



State of New Jersey
DIVISION OF RATE COUNSEL
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PHIL MURPHY
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Director

July 29, 2022

Via Electronic Mail board.secretary@bpu.nj.gov

Carmen D. Diaz, Acting Secretary
of the Board
44 South Clinton Avenue, 1st Floor
P.O. Box 350
Trenton, NJ 08625-0350

**Re: In the Matter of Proposed Updates to New Jersey's Clean
Energy Program: New Construction Program
BPU Docket No. QO22050327**

Dear Acting Secretary Diaz:

Please accept for filing these comments being submitted on behalf of the New Jersey Division of Rate Counsel ("Rate Counsel") in accordance with the Notice issued by the Board of Public Utilities ("Board") in this matter on July 12, 2022. 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.

Thank you for your consideration and attention to this matter.

Respectfully submitted,

Brian O. Lipman, Esq.
Director, Division of Rate Counsel

By: */s/ Kurt Lewandowski*
Kurt S. Lewandowski, Esq.
Assistant Deputy Rate Counsel

KSL

Enclosure

cc: Robert Brabston, BPU
Kelly Mooij, BPU
Stacy Richardson, BPU

**New Jersey Clean Energy Program
Proposed Revisions to the New Construction Program**

BPU Docket No. QO22050327

Comments of the New Jersey Division of Rate Counsel

July 29, 2022

The New Jersey Division of Rate Counsel (“Rate Counsel”) appreciates the opportunity to comment on the New Jersey Clean Energy Program’s (“NJ CEP”) proposed revisions to the NJ CEP New Construction Program (“Proposed Revisions”).

The New Jersey Board of Public Utilities (“BPU” or “Board”) issued a Notice (“Notice”) seeking comments on the Proposed Revisions on July 12, 2022. A 3-page summary of the Proposed Revisions (“CEP Document”) was referenced in the Notice. A stakeholder meeting (“Stakeholder Meeting”) was also noticed and held on July 22, 2022 by videoconference at which time the Board’s CEP consultant, TRC, presented overhead slides (“Presentation”) which provided further details about the Proposed Revisions. In its Notice, the Board set a deadline for written comments of July 29, 2022. Rate Counsel is pleased to provide these comments on the Proposed Revisions.

General Comments

According to the information provided by the Board and TRC, the Proposed Revisions are designed to streamline and update New Construction programs, to simplify and facilitate increased participation, to eliminate market gaps, and to enhance the focus on equity. Rate Counsel supports these goals, and appreciates the effort that has gone into identifying gaps and obstacles that have impeded achievement of New Jersey’s full potential for high levels of energy efficiency in new construction. In particular, Rate Counsel agrees that eliminating outdated silos, focusing on tailoring available measures and investment scope to individual projects, and

streamlining and simplifying the process flow will help the NJ CEP to far more effectively deliver a full suite of cost-effective energy efficiency measures for new construction. Given New Jersey's ambitious energy efficiency and greenhouse gas mitigation goals, and the long lives of our buildings, achieving high levels of energy efficiency in new building design and construction could not be more important.

Rate Counsel also has more specific comments on several aspects of the Proposed Revisions, as set forth below.

Specific Comments

Electrification and Infrastructure Balance

As noted in Rate Counsel's verbal comments at the Stakeholder Meeting, the CEP's focus on electrification measures is an important part of ultimately moving New Jersey away from direct use of fossil fuels in buildings, consistent with New Jersey's greenhouse gas emissions goals. However, Rate Counsel cannot support ratepayer funding for electrification at the same time the same ratepayers are being asked to fund expansion of the natural gas distribution system without some means to mitigate ratepayer costs. New Jersey should not be moving toward a future where only those who cannot afford to switch to all-electric homes and businesses will pay higher and higher costs for an outdated gas distribution system. Rate Counsel notes that there were other stakeholders at the Stakeholder Meeting who expressed that they were equally concerned with this prospect.

