



State of New Jersey
DIVISION OF RATE COUNSEL
140 EAST FRONT STREET, 4TH FL
P.O. Box 003
TRENTON, NEW JERSEY 08625

PHIL MURPHY
Governor

SHEILA OLIVER
Lt. Governor

STEFANIE A. BRAND
Director

June 17, 2020

By Electronic Mail

Honorable Aida Camacho-Welch, Secretary
NJ Board of Public Utilities
44 South Clinton Avenue, 9th Floor
P.O. Box 350
Trenton, NJ 08625-0350

**Re: In the Matter of Straw Proposal on
Electric Vehicle Infrastructure Build Out
BPU Docket No. QO20050357**

Dear Secretary Camacho-Welch:

Please accept for filing the enclosed comments being submitted on behalf of the New Jersey Division of Rate Counsel ("Rate Counsel") in response to the Request for Written Comments issued by the Staff of the Board of Public Utilities for comment on June 3, 2020, with subsequent Public Notice extending the deadline for comments to June 17, 2020. In accordance with the Notice, these comments are being filed electronically with the Board's Secretary at board.secretary@bpu.nj.gov.

Please acknowledge receipt of these comments.

Honorable Aida Camaco-Welch, Secretary
June 17, 2020
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Thank you for your consideration and attention to this matter.

Respectfully submitted,

STEFANIE A. BRAND
Director, Division of Rate Counsel

By: /s/ *Brian Weeks*
Brian Weeks, Esq.
Deputy Rate Counsel

BW
Enclosure

cc: All via e-mail:
Joseph Fiordaliso, President
Dianne Solomon, Commissioner
Mary-Anna Holden, Commissioner
Upendra Chivukula, Commissioner
Bob Gordon, Commissioner
Abraham Silverman, Esq., BPU
Kelly Mooij, BPU
Sherri Jones, BPU
B. Scott Hunter, BPU
Rachel Boylan, Esq., BPU
Pamela Owen, DAG

**IN THE MATTER OF STRAW PROPOSAL ON
ELECTRIC VEHICLE INFRASTRUCTURE BUILD OUT
BPU Docket No.: QO20050357**

Comments of the Division of Rate Counsel

June 17, 2020

Preliminary Statement

Encouraging the electrification of the transportation sector is an important goal, but one that will only be achieved over time and with contributions from many sources. In enacting the PIV Act, the Legislature recognized this and struck a balance between encouraging the adoption of Electric Vehicles (“EVs”) and not over burdening the customers of regulated electric utilities. The PIV Act includes broad goals and policies, but provides specifically for only certain limited programs to be paid for out of funds collected from ratepayers via the Societal Benefits Charge. The PIV Act also cites other sources of funding such as the Regional Greenhouse Gas Initiative (“RGGI”), Electrify America Funds and New Jersey Transit funding that may also be used to support this initiative.¹ While the PIV Act was signed into law before the current pandemic and economic downturn, the need for that balance is even greater now, with so many New Jersey households enduring the loss or reduction of income.

Rate Counsel supports the general proposition in the Staff Straw proposal (“Straw”, “Straw Proposal”) that ratepayer funding, via utility contributions to this effort, must be limited to those tasks that require utility expertise and other tasks only as a last resort.² Private equity and funding should be accessed to the greatest extent possible. Other sectors that will benefit from this effort, in particular the transportation sector, should also be asked to contribute.

¹ Codified at N.J.S.A. 48:25-1 through -11 the “Plug-In Vehicle Act” (“PIV Act”) or Electric Vehicle Act” (“EV Act”).

² “New Jersey Electric Vehicles Infrastructure Ecosystem 2020 Straw Proposal,” available at https://www.state.nj.us/bpu/pdf/publicnotice/Notice_Stakeholder_Meeting_EV_Straw_Proposal_5-18-20.pdf.

However, Rate Counsel has some significant concerns regarding how the Staff Straw attempts to accomplish its overall purpose and the process that is being employed to put these policies and programs into place. With respect to process, the Straw does not seem to contemplate the promulgation of regulations, even though it announces new rules that would be applied broadly and are not inferable from the statutory language. It seeks to implement these changes through utility filings with wholly unrealistic timeframes and deadlines. It would simply not be possible to provide due process for the many stakeholders whose interests are implicated by this proposal under the timeframes set forth in the Straw. Moreover, the Straw itself is not being reviewed consistent with due process, as not all interested parties were given an opportunity to comment, and only certain stakeholders were “selected” to speak on panels based on unknown criteria.

Substantively, Rate Counsel has concerns about the Straw as well. Although stating clearly that utilities should only be permitted to construct EV charging equipment as a “last resort,” the Straw then asks the utilities to map out where they will build these “last resort” charging stations by December 2020, well before there can be any actual understanding of where the market will develop and lead to privately built and financed stations. Also, though not mentioned in the substantive portions of the Straw, the minimum filing requirements at the end ask the utilities to submit plans to replace school buses throughout the state. This is wholly inappropriate as well as being illegal.

