



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

TAHESHA L. WAY
Lt. Governor

BRIAN O. LIPMAN
Director

Remarks of Brian O. Lipman, Director, Division of Rate Counsel, regarding S4876 ("New Jersey Energy Security and Affordability Act"; establishes advanced nuclear reactor distributed energy storage, and demand optimization programs in BPU) Presented at the Senate Environment and Energy Committee Meeting,

December 1, 2025

Good morning and thank you for the opportunity to discuss S4876 ("New Jersey Energy Security and Affordability Act"; establishes advanced nuclear reactor distributed energy storage, and demand optimization programs in BPU). My name is Brian Lipman, and I am the New Jersey Director of the Division of Rate Counsel. As you are aware, the Division of Rate Counsel represents and protects the interest of all consumers---residential customers, small business customers, small and large industrial customers, schools, libraries and other institutions in our communities. Rate Counsel is a party in cases where New Jersey utilities or businesses seek changes in their rate and/or services. Rate Counsel also gives consumers a voice in setting energy, water and telecommunications policy that will affect the rendering of utility services well into the future.

I will be blunt, if you truly care about affordability, you must vote no on this bill. As I will explain in detail below, this bill will increase rates for all ratepayers, perhaps as high as \$55 per month. It will not assist with reliability, and it will not bring down high energy rates. It violates the longstanding principle that ratepayers will not pay for utility infrastructure until it is used and useful. It is likely that the bill will be found to be unconstitutional as it appears to run afoul of the Supreme Court's ruling in *Hughes v. Talen*, where the U.S. Supreme Court struck down New Jersey's last law that tried to subsidize the building of power plants. This bill provides neither energy security nor affordability, and I urge you in the strongest terms possible to vote no on the bill as proposed.

There is some merit to the first part of the bill, requiring the Department of Environmental Protection to study the feasibility and barriers to development and deployment of advanced nuclear reactors. It is inherently logical to first identify the problem. Indeed, Rate Counsel supports an in-depth review of whether more in-state nuclear power makes sense and if it does, what is keeping it from being built. For that reason, we support S4689, also before this committee today as well. This bill, however, goes too far. Before it is even determined that more in-state nuclear is feasible, or if there are any barriers to building nuclear in New Jersey,

the bill obligates ratepayers to pay billions in additional rates, whether the facilities are needed or not. Customers' bills will increase before we know: Are there other sources of funding that could be tapped to assist with the cost of these facilities? Will federal loans be available? Is there a way to protect ratepayers if the projects prove not to be feasible? Will the mechanism established in this bill bring the capacity and savings that we need? We need answers to these questions before we commit to transferring the risks and costs to ratepayers and dramatically raising electric rates for everyone in the State of New Jersey. Rate Counsel agrees that studying the issue to find out what is needed makes sense. Throwing money at the issue, before even knowing what the issue is, does not.

This bill requires New Jersey ratepayers to fund the construction and operation of at least one or more nuclear power plants outside of the competitive market process. This means that electricity customers in New Jersey will bear all the risk of these facilities being built and providing power. A risk currently borne by investor-owned merchant generators.

And pay they will. Our initial estimate of just the nuclear portion of the bill is that this will increase electric bills for the average customer by \$22 to \$55 per month. The cost to commercial and industrial customers will be even higher. These increases could be double what we saw last summer, just after New Jersey's voters have made it very clear that energy affordability is a paramount concern. Shockingly, this massive increase will be put into place before any electricity flows from these power plants. All risk that the plants never get built has been shifted to ratepayers. Even if they are built, ratepayers will not own or share in the profits from them, but they will continue to pay higher rates to pay for their operation. Finally, as I will discuss below, while ratepayers will pay for the entire plant, not all of its electricity will stay in New Jersey, having New Jersey ratepayers paying these higher bills to support the needs of other states.

