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May 29, 2026

Via Electronic Mail

Sherri L. Lewis Secretary of the Board
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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:

The New Jersey Division of the Rate Counsel (“Rate Counsel”) welcomes the opportunity to provide written comments on the proposed Electric Distribution Utility (“EDU”) Business Model Study envisioned in the Governor’s January 20, 2026 Executive Order No. 1 (“EO1”).¹ EO1 provides that “the current cost of electricity has reached the point of crisis for many residents and families, and requires bold action to provide short-term relief and medium and long-term strategies and reforms to improve our energy system.”² To achieve these objectives, Governor

¹ Executive Order No. 1 from the Office of the Governor of the State of New Jersey, Mikie Sherrill, dated January 20, 2026 (EO1).

² Id., at p.1, WHEREAS Clause 3.

Sherrill instructed the New Jersey Board of Public Utilities (“Board” or “BPU”) to conduct “a study regarding modernization of the traditional electric distribution utility business model.”³

Rate Counsel supports an objective, transparent, and comprehensive stakeholder process for evaluating electricity rates in New Jersey and assessing policies to reduce rates, especially for low- and moderate-income families, and improve EDU service quality. The first step in this process should be an exhaustive, detailed analysis of electricity rates for each EDU, including all components. Subject to the completion of the foregoing EDU rate analysis, reforms should be impartially assessed, and should not be limited to presuming performance-based regulation (“PBR”). For this process to be effective and legitimate, the BPU must undertake a genuine and transparent stakeholder process that solicits, considers, and responds to stakeholder input.

What follows is Rate Counsel’s detailed summary of EO1 and the May 7, 2026, public stakeholder meeting,⁴ review of experiences with PBR mechanisms in other states, identification of additional initiatives that the BPU should pursue, and a detailed description of the analysis and process that should be conducted to objectively assess which, if any, PBR mechanisms or other reforms should be adopted.

Executive Summary

The rising cost of living in New Jersey, especially rising energy prices, have created an economic crisis for all New Jersey ratepayers. EO1 directs the BPU to take action to stabilize and

³ Id., at p. 7, ¶ 7.

⁴ State of New Jersey, Board of Public Utilities,, Notice of Stakeholder Meeting in the Matter of Executive Order 1 Modernization of the Traditional Electric Distribution Utility Business Model Study, Docket No. EO26040117, April 30, 2026.

lower electricity rates. Rate Counsel supports the elements of EO1 that result in immediate and meaningful rate relief, such as implementing residential bill credits, using Regional Greenhouse Gas Initiative (“RGGI”) funds to provide customer relief, and reviewing all societal benefit charges (“SBC”) and the Clean Energy Program’s budget (none of which has occurred as of yet). Rate Counsel, however, urges caution with respect to the premise that PBR will achieve the intended result to provide rate relief and has substantial reservations regarding the proposed timeline established in EO1. Although PBR sounds enticing in theory based on its promise to more effectively align the incentives for EDUs to reduce costs and improve performance over the traditional cost-of-service regulation (“COSR”) framework, in practice, it is not a panacea. Despite the incentives, PBR has resulted in higher rates and poorer EDU performance, is limited in its reach because it only applies to a small portion of EDU rates, may take years to implement, and may be abandoned to return to COSR. Rate Counsel recommends the BPU pursue additional initiatives, such as completing a clean energy program management audit and reviewing transmission costs. All these initiatives should be pursued through a robust, collaborative, and transparent stakeholder process.

COMMENTS

A. Summary of Executive Order No. 1, BPU Notice, and the Proposed Consultant’s Study

EO1 and the BPU’s presentation on May 7⁵ specify a consultant’s study to “address the relationship between the traditional business model and recent trends affecting electricity affordability.”⁶ The study should “identify potential policy pathways and opportunities for

⁵ BPU, Robert Brabston presentation, p. 7.

⁶ New Jersey Governor Sherrill, Executive Order No. 1, p. 7.

achieving long-term reductions to, and stabilization of, electricity bills.”⁷ EO1 then lists specific reforms that the study should consider, but is not limited to. The reforms are the following:⁸

- Make utility revenue models less dependent on infrastructure capital spending.
- Expand PBR to interconnecting generating facilities, multi-year rate plans, reductions in EDUs’ return on equity, supplemental transmission projects, least-cost resource testing requirements, asset securitization, and regulations governing infrastructure investments.