Ratepayers cannot be asked to fund this entire initiative and the Board lacks legal authority to order them to pay for costs beyond that which is used and useful in the provision of utility service. Rate Counsel urges the creation of an EV tariff for customers with EVs so that they may fairly pay for the additional costs that go along with their use of EVs, and to encourage them to utilize managed charging to minimize the burden on the distribution system. The most equitable result here would be for the private market and those who benefit from EV charging to pay as

much of the associated costs as possible. Requiring ratepayers as a whole, many of whom may never be able to afford these luxury vehicles, to subsidize those who can afford them, is wholly inequitable, and is not made up for by the fact that there may be system benefits several decades from now. Rate Counsel urges Staff and the Board to truly limit utility involvement, and thus ratepayer costs, to those aspects of transportation electrification that protect the distribution system and require utility involvement. The rest should be paid for by those who benefit.

Comments

As part of the process to implement the PIV Act, the Office of Clean Energy staff (“OCE”, “Staff”) of the Board of Public Utilities (“Board”, “BPU”) on May 18, 2020 circulated the Straw Proposal. Staff also held a webinar on June 3, 2020, at which selected stakeholders were invited to provide verbal comments and an opportunity was provided for questions.

The New Jersey Division of Rate Counsel (“Rate Counsel”) provides the following comments on the Straw Proposal which correspond to the Straw’s subsections.

I. Introduction [Straw, pp. 1-3]

Before considering socializing the cost of facilitating EV use, a view of the “big picture” is helpful to frame the issues. One view of utility regulation sees regulation as a proxy for market forces where none exist, such as where public utilities operate with exclusive municipal franchises to provide service, in other words, a monopoly. Since a monopoly has no competition to place downward pressure on prices, regulation steps in to ensure that rates are just and reasonable for an essential service like electricity. The ratemaking process ensures that only those costs associated with the provision of utility service are recoverable through rates. Rate Counsel urges the Board to be vigilant to ensure that the costs of EV adoption – not tied to the provision of utility service – are not passed through to ratepayers who do not own or operate EVs.

Today, EVs constitute a very small but growing part of the total new vehicle market. EVs embody the new technology of modern batteries for electric propulsion. EV drivers, in marketing parlance, squarely fall into the category of “early adopters.” In a competitive market – not in the utility monopoly realm – early adopters reasonably expect to pay more and typically do pay more to be among the “first,” whether it’s a color TV, an electric calculator, a personal computer, a cellular phone, a flat screen TV, the latest smart phone, or some other emerging technological innovation of its time. EV buyers are no exception. The models of best-selling brands of EVs range in price from around \$37,000 to over \$100,000. Clearly, these are luxury vehicles by any measure. Even the lowest priced EVs are considerably more expensive than a new compact family sedan. All are far more expensive than a typical used car. Realistically, there are no low-priced EVs on the horizon and there are not likely to be until there is greater demand. Unlike a natural monopoly like electricity, where it has not been feasible or cost effective for a competitor to build a duplicate, competing system, the prices for electric vehicles should come down as more and more people enter the market and competitors seek to increase their market share. In that circumstance, intervention via regulation would not be needed, and other ratepayers – many of whom do not even own a car – would not be required to absorb through utility rates the socialized costs of early adoption. The proposal here, in the guise of promoting this nascent industry, is to declare that the market has already failed and that the regulators must step in to impose socialized costs. Rate Counsel submits that this finding cannot be made at this juncture and that the focus should be on promoting robust competition to spur the broad adoption of EVs rather than skipping ahead to a monopolistic regulatory model.

Rate Counsel recognizes the potential that EVs have for reducing greenhouse gas (“GHG”) emissions tied to climate change. However, ratepayers have already contributed much over the years to energy efficiency (“EE”) and renewable energy (“RE”) programs designed to reduce the

GHG profile of the electric and gas public utility sector of the economy, and will continue to do so. As the Straw recognizes, the expanded use of EVs will add significantly to electric load.³ This anticipated EV-related increase in electric load will lead to a commensurate need to reduce the resulting increase in GHG emissions. Thus, the proliferation of EVs will lead to the need for even greater contributions from ratepayers for EE and RE programs to mitigate the EV-related GHG emanating from the utility sector and for distribution upgrades to ensure continued reliability. Requiring more from electric ratepayers who do not drive EVs while seeking no contribution from the transportation sector and not enough from those who can afford EVs is inequitable and potentially unnecessary.

Finally, unlike EV owners, electric ratepayers have no alternatives. Note that by their very nature, EVs are alternative fuel vehicles, as compared to modern household electric refrigerators and washing machines that are dependent on electricity and a permanent connection to the utility distribution grid. The cost burden placed on other electric ratepayers who have no reasonable alternatives must be considered, particularly at a time when unemployment levels are very high, as they are now. Therefore, socializing the costs of EV charging among all electric ratepayers does not appear to be a reasonable concept now.

As set forth herein, the confounding of electric public utility rate regulation and EV promotion is fraught with numerous policy and legal issues which impose constraints on utility involvement in this area. That said, there are reasonable ways to promote and support EV adoption within these constraints. The best way to simultaneously accelerate the development of an EV ecosystem without unjustly burdening other ratepayers is to establish separate tariffs for EV charging. This is discussed in detail in Section V(D) of these comments.

³ Straw, p. 6.

