customer decision 4. Make best use of existing EE and RE expertise and resources of utilities, EE and RE providers, and governmental agencies
Accountability and Oversight	1. Avoid conflict of interest between those who disburse and those who receive public funds 2. Ensure the public oversight that is necessary to assure accountability for the expenditure of PBC funds 3. Minimize regulatory or administrative procedures that could Interfere with the relationship between service providers and customers 4. Align the administrative authority's financial interests and Incentives with desired policy outcomes
Administrative Authority's Effectiveness	1. Provide opportunities for input and feedback from stakeholders, market participants, industry experts, and customers 2. Do not impose excessive or unnecessary transaction costs on service providers 3. Hire and retain highly qualified administrative and technical personnel
Transition Issues	1. Avoid unnecessary regulatory or political obstacles 2. Ensure seamless transition from the current DSM/energy efficiency programs and delivery system to the new EE and RE

	program structure

Source: American Council for an Energy Efficient Economy and Davies Associates, Inc., 2002.

However, there are also potential problems with utility administration: Some utilities have done a poor job in the past, are no longer interested or well suited to administer EE and RE activities given new policy objectives, or have interests that are fundamentally incompatible with these objectives in a restructured industry. For example, if the program policy objectives change from resource acquisition to creation of viable private-sector EE and RE industries, market participants will have great difficulty perceiving that a regulated distribution utility can dispense funds in a competitively neutral manner if the utility has a retail energy service affiliate that operates in the local service territory. We should be concerned that, as was the case in California, the distribution utility will have significant incentive to increase sales to facilitate recovery of potentially stranded costs; thus, its financial or business interests may not be well aligned with the desired outcomes of ratepayer-funded EE and RE programs.

It can also be argued that utilities' historic administrative and organizational strengths in EE and RE program administration are not particularly relevant because the markets for these services are not defined by service territories; thus, substantial coordination and administrative benefits could result from moving to statewide or regional administration of programs. In addition, with the dramatic reductions in utilities' spending on EE and RE programs in recent years, many utilities have lost much of their in-house expertise in this area.

Option 2: Administration by a State Agency

Under this option, a New Jersey state agency (such as the state energy office, general services administration, economic development agency, etc.) would administer and manage the publicly funded EE and RE programs. The utilities would collect the funds and transfer them to the state agency and, under certain conditions, may also implement programs.

The potential advantages of this approach are that:

- Statewide administration can minimize costs

- A state agency should be less likely to be perceived by market participants as having conflicts of interest
- State agencies have significant experience and could disburse funds through competitive solicitations
- State agencies have well-developed processes to ensure input and accountability for use of public funds.

However, there may be problems associated with utilizing a state agency to accomplish what is likely to be a significantly expanded mission. First, the agency's ability to meet the public-policy goals for EE and RE must be assessed, and the experience in some other states has not been encouraging. Over the pat two decades, different state agencies in various states (e.g., state energy offices, housing departments) have been responsible for aspects of EE, LI, and RE program delivery, such as administration of federally funded programs (e.g., residential conservation services, low-income weatherization, the state energy conservation programs, and the Institutional Conservation Program). However, most state agencies, including those in New Jersey, have not had experience administering the full scope of EE and RE programs mandated by the CRA Final Order.

Second, New Jersey state agencies likely employ procurement guidelines that are suboptimal when the desired products or services are difficult to define in advance. Potential drawbacks associated with state procurement processes will depend to some extent on the complexity of policy objectives for EE and RE (e.g., acquisition of resource savings may be less problematic than transforming markets because resource savings are easier to measure). If transforming markets increases in importance in New Jersey, flexible procurement processes are likely to be particularly important, since the understanding of how to assess and evaluate proposals to transform markets is rapidly evolving.

A third reason why administration by a New Jersey state agency may not be the optimal solution is that state budgeting and civil service requirements may make it difficult for state agencies to either hire staff quickly in response to an expanded mission or acquire necessary in-house technical expertise in a timely fashion. These constraints could be serious.

Option 3: An Independent Statewide Administrator

Under this option, New Jersey would support an existing institution or create a new state or regional non-profit institution to administer the Customer-sited Clean Energy Generation Program.

