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August 17, 2026

<u>Via Electronic Mail</u>
Sherri L. Lewis, Board Secretary
NJ Board of Public Utilities
44 South Clinton Avenue, 1st Floor
P.O. Box 350
Trenton, NJ 08625-0350

Re: In the Matter of Establishment of A Virtual Power Plant Program
BPU Docket No. QO26030099

Dear Secretary Lewis:

Please accept for filing these comments being submitted on behalf of the New Jersey Division of Rate Counsel in accordance with the Notice issued by the Board of Public Utilities ("Board") in this matter on July 16, 2026. In accordance with the Notice, these comments are being filed electronically with the Board's Secretary at board.secretary@bpu.nj.gov.

Please acknowledge receipt of these comments.

Please note that Rate Counsel's responses to Staff's requested "Stakeholder Comments" begin on page 112 of these comments.

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Thank you for your consideration and attention to this matter.

Respectfully submitted,

Brian O. Lipman, Esq.
Director, Division of Rate Counsel

By: /s/ Davud Wand
T. David Wand, Esq.
Deputy Rate Counsel

DW
Enclosure

cc: Service List

In the Matter of Establishment of A Virtual Power Plant Program BPU Docket No. QO26030099

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STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES

IN THE MATTER OF ESTABLISHING A VIRTUAL POWER PLANT ("VPP") PROGRAM IN THE STATE OF NEW JERSEY	BPU DOCKET NO. QO26030099

SUPPLEMENTAL REPLY COMMENTS OF THE
NEW JERSEY DIVISION OF RATE COUNSEL

1. Introduction

The New Jersey Division of Rate Counsel ("Rate Counsel") submits these comments on the Virtual Power Plant ("VPP") Straw Proposal ("Proposed Straw" or “Straw”) prepared by the Board of Public Utilities (“BPU” or “Board”) Staff. Rate Counsel recognizes that the Straw is the next step after the April 2026 Request for Information (RFI”), which was prepared in response to Executive Order 2.[1] Rate Counsel provided detailed written comments (“Reply Comments”) on May 20, 2026, addressing each of the major issues included in the RFI. These comments are supplemental to the responses specifically requested in the Straw, Rate Counsel responses to those questions in the Straw begin at page 112 of these comments below.

The currently Proposed Straw, issued on July 16, 2026, identifies an interim program, a longer-term tariff framework, minimum filing requirements, performance reporting, cost-effectiveness concepts, and several mechanisms intended to coordinate VPP development with other Board proceedings. Those additions are constructive and confirm that affordability and measurable customer savings should remain central to the Board's analysis.[2] Nevertheless, Rate

[1] Exec. Order No. 2, “Declaring a State of Emergency to Increase and Accelerate Development of New Power Generation to Address Electricity Supply and Reliability Crisis” (Jan. 20, 2026), 58 N.J.R. 1041(a) (Feb. 17, 2026).
[2] See N.J. Division of Rate Counsel, Comments in Response to the April 20, 2026 Request for Information, BPU Docket Nos. QO26030099, QO26040116, QO24020116, QO26030059 & QO24030199, at 1-2, 35-39 (May 20, 2026) ("Rate Counsel Initial Comments"); N.J. Board of Public Utilities Staff, Straw Proposal: Virtual Power Plant Program, BPU Docket No. QO26030099, at 7-11, 14-17 (July 15, 2026) ("Straw").

Counsel remains concerned about several critical aspects of the Board's proposed VPP programs and initiatives.

The Proposed Straw establishes a framework for developing a statewide VPP program in response to Executive Order No. 2 ("EO-2"). Rate Counsel recognizes that VPPs may provide useful grid services and reduce costs when deployed to address identified system needs. The threshold inquiry, however, should be whether, where, and to what extent additional VPP resources are needed and cost-effective for New Jersey ratepayers. That inquiry should identify the specific system need that is being addressed; to include what customers or loads are causing the need, the quantity and characteristics of the resources required, and whether VPPs are cost-effective compared with existing resources and reasonably available alternatives after accounting for ratepayer-funded costs. The availability of VPP technology, programs, and initiatives does not, by itself, establish the need for additional ratepayer-funded resources. Rather in each circumstance, the Board must review the incremental value of the VPP initiatives proposed, the least-cost or cost-effectiveness of the VPP proposal compared to reasonable alternatives, and the resulting and promised bill savings to ratepayers.

Rate Counsel does not oppose the disciplined use of customer-sited capacity resources, demand response, storage, managed charging, or other flexible-load measures. Properly designed capacity resources may reduce coincident peaks, defer a location-specific distribution investment, or provide measurable wholesale-market value. The ratepayer question, however, is not whether such resources "could" provide value in the abstract. The relevant question is whether an electric distribution company ("EDC") or aggregator will produce verifiable net savings from VPP programs for ratepayers at lower risk and lower cost than the alternatives, without shifting costs to customers who do not participate and without paying more than once for the same asset, capability, or service.[3] The Proposed Straw, much like the original RFI, fails to meet this fundamental requirement.

