

**IN THE MATTER OF THE IMPLEMENTATION OF P.L. 2018, C. 17, THE NEW  
JERSEY CLEAN ENERGY ACT OF 2018, REGARDING THE SECOND TRIENNIUM  
OF THE ENERGY EFFICIENCY AND PEAK DEMAND REDUCTION PROGRAMS**

**DOCKET NO. QO23030150**

**COMMENTS OF THE DIVISION OF RATE COUNSEL ON THE BUILDING  
DECARBONIZATION START-UP PROGRAMS FOR THE RESIDENTIAL SECTOR**

**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 “EE4: Building Decarbonization Start-Up Programs for the Residential Sector” (“BD Straw”). The Division of Clean Energy staff (“DCE” or “Staff”) circulated the BD Straw for comments and held a stakeholder webinar on June 20, 2023, at which stakeholders were invited to provide verbal comments. Significantly, the concept of building decarbonization was not previously identified as part of any energy efficiency program and the stakeholder webinar and these comments are the only opportunity the public will be afforded regarding this new and likely costly program that will inevitably have costs well beyond the initial \$150 million proposed in the BD Straw.

The purpose of the Residential Building Decarbonization Start-up programs (“BD Programs”) is to achieve CO<sub>2</sub> emission reductions through fuel-switching of space heating and water heating from fossil fuels to electric heat pumps.<sup>1</sup> The BD Straw states the BPU, in its role as a regulator of the electric and gas utilities, intends to “more directly influence” CO<sub>2</sub> emission reductions through electrification programs.<sup>2</sup> The BD Programs are proposed by Board Staff as a “carve-out” of the energy efficiency programs (“EE”) implemented pursuant to the Clean

---

<sup>1</sup> BD Straw, p.1.

<sup>2</sup> Id.

Energy Act of 2018 (“CEA”)<sup>3</sup>. The BD Straw states that it is consistent with Strategy 4 of the 2019 Energy Master Plan (“EMP”)<sup>4</sup> and the key strategies recommended in the New Jersey Global Warming Response Act 80x50 Report (80x50 Report”).<sup>5</sup> Further, the BD Straw relies on the directive of Governor Murphy’s Executive Order 315 (“EO 315”) to advance electrification of commercial and residential buildings by December 31, 2030.<sup>6</sup> The EMP and the Governor’s EO 315 are aspirational guides for the Board and other agencies; these directives do not constitute statutory mandates.

Rate Counsel acknowledges that the BD Straw circulated by Staff intended to assist in reaching the state’s ambitious clean energy goals of 100% carbon-neutral electricity generation and maximum electrification of the transportation and building sectors by 2050.<sup>7</sup> However, Rate Counsel has two primary concerns with the programs proposed in the BD Straw. First, the Board’s authority, granted by New Jersey statute, does not reach the regulation of CO<sub>2</sub> emissions. The Legislature explicitly grants jurisdiction over the reduction of CO<sub>2</sub> emissions to the New Jersey Department of Environmental Protection (“DEP”).<sup>8</sup> Second, even if the regulation of CO<sub>2</sub> emissions reduction is interpreted to be within the Board’s authority, the programs proposed in the BD Straw are in direct contravention to the CEA because they would tend to increase, rather than reduce, electricity usage in the State.

---

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

<sup>4</sup> BD Straw, p. 2; See 2019 Energy Master Plan: Pathway to 2050, Section 4.1.<sup>5</sup> BD Straw, p. 2; See New Jersey’s Global Warming Response Act 80x50 Report: Evaluating Our Progress and Identifying Pathways to Reduce Emissions 80% by 2050

<sup>5</sup> BD Straw, p. 2; See New Jersey’s Global Warming Response Act 80x50 Report: Evaluating Our Progress and Identifying Pathways to Reduce Emissions 80% by 2050

<sup>6</sup> BD Straw, p. 2; See Exec. Order N. 316 (2023)

<sup>7</sup> EMP, p. 11.

