



State of New Jersey
DIVISION OF RATE COUNSEL
140 EAST FRONT STREET, 4TH FL
P.O. Box 003
TRENTON, NEW JERSEY 08625

PHIL MURPHY
Governor

SHEILA OLIVER
Lt. Governor

STEFANIE A. BRAND
Director

August 6, 2020

VIA ELECTRONIC MAIL (EnergyEfficiency@bpu.nj.gov)

Honorable Aida Camacho-Welch, Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Trenton, New Jersey 08625-0350

**Re: Clean Energy Act – Energy Efficiency Transition
The New Jersey Cost Test Straw Proposal
Comments of the Division of Rate Counsel
Docket Nos. QO19010040, QO19060748;
and QO17091004**

Dear Secretary Camacho-Welch:

Please accept for filing the enclosed comments being submitted on behalf of the New Jersey Division of Rate Counsel (“Rate Counsel”) in response to the Request for Written Comments issued by the Staff of the Board of Public Utilities for comment July 30, 2020 with subsequent Public Notice deadline for comments to August 5, 2020. Governor Murphy declared a State of Emergency for August 4 due to tropical storm Isaias. In turn, Rate Counsel notified the Division of Clean Energy that disruptions caused by tropical storm Isaias, including power outages and State office closings, necessitated the filing of our comments today. In accordance with the Notice, an electronic copy will be emailed to EnergyEfficiency@bpu.nj.gov.

Please acknowledge receipt of these comments.

Honorable Aida Camacho-Welch, Secretary

August 6, 2020

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Thank you for your consideration and attention to this matter.

Respectfully submitted,

STEFANIE A. BRAND

Director, Division of Rate Counsel

By: /s/ Sarah H. Steindel
Sarah H. Steindel, Esq.
Assistant Deputy Rate Counsel

SHS

c: energyefficiency@bpu.nj.gov
Paul E. Flanagan, Executive Director, BPU
Sara Bluhm, BPU
Kelly Mooij, BPU
Sherri Jones, BPU
Stacy Peterson, BPU
Paul Lupo, BPU
Abe Silverman, Esq., BPU
Rachel Boylan, Esq., BPU
Stacy Richardson, Esq., BPU
Pamela Owen, DAG

STATE OF NEW JERSEY
BEFORE THE BOARD OF PUBLIC UTILITIES

In re: New Jersey Energy Efficiency) Docket Nos. QO19010040,
Transition—New Jersey Cost Test) QO19060748 and QO17091004
)

COMMENTS OF THE
NEW JERSEY DIVISION OF RATE COUNSEL
ON THE BPU STAFF' S NEW JERSEY COST TEST STRAW PROPOSAL

August 6, 2020

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 Staff’s Straw Proposal (“NJCT Straw Proposal”) for a New Jersey Cost Test (“NJCT”) for energy efficiency (“EE”) and peak demand reduction programs. The Clean Energy Act (P.L.2018, c.17, N.J.S.A. 48:3-87.8 et al.) (“CEA”) requires the Board to increase New Jersey ratepayers’ energy savings by developing a new generation of equitable energy efficiency and peak demand reduction programs. The CEA specifically requires the BPU to “ensure universal access to energy efficiency measures” and to “serve the needs of low-income communities.” It also requires that each portfolio of programs have a benefit-to-cost ratio greater than or equal to 1.0, to ensure that each program yields positive net benefits and is cost-effective. N.J.S.A. 48:3-87.9.

Thus, Staff has developed a proposal for a benefit-cost test for the first three years of EE and peak demand reduction investments in New Jersey. Staff held a public stakeholder meeting to review this proposal and hear stakeholder comments on July 30, 2020. Rate Counsel’s comments on the specifics of the proposal are outlined below.

BACKGROUND

The CEA provides that “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[.]”¹ The CEA further directs the Board to establish Quantitative Performance Indicators (“QPI”):

[T]he 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 State-sponsored energy efficiency or peak reduction programs, and public utility energy efficiency programs that exist on the date of enactment...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...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.²

Other sections of the CEA articulated specific minimum savings goals of 2% per year for electricity and 0.75% per year for gas³ and setting forth additional goals for utility efficiency programs, including “benefitting low-income customers or promoting emerging energy efficiency technologies.”⁴

As set forth in the Board's June 10, 2020 Order establishing standards for the State's EE and peak demand reduction programs, Staff recommended a multifaceted QPI for Program Years

¹ N.J.S.A. 48:3-87.9 (d)(2).

