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February 15, 2019

**VIA ELECTRONIC MAIL**  
**AND HAND-DELIVERED**

Hon. Aida Camacho-Welch, Secretary  
New Jersey Board of Public Utilities  
44 S. Clinton Avenue, 3<sup>rd</sup> Floor, Suite 314  
Trenton, New Jersey 08625-0350

**RE: In the Matter of The Implementation of P.L. 2018, C. 17  
Regarding the Establishment of Energy Efficiency  
and Peak Demand Reduction Programs  
BPU Docket No. QO19010040**

Dear Secretary Camacho-Welch:

Please accept the attached comments of the New Jersey Division of Rate Counsel (“Rate Counsel”) regarding the above-referenced matter. Enclosed is one additional copy. Please date stamp the copy as “filed” and return to our courier. Thank you for your consideration and attention to this matter.

Respectfully submitted,

STEFANIE A. BRAND  
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**IN THE MATTER OF THE IMPLEMENTATION OF P.L. 2018, c. 17  
REGARDING THE ESTABLISHMENT OF ENERGY EFFICIENCY  
AND PEAK DEMAND REDUCTION PROGRAMS  
BPU DOCKET NO. QO19010040**

**COMMENTS OF THE DIVISION OF RATE COUNSEL**

**February 15, 2019**

1. **What are some best practices for energy efficiency and peak demand reduction programs from leading states (Massachusetts, Rhode Island, California, Illinois, etc.) – including, but not limited to, [a.] administrative structures, [b.] performance incentives, [c.] cost-benefit analyses, [d.] decoupling policies, and [e.] evaluation – that New Jersey can implement to reach its energy efficiency and peak demand reduction goals?**

Rate Counsel provides the following comments on administrative structures, performance incentives, cost-benefit analyses, decoupling policies, and evaluation as follows:

- a. **Administrative structures:** There is no consensus about what type of administrative structure works the best, and the structure is best tailored to local factors. That said, the administrative structure should further program goals by supporting efficiency in operation, facilitating ease of participation by participants and providers, and promoting greater participation in programs. [See responses to Questions 3 and 5.]
- b. **Cost-benefit analyses:** Rate Counsel supports the use of multiple cost benefits analyses, which examine the proposed measures from various perspectives. Specifically, Rate Counsel recommends the use of the following tests: (1.) the Total Resource Cost (“TRC”) Test; (2.) the Participant Cost Test (“PCT”); (3.) the Societal Cost Test (“SCT”); (4.) the Program Administrator Cost Test (“PACT”); and (5.) the Ratepayer Impact Measure (“RIM”) or other bill and rate impact test.
- c. **Performance incentive:** See response to Question 11.
- d. **Decoupling:** In testimony filed in a recent New Jersey utility base rate case, Rate Counsel witness Dr. David E. Dismukes presented his findings on decoupling mechanisms

among investor-owned electric and gas utilities, citing US Energy Information Administration data.<sup>1</sup> Dr. Dismukes found that only 35 electric utilities, out of 152 investor-owned electric utilities<sup>2</sup> have an active revenue decoupling mechanism (23 percent of total electric utilities) and only 44 natural gas utilities, out of 256 investor-owned gas utilities<sup>3</sup> have similar mechanisms (17 percent of total gas utilities). Decoupling is sometimes cited as an incentive to promote energy efficiency and conservation. Rate Counsel submits that there is no need for decoupling as a form of incentive here, however, since the recently enacted Clean Energy Act mandates that utilities achieve specific numerical reductions in energy use, with penalty provisions for non-attainment and performance incentives for meeting or exceeding high savings targets.<sup>4</sup>

- e. **Evaluation:** Rate Counsel recommends the following for program evaluation:
  - i. Continue improving the current Protocols to Measure Resource Savings (“Protocols”) and require the Protocols to be used by all energy efficiency (“EE”) program administrators in the state. Further, the Protocols could include utility-specific values where applicable to allow for measure flexibility while encouraging statewide use. A growing number of states are switching to online savings protocols (often called technical reference manuals or “TRMs”). One significant improvement the state could implement early on is to turn the current PDF version of the Protocols into an online version which can be easily updated and is accessible by the public.