<sup>8</sup> See N.J.A.C. 7:27F-1.1.

## **The Board Authority Lacks Jurisdiction To Regulate CO<sub>2</sub> Emissions Reduction**

Title 48 of New Jersey statutes grants the Board general supervision and regulatory jurisdiction over all utilities, their property, property rights, equipment, facilities, and franchises.<sup>9</sup> The Board’s core mission is to ensure the safe, adequate, and proper utility services at reasonable rates for customers in New Jersey.<sup>10</sup> The CEA does not address emissions reductions, only the reduction of energy use, which if done as directed by the CEA will result in lower utility rates. Further, the instances in which greenhouse gases (“GHG”) or other harmful emissions are specifically addressed in Title 48 is limited to only a few instances. For example, the Board has the authority to require electric distribution companies (“EDCs”) to disclose emissions associated with its customer’s energy purchases,<sup>11</sup> the Board, in consultation with DEP, may adopt an emission portfolio standards applicable to electricity suppliers and basic generation service providers,<sup>12</sup> and the Board can adopt a GHG emissions portfolio standard to mitigate leakage.<sup>13</sup> Thus, the Board’s authority concerning GHG emissions is explicitly limited to the context of setting specific portfolio standards with which EDCs must comply.

Although reduction of GHG emissions is mentioned at N.J.S.A. 48:3-87(e)(4)(o) of Clean Energy Act, it is not in the context of electrification but rather in reference to increased reliance on renewable energy such as a solar. Additionally, N.J.S.A. 48:3-87(e)(4)(o) states that any change in the renewable portfolio standard must “tak[e] into account the cost impacts” of those changes to effectuate a reduction in emissions or peak demand with increased reliance on renewable energy. The BD Straw is notably missing any estimation of cost impacts of electrification further demonstrating the stark departure from the BPU’s core mandate.

---

<sup>9</sup> N.J.S.A. 48:2.13(a).

<sup>10</sup> BPU Mission Statement, <http://www/nj.gov/bpu/about/mission>

<sup>11</sup> See, N.J.S.A. 48:3-87(a).

<sup>12</sup> See, N.J.S.A. 48:3-87(c)(1).

<sup>13</sup> See, N.J.S.A. 48:3-87(c)(2).

Moreover, this portion of the CEA also states that any discussions of changes to the renewable portfolio standard and the resulting reduction in the greenhouse gases must be done in consultation with the NJ DEP. N.J.S.A. 48:3-87(e)(4)(o). The BD Straw does not state that it was developed in consultation with NJ DEP, and as noted, the BD Straw does not address renewable energy.

It is fundamental that authority of an administrative agency such as the Board is defined by the Legislature in the agency enabling act. An administrative agency “[o]nly has the powers that have been expressly granted by the Legislature and such incidental powers [as] are reasonably necessary or appropriate to effectuate those expressly granted powers.”<sup>14</sup> An agency’s rules will be invalidated if they are inconsistent with the statute they purport to interpret or violate the express or implied legislative policies of the enabling act.<sup>15</sup>

Centex Homes affirmed that the Board derives no jurisdiction from any sources of State policy other than its enabling statute. In Centex Homes, the Court reviewed the Board’s amendments to its main extension regulations that sought to implement the goals of another policy document, the State’s Development and Redevelopment Plan (“State Plan”) to foster “smart growth.” The Court recognized that the State Plan carried no regulatory effect and, therefore, “a state agency may only make modification to its regulations to reflect the State Plan ‘if such modifications are within the scope of the agency’s authority, it should seek to obtain the authority through normal legislative...processes.’”<sup>16</sup>

---

<sup>14</sup> In re Centex Homes, LLC, 411 N.J. Super. 244, 251 (App. Div. 2009) (citing N.J. Guild of Hearing Aid Dispensers v. Long, 75 N.J. 544, 562 384(1978)).