EO1 requires the study to be completed by July 19, 2026⁹ and involve at least one public session to inform stakeholders of its development.¹⁰

The study will consist of three phases.¹¹ Phase 1 is a qualitative alternative analysis of recent affordability trends, bill component trends (generation, transmission, distribution, and program cost drivers), and incentive and decision drivers inherent to regulatory structures and utility business models.¹²

Phase 2 is a baseline analysis focusing on data collection and calibration, primarily directed at the EDUs and developing scenarios. Examples of relevant data are recent EDU revenue requirements, cost of service, cost allocation, rate design workpapers, capital expenditures

⁷ Ibid.

⁸ Id., at pp. 7-8.

⁹ BPU, Robert Brabston presentation, p. 8.

¹⁰ New Jersey Governor Sherrill, Executive Order No. 1, p. 8.

¹¹ BPU, Robert Brabston presentation, pp. 10-14.

¹² Id., at p. 10.

(“CAPEX”) and investment forecasts, forecasted sales and load growth assumptions, generation interconnection queues, grid utilization data, and system performance and reliability data.¹³

Phase 3 is a quantitative alternatives analysis that explores alternative constructs and model scenarios, determines effective data presentation, ensures rigorous and transparent analysis, ongoing stakeholder engagement, and reporting.¹⁴

EO1 instructed the BPU to conduct “a study regarding modernization of the traditional electric distribution utility business model” but does not predetermine any outcome or instruct the BPU to take additional steps. Rather the Board should allow the study to examine the alternatives on their objective merits in light of the relationship between the current regulatory scheme and electricity affordability. The process of evaluation should be thorough enough to support whatever conclusions it reaches with credible evidence. A study conducted on a compressed timeline, toward a conclusion that appears to have been predetermined, is not the study EO1 contemplates.

EO1 states the current affordability crisis calls for “bold action” not brash decisions upending the current utility business model solely for the purpose of change, with no comprehensive understanding of the drivers contributing to the current affordability crisis. If the consultant’s study is inadequate, any regulatory changes built upon it could end up harming ratepayers rather than helping. Rate Counsel cautions that conformity to EO1 requires deliberate, thoughtful decision-making. The BPU should extend the study timeline, restructure the phases as

¹³ Id., at p. 11.

¹⁴ Id., at p. 12.

recommended in Section C below, and commit to a stakeholder process that is collaborative and transparent before any implementation steps are taken.

The BPU's current schedule – providing for a consultant study to be completed less than six months after EO1 was issued - cannot support the depth of analysis that responsible modernization of New Jersey's electric distribution system requires. As detailed in Section B below, state commissions that have chosen to implement performance-based regulation have done so over multi-year processes with extensive data collection, iterative stakeholder engagement, and multiple opportunities to course-correct. For example, the process in Hawaii, frequently cited as a model, took more than three years from enabling legislation to adopted framework. New Jersey's timeline compresses that process to a matter of weeks and months.

B. Review of U.S. Experiences with Performance-based Regulation

This section summarizes some of the U.S. experience with PBR. The purpose of this summary is not to provide an exhaustive review but to identify key findings that should inform the consultant's study and the BPU stakeholder process. Although informative, the panel that discussed the experiences in Hawaii, Illinois, Indiana, and Massachusetts did not present a balanced and comprehensive summary of PBR initiatives in those states or in the U.S., nor the current status of PBR in any of those jurisdictions.

1. Performance-based Regulation is Longstanding in the U.S.

The U.S. has implemented PBR for decades.¹⁵ Presently, eleven states have or are implementing PBR, and sixteen are exploring it.¹⁶ Many of these states are exploring PBR as a response to recent electricity price increases.¹⁷ Policymakers consider PBR because it purportedly aligns the EDUs' financial incentives with lowering rates and improving their service, more than COSR. The fact that some states are considering PBR does not mean that it can be implemented successfully or in a timely manner.

What sounds good in theory is much more challenging to implement in practice. According to Kenneth Costello, a seasoned regulatory economist and independent consultant, “the real world poses several challenges to regulators in structuring and implementing performance-based regulation. Both elements are crucial for successful performance-based regulation. A structure may seem appealing on the ‘blackboard’ but falls short of expectations when introduced into the real world.”¹⁸

¹⁵ RMI, Mark LeBel, Introduction to Performance-Based Regulation, May 7, 2026, p. 21 and G. A. Comnes, S. Stoft, N. Greene and L. J. Hill, LBNL Performance-Based Ratemaking for Electric Utilities: Review of Plans and Analysis of Economic and Resource-Planning Issues, Volume I, November 1995, available at <https://eta-publications.lbl.gov/sites/default/files/report-lbnl-37577.pdf>.

