



New Jersey's Clean Energy Program
New Jersey Board of Public Utilities
Program Administrator

February 22, 2016

Thank you for this opportunity to provide comments on the proposed changes to the Residential New Construction Program. EAM Associates is a high performance building consultant working within the Residential New Construction/Energy Star Homes Program since its inception in 2001. To date, we have certified over 13,000 single and multifamily homes to these standards.

EAM participated in the Working Group that was formed recently by the Market Manager (Honeywell) and we are glad to see that many of the recommendations from that group have been incorporated into this proposal. We fully support the transfer of funds from the Energy Efficient Products Program into Residential New Construction in order to accommodate applications through the balance of FY 2016. We also support in principle, the Proposed Enrollment Changes, however we have a few concerns:

- 1- Requiring a building permit will be problematic for those builders following the Energy Star Homes pathway for IECC 2015 compliance. The Department of Community Affairs Bulletin 15-4 requires a builder using the Energy Star compliance path to submit a program enrollment letter in order to secure a permit. We would suggest allowing these builders to enroll in the program, and then submit a copy of their permit, or a permit number, within 60-90 days of their program enrollment. We also see a problem with getting the street address on the construction plans. Many production builders use a single house plan in several communities, so addresses will often not be on plans. Also, we see many multi-family projects where street addresses/apartment numbers are not assigned prior to actual construction. Similar to the permit issue, one solution would be to allow projects to enroll, and add actual street addresses within 60-90 days of enrollment.
- 2- The 60 day deadline for single family projects to receive a pre-sheetrock inspection needs to have some flexibility and/or waiver system built in for situations that are bound to come up due to weather, municipal inspection delays, workforce and other variables that builders face every day. These builders should not be penalized or required to re-enroll in order to proceed with their projects.
- 3- Communications from the Market Manager in 2015 indicate that multi-family projects do not expire. We want to confirm that the 2 year expiration being proposed here will only affect new registrations, and that currently enrolled projects will continue without an expiration date.
- 4- It was our understanding that all projects registered with the Market Manager by 5 pm on 8/31/15 would be subject to program requirements and incentives that were available at that time. This proposal seems to include the 8/31/15 registrations with those on 9/1/15 and after. We need to know the status of those projects, enrolled at the Market Managers direction, prior to the close of business on 8/31/15.



EAM supports the Program's proposals with regard to the change to IECC 2015 in New Jersey. We have the following comments on those proposed changes.

- 1- We fully support dropping the Tier numbers.
- 2- While we support the eventual elimination of the Energy Efficient Home (current Tier 1) Program, there are a number of builders who are participating in this program and may have additional homes that have been permitted to 2009 IECC, and registered on or before 8/31/2015. Those builders should be allowed to complete their projects within one year of the registration date. We feel that any homes permitted to 2009 IECC should be able to enroll under the current program rules, either for Energy Efficient Homes or Energy Star Version 3.0. Any homes, previously not registered, and permitted to IECC 2015 should be enrolled under the proposed new programs, IECC 2015 ERI and Energy Star Version 3.1.
- 3- Under the proposed IECC 2015 ERI, the requirement for a local code official to provide a letter will be problematic, mainly due to the workload that these officials are dealing with in NJ, particularly in Sandy-affected areas. Since all of these homes will be getting a HERS rating, EAM would recommend as an alternative, providing the ERI report from the REM analysis done by the rating company. Since the rating company provides this information to the code official in the first place, this is effectively the same thing, with less disruption to everyone.
- 4- The proposed changes acknowledge the issue of how difficult it will be for multi-family projects to comply with the IECC 2015 ERI compliance path. The Market Manager, along with input from the participating rating companies, should look to make some accommodation for this so that multi-family projects can use this compliance path.
- 5- In the proposed Energy Star Homes Version 3.1 program, we want to be sure there are no "adders" being proposed on top of the current federal program. Adding prescriptive requirements, such as specific blower door testing results, negates the flexibility of what is truly supposed to be a performance program, and eliminates the advantage that builders would have by choosing the Energy Star Home code compliance path. We have spoken to many builders, both current and potential Energy Star Homes builders, who like the idea of the flexibility that the Energy Star Homes compliance path provides. The addition of NJ-specific mandatory requirements would certainly make them rethink their choice.
- 6- With regard to the Multi-Family High Rise Program (MFHR), we support the Market Manager's plan to follow the lead of EPA and allow a target baseline of choice due to the difficulties and unknowns in this program. In addition, we would like to see the elimination of the six story limit for participation in the MFHR program. EAM submitted detailed comments about this at the time of the FY 2016 filing, the text of which is included below:

Regarding the Multi Family High Rise Program (MFHR), we have a concern regarding the participation requirements, specifically the restriction to a maximum of six stories. Currently there is conflicting information in the marketplace, and on the NJCEP website, about this program.