II. Statutory Authority [Straw, pp. 3-4]

A. Legal Issues

The Board must ensure that any EV initiative is consistent with its statutory grant of authority and with public utility law.⁴ Rate Counsel does not believe that New Jersey’s electric distribution companies (“EDCs”) may or should be in the business of constructing, owning or operating EV chargers, or purchasing and donating EVs, on a rate regulated basis, and opposes imposing the costs for such investments on ratepayers as a whole. The PIV Act⁵ does not authorize the Board to allow regulated utility investments in public charging. The PIV Act identifies goals for the adoption of EVs in New Jersey, but the specific measures it authorizes differ from the Straw Proposal. While draft versions of the PIV Act included provisions allowing EDCs to invest in EV infrastructure and recover those investments from ratepayers, the Legislature removed those provisions from the bill before it was finalized. The PIV Act that was ultimately passed by the Legislature and signed by the Governor authorizes the Board to offer incentives of specific amounts, using specific sources of funding, to promote the purchase of EVs and the installation of in-home EV chargers. The Act provides that the Board shall administer a “Plug-in Electric Vehicle Incentive Fund” (“PIV Fund”), using funds collected via the Societal Benefits Charge (“SBC”) and Regional Greenhouse Gas Initiative (“RGGI”), further appropriations by the Legislature and the investment income of the PIV Fund itself to fund up to \$5000 in rebates for the purchase of electric vehicles.⁶ The Act also allows the BPU to create a program paid for through SBC funds to provide

⁴ On these and other bases, Rate Counsel has moved to dismiss both of the EDCs’ EV-related filings now pending before the Board. I/M/O Petition of Atlantic City Electric Company for Approval of a Voluntary Program for Plug-In Vehicle Charging, BPU Docket No. EO18020190; I/M/O Petition of Public Service Electric and Gas Company for Approval of its Clean Energy Future – Electric Vehicle and Energy Storage (“CEF-EVES”) Program on a Regulated Basis, BPU Docket No. EO18101111.

⁵ N.J.S.A. 48:25-1 through -11.

⁶ N.J.S.A. 48:25-7.

up to \$500 for in-home chargers. There is no mention of any authority for the BPU to authorize the utilities to implement additional programs and charge the costs of those programs to ratepayers.

Although the PIV Act does authorize the Board to establish EV-related programs pursuant to existing statutory authority,⁷ there is no authority in any other existing statutes that allows BPU to authorize ratepayer-funded charging stations. EDECA only addresses BPU authority to allow programs related to the provision of safe, adequate and proper service.⁸ It specifically limits the ability of regulated utilities to perform “competitive services,” which are defined as services outside BPU’s traditional jurisdiction over distribution and transmission monopolies.⁹

Other existing statutes also do not authorize the BPU to approve ratepayer-funded charging stations. While N.J.S.A. 48:3-98.1 allows utilities to seek approval for energy efficiency and renewable energy programs, EV programs are not energy conservation or efficiency. To the contrary, the 2019 EMP anticipates that electrifying the transportation industry will cause a large increase in the demand for electricity.¹⁰ Therefore, the construction and ownership of charging stations by EDCs is not authorized under N.J.S.A. 48:3-98.1.

New Jersey public utility law has developed safeguards for the respective property rights and obligations of ratepayers and public utility companies. An EDC may recover only the fair value of prudent investments in utility property that is used and useful in providing public utility service.¹¹ Public utility service must be safe, adequate and proper.¹² Utility rates must be “just and

⁷ N.J.S.A. 48:25-3(b).

⁸ N.J.S.A. 48:2-13(d).

⁹ N.J.S.A. 48:3-51, -56, -58 and -50.

¹⁰ State of New Jersey, “2019 New Jersey Energy Master Plan, Pathway to 2050,” available at https://nj.gov/emp/docs/pdf/2020_NJBPU_EMP.pdf, p.176.

¹¹ See e.g., In re Proposed Increased Intrastate Industrial Sand Rates, 66 N.J. 12, 22-24 (1974); I/M/O Petition of Pub. Serv. Coordinated Transp., 5 N.J. 196, 217 (1950); Atlantic City Sewerage Co. v. Bd. of Pub. Util. Comm’rs, 128 N.J.L. 359, 365-66 (Sup. Ct. 1942); Duquesne Light Co. v. Barasch, 488 U.S. 299, 307 (1989); Smyth v. Ames, 169 U.S. 466, 547 (1898).

¹² N.J.S.A. 48:2-23.

reasonable.”¹³ A related principle is that costs should be allocated to the party who causes the utility to incur them, i.e., the “cost causation” principle. In other words, a party that wants and will benefit from a public utility investment or service should pay for it.

Applying these principles quickly exposes the troubling portions of the Straw Proposal. The provision of electric transportation equipment is not a public utility function, so purchasing or subsidizing the ownership or use of an EV will not provide a public utility service. An EDC certainly may not use ratepayer funds to purchase an electric school bus and donate it to a school district or their transportation contractor, nor donate to the school or contractor the incremental cost of an electric school bus. Such equipment would not be used and useful in providing public utility service. The same principles prohibit using ratepayer funds to purchase electrically powered motor vehicles or other equipment to be owned and used by a port authority, transportation agency or other entity. Nor should ratepayers be asked to shoulder the costs of EV-related investments that the competitive market deems risky, due to the specific location or technology. If they are too risky to justify private investment, they may not be prudent utility investments for which ratepayers as a whole may be charged.

Because purchasing an EV costs thousands of dollars more than a comparable motor vehicle with an internal combustion engine, EVs remain an expensive novelty product for higher-income consumers. It is not just or reasonable or equitable for lower-income ratepayers who do not own an EV, and who are unlikely to own one in the near future, to subsidize infrastructure that primarily benefits high-income early adopters of EVs.

