

**IN THE MATTER OF THE IMPLEMENTATION OF P.L. 2018, C. 17, THE NEW  
JERSEY CLEAN ENERGY ACT OF 2018, REGARDING THE SECOND TRIENNIUM  
AND ENERGY EFFICIENCY AND PEAK DEMAND REDUCTION PROGRAMS  
DOCKET NO. QO23030150**

**COMMENTS OF THE NEW JERSEY DIVISION OF RATE COUNSEL ON THE  
GOALS, TARGETS, PERFORMANCE INCENTIVE MECHANISM AND ENERGY  
SAVINGS CARRYOVER STRAW PROPOSAL**

**JUNE 27, 2023**

**Introduction**

The Division of Rate Counsel (“Rate Counsel”) thanks the Board of Public Utilities (“Board” or “BPU”) for the opportunity to provide comments on the Straw Proposal titled “EE3: Goals, Targets, Performance Incentive Mechanism, Energy Savings Carryover” (“Goals Straw”). The Division of Clean Energy staff (“DCE” or “Staff”) circulated the Goals Straw for comments on June 6, 2023 and held two stakeholder webinars on June 20, 2023, at which stakeholders were invited to provide verbal comments. Written comments are due by June 27, 2023. This is the entirety of the public process for this \$5.3 to \$9.1 billion proposal<sup>1</sup> which will be paid entirely by ratepayers.

Rate Counsel is concerned that many of the issues discussed below require further study and are not yet ready for final disposition. The public process has not provided time for parties to be fully heard and a solution to be properly vetted. While Rate Counsel supports Energy Efficiency, Rate Counsel believes that it must be done in a cost effective and thoughtful manner. Rate Counsel suggests that after written comments are received from all interested parties additional, meaningful stakeholder proceedings are held by Board Staff given the magnitude of the projected cost of the programs which was just released with this current Goals Straw.

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<sup>1</sup> New Jersey Board of Public Utilities and Rutgers University Goal Setting Study, prepared by Cadmus, May 1, 2023 (“Cadmus Study”), p. 35.

### **Comments on the Goals**

The Goals Straw states that Staff commissioned a goal-setting study to establish cost effective goals for the three years of Triennium 2 (July 2024 – June 2027) for the purpose of identifying cost-effective energy efficiency goals for State- and Utility-run program.<sup>2</sup> Rate Counsel believes that clarification concerning one of Staff’s key assumptions is needed. Specifically, Staff notes that the goal setting study did not take into account certain expected energy savings. Rate Counsel is concerned that this means that these savings, had they been accounted for would have reduced the available savings identified in the study. In the alternative, it could be that these are additional savings that could be considered as part of the state’s portion of the goals of the Clean Energy Act of 2018 (“CEA”).<sup>3</sup> Rate Counsel believes clarification on this issue would be beneficial.

Staff seeks feedback on application of net or gross savings for certain purposes.<sup>4</sup> Rate Counsel supports the use of net energy savings for State and Utility incentive programs. Net savings are a key component to an evaluation, measurement, and verification (“EM&V”) assessment because it takes into account factors such as free ridership and spillover, whereas gross savings does not. Rate Counsel does, however, have some concerns about how measuring only net energy savings may impact the utilities’ budgets. Further discussion on this issue to strike a proper balance would be useful. Rate Counsel does not have a position on whether gross savings should be used to determine the impact of codes and standards, because we are unclear as to the purpose for which these savings are being calculated relative to the requirements of the CEA. Rate Counsel would like to explore the possibility of measuring both net and energy

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<sup>2</sup> Goals Straw, p.2.

<sup>3</sup> N.J.S.A. 48:3-87.9.

<sup>4</sup> Goals Straw, p.3.

savings from all other sources to meet the CEA's annual energy savings goals while attempting to reduce the impact on utility budgets and ratepayers.