In January of 2012, a Program Update letter was sent to builders and rating companies announcing the transition from the MFHR Pilot to the full EPA program. This letter can be found on the NJCEP website at <http://www.njcleanenergy.com/files/file/Residential%20Programs/NJ%20ENERGY%20STAR%20Homes/2012ESHProgramChangeLetter.pdf>.



The letter states that the EPA Program was being “fully adopted” along with revised protocols, with no mention of any modifications or NJ specific changes. On the NJCEP/RNC website today, a builder looking for information on the MFHR program is routed directly to the EPA website, another indication that the intent was to follow the EPA program guidelines and protocols completely. The program developed “decision trees” to guide builders, the earliest one we could find looks like it was put out late in 2013. There have been several “decision trees” posted on the website since, including some recently changed, one of which directs buildings over six stories into Energy Star MFHR, and others that direct them to Pay for Performance. It seems like the six story limit may just be a holdover from the pilot program, and should have been eliminated upon fully adopting the EPA version back in 2012. Certainly EAM, and several of our clients, took the January 2012 letter, and the directive to follow EPA guidelines and protocols, as full adoption of the EPA program with no restrictions.

The RNC MFHR Program should not be limited to six stories, and should follow the EPA program as it was clearly intended to do. By doing so, the Program will offer builders and developers the flexibility to choose the RNC pathway without sacrificing incentives if they feel that marketing the Energy Star label is important to their project’s success.

Please feel free to contact me if you have any questions. We look forward to continue working with the NJCEP in developing programs that help push the levels of efficiency and sustainability in New Jersey homes.

Sincerely,

Rick Marx
Vice President
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February 22, 2016

By Hand Delivery and Electronic Mail

Honorable Irene Kim Asbury, Secretary
NJ Board of Public Utilities
44 South Clinton Avenue, 9th Floor
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Trenton, New Jersey 08625-0350

**Re: NJCEP Proposed Changes to the Residential Energy Efficiency Budgets
and Residential New Construction Program (Request for Comments dated
February 8, 2016) - Comments of the New Jersey Division of Rate Counsel**

Dear Secretary Asbury:

Please accept this original and ten copies of Comments submitted on behalf of the New Jersey Division of Rate Counsel ("Rate Counsel") in connection with the above-captioned matter. Copies of the comments are being provided to all parties on the e-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 it in our self-addressed stamped envelope.


Honorable Irene Kim Asbury, Secretary
February 22, 2016
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Thank you for your consideration and assistance.

Respectfully submitted,

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**NJCEP Proposed Changes to the Residential Energy Efficiency Budgets
and Residential New Construction Program
(Request for Comments dated February 8, 2016)**

**Comments of the
New Jersey Division of Rate Counsel**

February 22, 2016

The Division of Rate Counsel (“Rate Counsel”) would like to thank the Board of Public Utilities (“BPU” or “the Board”) for the opportunity to present comments on the proposed budget modifications and changes to the Board-approved FY2016 Clean Energy Program (“CEP”) program budget and programs, which were circulated to stakeholders for comment by the Office of Clean Energy (“OCE”) in an e-mail notice issued February 8, 2016 (“Request for Comments”). Rate Counsel’s comments and recommendations regarding the Request for Comments are set forth below.

According to the OCE, the proposed budget modifications to the Residential Energy Efficiency (“EE”) programs revisions were developed in response to greater than anticipated participation levels for certain programs since the beginning of the fiscal year 2016 (FY16). In all, the OCE proposes to transfer funds amounting to \$3,658,620.47 from the Energy Efficient Products (“EEP”) program to the Residential New Construction (“RNC”) program (\$2,845,000) and Home Performance with ENERGY STAR (“HPwES”) program (\$813,620.47) budgets. The proposed budget modifications are addressed in more detail in the comments below.

The OCE also proposes RNC program changes. Specifically, the OCE proposes changes to the RNC enrollment requirements and the process for committing funds to RNC projects. In addition, the OCE proposes redefining the RNC incentive tiers in response to the adoption of the International Energy Construction Code (“IECC”) 2015 by the New Jersey’s Department of

Community Affairs on September 21, 2015, with an effective date of March 21, 2016. These proposed changes are addressed in more detail in the comments below.

Proposed Budget Modifications

The OCE notes that the RNC program received a large number of applications in August 2015 which exhausted the current rebate budget. Similarly, the OCE reports that HPwES program received a large volume of applications during the first half of FY16 as a result of incentive level reductions that were set to be implemented. The OCE claims that the transfer of funds from the Energy Efficient Products (“EEP”) program to the RNC and HPwES program budgets will allow these programs to continue to accept applications and remain open. The OCE notes that the excess EEP funds available for transfer are the result of the lighting markdown promotions ending mid fiscal year (December 31, 2015) in anticipation of the transition to the Program Administrator. Rate Counsel does not object to the proposed budget transfers.