Even getting past the shocking cost of the bill, it is unclear that this bill can pass constitutional muster. The last time New Jersey attempted to subsidize power generation, we guaranteed a specific recovery for those units. Under the Long-Term Capacity Agreement Pilot Program ("LCAPP") in 2011, we created a program to encourage construction of new gas fired plants. At that time, New Jersey also faced serious reliability concerns. The LCAPP provided for a competitive process to award contracts to generators who would be paid a set price for the energy and capacity they generated. Once built, the energy and capacity would be bid into the PJM markets, and the generators would be paid by ratepayers for the difference between what they earned in the markets and the agreed upon price. We agreed that regardless of what the facility earned in the market, we would ensure the unit earned a set amount. The U.S. Supreme Court found that the LCAPP Act violated the Supremacy Clause of the U.S. Constitution and struck down our law, finding that it interfered with FERC's jurisdiction. This bill does almost the same thing. We are guaranteeing a subsidy, which will be reduced by the amount earned in the market. We are again requiring the generator to bid into the PJM markets, but guaranteeing a price regardless of the market outcome. While the mechanics are slightly different, this bill, if enacted, would almost certainly be challenged, and it is unclear that New Jersey can make a meaningful enough distinction between this bill and the LCAPP Act.

And, if the bill does pass legal muster, PJM is likely to mitigate the bids of any subsidized unit to avoid skewing the competitive aspects of the market, thus creating greater risk that ratepayers will not get the desired return on their investment, but rather pay twice—first for these units and second for the capacity needed that these units cannot fulfill due to PJM rules. Assuming electricity ever does flow from these nuclear power plants, there is no guarantee New Jersey's captive customers will reap the intended benefits of the subsidized nuclear plants. The way the grid works, the power coming out of these plants, wherever they are located, will be bid into the PJM markets and therefore benefit not only New Jersey, but also surrounding states, such as Pennsylvania, Delaware and Maryland. This bill leaves New Jersey ratepayers paying subsidies for capacity they may not even use.

Some will argue that there will be a corresponding decrease in energy and capacity prices from bidding these facilities into the PJM markets. That is simply untrue. First, while ratepayers pay higher rates during construction, these facilities will have no impact on market prices. Indeed, these units will take at least ten years to build, so for ten years, ratepayers will pay higher rates with no relief in the market. That of course, assumes the units will be built. If they are not built, ratepayers will be on the hook for all "stranded" costs. Ratepayers could pay higher rates for years with no plants being built. Second, it is not clear that these facilities will be able to bid into and clear any of the PJM markets. PJM has historically protected its markets from subsidized resources and should be expected to do so here. Any revenues from those markets are speculative and may never materialize.

Moreover, this bill will ensure that no other electric generation developer will build in New Jersey again. There is currently a developer of nuclear generation stating publicly that it wants to build in New Jersey without subsidies. Businesses, like that and other generators, cannot compete against state-subsidized generation. Thus, rather than increase private business' interest in creating generation in New Jersey, this bill will stifle it. This bill guarantees that the only new generation to be built in New Jersey will be subsidized by captive New Jersey ratepayers.

The PJM markets are far from perfect—I think we all agree on that. But the idea of markets, and using them to drive down prices, is a fundamental core of New Jersey energy policy. This bill would eliminate our reliance on markets, shifting risk from developers onto captive ratepayers. Currently, a merchant generator decides to build a generation facility and takes the risk to do so. They bear the risk that they will be able to complete construction of the facility, the risk that it will be financially viable, and the risk that it will be needed for the life of the facility. This bill shifts those risks to ratepayers. To be clear, a merchant generator—including PSEG or Holtec—can build a nuclear power plant today. They could assume all the risk. But why would they, when we are willing to transfer all their risk to ratepayers? If during construction it is determined that the facility is not viable, they can walk away and lose nothing. If after it is built and the market does not generate sufficient revenues, it does not matter, New Jersey ratepayers will pay for it anyway. If it is determined that we no longer need that electricity, it does not matter, New Jersey ratepayers will pay for it.

