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January 17, 2020

By Hand Delivery and 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: New Jersey Energy Efficiency Transition
Stakeholder Comments – Program Administration Straw Proposal**

Dear Secretary Camacho-Welch:

Please accept for filing the enclosed original and ten (10) copies of comments being submitted on behalf of the New Jersey Division of Rate Counsel ("Rate Counsel") in connection with the above-referenced matter. Copies of Rate Counsel's comments are being provided to all parties on the service list by electronic mail and hard copies will be provided upon request to our office.

We are enclosing one additional copy of the comments. **Please stamp and date the extra copy as "filed" and return to our courier.**

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Thank you for our consideration and attention to this matter.

Respectfully submitted,

STEFANIE A. BRAND
Director, Division of Rate Counsel

By:



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Enclosure

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**Clean Energy Act
New Jersey Energy Efficiency Transition
Stakeholder Process**

**Energy Efficiency Stakeholder Meeting – Program Administration
BPU Docket No.: Undocketed Matter**

Comments of the Division of Rate Counsel

January 17, 2020

Introduction

As part of the process to implement the Clean Energy Act,¹ the Staff (“Staff”) of the Board of Public Utilities (“Board”, “BPU”) convened stakeholder meetings on September 25 and October 30, 2019 to address the administration of energy efficiency (“EE”) and demand response (“DR”) programs under the CEA. On December 20, 2019, Staff released a straw proposal (“Straw”, “Straw Proposal”) for program administration. The within comments are being submitted by the New Jersey Division of Rate Counsel (“Rate Counsel”) pursuant to the Notice circulated by Staff (“Notice”) seeking comments on the Straw Proposal. Rate Counsel reserves its right to further amend and augment these comments based on any future proposals and other developments in the stakeholder process.

I. General Comments - Reaching Low and Moderate Income Participants

These comments summarize Rate Counsel’s review of the Straw Proposal and recommendations. At a high level, Rate Counsel Notes that absent from the Straw Proposal is clear guidance on how the state and the utilities will achieve greater saturation of these energy

¹ P.L. 2018, c. 16 (C.48:3-87.3-87.7) (“Clean Energy Act” or “CEA”).

efficiency programs in low income communities. One of the main objectives stated in the Straw is to “provide equitable access to energy efficiency and peak demand opportunities....with a special focus on low income residents.” Straw, p. 7. In a preliminary sense, two major ways to achieve this objective is to strengthen community partnerships and develop a deeper understanding of the obstacles that stand between low income customers and energy efficiency. In subsequent proposals, the Board should outline how it and the utilities will gain a better understanding of these barriers and utilize partnerships or other means to implement new processes to reach more low and moderate income participants in each program. Further, more needs to be done to measure and address Low and Moderate Income participation in EE and DR programs.

The remainder of Rate Counsel’s comments are structured in the following sections, which mirror the sections in the Straw Proposal:

- Program administration frameworks
- Process
- Energy Savings
- Metrics

II. Program Administration Frameworks

A. General

In the Straw Proposal, Board Staff proposes to divide energy efficiency and peak reduction programs into two categories: Core Programs and Additional Initiatives. The Board Staff defines the Core Programs as “base programs which Staff believes will be critical to meeting the energy efficiency targets and which, in large part, currently comprise a majority of CEP offerings.” Straw, p. 13. This proposal appears reasonable. Further, Rate Counsel agrees that a majority of Clean Energy Program (“CEP”) offerings should be designated Core Programs and offered throughout the state. Additional Initiatives are defined by Staff as “auxiliary

programs and program features that will enhance the Core Programs' success and/or focus on policy goals not solely related to energy efficiency." Straw, p. 13. As discussed below, some of the Additional Initiatives proposed by Staff are problematic, extending far beyond EE measures for which cost recovery is reasonably sought from ratepayers, such as Electric Vehicles ("EVs") and Research and Development ("R&D").

B. State-Administered Core Programs and Utility-Administered Core Programs

Overall, the proposed assignment between the utilities and the CEP in the Straw Proposal is different from Rate Counsel's recommendation in its earlier (November 2, 2019) comments, in which Rate Counsel noted "[p]referably, the CEP would lead energy efficiency programs that need consistency across the state, with the CEP and the utilities sharing some responsibilities." November 2, 2019 comments, p. 2. In contrast, the Straw Proposal proposes that the majority of the CEP programs (except new construction, retail products, and state and municipal buildings-related programs) be administered by the utilities or co-managed by the utilities and the CEP. Rate Counsel does not object to most of the proposed allocation of programs in the Straw Proposal, provided the utilities can streamline their programs and maintain consistency among them throughout the state for the programs that need consistency. Additionally, Rate Counsel's comments on the statewide consistency are discussed further in Section C below.