¹⁶ NARUC, Performance-Based Ratemaking Tracking Map, <https://www.naruc.org/core-sectors/energy-resources-and-the-environment/valuation-and-ratemaking/performance-based-regulation-state-tracking-map/>. Different references report different numbers depending on what is considered PBR.

¹⁷ Aileen Cole and Dan Cross-Call, Great Plains Institute, GPI and CEG Report Explores Performance-based Regulation for Virginia's Electric Utilities, December 4, 2025, available at <https://betterenergy.org/blog/gpi-and-ceg-report-explores-performance-based-regulation-for-virginias-electric-utilities/>.

¹⁸ Kenneth W. Costello, The Regulatory Review, How Performance-based Regulation for Utilities Can Go Wrong,” May 5, 2026, available at <https://www.theregreview.org/2026/05/05/costello-how-performance-based-regulation-for-utilities-can-go-wrong/>. The article continues: “Utility exploitation is a distinct possibility that regulators cannot ignore in reviewing and approving a performance-based regulation mechanism.” See also Costello, Kenneth W. “How PBR can go wrong.” *The Electricity Journal* 33.7 (2020): 106801.

PBR's approaches financially reward EDUs for reducing capital expenditures and require accurate initial estimates of those expenditures. To obtain that information, the BPU must either rely on the EDU cost estimates, which risks the EDU inflating them to collect more of the savings, or conduct a process to determine their amount, which is akin to COSR.¹⁹ PBR approaches that provide incentives when the utility meets certain performance targets, such as customer center call wait times or the length of customer outages, require access to data to which the utility alone has access. As Kenneth W. Costello recently wrote in The Regulatory Review:

Inevitably, the utility will propose a benchmark that will facilitate earning a reward and avoiding a penalty. The utility may present its cost opportunities as lower than they really are. The utility may argue, for example, that it has certain constraints in reducing costs when, in fact, it has no such constraints. Utilities could then recover all of their costs even when they perform poorly.²⁰

Either the BPU must rely on the EDU's data or spend significant time, effort, and money verifying all the underlying data for each performance target. As discussed below, there are many different PBR options and, over time, states that have implemented PBR have had to change course as they confront its very real and substantial implementation difficulties.

2. Performance-based Regulation is a Disperse Collection of Approaches

PBR is not a single alternative to COSR but an overarching term that covers many distinct approaches (that typically require some type of COSR), including multi-year rate plans,

¹⁹ The PBR plan for NSTAR, the electric distribution and transmission company in Boston) has a little over 100 pages on PBR and 450 pages on traditional COSR. See Paul L. Joskow, The Expansion of Incentive (Performance-Based) Regulation of Electricity Distribution and Transmission in the United States, Review of Industrial Organization, June 17, 2024.

²⁰ Kenneth W. Costello, The Regulatory Review, How Performance-based Regulation for Utilities Can Go Wrong, May 5, 2026, available at <https://www.theregreview.org/2026/05/05/costello-how-performance-based-regulation-for-utilities-can-go-wrong/>.

performance incentive mechanisms (“PIMs”), the consideration of non-traditional solutions, and modernizing utility planning processes.²¹ Within each of these categories are multiple approaches. For instance, multi-year rate plans can use a price cap, revenue cap, or annual revenue changes over the duration of the plan, and their designs must be integrated with other revenue adjustment clauses.²² PIMs can be tracked informally or formally and benchmarked against historical trends or other jurisdictions.²³ There are multiple categories of PIMs such as reliability and resiliency, clean energy and environmental emissions, affordability, customer service, and many more.²⁴ Thus, the number of combinations of multi-year rate plans, revenue and price approaches, and PIMs is multifarious. For instance, in 2023, Hawaii had 10 PIMs, including shared savings mechanisms, and eleven categories of scorecards and reported metrics.²⁵ These approaches can also be combined, adding to the number and potentially increasing the complexity of their interactions. Thus, PBR is “not a shortcut and takes care and attention.”²⁶

3. The Success of Performance-based Regulation is Modest, Mixed, and Could be Adverse

Over the decades, the success of PBR is, at best, modest and mixed and has also, in some instances, failed and caused unintended consequences.²⁷ Lawrence Berkeley National Laboratory (“LBNL”) concluded in 1995:

²¹ RMI, Mark LeBel, Introduction to Performance-Based Regulation, May 7, 2026, p. 24.

²² Id., at p. 25.

²³ Id., at p. 28.

²⁴ Paul L. Joskow, The Expansion of Incentive (Performance-Based) Regulation of Electricity Distribution and Transmission in the United States, Review of Industrial Organization, June 17, 2024.