On that last issue, we need to be very clear here. The PJM load forecast is extremely questionable. Will all this increased demand actually materialize? We do not know, but more

concerning, PJM does not know. The bulk of the increase in demand that we are seeing is from data centers. In the Legislative findings for this bill, there is a statement that, “Even absent such projected growth in demand, current low capacity has resulted in record high capacity market prices.” This is simply not true. Dr. Bowring, the Independent Market Monitor for PJM has clearly stated in his 2025 analysis of the 2026/2027 RPM Base Residual Auction that “but for data center growth,” PJM would not have experienced tight supply conditions and high prices in its base residual auctions. He goes on to state: “It is misleading to assert that the capacity market results are simply just a reflection of supply and demand. The current conditions are not the result of organic load growth. The current conditions in the capacity market are almost entirely the result of large load additions from data centers.”

Data centers must be made to pay for their capacity needs. How many data centers will be built and how quickly is anyone’s guess. While there is increasing demand for these data centers, there are also a number of physical limitations—the number of micro chips, the amount of water available, and the actual physical ability to build them all. There are already companies out there innovating more creative ways to operate data centers, with micro chips that require less electricity. It is possible that in ten years, after these nuclear facilities are built, that demand will have stabilized or even gone back to what were previously normal levels. In a market based realm, the risk of that happening falls on the merchant generator. Under this bill, the risk falls on New Jersey ratepayers, who will continue to pay for these nuclear units even if they are no longer needed. This risk shifting from captive ratepayers to private companies has serious financial impacts on New Jersey, making this bill something we simply cannot afford.

The bill also requires that ratepayers begin funding a nuclear power plant, before any electricity is being generated. It is a longstanding principle of utility law that ratepayers only pay for utility infrastructure that is “used and useful.” While the utility ultimately does recover its construction costs, it must wait until it provides a product that benefits ratepayers. Here, ratepayers will be paying before receiving any benefit. Moreover, the bill permits an “allowable cost increase” to be recovered from ratepayers. This includes costs that “could not have been reasonably foreseen by the project.” The last nuclear plant to be built, the Vogtle plant, was seven years late and more than \$17 billion over budget. Interestingly, there is no corresponding provision in this bill to lower the costs if circumstances change. Given that this will be one of the first projects of its kind, this is essentially a blank check for increases. Ratepayers are not just the bank for these projects, they are an unchecked, unlimited pot of money for these projects. Forcing ratepayers to pay for construction during the building of the project simply results in higher rates—nothing else, no reliability, no rate relief—just higher rates. At a time when affordability is at the forefront, this bill is the antithesis of that core concept.

The mechanics of the bill also raise significant concerns. First, the bill is internally inconsistent and leaves significant terms undefined. At some points, the bill seems to require ratepayers to pay all of a qualified project’s construction costs. In other parts, those payments may be limited. It has been Rate Counsel’s experience that such ambiguity always favors the entity receiving subsidies and never the ratepayer. Many other portions of the bill contradict each other, evidence of a rushed process that did not seriously consider the implications of this bill. Words like “unreasonable” and “excessive” are left undefined. There is clearly a wide opinion of what constitutes unreasonable or excessive rates, however, resolution of those

disputes rarely favor ratepayers. These inconsistencies and ambiguities further the likelihood that a court will strike down this bill if it is enacted.

Second, the bill requires BPU to find “at least one” nuclear facility to build. There could be multiple, there is no cap on how many or how much ratepayers will pay. Our cost estimates are for one unit. Multiple units mean that electric rates could go up over \$100 a month. Applicants would then file expressions of interest with the BPU to seek qualification for these ratepayer subsidies. Included in the application is a subsidy amount that will cover “the total revenue requirements of the project.” This means that regardless of any federal loans, income generated by the facility or any other financial advantage the project receives, ratepayers will be responsible for all costs of the construction and operation of the unit. Ratepayers are the financial backstop and hold all the risk. The applicant will have to identify “anticipated impact to ratepayers, including the anticipated impact per month on ratepayer bills,” but this is largely undefined. Is this for the initial charge, the charge during construction or for the full length of the charge. How long will ratepayers be paying for this nuclear power plant? There needs to be more information provided to ensure the Board understands exactly what ratepayers are being asked to pay and for how long.