² N.J.S.A. 48:3-87.9 (c).

³ N.J.S.A. 48:3-87.9 (3)(a).

⁴ N.J.S.A. 48:3-87.9 (d)(2). Specifically, the CEA states that a benefit-to-cost ratio of less than one may be appropriate for programs that address these goals.

4 and 5 that would include the Program Administrator Cost Test (“PACT”) (referred to in the June 10 Order as the Utility Cost Test (“UCT”)) score⁵ (30% weighting), along with Low-Income and Small Business Lifetime Savings (15% and 10% weighting, respectively).⁶ Finally, Staff put forward a proposal to develop a New Jersey Cost Test (“NJCT”) based on the National Standard Practice Manual (“NSPM”),⁷ which would further quantify and evaluate performance relative to the numerous policy goals under the CEA.

During the July 30 New Jersey Cost Test Public Stakeholder Meeting, it was clarified that the “New Jersey Cost Test” is really expected to be two tests for different program year periods. First, a modified Total Resource Cost Test (“TRC”) for use in the initial three-year utility filings due September 25th, 2020; and second, a test based on the NSPM Resource Value Framework (“RVF”) to be developed through the EM&V Working Group and used in future filings. Staff further proposes that the initial NJCT will take the place of the California Standard Practice Manual’s (“CSPM”) TRC and SCT tests and will be used as the primary cost-effectiveness test during the first three-year program cycle, while reporting the results of the PACT, PCT and RIM tests for informational purposes. These comments reflect the initial NJCT that was detailed in the July 2020 NJCT Straw Proposal and discussed on the July 30 call.

RATE COUNSEL COMMENTS

As a preliminary matter, Rate Counsel appreciates the effort to develop benefit-cost tests with well-defined inputs and methodologies. At the same time, Rate Counsel is pleased to see

⁵ Rate Counsel has previously raised concerns regarding this over-emphasis on achieving high UCT scores, because it provides an incentive for utilities to “cherry-pick” highly cost-effective measures and possibly ignore other measures that could benefit their customers.

⁶ I/M/O the Implementation of P.L. 2018, c. 17 Regarding the Establishment of Energy Efficiency and Peak Demand Reduction Programs, BPU Dkt. Nos. QO19010040, QO19060748 & QO17091004, Order Directing the Utilities to Establish Energy Efficiency and Peak Demand Reduction Programs (June 10, 2020). (“June 10 Order”), pp. 22-23.

⁷ <https://www.nationalenergyscreeningproject.org/national-standard-practice-manual/>.

that the existing five tests based on the CSPM will be retained as part of the utility Minimum Filing Requirements (“MFR”). June 10 Order, Appendix B, MFR V. A. The standard CSPM benefit-cost tests provide valuable insight on program design from a variety of perspectives, even if they are no longer to be used as primary threshold tests for determining cost effectiveness. For example, the results of the PCT, PACT and RIM test can provide guidance on incentive levels and other elements of the design of a proposed program. A high PCT, in combination with a low PACT or high RIM test, would indicate that the incentive levels proposed for the program are too generous, and should be reduced to more fairly allocated the costs and benefits of the program. To make these tests even more useful for the Board and stakeholders, the utilities and stakeholders should come to agreement on the methodologies and approaches to be used for all of the tests.

With respect to the specific inputs proposed and requests for comments, Rate Counsel offers the following observations and recommendations:

Discount Rate

The Staff proposal notes that EE measures typically have relatively high upfront costs that will be recovered by savings over the life of the measure. It also notes that benefit-cost analyses for programs with streams of costs or benefits over more than 1-2 years use the standard practice of discounting future payments and savings. Discounting is a common method used in economics and finance to adjust for the fact that a dollar today does not have the same value as a dollar in the future.⁸ Discounting is an important component of project evaluation when costs and benefits span many years and, in some instances, decades. Failure to appropriately discount

⁸ Danthine, Jean-Pierre and John B. Donaldson. Intermediate Financial Theory. Second Edition. Chapter 2.

costs and/or benefits can lead to erroneous conclusions about investment profitability (from either a public or private investment perspective).