The existing CEP programs that are assigned to the utilities under the Straw Proposal are mostly retrofit programs for which the utility's access to customer energy data and ability to offer on-bill financing are advantageous. Examples of such programs are Home Performance with EnergyStar and WARMAdvantage and COOLAdvantage programs for residential customers, as well as Pay for Performance - Existing Buildings, Direct Install, and Large Energy Users Programs for commercial and industrial customers. While energy data can be transferred

to the State or even a third-party administrator, the initial process to transfer data is a significant undertaking.

Further, on-bill financing can be only offered by the utilities. While the Straw Proposal expresses some views with which Rate Counsel does not necessarily agree (e.g., the utilities can offer more flexibility), Rate Counsel agrees with the view that the utilities currently have an advantage over the State in terms of access to customer energy data and the ability to offer on-bill financing.

The existing CEP programs that the Straw Proposal proposes to stay with the CEP focus on new construction, retail products, local and state government buildings, and combined-heat and power (“CHP”) Fuel Cells Program. Rate Counsel concurs with the Straw Proposal with respect to recognizing the State’s advantages in implementing these programs. Such advantages are:

- New Construction programs: The state agency can effectively work with code officials and other agencies to support advances in codes and standards and is best positioned to work with trade allies across the state who are rarely bounded by utility territories. Straw, p. 18.
- Retail Products program: The State is better positioned to negotiate for statewide deployment of products and can continue to leverage the existing partnerships to ensure increased savings.

Rate Counsel disagrees with the Straw Proposal’s suggestion to include a program called Energy Efficiency Products Marketplace (“EPPM”) as a co-managed program by the CEP and the utilities. The EPPM program appears to be an integral part of the Retail Products program, which the Straw Proposal recommends assigning to the State. Straw, p. 18. The EPPM program is essentially a single online platform for the Retail Products program. On the EPPM platform, “customers across all service territories have equal and adequate access to energy efficient products.” Straw, p. 27. While the Program Recommendations section of the Straw Proposal assigns these programs to different administrators, in another section entitled “Energy Savings,”

there is no distinction between the two programs. Where the Straw Proposal presents an illustrative breakdown of potential energy savings by program, it categorizes “Consumer Products & Lighting Programs” as co-managed programs. Straw, pp. 34-35. Further clarification is needed in this area.

The Straw Proposal mentions several benefits of utility involvement in the EEPM program such as (a) the utilities can collaborate to make the platform accessible to consumers; and (b) utility access to customer data can enable targeted marketing to customers. Given these benefits and the close link between the EEPM and the Retail Products program, Rate Counsel believes it makes sense to combine both the Retail Products and the Energy Efficiency Products Marketplace as one co-managed program.

Lastly, Rate Counsel notes that the Straw Proposal is unclear on the advantages of the State implementing the CHP - Fuel Cells Program. The Straw Proposal claims that the State is best positioned to establish access to and provide comprehensive planning and coordination for customers. It is not clear whether the State has this advantage. While Rate Counsel agrees that the State could limit administrative costs if it offers this program across the State, Rate Counsel also sees a clear advantage of involving the utilities in this program. Rate Counsel considers access to energy usage and customer data as crucial for CHP development because it can inform optimal CHP design and sizing. On-bill financing offered by a utility would also help develop CHP. Rate Counsel recommends that Staff provide a more detailed explanation of the advantage of the State implementation of this program, as compared to the advantages that the utilities confer.

C. Co-Managed Programs

The Straw Proposal includes four programs co-managed by the CEP and the utilities: Low-Income Program (Comfort Partners), Multifamily Program, Appliance Recycling Program, and Energy Efficiency Products Marketplace. Rate Counsel's comments on the Energy Efficiency Products Marketplace are provided in the previous section, in which Rate Counsel recommends this program be combined with the Retail Products program as a single co-managed program.