Proposed Revisions to the Residential New Construction Program

- Enrollment and Funding Process Changes

The OCE reports that the RNC program has seen an “unprecedented” amount of applications submitted during the first quarter of FY16, which resulted in a pipeline of approximately 4,500 applications requesting enrollment into the program. The OCE further estimates that under the current program enrollment and funding rules, the projects in the pipeline would exhaust all available funding in the RNC rebates budget and will require approximately \$10 million in CEP funds. The OCE projects that its proposed changes to the enrollment requirements and funding

process will reduce the funding required for the remainder of FY16 to approximately \$2.8 million and will reduce the timeframe by which projects are enrolled in the program.

The OCE's proposed enrollment changes set fixed time periods for obtaining building permits and inspections. Furthermore, the OCE proposes to tighten the re-enrollment requirements. For example, if a project with existing funding commitments cannot meet the re-enrollment requirements the project will be deactivated and removed from the pipeline unless a waiver is obtained from the Program Administrator. The project will be allowed to re-enroll when it is able to meet the new enrollment requirements and will be eligible for the incentives in place at the time of re-enrollment.

With respect to RNC rebates, the OCE proposes that projects enrolled without a commitment will be paid in the order that the completed final incentive applications are received. And if incentive levels increase in a subsequent program year, the OCE proposes that enrolled projects will not be eligible for the higher incentive levels and will not be allowed to "deactivate" and re-enroll. Rate Counsel concurs that the proposed enrollment and funding changes are reasonable and help ensure that to ensure that funding commitments are made to those projects most likely to be completed in FY16.

- **IECC 2015-Related RNC Changes**

The OCE proposes a new Tier structure for RNC incentives and other RNC changes in response to the adoption of the International Energy Construction Code (IECC) 2015 by the Department of Community Affairs, with an effective date of March 21, 2016. The IECC 2015 code requires a greater level of energy efficiency than that required by the IECC 2009 code currently in use. The sections that follow discuss recommendations for reconciling RNC

Program requirements and these differing compliance requirements within the IECC 2015. These program requirements will take effect on March 21, 2016.

RNC Tier Incentive Structure: The current RNC FY16 program rules provide for four incentive tiers (Tier 1 thru Tier 4) of energy efficiency for the construction of new single family and multi-family housing. The OCE proposes to eliminate the numbered four-tier structure and replace it with the following, least to most energy efficient categories: (1) IECC 2015 ERI, (2) ENERGY STAR, (3) Zero Energy Ready Homes (“ZERH”), (4) and ZERH + renewables (“RE”). Each tier must achieve a minimum Home Energy Rating System (“HERS”) index in order to be eligible for incentives.¹

The OCE’s proposed new tier format will also eliminate the rebate for the current Tier 1 “Energy Efficient Home” incentive level, which is the lowest tier, since homes built to minimum IECC 2015 standard would be more efficient than the Tier 1 “Energy Efficient Homes” under the current standard. The OCE reports that since the start of FY16, only four homes have enrolled in Tier 1. Rate Counsel does not object to the proposed tier changes.

IECC 2015 Energy Rating Index (“ERI”): The IECC 2015 introduces an alternative compliance path based on total building performance called the Energy Rating Index (“ERI”), which is designed to even exceed the IECC 2015 prescriptive requirements. New Jersey amended the IECC 2015 code requirement to permit field testing newly constructed homes to verify a maximum allowable air leakage of three air changes per hour and made the field test optional. In contrast, the ERI compliance path requires field testing to demonstrate performance. The OCE

¹ The HERS index is the “industry standard” by which a home’s energy efficiency is measured, recognized nationally for inspecting and calculating a home’s energy efficiency performance.

notes that the different compliance requirements might result in significantly different performance levels, depending on the compliance pathway (ERI or 3ACH50) chosen. The OCE believes that homes built using IECC 2015 ERI compliance path will result in a higher level of performance than homes built using the “prescriptive path” without field testing. The OCE recommends a flat \$750 incentive for any home that demonstrates compliance with the IECC 2015 through the ERI path, as a stand-alone incentive for the lowest tier of efficiency or an adder to ENERGY STAR or ZERH incentives. A code official signature verifying code compliance was achieved using the ERI path will be required. Rate Counsel concurs with the OCE’s proposal.

ENERGY STAR Home and Zero Energy Ready Home (ZERH): The ENERGY STAR program is designed to achieve 15% more energy efficiency than the building code. And the US DOE Zero Energy Ready Home (“ZERH”) program has more stringent energy performance requirements than the other program paths. For states that have adopted IECC 2012 or IECC 2015, ENERGY STAR developed v3.1. The US EPA and DOE recognize that builders need 6-12 months to adjust to a new specification, and do not require the more stringent standards until 12 months following the effective date of the new EE code. The OCE proposes that the CEP follow the ENERGY STAR v3.1 standards upon the effective date of IECC 2015 on March 21, 2016. Rate Counsel concurs that the proposed modifications recognize the use of incentives to drive EE measures beyond the minimum required by code and recommends that the OCE’s proposed modifications should be adopted.