<sup>15</sup> Id. at 252 (quoting Smith v. Dir., of Div. of Taxation, 108 N.J. 19, 27 (1987) and GE Solid State, Inc. v. Dir., Div. of Taxation, 132 N.J. 298, 306, (1993)).

<sup>16</sup> Id. at 257 (citing In re Protest of Coastal Permit Programs Rules, 354 N.J. Super. 293, 357 (App. Div. 2002))

The Board derives its authority from the CEA and the NJ statute known as the Regional Greenhouse Gas Initiative Act (“RGGI Act”)<sup>17</sup> to regulate the reduction of electricity or natural gas below what would have otherwise been used.<sup>18</sup> That authority in the CEA includes the completion of a study to determine energy savings targets for the regulated utilities to achieve,<sup>19</sup> the adoption of quantitative performance indicators to determine if the energy savings targets were actually achieved, and the procedures used by the utilities to report compliance and recover EE program investment costs. Rate Counsel notes that the RGGI Act, like the CEA, does not address emissions reductions. The RGGI Act does, however, provide insight on what the Legislature meant by EE and conservation programs (“CP”). The RGGI Act defines EE and CP as: “any regulated program...for the purpose of conserving energy or making the use of electricity or natural gas more efficient.”<sup>20</sup> Thus, the current legislative grant of authority to the BPU is limited to energy-use reduction. It is not a grant of authority to require utilities to propose programs where the primarily goal is environmentally-centered. As noted above, the introduction section of the BD Straw states: “The main goal of building decarbonization (“BD”) is to reduce CO<sub>2</sub> emissions in the built environment, including emissions from activities within buildings as well as embodied emissions.”<sup>21</sup>

Further, Centex Homes affirmed that the Board does not possess a general grant of jurisdiction to issue environmental regulations. While N.J.S.A. 48:2-23 provides that the Board may require a public utility to “furnish safe, adequate and proper service... in a manner that tends to conserve and preserve the quality of the environment and prevent the pollution of the

---

<sup>17</sup> N.J.S.A. 48:3-98.1(d)

<sup>18</sup> Id. and N.J.S.A. 48:3-87.9 (a)

<sup>19</sup> N.J.S.A. 48:3-87.9(b)

<sup>20</sup> N.J.S.A. 48:3-98.1(d)

<sup>21</sup> BD Straw, p. 1

waters, land, and air of the State,”<sup>22</sup> Centex Homes held that N.J.S.A. 48:2-23 did not express “a legislative grant to integrate an environmental factor into the [main extension] analysis in such a way as to drastically change the function of the statute from a regulation of public utilities to the regulations of urban and suburban sprawl.”<sup>23</sup> The Court added, “[w]hile the BPU was ‘intended by the Legislature to have the widest range of regulatory powers over public utilities,’ that power has never been cast in environmental terms.”<sup>24</sup> Reducing CO<sub>2</sub> emissions, which is an environmental goal, is simply outside of any of the Board’s regulatory or statutory mandates and therefore lies outside of its jurisdiction

### **The BD Straw is in Direct Contravention of the CEA and RGGI**

If the Board reaches the conclusion that the proposals in the BD Straw are within the Board’s jurisdiction, Rate Counsel has concerns that they still fall outside of the legislative mandate of the CEA and the RGGI Act. The BD Straw states the proposed program is a “carve-out of EE programs” implemented pursuant of the CEA. Yet, the BD Straw states that the key performance metric is reduction of CO<sub>2</sub> emissions, therms, kWh, or Btus.<sup>25</sup> Although the goals of EE and BD programs are complimentary to one another, the CEA and the RGGI Act do not require or mandate a measurement of CO<sub>2</sub> emissions reduction. The Courts, when reviewing agency regulations note [a]n agency’s regulation “may not under the guise of interpretation ... give the statute any greater effect than its language allows.”<sup>26</sup> An agency’s regulations will be

---

<sup>22</sup> N.J.S.A. 48:2-23 states: “The board may, after public hearing, upon notice, by order in writing, require any public utility to furnish safe, adequate and proper service, including furnishing and performance of service in a manner that tends to conserve and preserve the quality of the environment and prevent the pollution of the waters, land and air of this State...”