²⁵ State of Hawaii Public Utilities Commission, Monitoring Hawaiian Electric’s Progress, July 2024, available at <https://puc.hawaii.gov/energy/pbr/monitoring-hawaiian-electrics-progress/>.

²⁶ RMI, Mark LeBel, Introduction to Performance-Based Regulation, May 7, 2026, p. 24.

²⁷ Id., at p. 26. For a critique of performance-based regulation in general, see Coglianese, C. (2016), The limits of performance-based regulation, *U. Mich. JL Reform*, 50, 525. See also David E. Dismukes, Acadian Consulting

Our analysis indicates that it is an open question whether PBR as proposed and implemented by our sample of early-adopting electric utilities represents an improvement over COS/ROR [cost of service/rate of return] regulation. The PBR plans in our sample are hampered by the relatively short time commitments that are made between utilities and regulators. Further, because of earnings sharing mechanisms and other exclusions, the incentive power of many PBR plans is diluted. The combined effect of modest terms and low incentive power results in some PBRs with incentive powers that differ little from COS/ROR already prevalent in the U.S.²⁸

In 2014, RMI found:

Many approaches to PBR have been attempted over recent decades, and not all of them have been successful. It is important to be aware that, because all regulation is incentive regulation, a PBR mechanism is likely to have unintended consequences, and it is crucial to understand the incentives that it creates. This requires extreme caution on the part of the regulator. Attempting to see the flaws in a proposed mechanism is one of the most challenging aspects.²⁹

In 2020, RMI concluded:

From a historical perspective, PIMs have a mixed track record in delivering effective and sustainable changes to utility performance. While there are plenty of success stories, there are also many examples of PIMs that did not motivate desired utility behavior, created perverse incentives, or either over- or under-compensated utilities relative to the customer benefits created.³⁰

In 2024, Acadian Consulting found:

There are three major forms of alternative regulation: Formula Rate Plans (“FRPs”); Performance-Based Ratemaking (“PBR”) plans; and Multi-Year Rate Plans (“MYRPs”). To date, none have led to

Group, Ratepayer benefits and impacts from alternative regulation: A survey and implications for Indiana, November 22, 2024, available at <https://www.in.gov/iurc/files/OUCC-Responses-to-Second-Survey-11-22-24.pdf>.

²⁸ G. A. Comnes, S. Stoft, N. Greene and L. J. Hill, LBNL Performance-Based Ratemaking for Electric Utilities: Review of Plans and Analysis of Economic and Resource-Planning Issues, Volume I, November 1995, p. xxv, available at <https://eta-publications.lbl.gov/sites/default/files/report-lbnl-37577.pdf>.

²⁹ Jim Lazar, RMI, Performance-Based Regulation for EU Distribution System Operators, May 2014, p. 14, available at <https://www.raponline.org/wp-content/uploads/2023/09/rap-lazar-performancebasedregulationeudsos-2014-may.pdf>.

³⁰ Cara Goldenberg, Dan Cross-Call, RMI, Aligning Utility Performance with the Public Interest, July 30, 2020, available at <https://rmi.org/aligning-utility-performance-with-the-public-interest/>.

any meaningful nor measurable ratepayer benefits. Alternative regulation has not resulted in any sustainable nor distinctly measurable improvement in reliability or quality of service. Alternative regulation mechanisms have resulted in large rate increases with very few rate decreases nor earning sharing opportunities. In addition, no measurable operating costs efficiencies have arisen in any state due to alternative regulations. In fact, most states have seen a deterioration in capital investment discipline and huge gains in rate base due to alternative regulation. There is not one single state adopting FRPs, PBR plans, or MYRPs that has shown outcomes that can be held out as an unequivocal “success” for ratepayers.³¹

In 2026, RMI found that “[n]ot all multi-year rate plans are created equal. They can be ineffective, and even harmful, without careful design that aligns the plans with the intended goals.”³² RMI does note that “[m]odern PBR should be considered a formalization of and improvement on less rigorous methods used historically by utility regulators and policymakers” but does not define what Modern PBR means, how it is distinct from prior PBR practices, what the more rigorous methods are that should be used, and what the results from these methods are.³³ RMI also concluded that “[i]f not designed effectively, PIMs can contribute to increasing costs.”³⁴ For the most part, U.S. PBR efforts were developed before the explosive growth in data center load, substantial inflation, and supply chain shortages, raising questions about the relevance of past efforts in the current environment.