Multi-Family High Rise (“MFHR”) Program: New Jersey adopted the more stringent ASHRAE 90.1-2013 for its commercial construction code, thereby increasing the baseline against which

building EE performance is measured. And the US EPA's MFHR program requires a 15% increased energy savings above code. Furthermore, New Jersey's adoption of IECC 2015 triggered additional changes to the commercial code. How these changes will affect construction is still an open question. The OCE notes this uncertainty and reports that the US EPA offers program participants some flexibility in choosing the baseline against which to measure a building's EE improvements. The OCE further notes that program participants in its CEP's Pay for Performance Program have found that even a 15% improvement over ASHRAE 90.1-2013 is "difficult to achieve." The OCE proposes following EPA's guidance to allow a target baseline of choice, recognizing that this change will require that the CEP collect new data on a project's baseline code and its projected percent savings above code as well as updates to the incentive table to align it with the new baselines. Rate Counsel concurs with the OCE's baseline and data collection proposals. However, the OCE should impose a fixed end date for the use of flexible baselines.

Memo

To: NJ Board of Public Utilities

Date: February 19, 2016

Re: Comments on Proposed Changes to Residential EE Budgets and the RNC Program

Proposed Budget Modifications

- We strongly support the transfer of additional funds into the RNC program budget. This infusion of funds **needs to be implemented immediately** or the confidence of the builder community in the RNC program will continue to be eroded, which will have cascading, and potentially irreparable, deleterious effects.
 - There is also urgency due to the enforcement of the 2015 Energy Code for all new units permitted after 3/21/16.
 - As the 2015 Energy Code has more stringent energy efficiency standards, builders are being forced to reevaluate their approach to compliance and are considering all options — including enrolling in the RNC program.
 - So, in the next few weeks, more and more builders will be focusing their eyes on the RNC program and trying to enroll. If the program is dysfunctional, that is the impression that will resonate within the builder community for the foreseeable future.
- As previously stated in communications to the BPU on this matter, it is imperative that RNC program never stop accepting applications or paying rebates. Accordingly, it is crucial for the RNC program's long-term viability that the BPU continue to allocate any additional funds, if necessary, to ensure the continual functioning of the program.
 - Once the program stops accepting applications or paying rebates, any builder that is unable to apply or receive a rebate will almost assuredly never be interested in participating again.
 - The builder community is tight-knit and word spreads quickly throughout builder trade associations. Individuals and municipal governments may wait extended periods of time to receive rebates. Businesses simply will not, and they also cannot risk any uncertainty about receiving payments.
 - The BPU would be well served to think of their business-serving programs (i.e., RNC, P4P) as B2B service enterprises. In that context, it should be especially clear that the RNC program should not reasonably expect to just stop servicing clients and still maintain business relationships with them.



Proposed Enrollment and Commitment Changes

- We generally support the proposed enrollment and commitment changes, however the devil is in the details and we have recommendations regarding certain aspects.
 1. With regard to pre-sheetrock inspection deadlines and commitment periods (1 –year v. 2-year), we believe that Multi-Single projects should be treated the same as Single Family, as opposed to being treated the same as Multifamily and Multifamily High Rise.
 - This is because, like Single Family, Multi-Single units are registered with RNC individually and also follow similar construction timelines as Single Family.
 2. There is a catch-22 situation created by requiring all units to submit a valid building permit to enroll.
 - This is because DCA Bulletin 15-4 states on page 2 that if a builder is complying with Energy Code by participating in the RNC program that a “letter of enrollment (typically the “builder’s acknowledgment” letter) from the NJ Clean Energy Program “market manager” should be submitted with the permit application.”
 - Obviously, the builder cannot submit a letter of enrollment with the permit application if a valid permit is required to receive a letter of enrollment.
 - While units permitting through the ERI pathway won’t have any issue, this causes a problem for units in the ENERGY STAR and ZERH programs.
 - We recommend that the RNC program remedy this problem by treating the requirement for a valid permit for all unit types just like the requirement for Single Family units to complete a pre-sheetrock inspection within 60 days.
 - That is to say that a builder should be able to receive a letter of enrollment without submitting a permit, but should have to submit one within 60 days of being enrolled.
 3. There is also the issue of how to treat any units subject to a 60-day deadline (permit and/or pre-sheetrock inspection) that fail to meet the deadline.
 - We recommend that any unit that is removed in the program for failing to meet any 60-day deadline (pre-sheetrock inspection and/or permit) should be able to simply re-enroll at any point without any special approval.
 - This is because there are a lot of variables that could delay a construction schedule within such a narrow timeframe, and it would be unfair to penalize a builder who suffered setbacks.
 - Similarly, municipal code departments are notoriously slow and a permit could be delayed for reasons not the fault of the builder.
 - Also, participating Raters have an incentive to not have to keep redoing the same administrative tasks so they will naturally steer builders away from registering too early.



