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September 25, 2026

Via Electronic Mail

Ms. Sherri L. Lewis Board Secretary
New Jersey Board of Public Utilities
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**Re: In the Matter of Executive Order No. 1 - Modernization of the Traditional
Electric Distribution Utility Business Model Study
BPU Docket No. EO26040117**

Dear Secretary Lewis:

Please accept for filing these comments of the New Jersey Division of Rate Counsel ("Rate Counsel") in response to the report entitled *Modernizing New Jersey's Electric Utility Business Model*, July 2026, prepared by Energy+Environmental Economics ("E3") ("E3's Phase I Report" or "Report"), a consultant to the New Jersey Board of Public Utilities ("Board" or "BPU). Pursuant to the Order issued by the Board in connection with In the Matter of the New Jersey Board of Public Utilities' Response to the COVID-19 Pandemic for a Temporary Waiver of Requirements for Certain Non-Essential Obligations, BPU Docket No. EO20030254, Order dated March 19, 2020, these documents are being electronically filed. Paper copies will not follow. **Please acknowledge receipt of this comment letter.**

INTRODUCTION

Rate Counsel thanks the Board for the opportunity to provide additional written comments. It is Rate Counsel's understanding that subsequent workshops will follow on October 1, 2026, and November 5, 2026, in an effort to solicit additional feedback and input regarding this comprehensive initiative.

As Rate Counsel has pointed out in prior comments in this proceeding, based upon its review of the academic and consulting literature, its discussions with regulators and stakeholders from other states, and its review of the comments filed by other stakeholders in this matter, many of the efforts to reform the utility business models have been unsuccessful.¹ These endeavors have resulted in higher costs, protracted proceedings and delays, and a return to, or continued reliance on, traditional cost-of-service regulation.

Rate Counsel does not object to considering utility reforms. Any reform, however, must make sense for New Jersey, be likely to substantially reduce customer rates and bills, and have clearly succeeded in other jurisdictions with little or no adverse consequences. Otherwise, New Jersey risks implementing changes that, while sound in an academic setting, when put into practice, will not reduce rates or bills, will create unnecessary proceedings and disputes, and will, in several years, return New Jersey to the status quo. It is imperative that any process take off rose-colored glasses and recognize there is no silver bullet reform that will resolve this affordability crisis. Rate Counsel reiterates its position that any proposed reforms being considered should be compared to the status quo. Furthermore, the proposed reforms must be clearly defined so they can be properly

¹ The New Jersey Division of the Rate Counsel, In the Matter of Executive Order No. 1 – Modernization of the Traditional Electric Distribution Utility Business Model Study, BPU Docket No. EO26040117, May 29, 2026.

scrutinized, and all evidence of their efficacy, as well as drawbacks, should be fully documented so they can be thoroughly assessed. Moreover, it is critical that the Board consider and document contrary evidence including implementation challenges, delays, and reversals.

In reviewing E3's Phase I Report, Rate Counsel is aware that E3 was operating under a constrained schedule and was tasked with covering a broad range of potential utility business model reforms. Rate Counsel also understands that the Phase I Report is preliminary, and additional work will be undertaken to expand upon, deepen, and substantiate the findings. Therefore, while understandable, the report is not as well documented as it could be. Rate Counsel requests that future reports provide sufficient documentation and descriptions for stakeholders to fully evaluate the findings and recommendations.² This step is critical to assessing potential reforms because, as Rate Counsel's prior comments demonstrate, potential utility model reforms either do not work, create unintended consequences, or are extremely difficult to implement as designed.³

The comments, questions, and requests below are not exhaustive of all of Rate Counsel's concerns with the Report, but they sufficiently illustrate the difficulties Rate Counsel experienced trying to properly assess it.

² For example, each finding and recommendation should include references, including page numbers and quotations, so that the Board and stakeholders know exactly what is being considered in any recommendation and finding.

³ *Ibid.*

SPECIFIC COMMENTS, QUESTIONS, AND REQUESTS

Rate Counsel has the following comments, questions, and requests (page numbers refer to E3's Phase I Report ("Report")):

1. Given the length of the Report, 116 pages, Rate Counsel believes an opportunity to more thoroughly review the report, section by section, with E3 to address clarifying questions regarding the Report's findings, evidentiary basis, and terminology would be more efficient and collaborative than the formal comment filing procedure offered by the Board.