Consider the following scenario: Suppose an individual is offered two financial options. The first option is for a \$1,000 cash payment today and the other option is for the same \$1,000, but in five years from now. Typical individuals, who are risk averse, will take the \$1,000 today instead of the option for payment in the future due to: (1) the uncertainty associated with the future payment; and (2) the fact that a dollar today is not worth a dollar in the future. Even if that individual does not actually intend to use the money for five years, they still have the ability to invest the money and earn a return on that investment. The rate of return on the investment is what you forgo if the individual simply took \$1,000 in the future without some form of additional financial compensation. Thus, discounting is necessary in comparing the costs and benefits on an “apples-to-apples” basis when evaluating the costs and benefits of a program that occur over a multiple-year period. The challenge with the use of discount rates in many benefit-cost analyses is that some utilize an incorrect discount rate (i.e., one that is either too high or too low) or often utilize differing discount rates for cost versus benefit streams over time.

Staff seeks stakeholder feedback on the appropriate discount rate to include in the NJCT. And as cited by Staff in its proposal, beginning in 1992 and periodically updated since, the White House Office of Management and Budget (“OMB”) publishes Circular No. A-94, which sets guidelines and specific discount rates to be applied to all CBAs performed by executive agencies. Section 8(b)1 of the current circular orders all executive agencies to report net present value using a real discount rate of seven percent,⁹ an estimate of the average before-tax rate of

⁹ Office of Management and Budget, Circular No. A-94 Revised, Section 8(b)1 (October 29, 1992).

return to private capital in the U.S. economy.¹⁰ When examining the effects of regulation that do not fall exclusively or primarily on the allocation of capital, such as the effect on private consumption due to higher consumer prices for goods and services, the OMB may use a lower three percent “societal” discount rate, based on the real, inflation adjusted, returns to a 10-year Treasury note since 1973.

Further, the Board has historically used a higher discount rate in assessing EE program benefits. In October 2012, the CEEEP at Rutgers University published the results of its retrospective CBA of the New Jersey Clean Energy Program EE programs. The CEEEP study used an eight percent nominal discount rate to discount the value of future benefits from the Clean Energy Program offerings.¹¹ A later CEEEP analysis uses an updated discount rate of seven percent and notes “[t]his is approximately the average of the prevailing weighted average cost of capital (cost of capital or WACC) for utilities in NJ as compiled by CEEEP from publicly available documents.”¹² A seven percent discount rate was also used recently by the Board in its Guidelines for Application Submission for Proposed Offshore Wind Facilities.

Rate Counsel believes that a seven percent discount rate, or one that is based on the utility weighted-average cost of capital (“WACC”) as also suggested by the Staff proposal is most appropriate.

During the stakeholder meeting, some participants encouraged the use of a much lower discount rate, commonly referred to as a “societal discount rate.” This type of rate is used in

¹⁰ Office of Management and Budget, Circular No. A-4, p. 33 (September 17, 2003).

¹¹ Center for Energy, Economic & Environmental Policy. 2011. Cost-Benefit Analysis of the New Jersey Clean Energy Program Energy Efficiency Programs: 2011 Retrospective & 2012 Prospective Summary Report, p. 5.

¹² Center for Energy, Economic & Environmental Policy. 2018. Energy Efficiency Cost-Benefit Analysis Avoided Cost Assumptions, page 9, fn 26. Available at: [http://www.njcleanenergy.com/files/file/Library/Market%20Research/Avoided%20Cost%20Memo%20\(3-13-18\).pdf](http://www.njcleanenergy.com/files/file/Library/Market%20Research/Avoided%20Cost%20Memo%20(3-13-18).pdf).

analysis of public policies which provide future benefits that are largely public in nature, known as “societal goods” or “public goods.” These public goods are often paid for by one group of citizens but enjoyed by all. Examples of such benefits traditionally recognized as public goods include clean air and clean water or national defense. Public goods are often referred to as those that are non-rival and non-exclusionary in their benefits.¹³ In other words, all, or the overwhelming bulk of a public good’s benefits are shared by all of society.