One advantage of this administrative approach is that it has a proven track record in some states, and over the past two decades a number of nongovernmental institutions have gained experience administering large-scale EE and RE programs. For example:

- In Rhode Island, Rhode Islanders Save Energy, a nonprofit agency created by the state's utilities, successfully delivered energy audits to residential customers during the l970s and 1980s and is presently administering several DSM and energy efficiency programs under contracts with local utilities.
- In North Carolina, the North Carolina Advanced Energy Corporation is a nonprofit organization that receives funding from the state's electric utilities (who also sit on its board of directors) to promote and demonstrate high-efficiency technologies and programs.
- In Vermont, EE programs are administered by the Energy Efficiency Utility, a state-sponsored nonprofit corporation (a Burlington-based consortium), with oversight provided by a PUC-appointed advisory committee.
- In Wisconsin, EE and RE programs are administered by nonprofit organizations selected by the state Department of Administration, with oversight by the Council on Utility Public Benefits.

There are also several examples of nonprofit or government agencies that are responsible for research, development, demonstration, and, in some states, limited implementation activities (e.g., New York State Energy Research and Development Authority, California Institute for Energy Efficiency, and Energy Center of Wisconsin).

Other potential advantages of nonprofit ISA administration of the New Jersey Customer-sited Clean Energy Generation Program include:

- The organizational form, structure, and mission of nonprofits could be compatible with public-policy goals for EE and RE (e.g., market transformation).
- Market participants are unlikely to perceive conflicts of interest.
- Flexible planning and competitive procurement processes can be employed.
- The organization may be able to attract highly motivated, skilled technical and administrative staff relatively rapidly.
- A potential nonprofit ISA is already in place -- the New Jersey Clean Energy Collaborative, and could be expeditiously and seamlessly transformed into the ISA.

However, this option also has some significant potential drawbacks. First, the creation of a successful ISA in New Jersey hinges on a broadly shared consensus regarding mission, objectives, funding sources, and appropriate organizational form and governance. Significant political will, commitment, and vision are required from many parties in order to work out the contentious issues that arise in creating a new or significantly enlarging the scope and responsibilities of an existing institution. Success is certainly not guaranteed, as evidenced by earlier attempts in Wisconsin.

Second, the issues associated with accountability and oversight of public funds and governance are particularly significant. Much depends on the enabling charter for the institution, including the role (if any) of the legislature in authorizing the creation of the institution. In the beginning, these issues may be time consuming to address. For example, even with knowledgeable staff on loan from the Northwest Power Planning Council, it took six months of discussions prior to and after the creation of the Northwest Energy Efficiency Alliance for the parties involved to reach consensus on administration and governance issues.

Third, given the high start-up costs of a new institution, this option probably requires that New Jersey policymakers ensure a relatively long-term commitment to the EE and RE programs, preferably five years or more. However, if the New Jersey Clean Energy Collaborative is selected as the ISA, it could presumably “hit the ground running” and incur minimal start-up costs.

Hybrid

The Hybrid approach shares some of the advantages and disadvantages of the other three options. For example:

- The hybrid approach can avoid utility service territory limitations.
- A hybrid, by definition, may have conflicting policy goals.
- If appropriately structured, a hybrid structure can avoid most conflict of interest problems.
- Governance and accountability issues are significant, due to shared responsibility.
- An appropriately structured hybrid approach can take advantage of utility staff and mechanisms for input and feedback from stakeholders.
- The approach has a potential major disadvantage in that its administrative procedures can be complex, contentious, and time consuming.
- Similarly, precise accountability and reporting requirements may be opaque.
- Transition costs for a hybrid structure will likely be greater than the utility option but less than the state agency or ISA options.

Section III

Evaluating the Options

Table 3 identifies the most important issues in deciding which of the four generic administrative options should be utilized in New Jersey, and some of these criteria can be considered sequentially in evaluating alternatives. For example, an examination can be made of New Jersey utilities that currently administer BPU-approved legacy DSM and EE programs. If a utility's past performance in EE program administration and delivery has been poor and/or unacceptable, then there is little reason to believe that the utility's future performance with respect to EE and RE programs will improve in a more competitive electricity industry. Similarly, if the utility's management clearly indicates that it has little interest in continuing to be responsible for ratepayer-funded EE and RE programs, then it is sensible to consider institutional alternatives. In both situations, the utility will have effectively removed itself from consideration.

Consideration must also be given to whether the specific policy objectives proposed for New Jersey's Energy Efficiency and Customer-Sited Renewable Energy Programs are best implemented locally or statewide. Local activities such as energy audits may be administered more effectively by transmission and distribution utilities, while statewide activities, such as participation in upstream EE and RE market transformation activities, might be more effectively administered by a statewide organization. The Pacific Northwest provides a useful example of how such a hybrid strategy might be implemented. Other models also exist, such as Rhode Island's, in which utilities have been effectively directed to participate in statewide, regional, and national activities. However, it is probably desirable to consider options for nonutility administration before choosing utility administration as a default.