<sup>23</sup> 411 N.J. Super. At 264-5.

<sup>24</sup> Id. at 265-66 (Citing A.A. Mastrangelo, Inc. v. Comm’r of the Dep’t of Env’tl. Prot., 90 N.J. 666, 685 (1982)).

<sup>25</sup> Id.

<sup>26</sup> In re Centex Homes, 411 N.J. Super. 244, 252 (quoting) In re Freshwater Wetlands, supra, 180 N.J. at 489.

invalidated if they are “inconsistent with the statute [they] purport to interpret,”<sup>27</sup> or they violate the “express or implied legislative policies” of the enabling act.<sup>28</sup>

Here, the DCE seeks to expand the effect of the CEA to include the reduction of CO<sub>2</sub> emission resulting from electrification projects, which will actually *increase* electric load and could therefore require future upgrades to the electric grid. The dichotomy between the purpose of EE under the CEA, and BD, as proposed is glaring. The BD Straw states: “While EE seeks to reduce energy consumption, BD seeks to reduce and ultimate eliminate CO<sub>2</sub> emissions from the building sector.”<sup>29</sup> The EMP, which Staff relies on in support of its proposal, also noted the potential opposing outcomes of electrification and stated the following:

[E]lectrification of traditionally fossil fuel-dominated sectors will result in two significant shifts: the substantial increase in electricity demand over time, and a corresponding decrease in natural gas and petroleum consumption over the same period.<sup>30</sup> Electrification of the building ...sector will increase the electricity load on the grid...<sup>31</sup> [P]oorly managed, rapid electrification ... could inadvertently trigger increased peak load at a great cost to ratepayers and to the state’s emissions goals.<sup>32</sup>

Further, a former Commissioner of the Board recently stated “The [Energy] Master Plan, though aspirational, which advocates for the policies unquestionably consistent with the Administration’s goals, is inconsistent with our charge.”<sup>33</sup>

The BD Straw unequivocally states that the key performance metric of the BD Programs is a reduction in CO<sub>2</sub> emissions, British thermal units (“Btus”), therms, and kilowatt hours (“kWh”).<sup>34</sup> This performance metric erroneously conflates energy savings with emissions reductions. While a particular measure implemented by a utility can achieve both energy savings

---

<sup>27</sup> Id. at 252 (quoting) Smith v. Dir., Div. of Taxation, 108 N.J. 19, 27.

<sup>28</sup> Id. at 252 (quoting) GE Solid State, Inc. v. Dir., Div. of Taxation, 132 N.J. 298, 306.

<sup>29</sup> BD Straw, p.1.

<sup>30</sup> EMP, p.37

<sup>31</sup> Id. at p.38.

<sup>32</sup> Id.

<sup>33</sup> Transcript of Board Agenda, Opening Remarks at p. 14, lines 12-15 (May 24, 2023).

<sup>34</sup> BD Straw, p. 1.

and reduce emissions, the BD Straw concedes that “the treatment of emissions savings is far more complicated than for EE measures.”<sup>35</sup> The complication, in calculating and claiming emissions savings, exists because it was not the intent of the CEA or the RGGI Act to incentivize the utilities - through cost recovery and return on its investment - to reduce CO<sub>2</sub> emissions in the same manner in which the CEA and the RGGI Act requires the utilities to reduce energy consumption. Simply, the cost of CO<sub>2</sub> emission reduction should not be borne by utility ratepayers.

