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Board of Public Utilities



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## NOTICE

### REQUEST FOR COMMENTS

#### IN THE MATTER OF NEW JERSEY'S CLEAN ENERGY PROGRAM: NEW CONSTRUCTION PROGRAM

Docket No. [QO22050327](#)

On behalf of the New Jersey Board of Public Utilities ("NJBP" or "Board"), Board staff ("Board Staff") hereby gives notice and invites all interested parties and members of the public to provide written comments on the NJBP's proposed New Construction Program ("Program" or "NCP"), which is offered through New Jersey's Clean Energy Program ("NJCEP") and serves the residential, multi-family, commercial, and industrial markets. Additionally, comments on the NJBP's other proposed revisions to NJCEP will also be accepted during this comment period.

#### **Background and Procedural History**

On February 9, 1999, the Electric Discount and Energy Competition Act ("EDECA"), N.J.S.A. 48:3-49 et al., was signed into law. The EDECA created the societal benefits charge ("SBC") to fund programs for the advancement of energy efficiency ("EE") and renewable energy ("RE") in New Jersey. The EDECA, as amended, at N.J.S.A. 48:3-60(a)(3), provided for the Board to initiate proceedings and undertake a comprehensive resource analysis ("CRA") of EE, plug-in electric vehicles ("EVs"), EV charging infrastructure, and Class I RE programs.<sup>1</sup> The EDECA also provided for the Board to determine, as a result of the CRA, the programs to be funded by the SBC. Those programs are now part of NJCEP.

On July 12, 2022, the Board provided a draft plan outlining the Program and provided notice of a virtual stakeholder meeting on July 22, 2022 to discuss the proposed Program. The Board accepted written comments on this Program through July 29, 2022. A summary of the comments received and Board Staff's responses to them appears as Attachment A to this Notice.

A revised Compliance Filing incorporating the currently proposed Program, as well as other revisions reflected in this Notice, is available for review [here](#).<sup>2</sup> The Program will bring new construction building projects to the next level

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<sup>1</sup> "Class I RE" refers to electric energy produced from solar technologies, photovoltaic technologies, wind energy, fuel cells, geothermal technologies, wave or tidal action, small scale hydropower facilities with a capability of three megawatts or less and put into service after the effective date of L. 2012, c. 24, and methane gas from landfills, a biomass facility, provided that the biomass is cultivated and harvested in a sustainable manner, and a composting or anaerobic or aerobic digestion facility that converts food waste or other organic waste to energy. N.J.S.A. 48:3-51.

<sup>2</sup> A Compliance Filing is a document that provides detailed program descriptions and budgets for how funding will be spent to support NJCEP. See I/M/O Comprehensive Energy Efficiency & Renewable Energy Resource Analysis for 2009 – 2012, BPU Docket No. EO07030203, Order dated Sept. 30, 2008, at 58-59 (describing requirements for such filings).

of EE and building performance by providing financial incentives for new construction that achieves building efficiencies greater than what is achieved by complying with building energy sub codes.<sup>3</sup> The proposed Program is designed to remove barriers to participation in NJCEP's current new construction programs,<sup>4</sup> streamline the application process, and align with Goals 3.1 and 4.1 of 2019 Energy Master Plan ("EMP").<sup>5</sup>

Board Staff has developed a Proposed Revised Fiscal Year 2024 ("FY24") Budget for NJCEP, under which the Program is offered, truing-up the differences between estimated expenses and commitments versus those actually incurred during Fiscal Year 2023. The details of the Program can be found in the Compliance Filing for the Program's Program Administrator, TRC ("TRC Compliance Filing"). The TRC Compliance Filing is part of the Proposed Revised FY24 Budget and is summarized in a separate Notice that is available for review [here](#). All documents relevant to the NJCEP FY24 budget can be found [here](#).

### **Comments**

The Board is also accepting written and/or electronic comments. All public comments should be filed under Docket No. [QO22050327](#), In the Matter of New Jersey's Clean Energy Program: New Construction Program.

