March 27, 2024

Secretary of the Board
44 South Clinton Ave., 1st Floor
Trenton, NJ 08625-0350

Posted via https://publicaccess.bpu.state.nj.us/
CC: board.secretary@bpu.nj.gov

RE: FY24 COMPLIANCE FILING
NEW CONSTRUCTION ENERGY EFFICIENCY PROGRAM UPDATES

Dear Secretary Golden,

Thank you for this opportunity to comment on the proposed New Construction Program updates contained within the TRC FY24 Compliance Filing dated March 6, 2024.

These comments are respectfully submitted on behalf of MaGrann, EAM and ReVireo, together representing the longest tenured and most active New Jersey based Energy Rating Companies supporting the Residential New Construction Program.

We would first like to express our appreciation for the effort and initiative represented by this substantial reconfiguration of the program, and particularly for the attention given to the nuances of the residential new construction market, and the affordable housing sector within that.

In general, we are supportive of these changes and offer the following feedback on some specific elements of the filing:

1. Program Eligibility

We strongly support the limitation of Residential Single Family and Multifamily program participation to the High Performance pathway. The three compliance levels within the High Performance pathway (and the modeling options they comprise) provide ample flexibility for builders and developers without compromising the whole-building approach intrinsic to this program.

We also strongly support the use of nationally recognized program certification standards as "proxies" for performance, and agree with the programs selected. We appreciate retention of ENERGY STAR MFNC v1.1 with a supplemental percent-above-code threshold, allowing flexibility to accommodate the protracted timelines associated with many multifamily properties. We also applaud the inclusion of Passive House standards (PHIUS and PHI) for the first time and think it's appropriate that Passive House receive the highest rebate amount available.

We think the language for eligible proxy programs should be clarified to explicitly specify actual certification as a requirement for incentive eligibility, which we believe is the intent. Use of language including "satisfy the requirements" and "submit documentation establishing that they have satisfied" can be misinterpreted to mean that equivalency with proxy certifications or self-attesting conformance with requirements is enough to be eligible for rebates. It's worth noting that the IRA initially used similar language. The IRS quickly had to circle back to make clear that actual certification is required for 45L tax credit eligibility.

2. Size Based Incentives

We support the shift to a per-square-foot basis for incentive calculation, and appreciate the "bonus" incentive applicable to affordable housing. We agree that the upper and lower bounds on sq.ft. applied to the incentive calculation for Single Family & Townhomes will address the penalty for smaller homes and over-reward of larger homes that would be inherent to this structure without these limits. Please note the following:

- We request that a definition for the basis of total building eligible sq.ft. be provided in the final program documentation. Typically, this would be Conditioned Floor Area (CFA) for all building types. For multifamily buildings, we additionally request clarification of total CFA applicable to the incentive calculation. The ENERGY STAR ASHRAE modeling methodology comprises all residential space and associated common areas. In a mixed use building, this would exclude commercial space. The ERI approach reports CFA at the unit level, but includes prescriptive requirements for common areas – providing similar justification for including common area CFA in the incentive calculation. This will require clarification to ensure fair and consistent total incentive payments between these approaches.

- With the exception of smaller multifamily units (under 1000 sq.ft.), we have found that total projected incentives under the new structure will generally be no less than would have been paid under the current structure relative to the applicable baseline, and will additionally reward and promote higher performance commensurate with the High Performance pathway tiers.

- To maintain parity with the legacy program, we request that a lower limit sq.ft. threshold be applied to Multifamily units based on the same logic applied to Single Family units. This will be especially important for affordable developers who tend to build smaller units, but we also see a trend toward smaller market rate apartments which should be encouraged. Based on our comparison of representative projects under both structures, and using the new UDRH baseline for both, we believe this threshold should be set at 1000 sq.ft. per unit – especially since the under-1000 sq.ft. units are typically the "highest achieving" and yet would see the greatest drop in incentives under the new structure. This lower sq.ft. limit plus the residential-associated common area would then be used in calculating the total building sq.ft. for incentive purposes.