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<sup>1</sup> I/M/O PSE&G, BPU Dkt. Nos. ER18010029 and GR18010030 (direct testimony dated August 6, 2018). (“Dismukes Testimony”).

<sup>2</sup> Dismukes Testimony, p. 6, citing Energy Information Administration Form 861, which includes utilities listed as “Investor Owned” engaged in electricity distribution.

<sup>3</sup> Dismukes Testimony, p. 6, citing Energy Information Administration Form 176, which includes utilities listed as “Investor Owned” or “Private” with nonzero residential sales volumes.

<sup>4</sup> See N.J.S.A. 48:3-87.9.

- ii. Facilitate utility and state collaboration on impact evaluation studies for measures that are relevant across the state regardless of utility service area. To use limited budget and resources effectively, leading states often collaborate to conduct joint evaluation studies. The state and the utilities could even co-fund a joint study with entities in neighboring states. Examples include avoided cost studies, measure saturation surveys, lighting hour-of-use study, measure life studies, and incremental cost studies.
- iii. Initiate evaluation planning when programs are being designed. Early consideration of the evaluation process - prior to program implementation - helps ensure that the necessary data will start to be collected upon implementation.<sup>5</sup>
- iv. Use advanced data analytics to evaluate project performance. Data analytics can be used for evaluating the performance of energy efficiency programs in a timely manner and can reduce the need and the costs for on-site visits and measurement. The results of the use of data analytics can also be used to refine, calibrate, and assess the accuracy of deemed savings values in the Protocols in a timely manner.
- v. Verification of savings, whether through a review or a formal impact evaluation, should be performed by an independent third party. This is especially important if performance incentives are based on savings achievements.

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<sup>5</sup> See The State and Local Energy Efficiency Network, “Energy Efficiency Program Impact Evaluation Guide” (p. 8-1).

2. **How should “full economic, cost effective potential” be defined in terms of the energy efficiency targets to be established by the Board?**

The Clean Energy Act, at N.J.S.A. 48:3-87.9 (b), places certain requirements on the Board regarding cost-effectiveness:

No later than one year after the date of enactment of P.L.2018, c.17 (C.48:3-87.8 et al.), the board shall conduct and complete a study to determine the energy savings targets for ***full economic, cost-effective potential*** for electricity usage reduction and natural gas usage reduction as well as the potential for peak demand reduction by the customers of each electric public utility and gas public utility and the timeframe for achieving the reductions. The energy savings targets for each electric public utility and gas public utility shall be reviewed every three years to determine if the targets should be adjusted. The board, in conducting the study, shall accept comments and suggestions from interested parties. [*Emphasis added.*]

Further, the Clean Energy Act also requires the application of benefit-to-cost analyses to evaluate the proposed programs. N.J.S.A. 48:3-87.9(d)(2). The Clean Energy Act provides that “[t]he methodology, assumptions, and data used to perform the benefit-to-cost analysis shall be based upon publicly available sources and shall be subject to stakeholder review and comment.” N.J.S.A. 48:3-87.9(c). Hence, the proposed benefit-to-cost models must be presented for stakeholder review and comment before their acceptance by the Board.

At the outset, in order to develop the “full economic, cost-effective potential”, the full benefits and costs of meeting energy efficiency targets should be included when developing the maximum threshold of the cost-effective potential. Benefits include, but are not limited to avoided energy, capacity, transmission and distribution costs; avoided environmental costs; risk avoidance benefits; and various non-energy benefits. In addition, the cost of achieving reductions must also be considered in terms of participant, ratepayer, and societal cost, including the effects of anticipated associated increases in utility rates. These benefits and costs would

also need to be fully defined in the process of revising the state's cost-effectiveness screening tests for EE and peak demand reduction ("DR") measures. The Clean Energy Act sets forth how the benefit-to-cost analyses should be applied:

The energy efficiency programs and peak demand reduction programs shall have a benefit-to-cost ratio greater than or equal to 1.0 at the portfolio level, considering both economic and environmental factors.... [N.J.S.A. 48:3-87.9(d)(2).]