**The deadline for comments on this matter is 5 p.m. Eastern Time on March 20, 2024.**

Please submit comments directly to the specific docket listed above using the "Post Comments" button on the Board's [Public Document Search](#) tool. All comments are considered "public documents" for purposes of the State's Open Public Records Act. Only public documents should be submitted using the "Post Comments" button on the Board's Public Document Search tool. Commenters may identify any information that they seek to keep confidential by submitting them in accordance with the procedures set forth in N.J.A.C. 14:1-12.3.

In addition to hard copy submissions, confidential information may also be filed electronically via the Board's e-filing system or by e-mail to the Secretary of the Board. Please include "Confidential Information" in the subject line of any e-mail. Instructions for confidential e-filings are found on the Board's webpage, <https://www.nj.gov/bpu/agenda/efiling>.

E-mailed and/or written comments may also be submitted to:

**Secretary of the Board**  
44 South Clinton Ave., 1<sup>st</sup> Floor  
PO Box 350  
Trenton, NJ 08625-0350  
Phone: 609-292-1599  
Email: [board.secretary@bpu.nj.gov](mailto:board.secretary@bpu.nj.gov)

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<sup>3</sup> More information about New Jersey's building energy sub codes is available at <https://www.nj.gov/dca/divisions/codes/codreg>.

<sup>4</sup> Descriptions of NJCEP's current new construction programs are available at <https://www.njcleanenergy.com/commercial-industrial/new-construction-buildings>.

<sup>5</sup> New Jersey Board of Public Utilities, [2019 New Jersey Energy Master Plan: Pathway to 2050](#) ("EMP"), Goal 3.1 ("Increase New Jersey's Overall Energy Efficiency"), at 136-146; EMP Goal 4.1 ("Start the Transition for New Construction to Be Net Zero Carbon"), at 159-166, [https://nj.gov/emp/docs/pdf/2020\\_NJBPU\\_EMP.pdf](https://nj.gov/emp/docs/pdf/2020_NJBPU_EMP.pdf).

Board Staff looks forward to receiving and reviewing stakeholder comments. Thank you for your interest in New Jersey's New Construction Program.

*Sherri L. Golden*

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Sherri L. Golden  
Secretary of the Board

Dated: March 6, 2024

## **ATTACHMENT A**

(Informal Comments and Responses Thereto)

Board Staff appreciates the time and thought the commenters put into their comments and has incorporated many but not all of them into the current proposal regarding the proposed Program. A summary of Board Staff's responses to the comments is set forth below.

One of the more significant issues raised was whether and, if so, how the NCP should continue to incentivize the more efficient use of natural gas. On one hand, a relatively broad spectrum of environmental organizations and activists pointed to the EMP and New Jersey's Global Warming Response Act 80 x 50 Report ("80 x 50 Report") as indicating the State's commitment to rapid and aggressive decarbonization and electrification of the construction sector.<sup>6</sup> Commenters argued that such commitment could be achieved only by ceasing to support any fossil fuel-based measures and instead substantially increasing support for heat pumps, electric water heating, electric stoves, and other electric equipment. Commenters additionally suggested that increase in support for electric equipment should take the form of, among other things, basing incentives upon the amount of greenhouse gas ("GHG") emissions reduced and incentivizing only Zero Energy or Zero Energy Ready Homes.<sup>7</sup> On the other hand, the natural gas utilities, natural gas suppliers, and others argued that the market is continuously developing more energy-efficient natural gas equipment and appliances and that customers should be given the option to choose the fuel and equipment that they prefer, especially when natural gas is less expensive than many other energy sources.

Regarding this issue, Board Staff has carefully considered, among other things, Governor Murphy's February 15, 2023 announcement regarding the State's new initiatives to combat climate change and "power the next New Jersey."<sup>8</sup> Board Staff agrees with the environmental organizations that the State's decarbonization and electrification goals are best met by developing incentives that will lead to a rapid transition to all-electric buildings, particularly in new construction. However, Board Staff is concerned that the market for all-electric buildings has not yet fully evolved and that immediately eliminating all incentives for natural gas equipment could result in many new buildings being built with inefficient natural gas equipment. Accordingly, Board Staff's proposed NCP incorporates several features that provide for a rapid but orderly transition to all-electric buildings, including, among others, the following:

- The Program's Bundled Pathway now provides incentives only for electric equipment.<sup>9</sup> Incentives are no longer available for fossil-fueled equipment, except for measures that indirectly result in fossil fuel savings,

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<sup>6</sup> L. 2007, c. 112 (N.J.S.A. 26:2C-37 et seq.); New Jersey Department of Environmental Protection, New Jersey's Global Warming Response Act 80x50 Report: Evaluating Our Progress and Identifying Pathways to Reduce Emissions 80% by 2050 (October 15, 2020), <https://dep.nj.gov/wp-content/uploads/climatechange/nj-gwra-80x50-report-2020.pdf>.

<sup>7</sup> For more information about the U.S. Department of Energy's Zero Energy and Zero Energy Ready Homes Programs, see <https://www.energy.gov/energysaver/aim-zero-zero-energy-and-zero-energy-ready-homes>.

<sup>8</sup> See "Governor Murphy Delivers Climate Change Address 'Clean Energy & Jobs to Power the Next New Jersey,'" available at <https://www.nj.gov/governor/news/news/562023/20230215a.shtml>.

<sup>9</sup> The NCP offers three pathways to earn incentives: Bundled, Streamlined, and High-Performance. The Bundled Pathway requires the implementation of a bundle of above-code energy conservation measures ("ECMs"). Eligible ECMs under this pathway consist primarily of electric equipment, as well as envelope measures.

such as envelope improvements.<sup>10</sup> Board Staff notes that only C&I buildings are eligible for the Bundled Pathway. Residential and multifamily buildings are not eligible for this pathway;

- Bonus incentives for achieving higher levels of decreased GHG emissions than would be achieved by merely complying with applicable building energy sub codes. Such incentives will generally provide higher payments for buildings that incorporate heat pumps and other electric heating, ventilation, and air conditioning (“HVAC”) systems that environmental activists support than they would provide for buildings with natural gas measures; and
- An aggressive outreach and marketing campaign undertaken by the NJBPU and contractors participating in the Program aimed at promoting all-electric buildings.

In addition, Board Staff intends to review closely proposed incentives for natural gas that may be included in the utility EE plans submitted for the Second Triennium, which runs from January 1, 2025 to June 30, 2027, so as to ensure that those plans are appropriately contributing to a rapid transition to all-electric buildings.<sup>11</sup>

Most commenters expressed general support for the proposed incentive structure. Some commenters specifically recommended that the imbalance between the current Pay for Performance – New Construction Program (“P4P–NC”) and Residential New Construction Program (“RNC”) multifamily incentives be resolved and that the proposed incentives provide proportionately higher incentives for those applications implementing the higher performance pathways and approaches, especially those providing true zero net energy performance.<sup>12</sup> Board Staff agrees with those specific recommendations. Board Staff’s proposed incentive structure implements the suggestions by providing the same incentives for similar multifamily buildings, regardless of whether they would have been deemed residential or commercial/industrial by the current new construction programs and by, for example, paying up to \$4.00/square foot for a zero energy building, versus \$1.00/square foot for simply achieving 5% savings above what is required by applicable building energy sub codes.<sup>13</sup> Some commenters also suggested that the incentives should avoid encouraging the construction of larger homes that typically consume more energy and other resources. Board Staff agrees with that suggestion. Accordingly, Board Staff has capped its incentive calculation at 4,000 square feet for homes, even if the eligible home is, in fact, larger than 4,000 square feet.<sup>14</sup>

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<sup>10</sup> A building’s envelope, which includes the walls, windows, roof, and foundation, forms the primary thermal barrier between the interior and exterior. Improvements to the envelope, such as insulation and air sealing, aim to improve the envelope’s ability to keep heat inside the building on cold days and outside it on hot days.

<sup>11</sup> The Second Triennium is a three-year cycle of energy efficiency programs implemented by the NJBPU pursuant to the New Jersey Clean Energy Act of 2018, L. 2018, c. 17 (N.J.S.A. 48:3-87.8 et al.).