³¹ David E. Dismukes, Acadian Consulting Group, prepared on behalf of the Indiana Office of Utility Consumer Counselor, Ratepayer benefits and impacts from alternative regulation: A survey and implications for Indiana, November 22, 2024, p. 3, available at <https://www.in.gov/iurc/files/OUCC-Responses-to-Second-Survey-11-22-24.pdf>.

³² RMI, Mark LeBel, Introduction to Performance-Based Regulation, May 7, 2026, p. 26.

³³ Id., at p. 24.

³⁴ Carina Rosenbach and Rachel Gold, RMI, Looking Under the Hood: How PUCs Evaluate Performance Incentive Mechanisms, August 6, 2025, available at <https://rmi.org/looking-under-the-hood-how-pucs-evaluate-performance-incentive-mechanisms/>.

C. PBR's Limited Rate Scope, Long Development Timelines, and BPU's Readiness Need to be Considered

1. Performance-Based Regulation Applies to a Small Portion of New Jersey Electricity Rates

New Jersey electricity rates have multiple components, only some of which would be covered by an EDU PBR. Since an EDU PBR can only potentially affect a small portion of electricity rate components, the potential for rate reductions is limited.

The rate components consist of wholesale market or basic generation services (electric energy, capacity, and ancillary services), transmission (regional and local transmission), service charge, distribution, New Jersey State energy and policy programs, the Infrastructure Improvement Program (“IIP”), the Conservation Incentive Program (“CIP”), and New Jersey State Sales and Use Tax (“SUT”). An EDU PBR would cover the service charge and distribution, and perhaps the IIP and CIP. Based on the electric utility bill example presented during the May 7 stakeholder meeting, an EDU PBR would account for between 22% (19% distribution plus 3% service charge) and 27% of the rates (4% IIP plus 1% CIP)³⁵ before adjusting for the SUT of 6.625%.³⁶ After removing the SUT, the EDU PBR could apply to 21% to 25% of a residential electricity bill. Most importantly, an EDU PBR would not cover the increasing wholesale electricity costs, which have dramatically increased due to the influx of new data centers³⁷ and transmission costs,³⁸ and are

³⁵ BPU, Robert Brabston presentation, p. 14.

³⁶ NJ Treasury Division of Taxation, Sales and Use Tax, available at <https://www.nj.gov/treasury/taxation/businesses/salestax/index.shtml>.

³⁷ Ethan Howland, Utility Dive, ‘Clear warning signs’ as PJM wholesale power costs jump 54% in one year, March 13, 2026, available at <https://www.utilitydive.com/news/pjm-capacity-energy-market-reliability-monitoring-analytics/814647/>.

³⁸ “In the PJM Interconnection (PJM) region, which includes Maryland, 12 other states, and Washington, D.C., transmission rates have roughly doubled over the past decade.” State of Maryland, Office of People’s Counsel, PJM Transmission Cost Impacts on Electricity Customers in Maryland, March 2026, p. 1, available at <https://opc.maryland.gov/Portals/0/Files/Publications/Rising%20Transmission%20Costs%202026-03-25%20CORRECTED%20FINAL.pdf>.

largely responsible for the substantial increases in bills seen by New Jersey ratepayers in the past two years.

2. Performance-Based Regulation Takes Years to Design, Implement, Evaluate, and May Be Abandoned

PBR takes a long time to fully implement. According to RMI, “[t]he reform process can be complex – and long!”³⁹ RMI explains “[a]chieving PBR reforms take time. Individual proceedings can last for years, and the full suite of changes needed to move to comprehensive PBR can take even longer. Regulators, utilities, and advocates should keep this in mind.”⁴⁰

For example, the Hawaiian process has been described as a “long and effortful journey to comprehensive PBR.”⁴¹ The Hawaiian Ratepayer Protection Act was passed in April 2018, the Hawaiian Public Utility Commission (“HPUC”) adopted the new PBR framework in December 2020, and working groups finalized the PBR framework and tariffs in June 2021.⁴² In February 2025, the HPUC determined that Hawaiian Electric’s (“HECO’s”) rates should be “re-based” using a “general rate case-type proceeding.”⁴³

³⁹ RMI, The Nuts and Bolts of Performance-Based Regulation: Tools to Build a More Affordable, Reliable, and Equitable Grid, July 2024, p. 48, available at https://rmi.org/wp-content/uploads/dlm_uploads/2024/07/PBR_Deck_final.pdf.

⁴⁰ Ibid.

⁴¹ Id., at p. 55.

⁴² Ibid.