However, under the Clean Energy Act an EE or peak reduction program within a portfolio may have a benefit-to-cost ratio of less than 1.0 if "implementation of the program is in the public interest, including, but not limited to, benefitting low-income customers or promoting emerging energy efficiency technologies." N.J.S.A. 48:3-87.9(d)(2). Unless the programs fall within these exceptions, the 1.0 ratio standard should apply.

**3. What markets should be served statewide? What programs should have consistent incentives, eligibility criteria and rules across all service territories? Should the programs be delivered by a single statewide implementer? What are the barriers to implementing a statewide approach, and how can they be overcome?**

Low-income, residential, multi-family, small commercial, local government, and product programs are particularly suited for state-wide implementation. These are typically large scale programs which can benefit from economies of scale in administration and cost. Further, outreach and educational programs can be developed to reach a larger state-wide audience.

The Clean Energy Act requires utilities to perform demographic studies to identify market barriers that prevent all of its customers from participating in implementing EE measures. N.J.S.A. 48:3-87.9(f)(2). So, some flexibility in the scope and range of programs must be accorded in response to the demographic studies. More time might be required to address market barriers. In the near term, CEP and utility-administered programs should continue, using uniform state-wide criteria for incentives, eligibility and rules.

In sum, residents throughout the state of New Jersey should have equal access to low-income, residential, and multifamily offerings. Similarly, small commercial and local government customers throughout the state of New Jersey should have access to programs, with uniform, clear rules for eligibility and acceptable EE and DR measures.

Further, because it can be difficult to restrict participation in upstream programs by contractors and builders to a specific utility, this is an area where a statewide model makes sense. There are also be benefits to offering other programs focused on energy efficiency products on a wider, statewide scale, such as standardization of rebate offerings and product promotions to influence (transform) the market.

**4. How can these programs be delivered at the lowest cost to rate payers, while also providing optimal ease of use and customer service and maximizing market utilization?**

Driving down the cost of administering the programs, optimizing ease of use, and maximizing results is an ongoing process. However, as a general principle, statewide program administration could be leveraged to avoid or minimize duplication, confusion, and free ridership, as well as to tap into economies of scale and scope. Administration could be further refined going forward.

Benchmarking studies could identify areas for improvement. Frequent impact and process evaluation studies, (e.g. every year for impact evaluations and every two to three years for process evaluation studies) will help to identify areas for improvement and inform how the program designs, delivery mechanisms, and marketing strategies should be modified. Furthermore, the demographic studies required by N.J.S.A. 48:3-87.9(f)(2) can be used to design programs which are more responsive to potential program participants, thereby maximizing program participation and energy savings.

While Rate Counsel does not endorse all of the measures set forth in the following documents, they may be of value to begin a discussion of program improvements:

ACEEE (2019) Fourth National Review of Exemplary Energy Efficiency Programs, available at <https://aceee.org/research-report/u1901>; ACEEE (2015) Expanding the Energy Efficiency Pie: Serving More Customers, Saving More Energy Through High Program Participation, available at <https://aceee.org/research-report/u1501>; Institute for Industrial Productivity (2012). Energy Efficiency Resource Acquisition Program Models in North America, available at <https://aceee.org/research-report/ie126>; ACEEE (2014) Successful Practices in Combined Gas and Electric Utility Energy Efficiency Programs, available at <https://aceee.org/research->

report/u1406; and U.S. EPA. National Action Plan for Energy Efficiency, available at <https://www.epa.gov/energy/national-action-plan-energy-efficiency-report>.

**5. What is the best way to minimize administrative costs and avoid duplicative administrative structures?**

In New Jersey, there are several entities administering efficiency, including the statewide Clean Energy Program (“CEP”), utilities that opt to offer complementary programs under the RGGI Act legislation<sup>6</sup>, and the Comfort Partners utility collaborative. Each entity has different administrative structures, targets, and measures.

The Clean Energy Act establishes standards for utility energy efficiency program achievement. Those standards, bolstered by incentives to the utilities for achieving energy efficiency performance targets and penalties for failing to achieve them expand the roles of the utilities in relation to the state-managed CEP in delivering energy efficiency. The aim should be to avoid competition between program administrators and to reduce consumer and contractor confusion associated with having competing program offerings.