3. Affordable Incentive

Once again, we fully support this important adder for housing targeted at reducing the energy cost burden of those New Jerseyans who can least afford to pay.

Please note that the definition of a qualifying property is in need of additional clarification. We work with many projects that include a mixed income profile (units identified as market rate and affordable, in various proportions). Some LMI properties may be identified as "workforce housing", may include affordable units in compliance with "Mount Laurel" or COAH provisions, and may or may not be participating in the Low Income Housing Tax Credit (LIHTC) program.

Would the affordable adder apply only to the qualifying units, a percentage of the whole building, the whole building if the percentage is over some threshold, etc.? We suggest soliciting participant and partner input on this question, as well as from NJHMFA and related stakeholders, before ultimately determining clear guidance.

4. Greenhouse Gas (GHG) Based Incentive

We applaud the inclusion of a carbon reduction bonus. The filing notes that the methodology for its calculation is still TBD. Fortunately, a methodology is already in place that could eliminate the need for a "supplemental" calculation. The HERS-based ERI path, which represents a significant majority of all residential participation, now includes a Carbon Index that calculates and reports carbon reduction in CO2e based on the applicable grid mix. Exploiting this feature would enable raters to calculate a total incentive (and report CO2e for programmatic aggregation) without any additional steps in the process. HERS CO2e is calculated based on ANSI Standard ICC 301 2022 Addendum B and uses hourly CO2e emission rates and electricity generation emission projections as published by the National Renewable Energy Laboratory (NREL) and eGrid database.

Importantly, care will need to be taken not to disproportionately incentivize electric resistance equipment that is inefficient and costly to operate based on site energy savings alone. We suggest looking further into the Carbon Index or any other approach with this in mind, and would be happy to help support this effort.

5. Workforce Development Reimbursement

This is a welcome addition, which we envision tapping into for new employees and continuing education of existing employees.

6. Expirations & Extensions

This is an important and challenging topic for participants and partners, particularly in the multifamily sector. Multifamily projects, both Affordable and Market Rate, have very long design and construction timelines, as well as increasingly complex and protracted financing package development processes. In the Affordable market, program certification and incentives are integral to financing approvals. The current project expiration limits already force participants to hold back on registration until close to construction kick-off in order to avoid the need for extension requests at the time of completion – which can create challenges when program requirements change within this timeline.

The across-the-board stipulation of 2-years plus 2x 6-month extensions at the Program Administrator's discretion represents an unnecessary sequence of hurdles when partners and participants already know from the outset of larger projects that they will inevitably require all of these extensions. The proposed timeline represents a reduction from the current 3-year default for multifamily, when in fact what is needed is to maintain or add to the default timeline, and not to introduce even more complexity that only frustrates stakeholders.

Especially in the current economic climate, we strongly request a default timeline of at least 3-years + 2x 6-month extensions. We would be happy to bring direct feedback from participating project developers on this point if needed.

7. Cost Effectiveness

Rising energy codes continue to put pressure on savings, requiring the program to drive toward increasingly challenging levels of performance. While this is appropriate and necessary, traditional cost tests typically attribute savings against an assumption of full and immediate compliance with these higher baselines, and take credit only for the higher performance of those homes and buildings participating in the program.

Through a variety of spillover effects, the NJCEP Residential New Construction Program and predecessor utility programs have been effectively moving the market toward progressively higher levels of efficiency for *all* New Jersey homes since the 1980s. For example, in single family homes this was evidenced early in the program's history by its impact on industry wide duct sealing and ventilation practices. More recently, code provisions requiring commissioning of systems in applicable buildings have yet to see widespread market adoption but are being enforced and supported through the program with similar market transformational outcomes.