⁴³ Hawaiian Public Utilities Commission, Addressing the Matter of Re-basing Hawaiian Electric’s Target Revenues for the Second Multi-Year Rate Period, Docket No. 2018-0088, February 27, 2025, p. 2. The HPUC also provided suggestions for modifying this re-basing proceeding from a traditional rate case to improve administrative efficiency and be consistent with Hawaiian’s PBR framework (p. 2). Rate Counsel also notes that notwithstanding PBR, now at the end of its first multi-year rate period, HECO has proposed an additional \$170 million in annual revenue, which is projected to increase residential bills by \$8-\$12 monthly See Hawaiian Electric, Key facts on Performance Based Regulation, rate reset (March 6, 2026)(available at <https://www.hawaiianelectric.com/key-facts-on-performance-based-regulation-rate-reset>).

The BPU's timeline to evaluate PBR is unrealistic. Conducting a study that supports a preordained conclusion of the benefits of PBR will not benefit ratepayers. A rushed proposal will likely unravel during proceedings to modify EDU tariffs or fail to achieve the desired results.

Rate Counsel respectfully submits that the BPU's success in this proceeding will not be measured by the speed with which it produces a regulatory change, but by whether that change demonstrably lowers bills, improves service reliability, and proves durable under the scrutiny of future proceedings. A rushed process that produces neither is not reform or modernization.

3. A Robust, Collaborative, and Transparent Stakeholder Process Is Necessary for Evaluating Performance-based Regulation and Additional Reforms

A robust, collaborative, and transparent stakeholder process is critical to the success of energy reforms in general and the consideration of PBR specifically.⁴⁴ According to Pacific Economics Group Research:

One common characteristic of well-designed PBR studies in other states is a robust, collaborative stakeholder process. Virginia's stakeholder process should incorporate best practices from model states, including Connecticut, Hawaii, Minnesota, and Nevada. These states have benefited from an intentional effort to engage and inform a broad collection of stakeholders over many months. In Connecticut, for example, regulators have implemented a multi-phase process lasting several years, including formal information requests, several written comment periods, topic-targeted stakeholder workshops, public listening sessions, and opportunities for feedback on draft proposals. In Hawaii, regulators facilitated a stakeholder process lasting more than two years, which ultimately

⁴⁴ Dan Cross-Call, Rachel Gold, Cara Goldenberg, Leia Guccione, and Michael O'Boyle, Navigating Utility Business Model Reform (2018), p. 41, available at https://rmi.org/wp-content/uploads/2018/10/RMI_Navigating_Utility_Business_Model_Reform_2018-1.pdf.

resulted in a comprehensive regulatory framework with multiyear rate plans, performance incentives, and innovative energy pilots.⁴⁵

Rate Counsel recommends the BPU and its consultants draft a detailed stakeholder engagement plan that is robust, collaborative, transparent, and subject to stakeholder review and comment. The stakeholder engagement plan should allow for meaningful contributions and participation by stakeholders in workshops, sufficient time to submit written comments, written responses by BPU Staff and its consultants to stakeholder comments, the opportunity to review and provide written comments on all consultant draft and final reports, and access to all data and analyses conducted by the BPU consultants in an accessible and data-useable format (e.g., available in spreadsheets, not .pdf files). Without a robust, collaborative and transparent stakeholder process, the BPU risks prolonged and potentially unsuccessful PBR regulatory proceedings.

4. Performance-based Regulation Will Require Structural and Institutional Adjustments by the New Jersey Board of Public Utilities

The success of PBR depends on effective data, information, and institutional support, which exceeds current regulatory capabilities. If the State adopts a comprehensive PBR regulatory structure, the BPU's role changes fundamentally. The BPU must shift from focusing on cost-of-service rate cases to collecting and evaluating utility performance data, benchmarking, setting and updating performance targets and metrics, and managing rewards and penalties tied to PIMs. This

⁴⁵ Mark Newton Lowry, Matthew Makos, Rebecca Kavan, Pacific Economics Group Research LLC, Performance-Based Regulation: Basic Features and Possible Applications to Virginia's Electric Utilities, December 2, 2024, pp. 50-51, available at <https://energy.virginia.gov/public/documents/Stakeholders/PBR%20for%20Virginia%20Electric%20Utilities-PEG.pdf>.

shift requires new processes, staff training, hiring, and organizational changes within the BPU. Implementation will take time. Rate Counsel urges the BPU to retain its COSR capabilities since PBR frequently depends in part on COSR.