One option is to clearly delineate the market segments and/or program types targeted by the utilities and state-run programs. For example, in New York, the recent restructuring of the state’s energy efficiency programs assigned the lion’s share of conventional energy efficiency programs to the state’s utilities. As a result, NYSERDA-administered programs now focus on market transformation, low-income households, and other defined segments.

Similarly, the CEP plays an important role in offering statewide programs that are clearly better offered by a single statewide administrator to maintain consistency across the state. The CEP currently serves statewide markets, but not exclusively. Utilities should be responsible for defined market segments that are not assigned to CEP. Programs that leverage the utility’s relationship with customers, or that reflect the unique aspects of its service territory, are good candidates for the utilities to administer. There are also programs, such as on-bill financing that

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<sup>6</sup> See N.J.S.A. 48:3-98.1.

utilities can offer but the OCE cannot. The utility programs should be geared toward taking advantage of the programs that complement and add to OCE programs.

Utilities that do not currently have the same ability or willingness to administer efficiency programs might consider assigning their energy efficiency program responsibilities to a third-party administrator. This, of course, would not absolve the utility of its obligation to meet the energy reduction targets set by the Clean Energy Act. Ideally, this administrator would serve all such utilities in the state to maintain consistency across utility jurisdictions. Under this model, utilities who have demonstrated commitment to implementing their efficiency programs could continue to do so, while others would contractually assign their responsibilities to a third party.

Such a model is not without precedent in New Jersey. The Comfort Partners program, which provides energy efficiency assistance to low-income customers in New Jersey, attempts to serve all eligible low-income customers regardless of service territory. The Comfort Partners program is administered by a collaborative of the utilities and funded by the Societal Benefits Charge. This approach works if utilities do not administer competing low-income programs, but rather delegate this task fully to the collaborative. Comfort Partners may serve as a model for other energy efficiency and DR programs in the state.

In Massachusetts, the electric and gas program administrators (“PAs”) have unified their resources through Mass Save. Mass Save is a collaborative that allows all customers in the state to access efficiency resources in one location but receive service directly from the PA in their territory. In most cases, the PAs offer the same measures and incentive levels, so customers throughout the state can take advantage of the same programs. However, the PAs still have the flexibility to provide unique measures and demonstration projects without imposing a statewide change.

The utilities in New Jersey can help bridge the inconsistencies of offerings across the state by coordinating regularly. In Massachusetts, working groups exist that cover all aspects of energy efficiency and are attended by the PAs and key stakeholders. These groups are particularly successful because the state has adopted common program and measure names. Shared naming conventions reduce confusion and make for more productive statewide discussions.

It is also possible to have the investor-owned utilities offer their own programs without a single statewide administrator. However, this utility-based model needs careful coordination among the utilities. Given that the CEP has been serving and ensuring consistent offerings across most of New Jersey for a decade, Rate Counsel does not recommend a model in which the utilities each offer their own programs with no coordination.

All of these administrative structures present challenges. Statewide coordination and collaboration will play a key role in all options involving utilities to ensure that all ratepayers have equal access to programs and to minimize customer and contractor confusion. In any case, New Jersey should keep the CEP “brand” to be used by both utility and third-party administrators in order to maintain continuity with the historical practice and consistency across the state. Again, the use of third-party PAs or other administrative models does not absolve the EDCs and GDCs of their respective energy savings requirements under the Clean Energy Act.

**6. What considerations should be made during a transition period that would result in as few disruptions as possible to the market place?**

At the outset, the CEP's commitments to customers should be taken into account.

Ideally, customers who have already applied for incentives or have signed contracts committing to implement measures in the near future should continue to interact with CEP. Additionally, the current contractual commitments of CEP with vendors will need to be considered in developing a transition schedule.

Any transition will also need to reflect which administration model the state decides to pursue. With either of the approaches described above in response to Question 5, statewide coordination will be important throughout the transition and beyond for minimizing customer and contractor confusion. Channels for communicating with the energy efficiency community (e.g., the stakeholder group, and existing contractor networks) should be considered an essential part of any transition plan.