In addition, the potential effects of fuel switching activities contemplated by the BD Straw will result in increased electric load, which is inconsistent to the energy reduction targets mandated by the CEA and the RGGI Act. Although Board Staff has stated that the utilities will not be penalized in reaching their Quantitative Performance Indicator (“QPI”) goals as a result of this increase in electricity use, the question remains – If the utilities have a “pass” from the measurement of increased electricity use, is the program still within the stated goals of the CEA and the RGGI Act? The result is literally turning a blind eye to increased use of electricity, which will eventually require upgrades to the electric grid infrastructure. Reduced GHG may be in line with environmental goals that could be furthered by NJ DEP, but the foreseeable consequence is increased pressure on the electric grid and this result is the exact opposite of the goals of the CEA and the RGGI Act.

Also of concern to Rate Counsel is that the programs proposed in the BD Straw are exempt from the requirement to meet or exceed the benefit-to-cost ratio of 1.0.<sup>36</sup> Although the CEA contemplates an exemption of this requirement, that is only for EE programs “benefitting

---

<sup>35</sup> BD Straw, p. 8.

<sup>36</sup> N.J.S.A. 48:3-87.9(d)(2) states: A program may have a benefit to cost ratio of less than 1.0 but may be appropriate to include within the portfolio if implementation of the program is in the public interest, including, but not limited to, benefiting low-income customers or promoting emerging energy efficiency technologies.



low-income customers or promoting emerging EE technology”.<sup>37</sup> Additionally, although the BD Straw states that the “scope of the BD programs would include moderate-income and market rate customers,”<sup>38</sup> the BD Straw does not specify what percent of the program will be targeted for low and moderate income participants. Notably, the BD Straw states that “[s]ome early adopters may be willing to adopt BD measures without a reduction in their bills.”<sup>39</sup> This indicates that low and moderate income customers may be an even smaller share of a BD program if the required analysis ahead of the project predicts an *increase* in their current energy bills; or that such customers may be inadvertently harmed by their participation. Further, the exemption of the cost the benefit ratio generally permitted for emerging technologies in EE programs is not applicable here – as electric heat pumps are no longer emerging EE technology and the utilities are currently implementing BD measures as a part of their core programs.

In fact, there should not be an overall exemption from demonstrating a CBA of at least 1.0 for the BD programs since, under the CEA, EE programs are required to be cost-effective. If the Board allows an exemption of the CBA requirement, this is an even further departure from the CEA in both intent and effect. It is paramount that EE programs fall squarely within the CEA and demonstrate cost-effectiveness since ratepayers will be paying the cost of these programs plus the utility's return on equity, which is currently set at approximately 9.6% on all the programs as permitted by the CEA.<sup>40</sup>

The CEA permits this return on equity and additional incentives under the specific condition of meeting the CBA ratio of 1.0. Without the CBA requirements, the EDCs hit a

---

<sup>37</sup> N.J.S.A. 48:3-87.9(d)(2).

<sup>38</sup> BD Straw, pg.6.

<sup>39</sup> BD Straw, p. 6.

<sup>40</sup> N.J.S.A. 48:3-87.9(e)(1) states: Each electric and gas public utility shall file with the board a petition to recover on a full and current basis through a surcharge all reasonable and prudent costs incurred as a result of EE programs and peak demand reduction (“PDR”) programs required pursuant to this section, including but not limited to recovery of and on capital investment, and the revenue impact of sales losses resulting from implementation of the EE and PDR schedules, which shall be determined by the board ...

homerun for their shareholders on their BD investments with little effort. First they can present a program that is not cost effective and not supported by current statute, second utilities can earn their ROE on the costs of program, third any increase in electric load is ignored when evaluating their performance, regardless of any additional upgrades needed to the electric system; and fourth, they can then earn the chance for an additional bonus incentive if they exceed their QPI targets. Moreover, electrification increases the EDCs' sales without impacting their need to comply with the CEA and ultimately will support the need to build additional infrastructure—again with a full return of and on these investments recovered from ratepayers. This regime is a win-win for the EDCs, but a sure loss for the ratepayers who will be paying for BD programs that are not cost-effective, will not reduce electric usage, may not reduce energy bills, and that may even impose the costs of a bonus ROE and additional incentives on ratepayers.