Rate Counsel does not object to allowing utilities to invest in, and earn on, the wiring and related “backbone” infrastructure necessary to make locations “charger ready,” depending on the work to be done. This is reasonably consistent with the traditional utility function of ensuring that

¹³ N.J.S.A. 48:3-1.

EDCs provide adequate distribution system infrastructure to serve their customers. However, these costs should to the extent possible be borne by EV owners and EVSE companies through their EV-only tariffs. Moreover, where a charger ready installation presents risk, such as a location where it may not be profitably used, the utility customer who requests the installation should bear the risk by paying an appropriate deposit to be repaid consistent with the Board’s Main Extension Rules.¹⁴

B. Procedural Issues

The stakeholder process being used to review the Straw Proposal needs to be expanded. It forms an incomplete and inadequate basis for launching a Board-regulated program of EDC involvement in EV-related industries. Simply put, the Straw Proposal process denies interested parties their right to participate with notice and an opportunity to be heard. The Board has a “duty to provide clear notice that would enable a meaningful opportunity for comment” in order to “satisfy its basic administrative law obligation to act with transparency through the provision of prior notice and opportunity for comment.”¹⁵

While a public “stakeholder” meeting was conducted, that meeting consisted of select panel members making presentations on requested topics. It was not an opportunity for interested parties to comment on what they thought of the Straw Proposal. Moreover, the process of selecting panelists was opaque. While Staff stated that they would endeavor to ensure the panels represented various interests and diverse opinions, constituencies and business models, the basis for selecting or rejecting certain individuals is unknown. Parties not selected as panelists were offered the opportunity to ask questions and make public statements, “time permitting.”¹⁶ The result is that

¹⁴ N.J.A.C. 14:3-8.1 to-8.14.

¹⁵ In re Provision of Basic Generation Service for the Period Beginning June 1, 2008, 205 N.J. 339, 344 (2011).

¹⁶ I/M/O Straw Proposal on Electric Vehicle Infrastructure Build Out, BPU Docket No. QO20050357, New Jersey Electric Vehicles Infrastructure Ecosystem 2020 Straw Proposal, May 18, 2020 Public Notice, pp. 14-15.

parties with a significant interest in the outcome of this matter were denied the opportunity to present their comments as part of a panel.¹⁷

Rate Counsel also believes the schedule set forth in the Straw Proposal is unrealistic and cannot be undertaken consistent with due process. The Board currently has before it two major, separate and different EV-related filings by EDCs that are fundamentally incompatible with the Straw Proposal. For example, both proposals call for ratepayer-funded charging stations well beyond those that can be considered as a “last resort.” Under the procedural schedules for those EDC EV matters, it is unlikely that they will be decided before the end of calendar year 2020. The Straw states that the EDC petitions should be litigated on a parallel track, but given their inconsistency with the Staff Straw, it is unclear how or whether those cases can be resolved simultaneously without a clear duplication of efforts and waste of resources on the part of the parties and the Board.

Moreover, given the uncertainty created by those significant unresolved matters and the lack of guidance from the Board on the appropriate scope of EDC involvement in EV-related investments, it is unclear whether any of the EDCs will be in a position to file proposed programs by December 31, 2020. It is also unclear how any New Jersey EDC will have sufficient data to identify “last resort” EVSE locations by the end of this year, since it will take at least several years before anyone knows which locations will be built by privately funded market participants.¹⁸ Even if the utilities were able to file petitions consistent with the Straw by December 31, it is highly unlikely the Board can consider those petitions consistent with due process and approve the EDCs’

¹⁷ Among the excluded are key industry participants such as ChargePoint, which has been very involved in the Board’s EV stakeholder process, is an Intervenor in both of the EDC EV-related proceedings now pending before the Board, and specifically requested participation on the panels.

¹⁸ Identifying EVSE locations also must include action by the DEP, which is to designate those heavily used public roads in the State that are “travel corridors,” N.J.S.A. 48:25-2, where DC Fast Chargers are to be located. N.J.S.A. 48:25-3.

EV-related programs by April 1, 2021, a mere 90 days later. This timeframe does not allow sufficient time for Board Staff and interested parties to obtain discovery, file testimony or otherwise litigate these petitions if they are contested pursuant to the Administrative Procedure Act (“APA”).¹⁹ This problem is compounded by the fact that Staff proposes having all utilities file their proposed EV programs for Board review on the same schedule. This will be extremely burdensome to all interested parties, including Board Staff and Rate Counsel, and does not allow for the procedural requirements of the APA to be met.

Finally, if the Board decides to adopt the recommendations in the Staff Straw proposal, the measures set forth in the Straw Proposal require rulemaking. They are meant to be broadly applicable, uniformly applied, and prospective. The provisions are not based on any previous statute or Board standard, and they set a general administrative regulatory policy.

While New Jersey agencies enjoy great leeway when selecting among procedures to fulfill their statutory mandates,²⁰ for some types of actions rulemaking is required.²¹ The New Jersey Supreme Court has established criteria for determining whether an administrative determination constitutes rulemaking. These elements, if present, define an administrative action as a rule which, in order to be valid, must be promulgated in accordance with the procedures governing rulemaking as provided by the Administrative Procedure Act.²²

An agency determination is considered an administrative rule if it:

- (1) is intended to have wide coverage encompassing a large segment of the regulated or general public, rather than an individual or a narrow select group;
- (2) is intended to be applied generally and uniformly to all similarly situated persons;

¹⁹ N.J.S.A. 52:14B-1 to -31 and 52:14F-1 to -23; see, N.J.A.C. 1:1-1 et seq.; N.J.A.C. 1:14; N.J.A.C. 14:1-8.1.