D. PBR Lacks Near-Term Impact on the Primary Drivers of EDU Rate Increases in New Jersey

1. Additional Reforms are Needed to Address Electricity Affordability Besides Performance-Based Regulation

At best, PBR results in modest outcomes, and, at worst, adverse ones. It is also only able to affect approximately 25% of New Jersey electricity rates, and it takes a long time to implement. As such, additional non-PBR reforms are needed. EO1 mandates these types of reforms, such as providing residential bill credits, using RGGI funds to provide customer relief, reviewing all SBCs and the Clean Energy Program's budget (without impacting low-income customers), and pausing EDU rate increases.⁴⁶ These reforms should be fast tracked and assigned a higher priority than PBR because they can result in immediate and meaningful electricity rate reductions.

Additional reforms should be pursued beyond those identified in EO1. First, Rate Counsel recommends the BPU identify, analyze, and implement efforts to reduce transmission costs, particularly supplemental projects, which are not reviewed by PJM for need or cost effectiveness.⁴⁷

⁴⁶ BPU, Robert Brabston, BPU Executive Director's presentation, p. 7.

⁴⁷ PJM, PJM Members Review Planning Under M-3 Process, October 22, 2019, available at <https://insidelines.pjm.com/pjm-members-review-planning-under-m-3-process/>. "Supplemental Projects are transmission system improvements identified by Transmission Owners to meet local needs not required for compliance with PJM criteria for reliability, operational performance or economic efficiency, and they are not state public policy projects."

Second, Rate Counsel recommends the BPU should also commission an independent management audit of the New Jersey Clean Energy Program.⁴⁸ A major deficiency of the Clean Energy Program's management is that consistently, year over year, it over-collects funds from ratepayers. Rate Counsel has repeatedly observed the following assessment:

For over a decade, the BPU has failed to comply with its statutory mandate to set a NJCEP Budget that balances the State's clean energy goals and the ratepayers' interests based on meaningful and careful analysis of each program. Instead for more than a decade, the BPU has utilized a top-down budgeting approach collecting approximately \$344 million from ratepayers each year and apportioning it to a suite of programs without providing any analysis or data of the costs, benefits, or needs of these programs to the public. This has resulted in a massive over collection of money from ratepayers and higher rates over that time. Recognizing the affordability crisis and the opportunity for impactful change to bills and the Clean Energy Program, the new administration issued an executive order seeking to help ratepayers by requiring a budget process that reins in excessive bills caused by prior Clean Energy budgets.⁴⁹

A management audit is a structured evaluation by a qualified independent consultant to assess the Clean Energy Program's budget and performance. It should evaluate the program's alignment with its goals, risk management, subcontractor performance, and corrective action for implementation. Key components include assessments of the Clean Energy Program's performance monitoring, stakeholder alignment, budget and contract control and management,

⁴⁸ Based upon the New Jersey Clean Energy website (<https://cleanenergy.nj.gov/resources/evaluation-reports-market-analysis-baseline-reports-and-trms?section=process-evaluations>) an independent management audit has never been conducted. In addition, process audits of each program need to be updated. The only process audit listed is the Local Government Energy Audit Program in 2024.

⁴⁹ New Jersey Division of Rate Counsel Comments, In the Matter of Comprehensive Energy Efficiency and Renewable Energy Resource Analysis for Fiscal Year 2026 Clean Energy Programs BPU Docket No. QO25040205 In the Matter of Clean Energy Programs and Budget for the Fiscal Year 2026 – True-Up, Revised Budgets and Program Changes, BPU Docket No. QO25040206, April 1, 2026.

data-driven decision-making, comprehensive assessment of program participation, and the program's strategic goals and structure. Audit findings can provide actionable recommendations to enhance operational efficiency, strengthen financial controls, and guide decision makers on practices to prevent the overcollection of ratepayer funds.

2. A Temporary Rate Freeze Alone Will Not Solve the Affordability Crises

Rate Counsel emphasizes that rate relief must be lasting, as a temporary pause on rate increases alone does not constitute genuine relief for New Jersey ratepayers. Unaccompanied by qualitative solutions to the factors driving the rate increases cited in the Section above, a rate freeze merely defers the harm, it does not eliminate it. When the freeze period expires, ratepayers face the same underlying cost pressures, now compounded by any costs that accumulated and were not recovered during the freeze period, as well as potentially carrying charges. The result is a larger, steeper rate increase than would have occurred absent the freeze causing rate shock that will fall hardest on the low- and moderate-income households. Such an outcome is a predictable consequence of treating a rate freeze as an end in itself, rather than as an opportunity to evaluate and address the rate increase drivers.