Under the CEA and the proposed performance incentive mechanism, if the utilities exceed their QPI performance targets, they can then earn a bonus return on its investments – at the expense of ratepayers. Without demonstrating cost-effectiveness, the utilities should not be permitted both to earn their standard rate of return and to have the opportunity to earn additional incentives. If the Board is asking ratepayers to bear the costs of increased utility rates to fund EE programs, the Board should ensure that the proposed EE programs are at least authorized by the CEA. If the Board seeks to exempt the BD programs from most of the requirements in the CEA (specifically cost effectiveness), utilities should not be allowed to include those energy “savings” in QPI calculations that support utility incentives.

**BD Should not be Part of the CEA Energy Efficiency Programs Since it Will Cause Customer Confusion and the Potential for Unscrupulous Contractor Behavior**

**Consumers Must Be Educated Up Front by a Neutral Party on Potential Bill Impacts**

In addition to the legal issues discussed above, BD programs should not be held out to customers as an energy efficiency program under the CEA since the likelihood of increased energy bills is contrary to customer expectation for energy efficiency projects. As Staff concedes in the BD Straw – some customers may not experience a reduction in their energy bills after a BD project is completed. It is not unforeseeable that an increase in energy bills could result. This is contrary to customers’ reasonable expectation when they pursue programs held out to the public as “energy efficiency.” If the Board proceeds with this new and novel concept of BD under the EE “umbrella,” customer education on the resulting utility bill impacts, especially for less sophisticated consumers, will be critical. Consumer education on this issue must be provided by a neutral third party so that the customer understands that the BD project may not necessarily result in energy efficiency and that the BD project may not result in a lower energy bill.

Rate Counsel agrees with Staff’s proposal that participants must be made aware of whether their bills will increase or decrease before a BD project is initiated in their home. However, this dichotomy leaves open the possibility for unscrupulous behavior by contractors if contractors continue to be the parties to provide this information on predicted bill impact. Currently, customers depend on contractors to provide information on projected energy use after the EE project with an accurate and honest analysis. If that information is not provided accurately to customers up front so they are aware that their energy bill may not decrease, it can

leave all customers, and particularly low and moderate income customers, vulnerable to predatory behavior.

Under the existing Residential EE programs, participants are provided with an estimate of how many percentage points their energy bills will decrease after the completion of an EE project. This is usually a relatively simple analysis where the new equipment, insulation, or other measures are often clearly labeled with their government-backed efficiency information and that information can be compared to old equipment and measures in the home. Additionally, the New Jersey Protocols to Measure Resource Savings, now reframed as the New Jersey Technical Resource Manual (“TRM”), also provides a standard basis for this analysis. Under traditional EE programs, it is very clear that the new measures will help save the customer energy AND lower their energy bills. When customers choose to switch from other fuels to electricity, such an analysis may not produce a clear result, and it may not demonstrate that the customer will experience lower energy bills overall.

There are many factors that could impact the customer bills and costs after electrification or the cost of the project including: the cost of electricity versus gas (or delivered fuel) in the customer’s territory, whether there is already highly efficient equipment in the home that is powered by a fuel other than electricity, whether there is already one electric heating measure in the home, whether the customer requires an upgrade to their electric panel to perform the BD measures, what type of heat pump they choose to install, and whether the customer installs new insulation or other efficiency measures in the home. The customer may also begin using energy for cooling in areas that had not previously been air conditioned if they switch from one-room units to central air conditioning as part of their BD project. Low and moderate income consumers simply do not have the income available to them to allow them to make decisions that