4. Regarding units that successfully enroll, meet any applicable 60-day deadlines, but then fail to complete within the one-year or two-year commitment period, we have the following comments:
- There should be **absolutely no restriction** on re-enrollment for any unit that was ever previously registered or attempted to register, even it has had a prior commitment expire.
 - This is because the program has previously functioned under an unwritten rule to always enroll units as early and often as possible. We understand that the proposed changes to enrollment and commitments seek to alter this practice, but it would be totally unfair to penalize anyone for simply doing what any participating Rater would've recommended.
 - In terms of any unit registered henceforth, under these new rules, which fails to complete in time (within 1 or 2 year window) — we are still skeptical that there should be a restriction on re-enrollment.
 - We do understand that we want to disincentive anyone from registering units superfluously. However, we feel requiring a permit and/or pre-sheetrock inspection within 60 days of enrollment accomplishes that.
 - We don't get what the intended effect of restricting re-enrollment would be, and we foresee all types of tricky circumstances that would be created as a result.
 - For example, what if a unit enrolls and meets all applicable 60-day deadlines but then some incident occurs that indefinitely delays construction? Would the proposed changes mean that the unit couldn't re-enroll even the RNC program was notified in advance by the Rater?
 - We understand the proposed rule allows for waivers, but we just see this is creating unnecessary administrative work and consternation for no real purpose.

Proposed RNC Incentive Tier Changes

- We cannot stress strongly enough how much we support the proposed change to eliminate the tier numbering system from the RNC program.
 - We have been advocating for this for years, as it is pointless and terribly confusing to builders.
- We are also generally supportive of the recommendation to phase out the "ENERGYEfficient Homes" program.
 - We believe the RNC program should always only incentive certification under existing standards (e.g., ENERGY STAR, ZERH) as opposed to creating new ones that have no brand awareness, marketing value, or established quality assurance mechanisms beyond the RNC program.



- However, we firmly believe that any units permitted under 2009 Energy Code should be allowed to register for the current version of the ENERGYEfficient Homes Program through the end of FY 2016.
- We have a handful of subdivision projects, which constitute at least 20 single-family units, which have been participating in ENERGYEfficient Homes for years and are finishing this year.
- We assume other Raters have similar projects and that there may also be some applications to ENERGYEfficient Homes, received after September 1, 2015, which are waiting in the queue.
- The funding shortfall is part of what has contributed to the low enrollment numbers, along with the fact that most Raters all rushed to get their builders' units registered by August 31, 2015 before the standards and rebate levels changed.
- No project should be penalized for the RNC program being unable to accept applications over the past few months.
- Also, since the current version of the ENERGYEfficient Homes program is designed to help builders transition to 2015 Energy Code — there is no reason not to allow homes permitted under 2009 Energy Code to utilize this program for its intended purpose. The ENERGYEfficient Homes standard is not obsolete for these units.
- That is why any project that has previously enrolled homes in the ENERGYEfficient Homes Program should be allowed to enroll any remaining units permitted under 2009 Energy Code in the ENERGYEfficient Homes Program for the remainder for FY2016.
- We strongly support the recommendation to provide a flat \$750 incentive for any unit permitted through the ERI Pathway.
 - As staff notes, it is fair to provide a flat rate for all housing types because the ERI targets are static regardless of housing type and are indeed harder to achieve for multifamily units.
 - Even though it is an Energy Code compliance pathway, it is intentionally over-designed to be more energy efficient than the other Energy Code pathways (i.e., Prescriptive, UA Tradeoff, and Performance pathways). Thus it is worth incentivizing.
 - This is also consistent with our aforementioned recommendation to only incentive achievement of existing standards, since ERI is part of the 2015 Energy Code and is based on Home Energy Rating System (HERS) Ratings.
 - This incentive would also increase enrollment in other RNC programs because it would result in more units receiving HERS Ratings (since ERI = HERS), which are required for ENERGY STAR and ZERH certifications.
 - By establishing processes with builders to have HERS Ratings done on their units, the initial barriers to pursuing ENERGY STAR or ZERH would be removed.
 - We also agree it makes sense to for this incentive to stand-alone, and be able to be earned in addition to a rebate for ENERGY STAR or ZERH. That is because the ERI Target for some units will be more difficult to achieve than the ENERGY STAR target, especially for multifamily units.