In this situation, to evaluate the benefits and costs of EE programs, a social discount rate is inappropriate since the EE programs are not a public good that is “non-rival” in consumption since the primary benefits of the project are being developed on behalf of New Jersey ratepayers, not those in another state such as Georgia or Missouri. And, while the EE programs will facilitate a number of positive externalities (like economic impacts, reduced emissions, improved regional dispatch, etc.) this is not justification for evaluating EE programs entirely as a “public good.” While EE program externalities may be valuable, the overwhelming majority of the program’s benefits are likely to be paid for and will accrue to New Jersey ratepayers. Including these externalities as individual benefit items is the more appropriate way to account for them in the CBA. Estimating these individual externalities and then also applying a societal discount rate to their benefit streams over time, effectively artificially inflates the value of certain benefits and puts a “hand on the scale” that biases the overall CBA in the Company’s favor.

A number of other regulatory commissions have recognized the impropriety of using social discount rates in evaluating investments and programs paid for by ratepayers. In 2012, the

¹³ Non-rivalrous goods are [public goods](#) that are consumed by people, but whose supply is not affected by people’s consumption. When an individual or a group of individuals use a particular good, the supply left for other people to use remains unchanged. Non-rivalrous goods can be consumed repeatedly without the fear of depletion of [supply](#). An example of a non-rival good would be a public park, or a fireworks display.

Illinois Commerce Commission (“ICC”) took issue with a CBA provided by Commonwealth Edison Company (“ComEd”) related to its Advanced Metering Infrastructure (“AMI”) proposal. The ICC found ComEd’s use of a societal discount rate equal to 3.087 percent discount rate “dubious,” noting that the rate is at the low end of a reasonable range of discount rates, and did not reflect customers’ cost of capital since it was based on a risk-free return on government bonds.¹⁴ Furthermore, the ICC felt that from a ratepayer perspective, the proposed AMI investment was not “risk-free,” since there were no guarantees that the Company’s assumptions would hold true or that even the meters being installed would remain in service as long as expected by the Company.¹⁵

Line Losses.

Line losses for converting savings at the retail level to avoided wholesale energy purchases should reflect the marginal loss rate, consistent with the incremental savings associated with EE programs. It is unclear what the basis is of the 4.97% figure in the NJCT Straw Proposal,¹⁶ or whether this is intended to represent average or marginal line losses. Staff has not defined what it means by an “inflation factor”¹⁷ in this context, so Rate Counsel is unable to comment on this issue. In general, it is adequate to use a single, EM&V-committee derived marginal loss rate for use statewide, representative of average conditions. However, utilities may reasonably propose a different loss rate for particular programs as appropriate, and with adequate support. (For example, an air conditioning program that results in savings primarily during peak cooling days may reasonably assume a higher marginal loss rate.)

¹⁴ Commonwealth Edison Company Petition for Statutory Approval of a Smart Grid Advanced Metering Infrastructure Deployment Plan pursuant to Section 16-108.6 of the Public Utilities Act, Illinois Commerce Commission Docket, 12-0298, p. 30.

¹⁵ *Id.*

¹⁶ NJCT Straw Proposal, page 8.

¹⁷ *Ibid.*

Efficiency Measure Incremental Costs.

Incremental cost assumptions should be transparent, consistent, and documented in the Technical Resource Manual (“TRM”) as noted in the NJCT Straw Proposal.

Non-Measure Program Costs.

Costs that are attributable to specific programs should be accounted as costs in the cost benefit tests for that specific program. For example, costs associated with building and managing an on-line marketplace should be included in the costs of each utility’s energy efficient products program, even though these costs are not directly attributable to specific appliances or other products. Only costs that are spread across all programs,¹⁸ such as overall administrative costs, should be excluded from program costs and reserved for portfolio-level evaluation.

Direct Energy Benefits.