would increase their energy bills. Rate Counsel is concerned that this rushed program could leave ample opportunity for unscrupulous contractor behavior that could result in vulnerable low and moderate income customers facing higher electric bills with the promise of either environmental benefits or the threat of soaring natural gas prices. Although more affluent customers may be able to afford higher electric bills with the ultimate goal of an environmental benefit or the assumption that electric bills will eventually decrease, a low or moderate income person living month to month does not have that luxury. This could cause a cascade of financial problems for low and moderate income customers who unexpectedly find themselves with an overall higher energy bill than before installing BD measures. Even if their bill remains the same, they may be stuck with paying for their new BD measures for an extended period of time. In turn, this could also place additional demands on the state's utility bill assistance programs. This possibility for unscrupulous contractor behavior has not been addressed in the BD Straw, likely due to lack of any true public vetting. Electrification programs simply do not fit within the umbrella of a suite of energy efficiency programs and if consumers see these programs advertised together and approved by the Board with other EE proposals, consumer confusion is likely. If the Board proceeds with BD, consumer education on bill impacts and energy use is critical. Since both the utility and the contractor are interested parties, the role of educating customers on this new program must be provided by a neutral third party.

Another related concern with regard to customer education is the reliance on the Inflation Reduction Act of 2022 ("IRA") tax credits and rebates as an offset to the potential energy bill increase that may result from participation in BD Programs. The IRA provides homeowners with expanded tax credits for EE improvements and High-Efficiency Electric Home Rebates,

which are point of sale rebates for home electrification retrofits.<sup>41</sup> The IRA rebates and tax credits are one-time payments that have the potential of reducing or eliminating the upfront BD project costs; however, if the project results in an increased energy bill, neither the rebate nor the tax credit would offset that increase. Additionally, it is unclear whether a BD project in the state would be eligible for both IRA tax credits and state rebates. This ambiguity further demonstrates why this program should not go forward at this time. It is imperative that the impact to ratepayers be considered because the financial consequence, as discussed above, could be detrimental to the LMI household. Although Rate Counsel appreciates the intended environmental benefits of the BD Programs, Rate Counsel urges the Board to remain mindful that maintaining low utility cost is a key component of its regulatory mission.

Programs where the primary purpose is not to reduce energy and are not cost-effective are in direct conflict with the CEA and RGGI. Although the BD Straw may align with some environmental aspirations, it is outside of the current statutory mandates and jurisdictional regime of the Board.

### **Budgeting Issues**

Rate Counsel notes that the Board has not indicated how the proposed budget of \$150 million over three years would be allocated among the state's utilities. Historically each utility has proposed its own EE budget based on its program design, and the final budget has been the product of a negotiated settlement. If the Board elects to pursue the proposed BD programs despite the inconsistencies with the governing legislation as discussed herein, the utilities will require guidance to meet the overall budget proposed by the Board. Further, it is likely that actual performance will vary among the utilities, such that where one utility may market aggressively and spend down its budget, another may have unspent funds. This is especially

---

<sup>41</sup> Pub. L. 117-169 (2022)

likely as the Straw Proposal anticipates programs from both EDCs and GDC but customer behavior in applying for the programs, especially once customers understand the potential bill impact, is unpredictable. If the proposed BD programs are to be implemented, the Board should determine in advance how to ensure that the proposed budget is spent fairly and efficiently to maximize ratepayer benefit.

### **CONCLUSION**

Rate Counsel appreciates the opportunity to provide these comments on the BD Straw. It is Rate Counsel's belief that the BD Straw goes beyond the BPU's statutory authority. Therefore, for the reasons discussed above, Rate Counsel strongly opposes the approval of the BD Straw given the lack of established law to support the proposed program. Moreover, it is clear that because this program goes beyond the Board's normal utility regulatory mission and because the program was not properly and publically vetted, DCE has proposed a program that is simply not ready to proceed. Alternatively, if the Board decides to implement any BD program, Rate Counsel strongly recommends that the Board implement a separate program outside of the CEA and RGGI statutes with emphasis on customer education on potential bill impacts of a BD project.