Rate Counsel has no objection to the inclusion of the other three programs as co-managed programs and agrees with the advantages of the State and utility involvement in these programs, as follows:

- **Low-income program (Comfort Partners):** This program has been managed by both the utilities and the State. The State has a role in setting program objectives, oversight, and participating in program management. The utilities manage and support the program operations and implementation. The State involvement can increase accessibility for all qualified customers across different utility service territories. In order to improve the program and achieve the Board's objectives to reach more low income residents, the utilities can take advantage of their direct customer relationships for implementing this program on a larger scale and reach more participants. Straw, p. 28. The Board can set benchmarking for utility outreach programs specifically focused on Comfort Partners and in order to reach more participants. Additionally, the Board should establish coordination within state government to address underlying health and safety concerns when they arise as barriers for implementation of Comfort Partners' EE and DR measures.
- **Multifamily program:** This program has similar advantages of co-management by the State and the utilities to those for the Low-income program. It takes advantage of "both the statewide and cross-customer-class purview of State administration, as well as the customer relationships and data access benefits of utility program administration." Straw, p. 28.
- **Appliance recycling program:** The State's involvement will allow the program to achieve economies of scale and reduce duplicative administration costs for this program across the state. The utilities can encourage customer participation by offering incentives to replace existing products. Straw, p. 28.

Lastly, Rate Counsel recommends that the Straw Proposal clarify whether co-managed programs must be offered by every entity, or whether offering the co-managed programs should

be optional. For example, Rockland Electric Company (“RECO”) opted out of the current low-income Comfort Partners program. Rate Counsel recommends that these co-managed programs should be mandatory programs, with some exceptions. Utilities should be able to opt out by petitioning the Board if they have ample evidence that customer demand for a program is lacking or for other good cause. Rate Counsel recommends that the Board establish a process to examine in detail any requests from the utilities to opt out any of the co-managed programs. This process should apply to RECO, which has already opted out the Comfort Partners program.

D. Additional Initiatives

Staff proposes a number of other programs within the category of Additional Initiatives. Rate Counsel has serious concerns about programs which go beyond EE and DR for which cost recovery is sought from ratepayers. The focus of the CEA is reductions in energy use and peak demand through EE and DR measures. Any Additional Initiatives implemented under the CEA should adhere to these goals. Two Additional Initiatives proposed by Staff are of particular concern: Electric Vehicle (“EV”) Related Programs and Initiatives, and Research and Development (“R&D”). Straw, pp. 23 and 25.

Staff’s proposal for utility-led EV Programs supports the promulgation of EVs which increases – rather than reduces - energy use, albeit with the aim of reducing peak usage attributable to EVs. Straw, p. 25. While the CEA provides that the Quantitative Performance Indicators (“QPIs”) adopted by the Board take into account EVs, the CEA does not explicitly incent EVs. N.J.S.A. 48:3-87.9(c). EVs add to electric usage, countering any reductions gained through EE measures. Further, but for this additional usage, additional DR measures to address peak usage by EVs would not be necessary. Additionally, a recently enacted law in New Jersey specifically addresses the role of electric utilities and the Board in EV matters.

Rate Counsel does not support rate recovery of R&D programs. Straw, p. 25. In essence, ratepayers should not be viewed as a source of “venture capital” to finance R&D. Under the CEA, rate recovery should only be permitted for reasonable and prudent expenditures for EE and DR measures, including used and useful utility property. See N.J.S.A. 48:3-87.9(e). R&D expenditures do not fall into this category.

Another Additional Initiative also presents concerns: Non-Wires and Non-Pipes Solutions. Straw, p. 21. Here, Staff’s proposal appears not to address EE and DR measures but, rather, it addresses avoided capital expenditures. It is not clear how Staff intends to recover the cost of such programs.

III. Process

A. Program cycles: Years 1-3 and Years 4-5

Rate Counsel agrees with the proposal to require both three-year plan filings and annual portfolio reports. However, Rate Counsel notes that these should be components of a process in which the utilities file petitions with testimony and other evidence, for both the three-year plan and the annual portfolio reports. Annual portfolio reports should be in each utility’s annual filing petitions, wherein the utility requests performance incentives based on its achievements in the pre-determined QPIs and savings targets described in the CEA.

Regarding the Straw Proposal’s proposed program cycle for Years 4-5, it is not clear as to why the Board staff recommends a minimum two-year duration for the next multi-year plan filing while it recommends a three-year duration for the initial multi-year plan filing. The Straw Proposal should clarify this point. The CEA requires annual utility filings, as well as triennial reviews of the QPIs and targets.²

² N.J.S.A. 48:3-87.9(b), (e).

B. Utility coordination – consistency

There are many commercial and industrial utility customers and EE/DR contractors who operate across different utility jurisdictions. Residential utility customers might shop around for energy-consuming appliances and equipment across utility jurisdiction lines. Thus, it is imperative for the utilities to have identical program structure and offerings as much as possible for their core programs across service territories. The Straw Proposal acknowledges the importance of coordination in several places and mentions “maintaining statewide consistency of programs to ensure equitable access for all customers is of paramount importance, particularly for the Core Programs.” Straw, p. 29.