We strongly encourage the BPU to consider claiming attribution for code and market impacts in its evaluation of program cost effectiveness. A significant amount of work has been done recently on quantifying these effects, providing a defensible basis for attribution. We suggest resources such as the following from Massachusetts, and would be happy to engage in further discussion on this topic.

http://www.nmrgroupinc.com/wp-content/uploads/2019/09/Pushing-the-market.pdf

8. Future Code Updates

We encourage the program to be proactive in planning for future code updates, which will likely occur within the next 3-year compliance filing cycle. The program administrator, participants and partners all need time to evaluate the projected impact of code updates, determine appropriate program modifications, and importantly provide the market with sufficient time to prepare – at least 90 days from the date on which modifications are finalized.

9. Garden State Challenge Pilot

We support the intent and high level approach of this "golden carrot" type initiative. In fact, we each have clients who have indicated they are enthusiastic about the concept and in principle would participate – but with some modifications, since the award structure presents significant concerns.

Firstly, it would be difficult for them to commit to the first or second steps knowing there would be no certainty of passing on to the subsequent steps. They believe it unlikely that they would have the resources to continue with a project designed to meet but rejected at the subsequent levels. They would then have to repeat the previous steps at a more typical level of performance, at additional time and cost, or duplicate effort from the outset.

Secondly, the timing (18 months with two 6-month extensions for the construction phase) simply wouldn't work for multifamily, especially affordable, and they wouldn't want to hold up design development or delay the project as they wait for approvals and incentives. At least 24-months with up to two 6-month extensions would be necessary, but better would be the three-year default referenced above.

Additionally, they suggest a) that a category be established specific to LMI/affordable housing, and b) that LMI projects be automatically approved for $650k in rounds 1-3 with go/no-go thresholds that must be met in order to advance from one round to the next, but "once you're in, you're in".

Golden Carrot type competitions have proven they can be an effective catalyst to moving markets. But in order to get it right – especially if residential housing is to be included, as it should be – we strongly recommend engaging directly with participants and partners prior to finalizing the Challenge Pilot program.

10. Prevailing Wage

We feel the biggest obstacle to participation in NJCEP is the applicable prevailing wage requirement for buildings over four stories. As stated in the filing, all projects participating in NJCEP programs are subject to prevailing wage requirements except single family, townhomes, and multifamily buildings 4 stories or less. From our perspective, this drastically reduces participation by multifamily projects, particularly in the increasingly popular 5-6 story mid-rise category. The multifamily building projects that we observe meeting prevailing wage requirements are primarily those with public financing that also carries the same requirement. As a result, the prevailing wage requirements present a significant obstacle to participation by multifamily buildings over 4 stories financed by other mechanisms. This is because meeting such requirements for a 5-story or a 6-story building, for example, may reportedly increase *total project cost* by an estimated 30-50% or more, far outweighing the incentives offered by the program.

We conjecture that the intent of the applicable law and the BPU's current residential exception was to ensure compliance of high rise, commercial-grade (i.e., steel framed) buildings. But the 4-story limit has the unintended consequence of prohibiting participation by buildings that are consistent with low-rise construction (i.e., wood framed, residential scale typically supported by residential trades). Additionally, there is ambiguity over the applicability of 4-story buildings built over unoccupied parking/lobby space (i.e. "podium" construction), which may also be unintentionally deterring participation.

While the BPU, NJCEP and program partners do not administer this law directly, we strongly request that the exemptions noted in the filing be modestly expanded to include residential buildings of all types up to six stories to help maximize the energy cost savings for an increasing segment of New Jersey renters.

Thank you again for the opportunity to provide comments and to be engaged in the program update process. On behalf of the energy professionals at MaGrann, EAM and ReVireo, we look forward to continuing to support the evolution of a program that is critical to achieving New Jersey's energy goals, to our many builder and developer clients, and most importantly to the construction of sustainable, affordable, high performance housing for New Jersey's homeowners and renters.

Sincerely,

MaGrann
PERFORMANCE · PARTNERSHIP · PURPOSE

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