**7. What is the best way to maximize the use of consumer data held by the utilities, and what procedures are recommend for sharing that data?**

One aspect of data availability is transparency. In New Jersey, historical and current efficiency data are difficult to access, limiting the opportunity for shared resources between the utilities. In Massachusetts, the efficiency program administrators (“PAs”) upload quarterly reports on “Mass Save Data”, the database associated with Massachusetts’ Mass Save energy efficiency program. The “Mass Save Data” database shows participants, expenditures, savings, and benefits on a quarterly basis by program and PA. Moreover, the “Mass Save Data” database is public and transparent, and it allows PAs in Massachusetts to compare their individual progress to the rest of the state, among other things. Improved access to New Jersey’s aggregate energy efficiency data could help spur the programs to be more successful.

In addition to data transparency, there may be an opportunity to leverage the work previously done by the CEP’s Data Working Group. Uniform recording and compilation of participating customer data by measure, equipment type, energy usage, etc., may help to evaluate performance and facilitate innovative ways of financing energy efficiency and demand side management projects.

Finally, data privacy must be considered. Any sharing of individual customer data must comport with Board rules.

**8. What data, assumptions, methodology, and considerations (e.g., non-energy benefits) should be used to perform cost-benefit analyses?**

The Clean Energy Act provides that “[t]he methodology, assumptions, and data used to perform the benefit-to-cost analysis shall be based upon publicly available sources and shall be subject to stakeholder review and comment.” N.J.S.A. 48:3-87.9(c). Accordingly, the cost and benefit inputs for proposed cost-benefit analyses need to be quantified as much as possible, with supporting data and transparent assumptions. Further, the proposed analyses must be subject to review and comment in a stakeholder process.

The Clean Energy Act also calls for consideration of both economic and environmental factors, as well as serving the needs of low-income communities. Therefore, various environmental factors (e.g., greenhouse gas emissions, water and land impacts) as well as job impacts, and various low-income benefits need to be considered in benefit-cost analyses. Finally, as stated earlier, the following cost-benefit tests should be applied in order to gage the effects of a proposed program or measure from multiple perspectives: (1.) the Total Resource Cost (“TRC”) Test; (2.) the Participant Cost Test (“PCT”); (3.) the Societal Cost Test (“SCT”); (4.) the Program Administrator Cost Test (“PACT”); and (5.) the Ratepayer Impact Measure (“RIM”) or other bill and rate impact test.

**9. What should the membership of the Independent Advisory Committee be? What is the proper role of the Independent Advisory Committee? What existing models or best practices should the Board consider in establishing the Independent Advisory Committee?**

The Clean Energy Act set forth the composition of the Independent Advisory Committee (“IAC”) as follows: “representatives from the public utilities, the Division of Rate Counsel, and environmental and consumer organizations....” N.J.S.A. 49:3-87.9(f)(1). Rate Counsel recommends that “consumer organization” members of the IAC should include, at least, representatives of low income housing organizations, social service organizations, economic development agencies, labor organizations, contractors, senior citizen organizations, small business, and manufacturing organizations.

Further, the Clean Energy Act sets the objectives of the IAC:

- [1.] to study the evaluation, measurement, and verification process for energy efficiency and peak demand reduction programs
- [2.] to provide recommendations to the board for improvements to the programs.<sup>7</sup>

For operational and organizational purposes, the IAC could be divided into two subgroups along the lines of these tasks. The first group of IAC tasks is technical in nature and requires some degree of subject matter expertise. The second group of IAC tasks is more policy-oriented in general and amenable to more widespread involvement. Nonetheless, all members of the IAC should be permitted to participate in either or both subgroups as they see fit. In general, the IAC should include individuals who are able to be consistently engaged over a period of time, have authority to speak or take action on behalf of a group or organization, and represent a group of customers (rather than a single customer).

More specifically, the Independent Advisory Committee should be charged with:

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<sup>7</sup> N.J.S.A. 49:3-87.9(f)(1).