Avoided energy costs should be calculated based on projected costs, using an agreed-upon methodology acceptable to stakeholders and to the Board. Electricity and capacity cost forecasts should be location-specific to the extent practicable. It may make sense to initiate a collaborative effort to generate avoided cost estimates, similar to the model used by the New England Avoided Energy Supply Cost Study produced semiannually by the AESC Study Group.¹⁹ Rate Counsel does not support basing this forecast on a “three-year rolling average of historic PJM wholesale real-time LMP”²⁰ as historic LMPs are a poor predictor of future energy prices. In addition, utilities can hedge against future energy prices, making market-informed forecasts of future prices the most relevant comparator for the purpose of calculating avoided energy price.

¹⁸ Referred to as “Non-Measure, Non-Program-Specific Costs” in the Straw Proposal, page 9.

¹⁹ <https://www.synapse-energy.com/project/avoided-energy-supply-costs-new-england>.

²⁰ NJCT Straw Proposal, page 10.

Staff also requested feedback on treatment of the PJM “EE-addback” in a benefit-cost analysis. As Rate Counsel understands it, this is merely a factor to avoid double-counting of resources that reduce load and are also bid into the RPM market. In other words, if load reductions are to be bid into the RPM market, then the total amount of capacity procured must not take these same load reductions into account. Whether this factor should be taken into account depends on whether or not the load reductions are going to be bid into the RPM market. However, Rate Counsel also notes that RPM price projections beyond the three-year forward period that has already settled are notoriously uncertain, and at least in today’s market, the effect of the “EE-addback” would be well inside the range of uncertainty.

With respect to gas prices, Rate Counsel similarly believes that a forward-looking estimator for the period over which gas consumption is expected to be impacted is the most relevant basis for benefit cost analysis. Further, Rate Counsel does not believe that the Henry Hub price is an appropriate basis for evaluating New Jersey avoided gas costs, and that forecasts should be developed to represent Citygate prices for New Jersey.²¹ Using this more appropriate price proxy would render unnecessary the separate calculation of gas transportation costs by the utilities.

Indirect Energy Benefits.

Rate Counsel supports the inclusion of Demand-Reduction Induced Price Effect (“DRIPE”) in calculating indirect avoided cost benefits.²² DRIPE represents the decrease in wholesale market prices when energy efficiency measures cause a decrease in demand, causing the market to clear, on average, at a lower point on the supply curve, and thereby lowering

²¹ See <https://www.eia.gov/dnav/ng/hist/n3050nj3m.htm> for US Government data on New Jersey Citygate prices.

²² Straw Proposal, page 12.

energy procurement costs. Rate Counsel does not agree that the “EE-addback” necessarily eliminates this benefit in the PJM capacity market; adding low-cost supply to the market has the same effect on prices as reducing demand. Utilities should be encouraged to bid EE-based capacity into the RPM market to the extent allowable under PJM rules, and should come to agreement on the best way to calculate the resulting DRIPE effect.

Non-Energy Resource Savings.

Staff recommends inclusion of the following non-energy benefits in the interim New Jersey Test:

- Avoided mortality and morbidity, based on an EPA report which included estimates of health benefits per avoided kWh;²³
- Benefits of avoided emissions (presumably of criterial pollutants) not included in the public health benefits;
- Avoided greenhouse gas emissions benefits;
- Other Low-Income health and safety impacts;
- Water and sewer benefits;
- Other non-energy indirect benefits, such as economic development impacts.

While Rate Counsel agrees that these can represent important benefits for ratepayers and the public in general, many of them are secondary impacts that are difficult to quantify. As noted in the Board’s June 10 Order, Staff’s recommendation was that this interim New Jersey Cost Test should include non-energy impacts only if they are “readily documented and have agreed upon values either in New Jersey or which can be reasonably used in New Jersey.” June 10 Order, p. 32. Rate Counsel agrees with this Staff recommendation.

²³ <https://www.epa.gov/sites/production/files/2019-07/documents/bpk-report-final-508.pdf>.