A critical issue raised by continued reliance on utilities for administration of ratepayer funded EE and RE activities is perceived or real conflicts of interest. It must be assessed whether societal objectives for promoting EE and RE are aligned with a utility's strategic incentives and whether utility administration poses significant threats to the development of competitive and robust EE and RE energy industries. Subjective judgments on these matters are unavoidable, but certain conditions can be evaluated. For example, if a New Jersey utility has divested its generation assets (i.e., it has become a pure DISCO), operates under a performance-based regulation scheme that decouples earnings from sales, and does not have

Table 3
Key Criteria for Evaluating Administrative Structures for New Jersey's Energy Efficiency and Customer-Sited Renewable Energy Programs

Criteria	Administrative Entity			
	Utilities	**State Agency**	**ISA**	**Hybrid**
Compatibility With Broad Public Policy Goals	Utility expertise and infrastructure is an advantage Utility influence with "upstream" entities is an advantage Service territory limitations lead to market and administrative inefficiencies in certain programs	Statewide scope may minimize administrative and transaction costs Agency's ability to meet EE and RE policy goals must be assessed	Organizational form, structure, & mission (e.g., statewide, regional) is strongly aligned with market transformation goals	Can avoid utility service territory limitations May have conflicting policy goals
Accountability and Oversight	Significant potential exists for conflicts of interest or percep-tions of conflict of interest with other market participants Regulatory oversight mechanisms are well developed, although process can be bureaucratic	Low potential exists for conflicts of interest with private market participants Public input process may be well developed but agency may have little experience with accountability & evaluation standards used for EE and RE programs	Minimal conflicts of interest exist with market participants Governance and accountability issues are significant	If appropriately structured, can avoid most conflict of interest problems Governance and accountability issues are significant due to shared responsibility
Administrative Effectiveness	Existing, well-developed mechanisms for input and feedback from stakeholders Some utilities have highly qualified, experienced staff Desired public outcomes may not be compatible with utility financial interests	Expanded mission for existing agency; assessment of historic track record State procurement rules may make it mare difficult to select "best value" programs & proposals State agency may not have required technical expertise May be difficult for a state agency to hire and retain the "best and the brightest" staff	Most flexibility on competitive procurement Institution building takes time and resources Can create efficient, lean organization quickly with clearly defined mission High probability of attracting qualified administrative & technical staff	Can take advantage of utility staff and mechanisms for input and feedback from stakeholders Administrative procedures can be complex, contentious, and time consuming Precise accountability and reporting requirements may be opaque
Transition Issues	Transition costs are the lowest	Transition issues may be significant	Political will and support needed to create new institution	Transition costs will be greater than the utility option but less than state agency or ISA options

Source: American Council for an Energy Efficient Economy and Davies Associates, Inc., 2002.

an unregulated ESCO or RESCO affiliate operating in its service territory, the potential for conflicts of interest has probably been minimized.

In evaluating options for assessing potential conflicts of interest, there are several important considerations:

- First, if the DISCO is affiliated with an unregulated ESCO or RESCO operating in its service territory, New Jersey could limit or constrain the activities of the ESCO or RESCO within the service territory (e.g., through market segmentation) or decide to monitor and enforce "arm's length" relationships. In this case, the state would have to evaluate the extent to which ongoing monitoring is compatible with future regulatory direction.
- Second, as discussed previously for Rhode Island, the existence of knowledgeable, well-funded (or reimbursed) interested parties can allow for negotiated settlements on funding allocations and program design, which may reduce the independent state monitoring required.
- Third, independent advisory boards (such as the California Board for Energy Efficiency) can be created to provide oversight in New Jersey separate from that provided by regulatory staff.

Experiences in other states indicate that the expected duration of continued ratepayer-funding must enter into decisions to pursue utility versus nonutility administration. In general:

- If the period of funding is expected to be short (one to three years), then the transition and start-up costs associated with nonutility administration are likely to outweigh the expediency of continuing utility administration, despite the ongoing monitoring and regulatory oversight costs.
- If, however, the period of funding is expected to be long (four or more years), it is appropriate to explore nonutility administration.

In New Jersey, the funding period is, initially, four years, but is being extended to eight years.

Consideration of possible alternative administrators should begin with existing nonutility institutions, and for a state agency or nonprofit corporation / governing board, the threshold questions are whether the institution possesses:

- The capability to staff and manage ratepayer-funded programs, which may be significantly broader in scope than current activities
- A system of governance and accountability that is acceptable to the public, the BPU, and the legislature.