²⁰ In re Provision of Basic Generation Service for the Period Beginning June 1, 2008, 205 N.J. 339, 347 (2011).

²¹ Metromedia, Inc. v. Director, Division of Taxation, 97 N.J. 313, 331-32 (1984).

²² N.J.S.A. 52:14B-1 to -31 and N.J.S.A. 52:14F-1 to -23; 97 N.J. at 328.

- (3) is designed to operate only in future cases, that is, prospectively;
- (4) prescribes a legal standard or directive that is not otherwise expressly provided by or clearly and obviously inferable from the enabling statutory authorization;
- (5) reflects an administrative policy that (i) was not previously expressed in any official and explicit agency determination, adjudication or rule, or (ii) constitutes a material and significant change from a clear, past agency position on the identical subject matter; and
- (6) reflects a decision on administrative regulatory policy in the nature of the interpretation of law or general policy.²³

While not all factors need be present to require rulemaking, here the Straw Proposal presents all six factors requiring rulemaking. The current process in the Straw Proposal is clearly not an appropriate substitute for rulemaking. Moreover, while the PIV Act authorizes the Board, in consultation with the DEP, to promulgate regulations to implement it,²⁴ it does not supplant the provisions of the APA that require rulemaking for agency action that meets the Metromedia standards.

III. Background on Terminology [Straw, pp. 4-5]

Rate Counsel recommends clarifying the terminology in the Straw. Some terms are undefined and others are confusing or contradictory. For example, the Straw's definition of "community location" seems to contradict the PIV Act's definition. The Straw's definition of "community location" adds the word "travel," which results in allowing "corridor" locations located within one mile of a "travel corridor" roadway to be included among "community" locations. But the PIV Act's definition excludes "corridor" locations from "community" locations. N.J.S.A. 48:25-2. The terms "operational" and "poor performing EV infrastructure companies" are also vaguely defined and should be clearly defined by rule. Other undefined terms include "evacuation routes" and market "maturity."

²³ 97 N.J. at 331-32; see also I/M/O the Board's Review of the Applicability and Calculation of a Consolidated Tax Adjustment, Docket No. A-1153-14T1 (App. Div. Sept. 18, 2017) (unpub.).

²⁴ N.J.S.A. 48:25-11.

IV. Objectives Underlying this Straw Proposal [Straw, pp. 6-7]

See Section I, Introduction.

V. Program Elements

A. The “Shared Responsibility” Business Model for Ownership, Maintenance and Advertising of EV Infrastructure. [Straw, pp. 7-8]

Rate Counsel generally supports the Straw’s “shared responsibility” model, whereby EDCs are responsible for distribution grid and “make ready” work, and EVSE Operators are responsible for the ownership and operation of charging station equipment. However, Rate Counsel’s support for the shared responsibility model is conditioned upon setting limitations on ratepayer cost responsibility, establishing limitations on EDC involvement in EVSE operation and ownership, and the adoption of EV-only rate tariffs. These conditions are discussed in detail in the within comments. Further, as a general guiding principle, ratepayers who do not own or operate EVs should not bear the costs of building the “EV Ecosystem.”

In sum, Rate Counsel generally agrees that the primary role of EDCs should be “backbone infrastructure” for charger ready locations. This infrastructure provides substantial benefit to EV owners and should be funded through each EDC’s “EV-only” tariff, described more fully in Section V(D) of these comments. With very few exceptions, non-utility entities should be responsible for installation of EV chargers, whether they be private EVSE companies, building or business owners, residents, or unregulated affiliates of EDCs.

1. Proposed EDC Role in the EV Ecosystem: [Straw, pp. 8-9]

The Straw proposes that EDCs should only be permitted to recover the costs of “distribution system upgrades, the costs of making a location Charger Ready, and the costs of any

mapping exercises.”²⁵ Rate Counsel generally concurs that rate recovery by an EDC should be limited to such costs. Rate Counsel does not object to allowing utilities to invest in, and earn on, the wiring and backbone infrastructure necessary to make locations Charger Ready. This is reasonably consistent with a traditional utility function of ensuring adequate physical and operational support for electric customers. More information is needed with respect to mapping costs in order to assess whether such cost are necessary to project system load or for distribution planning purposes. However, in any case, EV-related costs such as make ready work, should to the extent possible be recovered from EV owners and EVSE companies through EV rate tariffs, as described in Section V(D).

Similarly, Rate Counsel agrees that any such potentially recoverable costs should be subject to prudence and reasonableness tests. Rate Counsel maintains that such costs should also be subject to the “used and useful” test described more fully in the comments on Section II (A).

Rate Counsel does not concur with the provision in the Straw that envisions the EDCs determining in their rate recovery filings which costs are eligible for recovery as well as the rate recovery mechanism. The Straw proposes a definition of recoverable costs in utility filings as “investments [which] are otherwise appropriate for recovery through the rate recovery mechanism proposed by the EDC.” Rate Counsel maintains that the cost recovery mechanism should only be that methodology approved by the Board and not a method subject to the discretion of the EDC. Further, Rate Counsel maintains that any such cost recovery should be effectuated through a newly created EV rate tariff, as described in Section V(D). Finally, Rate Counsel maintains that there is no compelling reason to depart from the “beneficiary pays” principle for EV costs. Recovery of EV-related cost through an EV rate tariff would also be consistent with the “beneficiary pays” principle.