2. On page 16, the Report states, "In total Board staff received and reviewed 56 public comments." However, it is unclear whether E3 incorporated all or a portion of the public comments into its report. Rate Counsel recommends that Board Staff respond in writing to the comments, similar to a rulemaking proceeding.

3. Many statements in the Phase 1 Report are not referenced. The lack of references makes it difficult to impossible for stakeholders to assess the basis for the claims throughout the most critical portions of the Phase 1 Report. Similarly, of the 127 citation footnotes, many do not contain page numbers and often refer to large or multiple documents. Proceeding into Phase 2 without establishing the basis for the findings in Phase 1 jeopardizes the validity of any Phase 2 outcomes.

4. The following illustrates the challenges stakeholders face when attempting to review the Report's findings and their evidentiary basis and the need for further clarification. In

Section 3.6, Enhancing Regulatory Scrutiny of Utility Spending,⁴ and Subsection 3.6.1, Strengthening Accountability for Capital Spending Outcomes,⁵ the Phase 1 Report makes a series of statements which require additional clarification.⁶

a. Page 66: The Phase 1 Report uses terms such as “weak benefit cost” analysis, “poor alternative analysis”, or “insufficient performance accountability”? It is unclear what each of these terms means in the context of this Report and evidentiary basis for that assessment.

b. Page 67: Does the Board believe the current process is insufficient and that it needs “stronger documentation requirements”, “standardized capital program reporting”, “benefit-cost analysis”, “non-wire alternative screening”, “cost caps”, “milestone-based approvals”, “variance reporting”, and “post-construction performance reviews”? It is unclear from the Phase 1 Report what is intended by each of these terms. Further, the same can be said for “standardized capital plan template”, “benefit-cost assumptions”, “expected customer impacts”, “clear consequences for material overruns”, and “rider and tracker guardrails.” There will need to be more discussion on the current process and what changes the Board seeks.

c. Page 67: “NJBPU can begin requiring enhanced documentation, variance reporting, and alternative analysis in current proceedings without waiting for legislation,

⁴ pages 66-70

⁵ pages 67-68

⁶ Rate Counsel’s comments focus on these sections because the reforms discussed therein scored a “High” in “Bill Reduction potential” and are the “most actionable near-term reform categories for New Jersey” (page 68, Table 15). If these are areas where the Board can act quickly, these actions may reduce rates and bills by improving capital expenditure decisions.

laying the foundation for future reform.” For each item listed, the Board should identify current practice, and what it means by these terms, what it is planning to implement and what additional actions should it take?

6. In addition to the questions raised by the findings in Section 3.6, in Appendix B.9 documentation regarding “Strengthening Accountability & Regulatory Scrutiny” is needed to properly assess the statements, assumptions, and findings contained in the Phase 1 Report. To the extent there are citations, they are vague or unclear as to which statements they support. Moreover, many of the conclusory statements highlighting New York State’s “success” need support to be properly evaluated by stakeholders or relied upon by the Board.

SUMMARY

Rate Counsel would like to see the effort to reform the utility business model succeed, however, the effort must proceed under the proviso, first and foremost, that it does no harm. The importance and risks of this proceeding are substantial. Rate Counsel cautions that changing the existing electric utility business model may not reduce rates and bills but could increase them. It is essential for the success of program that built-in safeguards for ratepayers be part of the plan. Rate Counsel is concerned that, while many of the reforms and changes identified in the Phase 1 Report seem promising in theory, when implemented, the reforms will not work as intended and be proven to be counterproductive.

The Board’s best hope for avoiding this outcome is stakeholder-access to comprehensive, neutral, transparent, and completely-documented information, so that the stakeholder process can elicit a sufficient basis on which the Board to make a decision on how to proceed. Rate Counsel's

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comments, questions, and requests regarding the Phase I Report are intended to highlight information needed to bring more clarity to the process and fully evaluate the possible utility business model reforms.

Respectfully submitted,

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By: */s/ David Wand*
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DW/dl

c: Service List (via electronic mail)

**Modernization of the Traditional
Electric Distribution Utility
Business Model
BPU Docket No. EO26040117**

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