- We support the adoption of ENERGY STAR Version 3.1 (v3.1) as the standard for the RNC program for all homes permitted under 2015 Energy Code.
 - However, staff's recommendation seems to be unclear, as they seem to suggest that v3.1 should be enforced for all units registered on, or after, March 21, 2016. **If that is the case, we do not agree with that.**
 - Rather we think that any home permitted under 2015 Energy Code should be required to meet v3.1 requirements.
 - The difference is that there will be many units permitted under 2009 Energy Code, prior to the NJ DCA deadline of March 21, 2016. Those units may then attempt to enroll in the RNC program after March 21, 2016.
 - Those units should not be required to meet v3.1, as v3.0 will still be 15% more energy efficient than their code baseline. To require v3.1 for those units would be unfairly burdensome, as v3.1 is only supposed to apply to homes permitted under 2015 Energy Code.
 - Based on our discussions with staff, we think that staff may have been trying to recommend the same thing (that v3.1 apply to all units permitted under 2015 Energy Code) but just failed to clearly communicate that.
 - If that is the case, then this is all redundant. But it needs to be addressed because there is a big difference between requiring v3.1 for all homes permitted under 2015 Energy Code and requiring v3.1 for any home enrolled in RNC on, or after, March 21, 2016.
 - The latter option, besides being unfairly burdensome, would also create chaos for the RNC program, as Raters would be forced to rush to register builders' projects prior to such a deadline at a time when the RNC program is in a state of administrative transition.
 - For all of those reasons, we strongly recommend that v3.1 apply to all units permitted under 2015 Energy Code but that any unit permitted under 2009 Energy Code be subject only to v3.0 requirements — at least for the remainder of FY 2016.
 - Since FY 2016 ends on August 31, 2016 and the NJ DCA Energy Code Deadline is March 21, 2016, the end of FY 2016 is the best cutoff for enrolling any homes permitted under 2009 Energy Code under either ENERGY STAR v3.0 or ENERGY Efficient Homes.
 - That would give Raters and builders over five months to enroll any homes permitted under 2009 Energy Code before the March 21st deadline.
 - We also want to recommend that **no additional prescriptive requirements** ever be applied to ENERGY STAR or ZERH certification in order to receive a rebate. The U.S. EPA and U.S. DOE developed these standards through extensive research and testing processes. The RNC program should never presume to "know better" and arbitrarily apply additional prescriptive requirements on top of what EPA and DOE require.



- To put a fine point on it, the RNC program should not apply a prescriptive 3ACH50 air-sealing requirement to either program, since these programs are designed to allow tradeoffs between air-sealing and other energy efficiency measures.
- Accordingly, any increase in the ACH50 number must be offset by increased energy efficiency elsewhere in the software energy model in order to achieve certification.
- Basically, don't try to re-invent the wheel. Defer to the EPA and DOE standards. Always.
- Regarding the Multifamily High Rise (MFHR) Program, we have the following comments and recommendations:
 - We support the recommendation to allow units to qualify based on different percentage improvements over a target baseline of choice. Staff is correct on all points about the difficulty of achieving 15% of ASHRAE 90.1-2013 and the unfamiliarity of many design professionals with this new standard.
 - However, we still believe the rebates are too low to be attractive, given the increased construction and consulting costs necessary to achieve this certification, and that the BPU needs to make major changes to the MFHR Program as detailed below:
 - The ENERGY STAR Multifamily High Rise (hereinafter "MFHR") Program is designed to certify residential buildings of sufficient size and characteristics to be permitted under commercial construction code. Accordingly, these buildings are subject to commercial energy code – which is based on the ASHRAE 90.1 standard.
 - The certification requirement of 15% reduction vs. ASHRAE 90.1 baseline is exactly the same requirement of the Pay for Performance (hereinafter "P4P") New Construction Program.
 - ENERGY STAR MFHR does not limit the number of stories that a building can have to be eligible for certification. As the name suggests, it is intended for high-rise buildings.
 - The NJCEP arbitrarily caps the number of stories for its associated rebate program at 6, because buildings over that size are eligible for P4P.
 - This is seemingly a result of the fact that the NJ P4P program existed prior to the ENERGY STAR MFHR program, and so the NJCEP only uses the ENERGY STAR MFHR program to "fill the gap" between the size maximum for the ENERGY STAR Homes program and the size minimum for the P4P program.
 - **We believe that this is a mistake that should be corrected**, especially as new multifamily construction continues to dramatically outpace all other new housing construction in New Jersey.
 - The NJCEP consistently relies on the power of the ENERGY STAR label and all of the federal resources behind to incentive participation in its programs. So why would it arbitrarily deny, for example, a 10-story building that wanted to do ENERGY STAR MFHR from earning a rebate through its associated program?



- The fact is that in new residential construction, where marketability is much more important than in an existing commercial building, the ENERGY STAR label is so much more valuable. No developer is going to see any marketing value in that his/her new apartment building achieved P4P requirements.
- Accordingly, the NJCEP should not limit the size of high-rise apartment building that can receive a rebate for ENERGY MFHR certification.
- **It should also align the rebate structure for ENERGY MFHR with that of P4P New Construction since the standards and certification processes are almost identical (especially with the removal of the IRR requirement from P4P).**
- The incremental cost of certification for P4P and ENERGY STAR MFHR are also almost identical because they both have the same technical requirements and both require the involvement of a Licensed Professional Engineer or Registered Architect to verify certification.
- For these above reasons, we feel that that the rebate structures for ENERGY STAR MFHR and P4P should be brought into alignment since they both operate under the NJCEP umbrella. We are unaware of any other type of building that qualifies for multiple NJCEP options except for MFHR projects.
- This dual eligibility is a function of the fact that P4P was already a successful program in NJ prior to the EPA rolling out its MFHR program. The NJCEP was correct in adopting a rebate structure to incentive MFHR, but its **participation has been depressed by the fact that the rebates for P4P are so much higher for the same performance levels.**
- This is a shame because the ENERGY STAR label is a much more powerful marketing tool than the P4P name, and so the MFHR RNC rebate program would be so much more attractive if the rebate levels were aligned with those for P4P, or at least made to be somewhat close.
- It might also make sense to move the administration of the ENERGY STAR MFHR program from the RNC section of the NJCEP to the Commercial and Industrial section.
- This is because these buildings are permitted and built as commercial structures, and their energy usage is determined at the whole-building level (as opposed to the per unit method for low-rise residential construction). So they are effectively commercial buildings from an engineering perspective.
- We are not even sure that the current or future RNC program staff has the technical capability to correctly review the compliance of buildings with the ENERGY STAR MFHR requirements.