- Advising and assisting in developing, implementing, and evaluating cost-effective efficiency programs to meet energy savings goals. The committee should be consulted in all aspects of energy efficiency administration--from goal setting and program design, through evaluation, and everything in between.
- Providing consistency among efficiency offerings throughout the state by bringing all program administrators and interested parties together at one table to discuss program design, implementation, and evaluation. This approach can reduce time, effort, and ratepayer dollars spent on proceedings or settlement negotiations. Further, it streamlines and focuses Board review of proposals.
- Ensuring that meaningful programs are available and accessible to all customer classes, as well as subgroups within the classes, such as low-income and other groups.

There are also a few overarching principles to observe when establishing the committee:<sup>8</sup>

- Provide a clear objective, which clarifies the duration and scope of the Committee. The Board should also ensure that members understand that the purpose of the Committee is to bridge differences.
- Establish ground rules to ensure balanced participation from many types of stakeholders, and to provide transparency.
- Provide public access to meetings and meeting materials.
- Periodically assess the Committee, to inform whether it should be continued, and whether changes to its mission and operating practices would improve its effectiveness.
- Employ an experienced facilitator, to ensure all attendees have a chance to express their views.
- Ensure that the Committee's findings and conclusions are presented to the Board.

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<sup>8</sup> See State and Local Energy Efficiency Action Network (2015) Energy Efficiency Collaboratives, Available at <https://www4.eere.energy.gov/seeaction/system/files/documents/EECollaboratives-0925final.pdf>

10. **How should savings from the Clean Energy Program, existing utility programs, building code measures, appliance efficiency standards, other State sponsored EE or peak reduction programs, etc., that may contribute to meeting savings targets be factored into a utility's savings targets, QPIs, and performance incentives?**

The Clean Energy Act addresses the factors included in the energy savings attributable to a public utility:

A public utility may apply all energy savings attributable to programs available to its customers, including demand side management programs, other measures implemented by the public utility, non-utility programs, including those available under energy efficiency programs in existence on the date of enactment of P.L.2018, c.17 (C.48:3-87.8 et al.), building codes, and other efficiency standards in effect, *to achieve the targets established in this section.* [Emphasis added; N.J.S.A. 48:3-87.9(c).]

Further, the Clean Energy Act also addresses how such non-utility programs are factored into the QPIs:

No later than one year after the date of enactment of P.L.2018, c.17 (C.48:3-87.8 et al.), the board shall adopt quantitative performance indicators pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) for each electric public utility and gas public utility, which shall establish reasonably achievable targets for energy usage reductions and peak demand reductions *and take into account the public utility's energy efficiency measures and other non-utility energy efficiency measures including measures to support the development and implementation of building code changes, appliance efficiency standards, the Clean Energy program, any other State-sponsored energy efficiency or peak reduction programs, and public utility energy efficiency programs that exist on the date of enactment of P.L.2018, c.17 (C.48:3-87.8 et al.).* [Emphasis added; N.J.S.A. 48:3-87.9(c).]

With respect to the award of any incentives, only savings attributable to utility programs should count towards any incentives. The Clean Energy Act provides that a public utility shall receive incentives or penalties based in the performance of "*its energy efficiency measures and peak reduction measures.*" N.J.S.A. 48:3-87.9(e)(2),(3) [Emphasis added.] For example, savings attributable to building codes and appliance standards should not count towards claimed savings.

**11. How should performance incentives and penalties be implemented? What level of information will be needed? How should they be collected/paid, with what frequency and when should they begin implementation?**

The Clean Energy Act provides for both incentives and penalties. See N.J.S.A. 48:3-87.9(e)(2), (3), and (4). However, certain steps need to be taken prior to such actions. First, the Board must establish Quantitative Performance Indicators (“QPIs”) for each utility based on a number of factors:

*In establishing quantitative performance indicators, the board shall use a methodology that incorporates weather, economic factors, customer growth, outage-adjusted efficiency factors, and any other appropriate factors to ensure that the public utility’s incentives or penalties determined pursuant to subsection e. of this section and section 13 of P.L.2007, c.340 (C.48:3-98.1) are based upon performance, and take into account the growth in the use of electric vehicles, microgrids, and distributed energy resources. In establishing quantitative performance indicators, the board shall also consider each public utility’s customer class mix and potential for adoption by each of those customer classes of energy efficiency programs offered by the public utility or that are otherwise available. [Emphasis added; N.J.S.A. 48:3-87.9(c).]*