**The Cadmus Goal Setting Study Provides a Monetary Wish List without  
Regard for the Ability of Ratepayers to Pay**

Regarding the 2023 Goal Setting Study conducted by Cadmus,<sup>5</sup> Rate Counsel is very concerned about the projections regarding utility “budgets” in Triennium 2 since there is no corresponding ratepayer impact study. By providing a list of costs, without regard as to whether there is actual money available to fulfill that list is not a budget, but rather a wish list. All parties can agree that energy efficiency, or most endeavors for that matter, could be more successful if there was an unlimited access to funds for that purpose. **Ratepayers are not an unlimited funding source.** If Cadmus were to provide the corresponding ratepayer impact, stakeholders would have a clearer picture regarding whether the suggested “budgets” are in fact a reasonable increase to ratepayers. Without that, Rate Counsel, the utilities, and most importantly, the Board, are left without that critical information. The budgets are nearly meaningless if the Board does not know how much ratepayers will be impacted. Indeed, ratepayer impact is a major factor in any Board decision. Although the Board is charged with implementing the Clean Energy Act, the Board's statutory mandate to fix just and reasonable rates is paramount.<sup>6</sup> Absent information on ratepayer impact, the Board is left with only a wish list without the practical impact. Currently, the Cadmus Study states that by Program Year 6, the total budget for energy efficiency for NJ ratepayers for Triennium Two will be somewhere between \$5.3 billion under Scenario B and \$9.1 billion under Scenario C.<sup>7</sup> According to the Cadmus Study, under Scenario

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<sup>5</sup> Cadmus Study, p. 34-41..

<sup>6</sup> See N.J.S.A. 48:2-21(b)(1) which details one of the Board's core powers to fix just and reasonable individual and joint rates for public utilities.

<sup>7</sup> Id. at p. 35.

B, or what is stated as “Full Compliance,” ratepayers will be paying up to \$5.3 billion in total for these EE programs and under Scenario C, or “High Adoption,” NJ ratepayers would pay a total of \$9.1 billion over the three year Triennium. With about 4.7 million ratepayers in New Jersey, if that amount of money was divided equally, this would result in a cumulative increase to each individual ratepayer of \$1,133.00 over the three years under the “Full Compliance” scenario and a whopping \$1,943.00 increase per ratepayer under the “High Adoption” scenario over the 3-year triennium. A ratepayer who pay gas and electric bills would pay these increases in twofold, once on their gas bill, and separately again on their electric bill. The yearly increases to individual ratepayers range between \$317.00 and \$418.00 per ratepayer in the “Full Compliance” scenario, and between \$540.00 and \$745.00 per year in the “High Adoption” scenario.<sup>8</sup> This is a monthly increase of a minimum of \$26.00 and a maximum of \$62.00 just in energy efficiency programs alone if each ratepayer shared the burden equally. It is important to note that Rate Counsel’s numbers are based on the Cadmus Study results which did not include an analysis of the impact on an average residential customer based on customer class and usage. The table below shows the financial implications of each scenario, to meet the CEA targets by 2026.

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<sup>8</sup> These are simple averages. Under the relevant EDC and GDC tariffs, the actual bills will be different based on customer class and usage. Nonetheless, regardless of rate class or usage, every New Jersey ratepayer will see significant increases over the next three years if the utilities propose budgets within the Cadmus Study recommendations.

**Table 1: Cost of Energy Efficiency Programs Per New Jersey Ratepayer for  
Scenarios B and C in the Cadmus Goal Setting Study<sup>9</sup>**

Description	Gas and Electric Customers			
	2025 (PY4)	2026 (PY5)	2027 (PY6)	Total Cumulative
Total Projected NJ Customers	\$ 4,693,218	\$ 4,700,374	\$ 4,707,541	
<b>High Adoption (Scenario C)</b>				
Projected Annual Spending Total	2,535,000,000	3,094,000,000	3,505,000,000	9,134,000,000
Cost per Customer	\$ 540	\$ 658	\$ 745	\$ 1,943
<b>Annual Increase Per Year</b>	<b>\$ 483,000,000</b>	<b>\$ 559,000,000</b>	<b>\$ 411,000,000</b>	<b>\$ 1,453,000,000</b>
<b>Annual Increase Per Year (%)</b>	<b>24%</b>	<b>22%</b>	<b>13%</b>	<b>59%</b>
<b>Full Compliance (Scenario B)</b>				
Projected Annual Spending Total	1,490,000,000	1,866,000,000	1,969,000,000	5,325,000,000
Cost per Customer	\$ 317	\$ 397	\$ 418	\$ 1,133
<b>Annual Increase Per Year</b>	<b>\$ 327,000,000</b>	<b>\$ 376,000,000</b>	<b>\$ 103,000,000</b>	<b>\$ 806,000,000</b>
<b>Annual Increase Per Year (%)</b>	<b>28%</b>	<b>25%</b>	<b>6%</b>	<b>59%</b>

Note: Cost per Customer is based on EIA Customer Projections.