Rate Counsel recommends the BPU pair any rate pause with concrete, enforceable commitments to address the underlying drivers of rate increases. Any rate pause must be conditioned on a plan that specifies how each major cost driver will be addressed during the pause period, what measurable reductions in those cost drivers will be achieved before rates are allowed to increase again, and how the BPU will prevent the expiration of a rate freeze from compounding the very affordability crisis EO1 seeks to resolve. A pause without a plan is a band-aid, not a cure.

E. Necessary Elements to Ensure the Success of the Proposed PBR Performance-based Regulation Consulting Study

As noted above, the proposed PBR Consulting study consists of three phases. Phase 1 is a qualitative alternative analysis, Phase 2 is a baseline analysis focusing on data collection and calibration, and Phase 3 is a quantitative alternatives analysis. The BPU and its consultants have not provided sufficient information regarding the purpose, methodology, and outcomes of each phase, their timelines, and the roles of stakeholders in providing information, reviewing, and commenting on the study.

Based on the limited information that has been provided regarding the PBR study, Rate Counsel strongly recommends the following:

1. Instruct the consultants to conduct an independent and rigorous study that does not presuppose that PBR should be adopted but instead analyzes the advantages, disadvantages, and tradeoffs between COSR and different PBR approaches.
2. Draft a detailed study workplan with the opportunity for stakeholders to comment along the way and require BPU Staff to provide written responses to all comments. This is a necessary step to ensure the study's success and stakeholder support.
3. Switch the order of Phases 1 and 2 so that the qualitative alternative analysis is conducted after the initial data collection and calibration. Discussing alternative solutions before any analysis is undertaken is putting the cart before the horse.
4. The baseline analysis (proposed as Phase 2 but would now become Phase 1) should include a comprehensive and systematic analysis of the last 10 years of residential electricity rates for each utility and a forecast for the next five years; in other words, it should define and analyze the problem. To make an informed evaluation of alternatives, the BPU should identify all the billing components of residential electricity bills, including all state taxes and policy costs. The numerical values of each of these components (e.g., monthly fee, distribution cost, transmission cost, PJM wholesale market costs (i.e., energy, capacity, ancillary services), infrastructure improvement charges, SBC, Renewable Portfolio Standard ("RPS") charges, Zero Emission Certificate ("ZEC"), solar/green charges, CIP, S&UT, etc.) should be compiled for each utility for the past 10 years and forecasted for the next five years.

5. Before starting Phase 3, BPU Staff should update the study workplan based on results from Phases 1 and 2 and recirculate the revised workplan for stakeholder comment. The BPU should respond to all comments in writing.
6. For each alternative model considered in Phase 3, analyze which component of the residential retail bill would be impacted, how much it would change over the next five years, and what its impact would be on quality of service. Consider other alternatives beyond regulatory reform.
7. Make publicly available all data, analyses, and models used by the consultant. If any data or models are proprietary, establish a process for Rate Counsel and its consultants to access them, subject to an appropriate non-disclosure agreement.

CONCLUSION

It is entirely unclear to Rate Counsel what the BPU hopes PBR will accomplish for ratepayers. At best, it may yield modest benefits for ratepayers, and, at worst, it may result in substantial negative outcomes. An EDU PBR can affect only approximately 25% of New Jersey electricity rates, substantially limiting its ability to improve affordability. It will take years to implement PBR, and it may be substantially modified or even reversed, meaning ratepayers are not likely to experience any benefits in the near term and may not experience any in the long term.

From these findings, the BPU should not presume that a PBR alternative must be adopted. Instead, the Board has an obligation to objectively and comprehensively evaluate alternatives, including COSR, their impacts on electricity rates, and identify the accompanying policies that must be considered before moving forward. The proposed PBR consulting study should not be rushed and it should be modified to allow robust stakeholder input as suggested herein. Additionally, it is incumbent upon the BPU to identify other affordability efforts in EO1 which should be pursued with deliberate speed and the BPU must recognize that a rate freeze without addressing the drivers of the affordability crisis is not relief, it is essentially postponed harm. Concurrently with the study of regulatory alternatives, such as PBR, the Board should also pursue

Secretary Sherri L. Lewis

May 29, 2026

Page 21

meaningful efforts to reduce transmission costs, particularly supplemental projects, and commission an independent management audit of the New Jersey Clean Energy Program to address the overcollection of funds. Only through an objective, transparent, and comprehensive stakeholder process for evaluating electricity rates in New Jersey and assessing policies to reduce rates, can the Board hope to successfully achieve the goals set forth in EO1.

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DW/dl

cc: Service List

**Modernization of the Traditional
Electric Distribution Utility
Business Model
BPU Docket No. EO26040177**

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