As a measure of potential for adoption of measures by customer class, the market potential studies mandated by the Clean Energy Act should form the basis for the QPIs. The market potential studies examine the potential energy savings for each utility based on a number of relevant factors:

No later than one year after the date of enactment of P.L.2018, c.17 (C.48:3-87.8 et al.), the board shall conduct and complete a study to determine the energy savings targets for full economic, cost-effective potential for electricity usage reduction and natural gas usage reduction as well as the potential for peak demand reduction by the customers of each electric public utility and gas public utility and the timeframe for achieving the reductions. The energy savings targets for each electric public utility and gas public utility shall be reviewed every three years to determine if the targets should be adjusted. The board, in conducting the study, shall accept comments and suggestions from interested parties. [N.J.S.A. 48:3-87.9(b).]

In sum, the Clean Energy Act recognizes that reductions in energy use and peak demand may be attributable to factors other than utility EE and DR measures. A variety of factors may influence program participants and energy savings. Weather may be colder or warmer at the time when actual utility reduction performance is assessed, versus the historical normal weather trends during the three-year period used to set the reduction percentage under N.J.S.A. 48:3-87.9(a). Other factors may occur that could impact energy use, such as the economy and commodity (electric energy and gas) prices. These factors affect energy use, beyond utility-sponsored energy efficiency programs.

As set forth in the excerpts above, the Clean Energy Act recognizes other factors affecting energy use besides EE and DR measures. Therefore, proceedings to consider the award of any incentives under the Clean Energy Act must be subject to evidentiary hearings and testimony, if necessary, to examine the factors which affected energy use. A process is needed to verify utilities' "savings" estimates. Furthermore, any claimed reductions in energy under consideration for incentives must be examined in terms of how the utility-sponsored programs fared in achieving the market potential for energy savings and QPIs. The OCE needs initiate a process to develop the methodologies that incorporate various factors into the QPIs, such as economic factors and customer growth.

Energy savings achievements should be used in the formula for determining incentives, specifically for scaling incentives and as the basis for deadbands in which no incentives or penalties are assessed (e.g., penalties would be imposed at 95% of the target, and increase in conjunction with lower verified energy savings). Rate Counsel recommends that incentives should start at a level beyond the level required by the Act (e.g., 105%) and move higher commensurate with savings achievements above that point. This deadband will reduce

contention over small deviations in performance around the target. It is important that incentives be tied to reasonably high achievement (savings). In sum, incentives must be tied to energy savings, because if incentives are only tied to EE spending, there would be an incentive to just increase spending without increasing energy savings. Furthermore, with performance incentives, it is good practice to review performance periodically to assess their effectiveness.

In addition, energy savings achievements should be verified through review or impact evaluation by an independent third party. This review or evaluation should consider other factors that impact energy savings, as well as programmatic considerations like free ridership. This review or evaluation should be subject to review in a regulatory proceeding.

Finally, any incentive should track linearly the value of such savings. N.J.S.A. 48:3-87.9(f). Any utility claiming incentives should be required to demonstrate the value of the reductions in terms of emissions reductions, avoided costs, jobs, economic savings and other relevant factors.

**12. Under N.J.S.A. 48:3-88(3)(e), each electric and gas public utility must file an annual petition with the Board to demonstrate compliance with energy efficiency and peak demand reduction programs, compliance with targets established pursuant to the quantitative performance indicators, and for cost recovery of the programs. What information should these annual petitions include?**

The Board should convene a proceeding to develop minimum filing requirements (“MFRs”) not unlike those convened to establish MFRs for RGGI Act and Infrastructure Investment Program filings. At this juncture, in concept annual petitions should include information needed to evaluate the performance incentive/penalty criteria, including annual and lifecycle electricity, natural gas and other fuel savings (in MWh, therms, or MMBtu), electricity peak load savings in MW, participation counts, data on percent of customers served, total program costs in net present value, total program benefits in net present value, and benefit-cost ratios. Further, annual filings should also compare results in each of the aforementioned categories and compare actual results with projected results.