There are a number of ways to achieve consistency across multiple utility service territories and avoid consumer and contractor confusion. One important approach missing in the Straw Proposal is the process to develop the Core programs for the utilities. Rate Counsel believes that prior to individual utility filings, Staff should first convene stakeholder meetings and establish the key structure and program offerings for the Core programs. Rate Counsel does not anticipate any significant challenges in this effort because it is anticipated that most of the Core programs are currently offered by the CEP, which will serve as templates for program design. As part of the stakeholder meeting process utilities could propose, for comment by stakeholders, any additional features or modifications to the key structure of the Core programs together with sufficient material to support such modifications. This process will ensure that the utilities will have consistent Core programs across jurisdictions.

Once the basic Core program designs and incentive levels are set, the utilities should jointly propose approaches to implement their Core programs and subsequently petition the Board for approval, with the opportunity for review and comment by parties. This is similar to the current

administration approach of the Comfort Partners program whereby a group of utilities manages and implements the program. The exception here is that in this program the Office of Clean Energy (“OCE”) has a role of program oversight and goal setting. As an alternative approach, the utilities could also propose to hire a single contractor that either manages or coordinates each Core program for all the utilities. This is similar to the proposal in the Straw for the Multifamily Program where it states “[t]he utilities would procure a joint program administrator to perform high-level program coordination.” Straw, p. 28.

C. Utility coordination – flexibility

The Straw Proposal discusses the importance of balancing flexibility and consistency. More specifically, the Straw Proposal mentions that “[a]llowing utilities to react quickly to changing market conditions, within reasonable limits, will ensure that programs remain effective and work toward achieving the aggressive savings goals set forth in the CEA.” Straw, p. 30. In the Straw Proposal, Board Staff also proposes conditions that would permit the utilities to make modifications during program cycles without Board approval but with Board and Rate Counsel notification. Such conditions are as follows:

- Make minor modifications to *program* design;
- Shift budgets between programs up to 3 percent of approved program budgets without altering the utility’s overall energy efficiency program budget and while remaining cost-effective; and
- Adjust incentives and rebates up to 15 percent of approved levels (Straw Proposal, p. 30).

At the outset, the thresholds and procedural requirements posited by Staff are vague and unsupported by any analysis. Rate Counsel concurs with Board Staff regarding the importance of keeping the balance between flexibility and consistency. However, Rate Counsel maintains that it is premature to establish thresholds and procedural requirements at this point. In any case,

any modifications proposed by utilities to existing programs and budgets must be supported by adequate information and evidence, with opportunity for review and comment.

D. Utility coordination – reporting

The Straw Proposal proposes that “[a]ll entities responsible for program delivery, including the OCE, will be required to report savings, costs, and evaluation data following a consistent set of requirements to ensure that all savings and expenditures are accurately tracked, accounted for, and attributed to the proper entity.” Rate Counsel agrees that consistent reporting structures are vital for evaluating program performance across service areas and ensuring the utility savings targets are met.

E. Marketing

The Straw Proposal acknowledges the serious impact on participation in energy efficiency programs due to the lack of marketing over the past several years in New Jersey. The Straw Proposal also acknowledges the importance of effective marketing to increase both program participation and energy savings. Straw, p. 31. To establish effective statewide marketing, the Straw Proposal makes a number of important recommendations as follows:

- “Staff recommends a collaborative approach between the State and the utilities to ensure that program offerings are marketed and communicated clearly, have maximum reach to all customers, and are implemented at the least cost to the ratepayer.” Straw, p. 31.
- “[T]he State will hold an ongoing working group with the utilities to discuss marketing research, campaign plans, implementation, and results.” Straw, p. 31.
- “Overall brand awareness will be conducted at the state level. The State will work closely with the utilities to ensure that mass marketing efforts are conducted in each territory and promote “New Jersey’s Clean Energy Program.” Messaging and creatives will include the NJCEP logo and the utilities’ logo (when applicable).” (Straw, p. 31.)
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In general, Rate Counsel supports these approaches to create effective program marketing in the State.

IV. Energy Savings

As referenced in the Straw Proposal, the CEA states that “[a] public utility may apply all energy savings attributable to programs available to its customers, including demand side management programs, other measures implemented by the public utility, non-utility programs, including those available under energy efficiency programs in existence on the date of enactment of P.L.2018, c.17 (C.48:3-87.8 et al.), building codes, and other efficiency standards in effect, to achieve the targets established in this section.” Straw, p. 33.