Moreover, the application allows for up to a 20% increase in projected costs. That increase, however, is not a true cap because later in the bill the board may grant further increases it deems “necessary for the project’s continued financial viability and will not impose an unreasonable burden on ratepayers.” Once construction starts, cost overruns are inevitable.¹ Projects will certainly argue that cost overruns are “needed for the viability of the project” and should be passed on to ratepayers. The bill’s requirement that the BPU find that an such increase not be an “unreasonable burden” on ratepayers is cold comfort as, like in the ZEC proceedings, BPU is likely to focus only on the threat that the plant will not be built without the additional subsidies. The last requirement for the application is “an analysis of the impact on jobs, wages and the economy in general,” should specifically require them to look at the negative impact on New Jersey’s economy caused by higher rates. Companies no longer able to afford their electric bills and may shut down or move to other states leading to job loss. Citizens paying significantly higher electric bills may be forced to choose whether to pay heat, rent, medicine or feed their family. For some, it may be easier to simply leave the state.

Once the applications are received, the Board then evaluates these applications with no public input whatsoever. Rate Counsel, the government agency responsible for advocating on behalf of the ratepayers being obligated to pay, has no role. The public has no say. The selection of a generator application, obligating ratepayers to billions of dollars, with substantial rate increases over many years will be completed behind closed doors.

¹ In Georgia, one of the most recent nuclear power plants to be built had an original estimate of \$14 billion, but reached a final price tag of around \$35 billion, more than double. These cost increases led to significant delays in completion of the project, and more importantly, significant increases to Georgia’s electric ratepayers. 20% of \$14 billion is already \$2.8 billion, and the initial costs of a nuclear power plant being built in New Jersey in 2030 is certainly going to be higher than \$14 billion.

Then, once the BPU makes its secret selection, the bill provides that the BPU will enter into secret negotiations with selected projects. Again, the terms of this agreement will bind ratepayers for years to come to substantial rate increases, yet neither Rate Counsel nor any other public entity will be privy to those negotiations. Billions will be awarded with no public oversight whatsoever.

The bill fails to protect ratepayers, allowing the facilities to receive ratepayer subsidies to sell off their capacity to a "co-located energy user," likely a data center. Thus, after ratepayers fund construction of the facility, taking on all that risk, the project's owner can simply sell that power to a private energy user, leaving New Jersey ratepayers with nothing. The bill requires repayment, without any interest, of the construction costs. The bottom line is that these subsidies will result in interest free loans from ratepayers to large electric generators and data centers, owned by some of the richest companies in the world. It will saddle New Jersey ratepayers—your constituents—with massive rate increases and unlimited risk with no corresponding benefit to ratepayers. The bill must mandate that if ratepayers pay to construct a nuclear power plant, they get the power generated by the nuclear power plant.

The bill also allows the project to keep tax credits or governmental benefits awarded after the BPU acts. In other words, if the project receives additional windfall revenues, such as grants from the federal government, it keeps them, adding to the profit margins of the project developers. Ratepayers should not be the primary source of revenue for funding these projects, yet that is exactly what this bill does. Ratepayers bear the costs and risks while the project reaps the benefits. This is the deal you are forcing your constituents into.

This bill is a bad idea. It will raise rates. It will not help with affordability. It will not provide energy security. It simply shifts risks, and costs, from merchant generators to New Jersey ratepayers, ensuring significantly higher electric rates in New Jersey with no guarantee of any actual benefit, and the almost certain outcome that it will ultimately hurt much more than it will help. I wholeheartedly urge you, in the name of affordability, to vote no on this bill.

I thank you for the opportunity to appear before you today.