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February 19, 2016

Sherri Jones
New Jersey Board of Public Utilities
44 South Clinton Avenue
Trenton New Jersey 08625

Via Email: publiccomments@njcleanenergy.com

**Re: Proposed Changes to the NJCEP Program and Budget
& Residential New Construction Program**

Dear Ms. Jones,

These comments are respectfully submitted by MaGrann Associates, a for-profit energy engineering and consulting small-business firm established in 1982 and based in Mt. Laurel, New Jersey. Throughout the life of New Jersey's Clean Energy Program, and the predecessor programs operated by New Jersey's electric and gas utilities, MaGrann Associates has provided energy rating, engineering design, verification, certification, training and program implementation services for New Jersey's builders, developers, contractors, design professionals, utility companies, building owners and managers. To date, MaGrann Associates has supported energy efficiency improvements in more than 100,000 homes and businesses. These comments are submitted from the perspective of our role as an energy rating company supporting builders and developers participating under the Residential New Construction program.

Proposed revisions to Residential New Construction

1. [Proposed Enrollment Changes, Page 2]

"Single family projects will be required to submit a valid building permit and plans with the unit's address clearly referenced on each document in order to be enrolled. (The program does not currently require these submissions.)"

The program needs to be careful that it is not creating a catch-22 for projects that require proof of program enrollment as part of their code application and therefore cannot submit a permit as part of their program enrollment process.



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2. [Proposed Enrollment Changes, Page 2]

Multi-family, multi-family high rise, and multi-single projects must submit a valid permit and plans with the unit's address clearly referenced on each document in order to be enrolled.

See #1 above.

"Unit's address" would be more practical if it read "project's address" as multi-family plans rarely reference individual unit addresses.

There is no mention of the timeline for enrollment relative to construction. Multifamily projects are currently (and reasonably) required to enroll immediately prior to construction start date so as not to encumber funds that may not be spent for a considerable period while funding, design and other tasks are completed (often in excess of a year). However, this requirement also creates the situation described in #5 below. **Is it being rescinded?**

3. [Proposed Enrollment Changes, Page 2]

"Projects enrolled between August 31, 2015 and June 30, 2016 will be given an application number without a commitment."

Our understanding was that this provision was proposed for implementation in the absence of additional funding being allocated to the program. The Summary of Proposed Budget Modifications (table on page 3) indicates that \$2,845,000 will be transferred to the Residential New Construction program. **Does this not provide the financial basis for the restriction on commitments to be lifted?** The continued inability of projects to receive commitments will perpetuate a barrier to participation and damage the long term credibility of the program.

4. [Commitments, Page 3]

Projects with existing funding commitments will be able to re-enroll one time and will be required to meet the enrollment rules in place at the time of re-enrollment. If a project cannot meet the enrollment requirements the project will be deactivated and removed from the pipeline. The project will be allowed to re-enroll when it is able to meet the new enrollment requirements and will be eligible for the incentives in place at the time of re-enrollment.

Commitments for multi-family/multi-single projects will now be valid for two years.

These provisions acknowledge the long timelines associated with the design, funding and construction of multifamily projects, particularly in the affordable market. Occasionally, construction timelines can extend beyond 2 years – typically when when the last units are wrapping up completion. It is unreasonable to expect a project already in the final stages of construction to comply with new requirements that may have subsequently been adopted by the program. **We request that projects consisting of multifamily buildings that can demonstrate they are already under construction at the time of the 2-year expiration (e.g. by documentation of pre-drywall inspections having commenced) be granted an**

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exemption to complete under the program requirements in place at the time of enrollment. If construction has not commenced, the 2-year expiration and re-enrollment requirements would apply.

5. [Commitments, Page 3]

Commitments for multi-family/multi-single projects will now be valid for two years.

We believe this was intended to be inclusive of all multifamily types, consistent with #1 above, i.e. **Commitments for multi-family/multi-single/multifamily high rise (MFHR) projects will now be valid for two years.**

6. [IECC 2015 ERI, Page 4]

A code official signature verifying code compliance was achieved using the ERI path will be required.