If these questions cannot be answered satisfactorily, the next question is whether political support exists to modify these institutions appropriately, or to create new ones. If not, New Jersey must revisit the options for continued utility administration.

If the capability, governance, and accountability requirements for nonutility administration can be met, then another issue arises if state agencies are given responsibility for program administration. As noted, New Jersey state procurement and hiring policies are quite rigid compared to those of utilities or nonprofit organizations. If the rigidities in these procedures are deemed unmanageable given the need to implement EE and RE policies expeditiously, then the arguments for state administration are less compelling.

These rigidities are based, in part, on a desire to procure contractors objectively and insulate state workers from political influences. However, Vermont and California have examined novel approaches for assessing institutional alternatives which may allow consideration of another option -- administration by a nonutility for-profit firm. Rather than make an upfront assessment of the tradeoffs and considerations discussed above, Vermont proposed that the Public Service Board conduct a public solicitation through a formal proceeding in which the administrator could conceivably be a nonprofit organization, a private corporation, an ESCO, or a consortium of firms or organizations.

Similarly, California conducted an even broader solicitation, also subject to ultimate approval by the CPUC, that allowed state agencies, nonprofits, utilities, and nonutility for-profit firms to submit bids to administer

energy-efficiency programs statewide. In order to develop an RFP to hire new administrators, the CBEE led an open process with significant opportunities for public comment. The RFP identified the number of administrators the CPUC will hire -- three: Residential, nonresidential, and new construction -- and the scope of their responsibilities, including the separation between administrative and implementation responsibilities. The openness of the process is central to the reasons why consideration of nonutility for profit firms was even possible. However, developing and implementing the RFP process, which started in mid-1997 and was not completed until 1999, was time-consuming, and other states are carefully assessing this option.

Section IV

Implications for New Jersey

Ratepayer-funded EE and RE programs reflect societal preferences to secure important public benefits that markets cannot be expected to provide unassisted. Although the New Jersey restructuring process holds great promise for improving the functioning of the energy market, restructuring alone is unlikely to supplant the need for ratepayer funding of EE and RE programs. These programs must be consciously redesigned, however, to ensure that they are consistent with the new institutional relationships and policy goals created through restructuring.

While it is too soon to draw firm conclusions about the relative success of public benefit RE and EE policies in most state, the early indications are generally positive. Collection of the fund revenues and actual implementation of the programs has begun in more than ten states, with several states having had their programs “in the field” for at least three years.

In addition, these public benefit policies regarding EE and RE have generally received high marks from various stakeholders in the respective states. Studies, surveys, and interviews with the stakeholders (e.g., administrators, utilities, advocate groups, etc.) in the states with policies in place indicate that those involved have an overall positive regard for the public benefits policies adopted by their state, and in most cases, for the implementation efforts to date.

It thus appears that it is possible to establish statewide public benefit EE and RE funding mechanisms and achieve practical success in

administering and delivering programs funded by that mechanism. The success of such efforts in a number of states demonstrates this.

A significant corollary lesson is that there does not appear to be any single "correct approach" for the design of such a system:

- Some states, such as Maine and New Hampshire, have implemented utility administered programs.
- Some states, such as New York and Illinois, utilize programs administered by state agencies.
- Several states, such as Vermont, Wisconsin, and Oregon, are relying on an ISA.
- Other states, such as Massachusetts, Connecticut, and California are utilizing hybrid approaches.

Thus, a primary strategic and tactical lesson that emerges from analysis of the experiences in other states is that, once having met an overall policy threshold of having public benefit funding support for EE and RE programs, each state should take advantage of its own strengths and assets in designing the specific details of its EE and RE policy implementation approach.

Section V

Lessons Learned From Other States

There is relatively little quantifiable information as to the long term effectiveness and efficiency of these different organizational structures, primarily due to the brevity of their existence. There are successful examples of all four structures, but few metrics as to the effectiveness or efficiency. Most states' programs are nascent and consequently do not have the performance experience on which to determine the effectiveness and efficiency of the organizational structure.

We researched the experiences of the 23 states that have mandated SBC EE&RE programs; specifically, we:

- Interviewed staff from the relevant PUCs, state agencies, utilities, ISAs, and industry, environmental, and EE&RE interest groups

- Reviewed and analyzed the relevant state on-line data bases
- Examined legislation and proceedings
- Reviewed the existing literature

The reasons for selecting a particular method of organization and administration are state specific, and include factors such as the legislation, the relative strengths of the groups at the negotiating table, and expediency. Evidence from the individual states indicates that all four of the administrative structures can be successful. However, as noted, we found that there is no a priori best method of organization, and each state situation is unique.