The Straw Proposal further states that “Staff anticipates that energy savings achieved through programs administered by the State will count towards utility savings and that the utilities will be able to count the savings achieved by the State, through State-led initiatives, in meeting the CEA’s overall goals.” Straw, p. 33. Rate Counsel agrees that, to mitigate costs, savings achieved by the utility-run, co-managed, and State-run programs should count toward the CEA’s electric and gas utility savings targets.

The Straw Proposal also states that “[s]avings anticipated to come from New Jersey’s Clean Energy Program will not be included in each utility’s quantitative performance indicators, and therefore the utilities will not receive performance incentives or penalties based on NJCEP’s savings.³ However, energy savings anticipated to be achieved through the co-managed programs will be included in each utilities’ QPIs, and the utilities will be assessed incentives or penalties based on achievements in the co-managed programs.”⁴ Rate Counsel agrees that utilities should be subject to incentives and penalties for the programs that are clearly in their charge, i.e. the utility-led programs. Whether utilities should receive incentives and penalties for co-managed programs is less clear.

³ N.J.S.A. 48:3-87.9(c).

⁴ N.J.S.A. 48:3-87.9(c).

Incentives and penalties are effective if the utility has a degree of control over the outcome. If the utilities have a large role in the success or failure of the co-managed programs, these programs should be counted toward the QPIs. However, the Straw Proposal is unclear about the extent of the utilities' role in the co-managed programs. For example, the utilities' role in the Appliance Recycling program is described as "managing the recycling needs and opportunities in their territories and encouraging customer participation by offering incentives to replace existing products with more efficient products" Straw, p. 28. There may be a clear opportunity for the utilities to offer incentives for more efficient products within the Appliance Recycling program. However, it is unclear what is meant by "managing the recycling needs and opportunities" and how large of an effort this requires, since the administration of the program would fall on the State. Straw, p. 28.

In sum, the method for determining whether programs count towards QPIs needs to be discussed in more detail than has been provided in Straw Proposal. Rate Counsel also recommends the Board establish a formal process to determine the level of energy savings and QPIs for the programs for which the utilities are responsible. This process should be discussed in subsequent Straw Proposals on this issue. Rate Counsel reserves the right to comment on any proposed methods for attributing program achievements to the QPIs.

V. Metrics

The Straw Proposal recommends the following metrics:

- annual energy savings
- annual demand savings
- lifetime energy savings
- lifetime of persisting demand savings
- utility cost test net present value of net benefits
- low-income lifetime savings
- small business lifetime savings (Straw Proposal, p. 37-38)

The Straw Proposal's set of metrics mirror those identified by the Optimal Study, with one exception: the Optimal study also included a metric called "Optional additional metric for key policy objective and relevant to utility specific plans."⁵ Optimal Study, p. 97. The Optimal study also provided weights for the metrics that it proposed, including 6 percent for the optional additional metric. Optimal Study, pp. 96-97.

In the Straw Proposal, Staff states it envisions that the metrics and the associated weights "will be consistent among all utilities...." Straw, p. 39. However, the Straw Proposal does not propose weights. Notably, the Straw Proposal does not provide enough information to assess the metrics, either individually or as a group. Significantly, the Straw Proposal provides no units, formulae, data sources, or timeframe for calculating the proposed metrics. Further, the Straw Proposal does not discuss whether there are other policy objectives that are not represented in its the proposed set.

Rate Counsel also notes that the Straw Proposal has not provided any discussion or assessment of interactions between its proposed metrics. There appear to be many overlaps between these metrics. Just to name a few, there are likely overlaps between total annual and lifetime energy savings, between annual and lifetime demand savings, between total annual energy and demand savings, between low-income lifetime energy and total lifetime energy savings, and between small business lifetime and total lifetime energy savings. Some of the overlaps may be substantial. While these overlaps may or may not be a problem, interactions between the incentives should be considered carefully. If there are overlaps, incentives for a particular activity that touches on more than one QPI could be very rich. Further, if there are problems with the design of metrics, the overlap could magnify these problems.

⁵ Optimal Energy (May 9, 2019). Draft Document: "Energy Efficiency Potential in New Jersey."

For the entire section of the Straw Proposal on Metrics, there has not been sufficient opportunity or information to enable an assessment of the set of metrics, their weights, and how they interact. There should be opportunity for comment on all of these within the QPI process.

For Staff's consideration as it formulates its thoughts on metrics, Rate Counsel notes that the process and definition of metrics should include the following:

- Formulae for the metric should be clearly defined.
- Data sources, methodologies, and assumptions should be specified.
- A clear assignment of responsibility for calculating metrics and a timeline for doing so should be specified.