²⁵ Straw, pp. 8-9.

Rate Counsel does not agree that EDCs should be authorized to construct or own EVSE. The PIV Act did not direct or authorize the Board to permit EDCs to enter the EVSE industry, nor is there any statutory support for such EDC involvement, as set forth in Section II. The concept of “Last Resort” EVSE is discussed more fully in Section V(C).

2. Proposed Role for EVSE Infrastructure Companies: [Straw, pp. 9-10]

Rate Counsel supports the Straw’s designation of EVSE infrastructure companies as preferred owners and operators of EVSE. Rate Counsel also concurs with the Straw proposal that any ratepayer-funded make ready work be conditioned upon public access to the EVSE facility and other criteria.

B. Process for Making a Location Charger Ready [Straw, pp. 10-11]

The Straw would require an EDC to make a location “charger ready” within 12 months upon a request by an EVSE infrastructure companies. Further, the Straw would allow an EVSE Infrastructure Company up to 24 months from when a site is charger- ready until the EVSE is installed on the site.²⁶ However, as proposed, there is essentially no penalty for EVSE infrastructure companies who, after obtaining the necessary “charger ready” work, elect not to install or operate EVSE at that location. This raises a risk of stranded assets, and there aren’t any provisions to prevent such risks. Mechanisms such as penalty provisions or deposit requirements should be considered to mitigate the risk of stranded investment. In any case, rate recovery of EDC make ready work should not begin until the work is “used and useful,” which means a fully functional EVSE installation that is open for public access.

The “return” of EVSE to the EDCs raises significant questions that should be resolved. It is unclear what “charger ready” infrastructure would be returned to the EDC. Since the BPU has no

²⁶ Straw, p. 10.

authority over competitive EVSE providers, how would this return be effectuated? Would this be required by contract with the competitive EVSE provider? How will the costs be addressed? If the BPU requires this “return” of property, it must ensure that it has regulatory authority to do what is proposed, that costs are fairly allocated, and that its actions do not constitute a regulatory taking.

C. Ensuring Equitable Distribution of EVSE [Straw, pp. 11-12]

Rate Counsel fully supports equitable access to the EV Ecosystem for all residents of New Jersey. However, the current reality, and the likely reality for several years, is that individual EV ownership is largely restricted to higher-income residents.²⁷ The EVs of today are luxury vehicles that cost many thousands of dollars more than equivalent conventional vehicles. Board Staff implicitly recognizes this reality in its description of these areas as “geographic localities within New Jersey where the market is not sufficiently mature to build EVSE on a purely merchant basis.” If residents of these areas were able to purchase EVs, there would be a natural market for EVSE that will attract commercial investment, just as there is a competitive market today for gas stations in lower-income regions.

Subsidizing EV charging infrastructure in regions where EV ownership is low to nonexistent does not serve the needs of the residents of these communities. Unlike some other economic activities, EV chargers are fully automatic and do not create a significant number of jobs. At least for the next several years, the primary benefit of locating chargers in lower-income areas is to alleviate the “range anxiety” of other drivers who are passing through. In truth, it is likely that such public chargers will get very little use, as most drivers will charge their vehicles at home or at work. For these reasons, Rate Counsel does not believe that New Jersey’s EDCs should be in the

²⁷ Rate Counsel notes that the definition of “EV Ecosystem” in the Straw Proposal does not appear to be consistent with the use of this term in the body of the document. Rate Counsel recommends a new definition that encompasses the full universe of charging equipment, backbone infrastructure, and EVs throughout New Jersey.

business of constructing or owning chargers on a rate regulated business and opposes imposing the costs for public charging on ratepayers as a whole.

Furthermore, low-income customers should not be subsidizing high-income customers. Simply putting infrastructure in low-income or Environmental Justice (“EJ”) areas does not mean that these customers will benefit, since EVs are still more expensive than ICE or even hybrid models, and certainly far more costly than used cars. To provide actual benefits to low and moderate income and EJ communities, the focus should be on lowering emissions in those areas via improvements in public transportation and/or encouraging fleet owners to electrify their vehicles over time at their own cost, or by taking advantage of the rebate program established in the PIV Act. However, low and moderate income customers, who will already be contributing to EE and RE programs to lower emissions, as well as the rebate programs in the PIV Act and the distribution system upgrades that will be needed with broad EV adoption, should not be made to contribute further to subsidize charging stations simply to alleviate the “range anxiety” of much wealthier customers. This is particularly true during these uncertain economic times when many New Jersey consumers are unemployed or have had their incomes lowered.²⁸

Further, no specific mechanism has yet been proposed for identifying underserved or “equity” areas for utility investment, although Staff has requested comment in this area.²⁹ Rate Counsel’s position is that “party of last resort” should really mean last resort, and should not mean that some formula is implemented to identify areas before there is an opportunity for a real market

²⁸ There is also no reliable evidence to support the frequent claim by EV advocates that broad EV adoption will lower costs for all consumers. The ChargeEVC Study, which is often cited for that proposition only assumed a fairly low level of ratepayer contribution to the EV ecosystem. If ratepayers are asked to pay more than what was assumed in that study, the potential savings for all ratepayers is diminished or disappears. Even if some savings does result, it will not be evident on ratepayer bills for a very long time. In the meantime, consumers, many of whom are already struggling, will see their bills go up.