Basis for Incentive Awards

At the Stakeholder Meeting, Staff requested feedback on the proposed incentive structure. Slide 17 of the Presentation suggests that all incentives – no matter the pathway – would be awarded on a dollars per square-foot basis, with higher amounts per square foot

depending on the pathway – i.e., on the depth of participation. With respect to residential projects, Rate Counsel believes it is problematic to base new construction incentives on the square footage of a new home. Incentives based on square footage would tend to favor extremely large new homes with a higher base energy load, all else equal. New larger homes with an already relatively large projected energy profile should not be rewarded with excessive outlays of ratepayer funds, even if they incorporate additional energy efficiency measures in their design. This would tend to favor new affluent developments with larger homes that may be placing energy efficient measures in the homes regardless of the incentive structure. As an alternative model, Massachusetts provides incentives for residential new construction based on expected energy savings relative to the average new home in Massachusetts. In addition, Massachusetts offers a bonus incentive for homes that receive EnergyStar designation – however, there is no explicit relationship between the incentive and the size of the home.¹ Another possible solution would be to cap residential incentives based on the average size of a new home in New Jersey.

Outreach and Equity

According to the NJ CEP Document referenced in the Notice, one of the primary objectives of the proposed program modifications (Objective 4) is to “increase participation, equity, and education.” Increasing equity and participation by low- and moderate-income (“LMI”) New Jersey residents is an important goal, consistent with the Clean Energy Act. Ensuring high levels of performance in newly constructed housing for all New Jersey residents will provide long-term benefits in terms of health, safety, reduced cost, economic development, and minimizing future arrearages on energy bills. To achieve this objective, it is imperative to

¹ See <https://www.masssave.com/-/media/Files/PDFs/Save/Residential/Pay-for-Savings.pdf> for details.

limit the up-front costs of energy efficiency enhancements for low- and moderate-income housing, consistent with the ideas presented in Objective 4 of CEP Document.

However, it appeared to Rate Counsel that this Objective was not given sufficient emphasis at the July 22 stakeholder meeting or in the Presentation at that meeting; in fact, this Objective was not even listed among the objectives on page 8 of the Presentation. The Board and the NJ CEP need not be reminded that all ratepayers are paying the costs for the NJ CEP's New Construction programs, including lower-income ratepayers who have disproportionately high energy burdens. It is imperative, for basic fairness and under the Clean Energy Act and the New Jersey Energy Master plan, that all ratepayers have an opportunity to benefit from these programs. Rate Counsel urges the NJ CEP to coordinate with community groups and housing advocates on ways to ensure that lower income residents and those in overburdened communities can benefit from the revised new construction program. For example, much like "gut-rehab" is considered "new construction" for commercial buildings, perhaps extensive rehabilitation of older homes in LMI census tracts and those in overburdened communities should qualify as "new construction" for CEP purposes in addition to the LMI new construction incentives which is referenced on page 3 of the 3-page summary.

Sources of Program Funding

Finally, Rate Counsel urges the CEP to consider the availability of other (non-ratepayer) funding sources in designing and implementing the new construction programs. For example, the Federal Infrastructure Investment and Jobs Act ("Act") includes, among other allocations, \$225 million in funding for updated building codes,² \$400 million in funding for "Future of

² Title V—Energy Efficiency and Building Infrastructure, Subtitle B (Buildings), Sec. 40155.

industry” covered projects including energy efficiency,³ and \$500 million for projects, including energy efficiency improvements, at public school facilities.⁴ It also includes a block grant program for energy efficiency and conservation.⁵ In particular, the bonus measures supporting electrification and greenhouse gas mitigation of the Proposed Revisions are likely to coincide with aspects of the Act. The NJ CEP and the Board’s consultant TRC should ensure they are familiar with all such opportunities to leverage Federal funds in support of the revised New Construction program, and to the extent possible, should ensure that the program is designed to qualify for and receive such federal funding and grants.

Rate Counsel appreciates this opportunity to provide input and comment on the proposed revisions to the New Construction program, and looks forward to further participation as the revised programs get underway.

³ *Id.*, Subtitle C (Industry), Sec. 40521.

⁴ *Id.*, Subtitle D (Schools and Nonprofits), Sec. 40541.

⁵ *Id.*, Subtitle E (Miscellaneous), Sec. 40552.