At this rate, some ratepayers may nearly double their gas and electric bills just to pay for energy efficiency programs. Significantly, these are not the only rate increases ratepayers will face over the next three years.

Rate Counsel is deeply concerned that the Board's contractor, Cadmus, is forecasting utility budgets ahead of a legal proceeding where the utilities will provide actual budgets, with supporting data, as part of their upcoming EE legal filings. When the utilities file their legal cases in October 2023, a major issue under review will be the dollar amount in their budgets. That process is undercut when exact dollar amounts are forecasted by a proxy of the Board.

<sup>9</sup> Sources: New Jersey Board of Public Utilities and Rutgers University Goal Setting Study, U. S. Energy Information Administration, Form EIA-861 at <https://www.eia.gov/electricity/data/eia861/> and [https://www.eia.gov/dnav/ng/NG\\_CONS\\_NUM\\_DCU\\_SNJ\\_A.htm](https://www.eia.gov/dnav/ng/NG_CONS_NUM_DCU_SNJ_A.htm)

Providing that specific cost information in advance of a legal filing walks a fine line between agency guidance and the tribunal directing the result of a not yet filed legal proceeding.

The Cadmus Study is deeply skewed in that it only looks at one side of the equation—essentially a wish list of projects, without looking at the other side: how much it will cost. Therefore, the Study does not provide adequate information to the Board to determine the reasonableness of cost to those who will actually pay for the programs.

### **Comments on Quantitative Performance Indicators (“QPIs”)**

Rate Counsel continues to believe that the use of “source” energy savings for QPI calculation<sup>10</sup> is overly complicated, imprecise, and possibly infeasible. The Goals Straw describes the calculation of source energy savings as follows:

The starting value for the heat rate is based on the mix of marginal generation units for using heat rates by plant type from EIA and calculating a weighted average heat rate based on PJM’s reported share of each plant type associated with marginal generation. The resulting heat rates and Site-to-Source MMBtu Conversion Factors are shown in Table 3. The values in the table include line losses, which are calculated using a statewide average of 5.8% multiplied by a marginal loss factor of 1.5, as per the NJCT.

Rate Counsel recognizes the appeal of using a “source” savings approach: that it would focus more directly on avoided BTU on the generation system, which is more tightly tied to carbon and other emissions than simple electricity kWh savings. However, these are outweighed by the significant drawbacks:

- Calculating source emissions is far more complicated, and far more uncertain, than simply calculating kWh savings from electricity measures.

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<sup>10</sup> Goals Straw, p.4, Table 2.

- Use of source emissions is inconsistent with both the CEA, which is squarely focused on kWh savings in the electric sector, and the utility kWh energy savings goals as set forth in the Goals Straw.
- It is unclear that the marginal emissions factor, as opposed to average or even baseload factor, is appropriate for calculating the emissions impact of measures that produce savings over several years. This fact merely illustrates the complexity and uncertainty in tying site savings to source BTU savings.

Rate Counsel notes that even Staff, in formulating its example of QPI calculation reverts to what appears to be site MWh.<sup>11</sup> Staff then states that “[t]he first QPI, annual savings, directly pertains to the goals in Section III(A).”<sup>12</sup> Further, Staff notes that in calculating QPI, “[v]erified deemed savings will be utilized for the purposes of calculating actual performance and applying incentives and penalties relative to that three-year average, which will apply for the duration of the triennium.”<sup>13</sup> But these electric “verified deemed savings” would be calculated in kWh, as would be the three-year average upon which the savings targets are based - in other words, site-level savings. This example is inconsistent with Staff’s proposed use of “source” energy savings for QPIs. If the baseline and the goals are predicated on site energy usage, the QPIs should be as well.

Overall, Rate Counsel’s recommendation for purposes of calculating the QPIs is that electricity savings, should be based on the actual amount of kWh saved, and should not overly complicate the metrics by applying an imprecise and questionable site-to-source conversion scheme. Further, as the Board is aware, the CEA sets a specific target for electricity use reduction and natural gas use reduction.<sup>14</sup> The CEA did not contemplate a combined energy

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<sup>11</sup> Goals Straw, p.7.

<sup>12</sup> Id.