²⁹ Straw, pp. 11-12.

response, which could be two to three years. If the Board is going to ultimately order utility-funded charging infrastructure in some areas, it is essential that the affected communities be given meaningful input into the process, that community concerns are met, and that care is taken to ensure that the local community benefits directly from each project.

As an alternative approach to funding charging infrastructure in immature markets that cannot support commercial charging stations, the Board could establish a fund for the construction of EVSE in underserved areas and direct the EDCs to condition the provision of charge-ready service on the EVSE provider's contribution to that fund. The New Jersey Department of Transportation ("NJDOT") or some other suitable state agency could then be responsible for allocating such funds for this purpose. In this way, the EVSE suppliers and customers would pay for the alleviation of range anxiety, as opposed to all ratepayers including low-income New Jerseyans who are unlikely to own EVs anytime soon.

D. Rate Reforms Designed to Encourage Adoption of Electric Vehicles [Straw, pp. 12-13]

EV charging presents new and unique load which will result in increased demand for electricity. Further, in order to meet EV vehicle registration and charging station targets, some additional funding may be required. The cost of distribution grid upgrades and make ready work are but a few of the anticipated costs of the EV ecosystem build-out which will need to be funded. As noted throughout these comments, Rate Counsel believes that there should be a specific rate structure for EV charging. This would accomplish the following two very important goals:

- a. Ensure that EV users pay the utility-related costs of the EV ecosystem, and that these costs are not socialized to the low-income customers who are unlikely to own an EV in the near future; and
- b. Support TOU rates to encourage off-peak charging, or on-site storage to alleviate peak demand.

While Rate Counsel recognizes the particular burden demand charges can place on EVSE that impose infrequent, high draws on the system, Rate Counsel notes that these charges do reasonably reflect the burden that such high draws place on the distribution system and on the ratepayers who fund it. Further, EVSE providers should be incentivized to concentrate charging in off-peak hours, or to implement other solutions to mitigate on-peak loads such as on-site battery storage. Therefore, Rate Counsel does not support the complete elimination of demand charges or the economic signal they represent. Instead, Rate Counsel recommends that demand charges be reduced for EVSE during off-peak time, but not during on-peak times. Users who insist on charging during peak times should pay a premium to reflect the burden they are imposing on the system, and should not be given an effective subsidy for this practice by other ratepayers. Separate EV-only charging tariffs, discussed below, could permit some degree of flexibility to address the structure of demand charges as compared to a typical commercial rate tariff.

Separate EV charging tariffs would address these concerns in a way which offers flexibility to meet the needs of both EV owners and EVSE operators; the actions needed to expand the EV ecosystem; as well as the physical reality and cost of the impact of EVs on the electric distribution grid. Furthermore, a separate EV tariff structure would facilitate a rapid build-out of the EV ecosystem by providing the flexibility to address demand charges and TOU rates, as well as a mechanism to fund “make ready” and other EV-related activities. Moreover, a separate EV charging tariff would not burden other traditional ratepayers who do not own EVs and, unlike vehicle owners, have no substitute energy sources other than grid-sourced electricity.

Further, EV charging tariffs could be developed which correspond to the level of charging voltage, and whether the charging is at a residential or commercial location. At the outset, all EV charging at Level 2 and above could be subject to a unique EV tariff which would roughly correspond to the charging voltage. For example, a Level 2 charger would be subject to, for

instance, an EV-2 Tariff and rates, whereas a DC Fast Charger would be subject to an EV-DCFC tariff and rates, and so on. EV tariffs, in turn, could more easily accommodate unique Time of Use (“TOU”) rates and demand charges for EV charging, as compared to attempting to “force fit” EV-friendly TOU rates and demand charges onto existing conventional electric service tariffs. Further, Riders could be added the EV tariff rates to cover the cost of Make Ready work, EV Mapping and administrative costs. This structure follows the principle where rates follow cost causation. With EV charging tariffs, the costs of the EV ecosystem are allocated to EV users.

In addition, the requirement that EV owners apply for service under an EV charging tariff would assist EDCs in evaluating the ability of the existing local distribution grid to handle the added load of EV charging. This would help avoid the possibility of multiple EV chargers appearing on a single circuit without EDC foreknowledge, which could affect reliability if the necessary upgrades are not performed.

Furthermore, well-designed regulation could drive technological development. For example, automotive emissions and mileage regulations were at times “stretch goals” which drove innovation in vehicle pollution controls and efficient design. Likewise, a separate tariff (and metering) for EV charging, with appropriate TOU and demand charges, could spur development of new technologies such as onboard metering and telemetry, vehicle-to-grid (“V2G”) systems, and battery storage. Such regulations could drive innovation in the EV and energy sphere.

In addition, EV charging tariffs could more easily address rate parity between residential and multi-family charging than conventional utility tariffs which have a clear delineation between Residential and Commercial (multi-family) rate classes. For example, under an EV tariff the rates for Level 2 charging, based on voltage or other criteria, could be the same for single-family and multi-family Level 2 charging units. In short, EV charging tariffs would provide the flexibility needed to address the unique issues presented by EVs.