There is thus no way to determine a priori which of the four administrative structures -- utility, state agency, ISA, or hybrid -- is best in general or for a particular state. Most states' experiences are too recent to make a decisive judgment, and most observers feel that the situation is very fluid and that the appropriate approaches for the different states will evolve over time. Nevertheless, successful models of each structure are emerging; for example:

- Utility administration seems to be working well in Connecticut.
- State agency administration appears to be successful in New York.
- The hybrid model appears to be effective in Massachusetts and Rhode Island.
- ISAs have worked well in the Northwest.
- In Vermont, utility administration was initially not successful, and the structure was changed to an ISA, which appears to be more effective.
- In Montana, state administration may be morphing into a hybrid state agency / utility model.

We found that the administrative structure is determined by several factors, the most important of which are very state-specific. For example:

- In Montana, the state agencies are allowing the Montana Power Company to administer the SBC programs because the agencies and the state's community activists and

environmentalists trust the MPC to be efficient and environmentally responsible.

- In Wisconsin, the state Department of Energy is transferring responsibility for administration to two nonprofit organizations because the DOE feels that it does not have the in-house staff to do it.
- In New York, NYSERDA is administering the program because it does have the in-house staff
- In Vermont, initial concerns with utility performance led to the administration being transferred to a nonprofit ISA
- ISAs have a history of success in the Northwest, and Oregon has established a nonprofit ISA to administer its SBC programs
- In Massachusetts, it was decided to allow the Division of Energy Resources administer the EE programs, but have the Massachusetts Technology Park Corporation administers the RE programs -- due to its experience in managing and distributing technology funds.
- In Rhode Island, it was decided to administer the programs through utility-based collaboratives.

Nevertheless, our review of the administrative options in other states did provide useful insights; for example:

- A utility's past performance in DSM/EE administration is germane, and if the utility indicates that it has little interest in continuing responsibility for ratepayer-funded EE & RE programs, then other institutional alternatives must be considered.
- Some EE&RE programs that involve local activities, such as energy audits, may be administered more effectively by transmission and distribution utilities.
- Statewide activities, such as participation in upstream EE and RE market transformation activities, may be more effectively administered by a statewide organization -- state agency, ISA, or hybrid.

- It is usually desirable to consider options for nonutility administration before choosing utility administration as a default.
- Real or perceived conflicts of interest are important, and it is critical to assess whether societal objectives for promoting EE and RE are aligned with a utility's strategic incentives and whether utility administration poses significant threats to the development of competitive and robust EE and RE energy industries.
- The existence of knowledgeable, well-funded (or reimbursed) interested parties can allow for negotiated settlements on funding allocations and program design, which may reduce the independent state monitoring required.
- Independent advisory boards can be created to provide oversight separate from that provided by regulatory staff.

With respect to implementation:

- If programs are to be administered by an ISA rather than the utilities, it is important to select an organization with experience and demonstrated capability in this field. This will be much quicker and more effective than trying to create a new organization.
- In delivering programs, advantage should be taken of existing experienced delivery channels, while still allowing some opportunity for testing creative new approaches. There is room to incorporate both strategies.
- All available program dollars should not be committed immediately at the outset; some flexibility should be retained to direct funds to good program ideas that emerge as experience unfolds.
- Use of multiparty collaboratives for program guidance and oversight can be an effective mechanism for avoiding litigation and other challenges and delays, and can be done in a reasonably efficient manner.

- "Bureaucratic roadblocks" should be avoided. In most states, the legislature can create policy, but it is up to other agencies of government to implement that policy. In several states, the restructuring legislation contains favorable language "authorizing" an SBC for EE&RE programs, but non-supportive regulatory commissions have not yet approved any funding.
- The "standard cost trap" should be avoided. The new EE&RE charges must be set at a level high enough to assure sufficient finds for new programs as well as covering the cost obligations from prior programs. Several states have discovered that their new SBCs will be almost entirely used up to pay for prior DSM/EE programs, rather than covering those prior obligated costs in some other manner, such as including them in stranded cost recovery.
- "Procedural gridlock" should be avoided. The complexity of overlapping rules and procedural requirements can impede implementation. Several states have experienced administrative meltdowns, where overly complex processes and lack of coordination among different government entities have hindered the goals of statewide administration of the SBC EE&RE programs.