Further, in the absence of clear guidelines, there is a significant risk both of double-counting benefits, and of adding so many monetized secondary benefits as to render the cost-benefit analysis meaningless. The CEA already allows “extra credit” for, for example, low-income programs (which do not have to demonstrate a benefit-to-cost ration of 1 or greater) which reflects, at least in part, the societal benefits of improved health and safety for the target population, along with reduced uncollectible accounts. Customer-specific benefits such as avoided water and sewer costs can reasonably be included in the Participant Cost Test, but on a societal level are quite small and largely represent a transfer payment.²⁴ It is a reasonable and common practice, and consistent with the CEA mandate to consider “economic and environmental factors,” to include some proxy for avoided emissions on the benefit side of the modified Societal Cost Test. However, there is a significant risk of double counting if both emissions costs (based on permit prices, or some other proxy) and health benefits are included.

Economic Impact

The Staff proposal recognizes that EE programs can provide additional benefits to society beyond the ratepayer cost savings directly resulting from using less energy. Including appropriate non-energy impacts ensures that benefit-cost screening adequately captures the full range of impacts that these programs have on participants and society. Given the requirements of the CEA and the additional societal benefits provided by EE programs, Staff believes that it is appropriate to include NEIs in the NJCT and Rate Counsel agrees.

However, both the positive and negative economic impacts of EE program on ratepayer and participant income must be included in any benefit-cost analysis. Savings that result from

²⁴ Water and Sewer costs overwhelmingly represent the embedded cost of water and sewer infrastructure, so cannot be avoided at the societal level through EE measures.

EE programs can be considered an increase to ratepayer and participant income. This income increase represents a positive impact on a regional economy since it takes income and increased costs for several classes of market participants without any corresponding direct economic offset (or transfer). Similarly, the costs of EE programs can be considered a decrease to ratepayer and participant income. This income decrease represents a negative impact on a regional economy since it takes income and increased costs for several classes of market participants without any corresponding direct economic offset (or transfer). A reduction in household income, or an increase in business costs, reduces the amount of money spent on goods and services, which in turn, leads to “ripple effects” (or multiplier effects) in a regional economy. Total economic impacts are the sum of these ripple effects and include: (1) direct impacts which come from the economic “shock” from a policy change or rate increase; (2) indirect impacts which are the decreased expenditures made by others in response to the direct impacts; and (3) induced impacts which are further economic impacts created from the income/(losses) generated by direct and indirect impacts. Simply put, rate increases reduce disposable income for households and profits for businesses and industry. These ripple effects can be seen in reduced economic activity and other value-added activities in the state such as proprietor income, rents and indirect business taxes. Rate Counsel recommends the use of the IMpacts for PLANning (“IMPLAN”) software package, so that multiplier effects of the costs and benefits to the economy can be calculated, and then the total net present value (“NPV”) of the program benefits to the NPV of the program costs, including the additional indirect and induced economic impacts can be compared. In calculating the economic impacts of program savings, one would consider the savings for residential, commercial, and industrial ratepayers. In calculating the economic impacts of incremental costs, one would allocate the rebate portion of the incremental costs to ratepayers,

and the net incremental cost of the program to participants. Finally, the administrative cost of the program is allocated to ratepayers.

The Staff NJCT proposal does not adequately address ratepayer impacts. The rate increases needed to fund any EE programs will lead to a certain level of negative economic impacts on the New Jersey economy. This results in a decrease in New Jersey economic activity as resources are diverted from general economic activity for households, businesses, and industries and towards the funding of EE programs.

While the benefit-cost analysis will include program expenditures as a cost, this does not adequately account for the impact that the overall change in rates will have for the Company's ratepayers and how those impacts ripple through the New Jersey economy. This approach has been used in several prior Board proceedings and was recognized as appropriate in the Board's decision in the 2018 Nautilus offshore wind ("OSW") proceeding.²⁵ In fact, it was Nautilus' failure to provide a transparent representation of its rate and economic impacts that served as an important basis for the Board's decision to reject the OSW proposal.²⁶

²⁵ In the Matter of Consideration of the State Water Wind Project and Offshore Wind Renewable Energy Certificate, BPU Docket No. QO18080843 (Order, December 18, 2018).

²⁶ *Id.* at p. 16.