An EV charging tariff could also address the conundrum raised by demand charges without resorting to waivers or rebates. Under an EV charging tariff - providing the class revenue requirement is met - energy and demand charges could be adjusted or offset to meet the unique needs of EV charging. However, demand charges should be cost based to the fullest extent possible so as not to distort price signals. For this reason, waivers and rebates should be avoided as well. Both distort price signals by artificially lowering demand charges which could result in the need for costly system upgrades to meet peak demand which would then be socialized to other ratepayers who receive no related benefit. Further, cost-based demand charges would provide an incentive for the development of battery storage and managed charging for customers who seek to avoid the increased charges. Finally, with an EV tariff the cost of any rebates or waivers would be recovered through other elements of the EV tariff customers. For instance, if the Board approves the use of demand charge waivers or rebates, the cost of such mechanisms should be recovered through a rider or other element of an EV tariff. In any case, the cost of rebates or waivers should not be recovered from other rate classes or from ratepayers who are not EV owners.

Furthermore, separate EV charging tariffs would recognize the uniqueness of EV load and its impact on the grid and energy supply resources. EV charging is incremental load, so mandatory TOU rates for EV charging are necessary to ensure that EV charging does not add to system peaks and the need for costly system upgrades. Again, an EV tariff would have the flexibility to incorporate TOU rates. The peak rate must be set high enough to discourage on-peak charging, with a large differential from off-peak rates. Further, TOU rates will drive the adoption of new technology to manage charging, such as battery storage and V2G telemetry to ascertain peak times and schedule charging times accordingly.

Finally, the Straw proposes a “set point” for vehicle charging rates that is “benchmarked so that the vehicle charging remains below the equivalent cost of diesel or gasoline on a per mile

basis.”³⁰ It is unclear how the Board can set “just and reasonable” rates pegged to volatile petroleum prices that are often moved or manipulated by international events and actors, and not based on the cost of providing electric utility service.

E. Other Policy Considerations and Minimum Filing Requirements [Straw, pp. 13-14]

As discussed above, Rate Counsel has concerns about the Straw’s proposed timetable. In addition, Rate Counsel has concerns about how any policy determinations made as a result of the stakeholder process will affect pending EDC EV cases. Rate Counsel also has concerns about the scope of the proposed EDC filings.

First, Rate Counsel believes the schedule set forth is unrealistic, especially if (as noted above) two of New Jersey’s utilities are concurrently pursuing EV programs that are inconsistent with Staff’s proposal. It is unlikely that all utilities will be ready to file programs by December 31, 2020, or that a review of the filings could be completed in time for program implementation on April 1, 2021, a mere 90 days later. Further, having all utilities file programs for Board consideration on the same schedule will be extremely burdensome on limited Staff and Rate Counsel resources, as well as for parties participating in all filings.

In addition, while the Straw has many elements Rate Counsel supports, they are incompatible with current EV filings by PSE&G and ACE, both of which are subject to pending motions to dismiss. In any case, those EV proceedings should be withdrawn or put on hold pending Board direction on the proper utility role in building and operating EV infrastructure. There is no reason for parties to spend the time and resources litigating proposals if they are ultimately going to be found incompatible with New Jersey’s policies in this area.

³⁰ Straw, p. 13.

In addition, it is unclear how the utilities will know by December 31, 2020 where “last resort” charging stations would be needed. If Staff seeks to ensure that private capital is used wherever possible over ratepayer funds, then the market must be allowed time to develop before we can see where the market fails to lead to the construction of needed stations. It is simply not consistent with Staff’s stated goals to have the utilities propose locations of “last resort” stations by December.

Finally, the Straw Proposal recommends that EDC proposals include plans for electrification of school bus fleets. This raises two concerns. First, Rate Counsel strongly objects to the idea that electric ratepayers should pay for the replacement of school buses. Requiring them to do so, is inconsistent with BPU’s legal authority and threatens to add a significant financial burden on customers, many of whom are already struggling to pay their bills. The Straw Proposal states that EDC proposals for EV programs should include, among other elements, “[p]roposals for electrification of school bus fleets.” A number of participants in the Technical Conference addressed the many economic, environmental, and human health benefits of converting medium duty trucks and school buses to electric technology. Rate Counsel is cognizant of these benefits and of the importance of reducing pollution throughout the state, and particularly in Environmental Justice communities. However, while it is not clear exactly what Staff has in mind, Rate Counsel strongly objects to the idea that electricity ratepayers should be charged for replacing of school buses simply because of those pollution benefits. This is a social and environmental policy objective that is clearly not related to the duty of electric utilities to provide low-cost, reliable electric service. There is no statutory authority whatsoever that allows BPU to now become the regulator in charge of the state’s school bus fleets. Just because something gets plugged in, does not bring it within BPU’s statutory authority. Many school buses in this state are owned and operated by private companies that contract with school districts. Requiring the ratepaying public

to pay for buses that would then be donated to either school districts or private companies raises many legal and constitutional issues.³¹ Moreover, Staff's straw could lead to significant stranded costs related to existing school buses, which will also have to be paid for either by taxpayers or ratepayers. In short, Board Staff's apparent idea, not discussed in the body of the Straw but slipped into the minimum filing requirements, that utility ratepayers should pay for the replacement of school buses throughout the state is not authorized by law and is poor public policy. It certainly could not be simply adopted by the Board through approval of the Straw without rulemaking and the articulation of the legal authority for ordering it.

³¹ See, In re N.J. Am. Water Co., 169 N.J. 181 (2001) (finding insufficient nexus between utility charitable contributions and the provision of utility service to allow utility to charge ratepayers for charitable contributions).