Our experience is that code officials do not typically provide signed verification of compliance with a specific code path, so some **flexibility in acceptable documentation may be required.**

7. [ENERGY STAR Home – Recommendation, Page 5]

While ENERGY STAR v3.1 standards will not be enforced by EPA in New Jersey until April 1, 2017, Staff recommends adopting the ENERGY STAR v3.1 standards upon the effective date of IECC 2015 on March 21, 2016. This is consistent with the program's history of providing incentives to transform the market, i.e. only when appliances/equipment/construction, etc. exceed the energy savings mandated by code.

This provision should only apply to homes that complete under the new code. Homes permitted under IECC 2009 will continue to be completed under the 2009 code beyond 3/21/2016. **Only homes that complete under the new IECC 2015 code should be required to comply with ENERGY STAR v3.1, as intended by EPA.**

However, requiring early adoption of ENERGY STAR 3.1 will create a catch-22 for multifamily projects that have designed to ENERGY STAR 3.0 but not yet enrolled because NJCEP requires them to wait until just before commencing construction. This is particularly true for State funded affordable development whose funding occurs early in the project timeline based on commitment to NJCEP and ENERGY STAR compliance (with the assumption of receiving the corresponding NJCEP incentive funding). These projects are committed to meeting ENERGY STAR 3.0 based on EPA's published schedule. In the period between March 21, 2016 and April 1, 2017, a project that must enroll or re-enroll will be placed in the impossible situation of having to meet v3.1 when it is too late to incorporate those changes. **NJCEP should honor the EPA timeline, if not for all projects, then by providing an exception for multifamily buildings.**

8. [ZERH, Page 5]

While ENERGY STAR v3.1 standards will not be enforced by EPA in New Jersey until April 1, 2017, Staff recommends adopting the ENERGY STAR v3.1 specification as well as IECC 2015 insulation levels in alignment with the effective date of IECC 2015 on March 21, 2016.

Consistent with previous comments, this provision for Zero Energy Ready Homes should only apply to units that complete under the new code. Homes permitted under IECC 2009 will continue to be completed under the 2009 code beyond 3/21/2016. **Only homes that complete under the new IECC 2015 code should be required to comply with ENERGY STAR v3.1, as intended by EPA.**

9. [MFHR, Page 5]

With the MFHR program, Staff recommends following EPA's guidance to allow a target baseline of choice. This change will require that the NJCEP collect new data, including a project's baseline code and the percent savings above code that participant project has been designed to achieve. The incentive table will also need to be updated to align with the various baselines.

Consistent with #6 & #7 above, this should only apply to buildings permitted under IECC 2015. **Buildings permitted under IECC 2009 should only have to comply with current requirements.**

10. [New Financial Incentive Tables, Page 6]

Unless otherwise intended, we suggest simply making it clear that **the new technical requirements** associated with program incentives **apply only to units permitted under the new 2015 code.**

Other Comments

1. Multifamily High Rise: We strongly recommend that the MFHR and P4P programs be brought into alignment under ENERGY STAR MFHR. This program was designed by EPA specifically to address the unique characteristics of large buildings that, while built under commercial codes, are fundamentally residential buildings – i.e. buildings designed primarily for people to live in rather than work in. The technical basis of the MFHR program is the result of extensive stakeholder input and a pilot in which NJCEP and its implementers participated. It is therefore inappropriate that ENERGY STAR MFHR be limited to buildings under 6 floors because of the overlap with P4P, regardless of which incentive structure is then applied.
2. In general, the RNC program has become overly burdensome in terms of documentation and process. In addition to creating unintended market barriers, this is likely to become

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an issue as more attention is paid to cost effectiveness for both participants and the program. As we strongly support the need for robust quality assurance, we encourage the program to examine ways in which the process could be simplified while maintaining a balance with effective QA.

Thank you for your consideration and this opportunity to provide stakeholder input. Additional stakeholder meetings, potentially including EPA, would likely be valuable in resolving some of the points raised. I would be happy to provide any additional information or clarification that would be helpful in evaluation of these comments.

Sincerely,



Ben Adams
Vice President, Program Development

From: Steve Klocke
To: "publiccomments@NJCleanEnergy.com"
Subject: RNC program changes - comments
Date: Thursday, February 11, 2016 4:50:03 PM

Hello,

All of our ENERGY STAR projects in New Jersey projects are multifamily buildings. These buildings take considerably longer to plan, finance and construct than single-family homes.

The RNC program registration only lasts one year, and projects are required to follow whatever program requirements are current when they re-register. This poses a significant problem for multifamily projects, since they rarely finish construction in a year, and they typically register for the RNC program before they start construction. This is especially important for affordable projects because their funding is usually very tight.

As such, we would appreciate a longer registration expiration date for multifamily projects (maybe two years instead of one year) OR allow projects to re-register after one year but allow them to follow the program requirements under which they were originally registered.

Please feel free to contact me with any questions. Thank you for your consideration!

Steve Klocke
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