<sup>13</sup> Id.

<sup>14</sup> N.J.S.A. 48:3-87.9(a) states: “[T]he Utilities must achieve energy savings of 0.75% for the natural gas utilities and 2% for the electric utilities...”

metric because it was not intended that energy use reduction among the electric and natural gas sectors take place simultaneously. Rate Counsel questions the need to over complicate the energy savings calculation by expanding the CEA beyond its clearly stated purpose.

Staff requests stakeholder input about whether Staff should develop recommended targets applicable to the lifetime energy savings QPI for the minimum ratio of lifetime-to-first-year energy savings or weighted average expected useful life of EE measures at the portfolio level. Rate Counsel believes that such guidance is imperative. Rate Counsel is aware that a great deal of thought and discussion went into the development of the weighting scheme for the QPI, with the expectation that each utility would be subject to aggressive but achievable goals for each QPI. Staff, with the support of the Statewide Evaluator (“SWE”), should provide guidance on what such goals should look like, specifically with respect to the ratio of lifetime to annual energy savings. If the utilities diverge from this guidance in their program filings, the burden should be on each utility to show why a different goal is more appropriate.

### **Comments on the Performance Incentive Mechanism (“PIM”)**

At the outset, it is important to remember that New Jersey is only one of eight states in the country that permits utilities to earn their rate of return on utility EE programs.<sup>15</sup> Utilities are being richly compensated for their EE programs by recovering from ratepayers the entire cost of their program plus an additional 9.6% ROE on every dollar spent. This is already a very hefty incentive for utilities to offer expansive programs. Incentives in addition to the current 9.6% ROE will only put additional strain on ratepayers, therefore they must be reserved for exemplary performance where ratepayers are truly receiving additional value added.

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<sup>15</sup> “Snapshot of Energy Efficiency Performance Incentives for Electric Utilities, American Council for an Energy-Efficient Economy (“ACEE”),” found at <https://www.acee.org/topic-brief/pims-121118>.



Regarding the penalty aspect of performance incentive mechanism (“PIM”), Rate Counsel notes that, as proposed, utilities would still recover their full investment, plus a return on equity of over 6%, even if they achieve zero savings and make no progress at all toward any of the other QPI goals. This seems contrary to the goals of the CEA which requires a utility penalty,<sup>16</sup> and does not constitute a true penalty for extremely poor performance. In fact, if a utility’s performance is so poor as to raise the question of whether investments in energy efficiency are even “used and useful”, the utility should not be allowed to fully recover its investment. Rate Counsel understands that utilities are facing a new level of accountability for achieving unprecedented levels of energy savings, and it is reasonable to limit the risk they face for not meeting these standards in the coming triennium. However, surely, the risk that they will only achieve 20% of their targets or less is vanishingly small, and such an outcome would reflect extremely poor planning and management on a utility's part. After all, the very savings and other QPI targets at issue are based on each utility's own proposals. Therefore, Rate Counsel believes the penalty graph line should continue on the same trajectory as currently proposed to ultimately reach the level of 0% ROE when a utility’s performance falls below 20% of the QPI.

Rate Counsel believes that even guaranteeing 0% ROE for this level of performance would be generous, and might serve to insulate a utility from the accountability it would otherwise have for its performance, including possible disallowance of costs. As an alternative, Rate Counsel recommends that in the unlikely event that a utility's QPI performance falls below 40%, it be directed to make a filing with the Board demonstrating that this poor level of

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<sup>16</sup> See N.J.S.A. 48:3-87.9(e)(3) which states: “If an electric public utility fails to achieve the reduction in its performance target established in the quantitative performance indicators, the public utilities shall be assess a penalty as determined by the board...” AND N.J.S.A. 48:3-87.9(e)(4) which states: “The adjustments made pursuant to this section may be through adjustments of the ...utility’s rate of return ...or a specified dollar amount.”

performance was due to circumstances beyond its control, and demonstrate why it should receive recovery of or on its energy efficiency investments from ratepayers.

### **Comments on Energy Savings Carryover**

With regard to carryover savings, Rate Counsel recommends that carryovers be allowed in a manner similar to that used for carryovers from Program Year 2024 to Program Year 2025. Rate Counsel is concerned that deviation from what has already been permitted in Triennium 1 could adversely impact ratepayers and contravenes the language of the CEA. Rate Counsel addresses below the questions in the Goal Straw regarding whether cumulative carryovers should be permitted, whether carryovers should be utilized for purposes other than to offset penalties, and at what point in time utilities would be required to make the decision to carryover.