<sup>12</sup> The Pay for Performance – New Construction Program (“P4P–NC”) and the Residential New Construction Program (“RNC”) are current EE programs under NJCEP. P4P–NC aims to encourage developers and design professionals to look for ways to optimize design, operation, and maintenance of new construction and substantial renovation projects in order to maximize energy and energy cost savings. RNC is designed to increase the energy efficiency and environmental performance of residential new construction buildings (single and multifamily) in New Jersey.

<sup>13</sup> For example, buildings with 50,000 square feet or more of planned, conditioned space, including multifamily buildings, are eligible to participate in the current P4P–NC Program, and multifamily buildings are also eligible to participate in the current RNC Program.

<sup>14</sup> For example, as noted in the compliance filing, the maximum ceiling for calculating incentives will be 4,000 sf, even if the subject home is greater than 4,000 sf. By way of example only, a 5,000 sf home that qualified for an ENERGY STAR incentive would be paid a base incentive of \$4,000 (4,000 sf x \$1/sf). It might also be eligible for a GHG reduction incentive or additional Incentive, each of which would, if earned, be calculated as if the home were 4,000 sf.

In response to Board Staff's proposed use of well-known, nationally recognized programs such as Leadership in Energy and Environmental Design ("LEED") or ENERGY STAR (collectively, "Proxies"), some commenters suggested that Passive House be included as one such proxy.<sup>15</sup> Other commenters noted that some elements of the LEED standards do and/or could lag behind baseline or default requirements, such as the State's building energy sub codes. Board Staff agrees and has included a Passive House approach as one of several High-Performance Pathway approaches. Board Staff also has included certain program-specific requirements for those using the LEED approach to ensure that applicants using that approach will receive incentives only if they achieve savings above baseline requirements.

Board Staff received comments both supporting and opposing the introduction of the proposed Streamlined Pathway.<sup>16</sup> The opposition argued that the Streamlined Pathway would result in too many applicants opting for it rather than the more aggressive High-Performance Pathway; supporters argued that it would encourage participation by those without the resources to conduct the sophisticated modeling required by the High-Performance Pathway.<sup>17</sup> Board Staff has determined that, on balance, the introduction of the new Streamlined Pathway is more likely to result in the NCP producing greater energy savings than if it did not include the new pathway. However, Board Staff has also proposed limiting the use of the new Streamlined Pathway to non-residential buildings, in order to avoid the potential diversion of participants from the more holistic and aggressive High-Performance Pathway. If the Board approves the Streamlined Pathway, Board Staff will monitor its impact and evaluate whether to continue the pathway going forward and, if so, whether it should be revised in light of such impact.

Finally, some commenters encouraged Board Staff to provide support for education and training regarding the skills necessary to enable the design and construction of buildings that pursue the High-Performance Pathway, especially the Passive House approach. Board Staff agrees and has proposed incentives for a variety of relevant trainings and certifications that enable builders, developers, and energy professionals to construct buildings that meet standards including LEED, ENERGY STAR, and Passive House.

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<sup>15</sup> LEED was developed by the non-profit United States Green Building Council. ENERGY STAR was developed by the United State Environmental Protection Agency. "Passive House" is a building standard for energy efficiency and comfort developed by the Passivhaus Institute.

<sup>16</sup> The NCP's Streamlined Pathway encourages deeper energy savings than the Bundled Pathway but requires less time and expense than traditional comprehensive programs. Although it requires some modeling of ECMs, the Streamlined Pathway's modeling is performed in a web-based user interface that requires minimal inputs and generates quick and accurate projected savings.

<sup>17</sup> The NCP's High-Performance Pathway encourages the deepest energy savings by requiring that applicants take a comprehensive, whole-building approach and either exceed building energy sub code requirements by a certain percentage or meet one of several sets of stringent technical standards for new construction, such as LEED, ENERGY STAR, etc. This pathway largely replaces RNC and P4P-NC. For more information about comprehensive, whole-building solutions, see [https://www.energystar.gov/buildings/resources\\_audience/utilities\\_program\\_sponsors/comp\\_whole\\_bldg\\_solutions](https://www.energystar.gov/buildings/resources_audience/utilities_program_sponsors/comp_whole_bldg_solutions)