Cumulative carryovers are not supported by the language of the Clean Energy Act since the Act specifies that performance incentives must be received “the following year”. The CEA states:

If an electric public utility or gas public utility achieves the performance targets established in the quantitative performance indicators, the public utility shall **receive an incentive as determined by the board for its energy efficiency measures and peak demand reduction measures for the following year.** N.J.S.A. 48:3-87.9(e)(2). (emphasis added).

In addition to the language of the CEA which specifies that the carryover would need to be received in the “following year,” Rate Counsel is opposed to cumulative carryovers in principle since it would create unexpected increases for ratepayers, unnecessary financial gain for the utilities, and it would sidestep the “carrot” effect of the incentive process as intended under the CEA.

For example, if a utility earns a 10% PIM increase in its ROE by achieving savings above the 120% of its goals in year 1, and another 10% by achieving over the 120% level in year 2 and then it elected to carryover year 1 and year 2 energy savings to year 3, the utility could potentially start year 3 with 20% of its energy savings goal already banked. If unlimited carry overs are permitted, the utility could potentially earn an incentive under the PIM nearly every year. It seems that under that scenario the PIM will lose its “carrot” effect and the utility will have less incentive to strive to achieve targets if it knows that there is already 20% or more QPI achievement in the “bank.”

Cumulative carryovers are not permitted by the language of the CEA and would tend to encourage a “coasting” mentality if too many incentives are accumulated. This would reduce the overall spirit and intent of the incentive/penalty mechanism set forth in the CEA. Rate Counsel notes that the PIM chart in the Goals Straw shows a maximum incentive of 50 basis points over ROE and therefore even cumulative penalties would not be permitted exceed the 50 basis point incentive ceiling under the current PIM. Nevertheless, cumulative carryovers are in direct contravention with the language and the spirit of the CEA and should not be permitted.

Carryovers should only be utilized to offset penalties. As mentioned above, utilities are already being compensated handsomely for EE programs and additional opportunities to earn incentives under the PIM are unnecessary to encourage utility performance. It is also an unnecessary additional burden on ratepayers to pay for excessive incentives, plus the cost of the program, *and* the utility’s ROE. Permitting any carryover seems to strain the language of the CEA which specifies that incentives must be received in the “following year” yet given the current allowance, Rate Counsel understands that the utilities may wish to offset a previously poor performance in a current year with good performance from a prior year. Carryovers should

not be permitted to allow utilities extra opportunities to earn incentives, but only to offset a particularly poor performance where a penalty would otherwise result.

Continuing with the approach where utilities would only be permitted to carry over incentives from the immediately preceding year, the utilities should only have the opportunity at the end of a program year to elect if it would like to carry over any savings it achieved in excess of 120% of the QPI. The utility must determine whether it chooses to take the incentive or carry it over to the next year by the time it files its annual true up filing for the relevant program year. Changes in the company's selection cannot be made after that time since that would cause an additional administrative burden and confusion with regard to the company's filings and rates. This recommendation also assumes that carry-overs would only be permitted if the QPI achieved was at 120% or greater.

Finally, carryovers cannot be used as an excuse to accelerate utility programs. A utility should not be permitted to utilize its entire budget in the first two years in order to accumulate credits and then seek additional budget for the third year. Any carryover rule that allows or encourages such behavior should not be permitted.

In summary, in order to more closely align with the CEA and protect ratepayers from excessive rate increases, if carryovers are permitted in Triennium 2, Rate Counsel's position is:

- Carryovers should only be permitted if the utility achieves 120% (or greater) of the QPI level;
- Cumulative carryovers are prohibited under the CEA and a carryover should only be permitted from the immediately preceding program year. This will avoid potential confusion and the administrative burden of additional filings;

- Carryovers would only be utilized to offset a penalty; they would not be permitted to earn incentives; and
- The utility has the opportunity to elect to carryover at the end of a Program Year and will present that decision in their annual true up filing. That decision cannot be reversed at a later date. The language of the CEA prohibits utilities from receiving incentives at a date later than the immediately proceeding year. This limit will also reduce confusion and administrative burden of unnecessary filings on the parties.