Rate Counsel identifies below specific foundational deficiencies in the present VPP Proposed Straw that should be resolved before the Board approves binding budgets, procurement targets, long-term compensation rights, or material enabling investments. Otherwise, ratepayers may be committed to substantial new costs before the Board establishes a record that those expenditures address demonstrated system needs, produce incremental net benefits, and avoid duplicative or excessive compensation. Deferring these threshold determinations also risks leaving subsequent utility Minimum Filing Requirements ("MFRs") without sufficiently defined standards against which the Board, Rate Counsel, and other stakeholders can evaluate proposed expenditures, compensation levels, cost-effectiveness, and actual program performance. If the governing methodology is not sufficiently established first, the anticipated individual utility MFR proceedings could result in inconsistent methodologies among EDCs; different avoided-cost or baseline assumptions; difficulty comparing utility proposals; uncertainty about what constitutes incremental value; and ultimately difficulty determining whether the resulting costs are reasonable. Ultimately, these deficiencies could make it difficult to determine whether the resulting costs of the VPP Program are reasonable and whether the promised net savings to ratepayers materialize within a reasonable time period. Such an outcome would frustrate, rather than advance, the objectives of EO-2.

Rate Counsel acknowledges that EO-2 directs the BPU, within 180 days, to "commence the development" of a VPP program designed to reduce peak demand through aggregation of

[3] See Rate Counsel Initial Comments, Responses to Questions 9, 15, 19, 22 & 75, at 2-13, 35-39 (recommending cost-causation, pay-for-performance, anti-double-counting, protection of non-participants, and comparison with conventional alternatives).

behind-the-meter DERs. But EO-2 also directs the BPU to "build on and advance existing programs," identify opportunities that "generate customer savings," and "assess and, as appropriate," implement operational and policy changes enabling aggregated DERs to participate in the PJM capacity market. Thus, while EO-2 directs the Board to develop a VPP program, it does not dispense with the need to determine whether the program's particular expenditures, incentives, and compensation mechanisms are reasonable and cost-effective as opposed to reasonable existing alternatives, or whether the VPP program will produce incremental benefits and customer savings. It is that aspect of the Board's implementation of EO-2 that principally concerns Rate Counsel.

Rate Counsel Overall Concerns:

Rate Counsel notes the summary of the June 16, 2026 VPP Roundtable on Page 28 of the Straw does not accurately capture Rate Counsel's perspective on whether a consensus was reached among the parties present at that discussion on that date. At that roundtable discussion, Rate Counsel voiced that our main concern is affordability and under the traditional ratemaking principle of "cost causation", normal ratepayers should not be paying for VPP programs. Rate Counsel remains concerned that our perspective was not accurately captured in the development of the Straw proposal.

Noticeably absent from the Straw is any discussion of the quantification of costs. It has been Rate Counsel's experience that costs have been significantly downplayed in evaluating similar programs. Any analysis must review all costs of the program, including any utility return on investment and other costs, such as grid buildout, that are necessary for the program to move forward and will be borne by ratepayers. Failure to fully consider all costs leads to programs being inappropriately deemed cost efficient when in fact, they result in significant increases in bills without actual benefit.

Additionally, Rate Counsel remains skeptical of the proposed EDC budgets that are provided on pages 33-34 of the Straw. Rate Counsel questions how these proposed budgets were determined and whether it is necessary to pre-determine budgets ahead of proposals.

The Straw Proposal states that the first phase will include VPP Interim Program designed to "leverage existing infrastructure" with the specific purpose of "reducing the overall capacity commitment for New Jersey using PJM's determined Network Service Peak Load." (Straw Proposal at 15-16). The Straw Proposal further assumes "[t]hese savings will reduce participants energy costs, and will also help reduce future capacity needs resulting in lower costs in the PJM auction." (Ibid.) However, it is unclear how the Interim Program will be in a position to achieve this goal of lower PJM capacity costs if the PJM BRA for the 2029/2030 Delivery Year is scheduled to occur in December 2026 and the 2030/2031 Delivery Auction is scheduled for May 2027. Rate Counsel recommends the VPP Interim Program clearly state when it expects reductions in the overall capacity commitment and by how much. Without this information, it is unclear to Rate Counsel how the Straw Proposal reasonably intends to affect capacity prices in the near-term.

Rate Counsel also questions whether NJ Transit should be involved in VPP projects and receive additional ratepayer funding since ratepayers already fund a great portion, if not all of NJ Transit's electric bills through the SBC budget and SBC budget diversions. Rate Counsel also notes the mention of the performance-based ratemaking on page 76 of the Straw, but it is unclear whether performance based ratemaking will in fact be utilized in the future since it is currently being evaluated by the Board.

Finally, Rate Counsel is deeply concerned that the currently proposed procedural schedule to propose and implement potential VPP projects within roughly five months is unworkable since it does not provide the BPU or Rate Counsel adequate time to vet and analyze and proposed projects and their potential impacts on ratepayers. This is especially true since, with every utility filing, full due process is required including discovery and possibly evidentiary hearings prior to any Board approval.

Rate Counsel Comments

Rate Counsel's concerns fall into three principal areas. First, although the Proposed Straw identifies potential VPP savings and proposes reporting, evaluation, and cost-effectiveness requirements, it does not yet establish a sufficiently developed New Jersey-specific methodology for determining projected net ratepayer savings and reconciling those projections with actual results. Second, although the Proposed Straw recognizes and proposes coordination with numerous existing Board programs and proceedings, it does not evaluate VPP costs and benefits holistically against the existing portfolio of ratepayer-funded DERs, demand resources, rate designs, efficiency programs, grid investments, and bulk-power initiatives to determine what incremental need and value remain. Third, although the Proposed Straw includes protections intended to prevent duplicative incentives or compensation for the same services, its proposed value-stacking framework does not establish a comprehensive means of determining whether cumulative compensation from VPP payments, existing incentives, retail programs, and wholesale-market revenues exceeds the incremental value and cost savings actually delivered to ratepayers.

1.1. The Straw Does Not Fully Address the Primary Issue: Estimating and Verifying Ratepayer Savings from VPP Programs

The Straw properly states that VPP programs must produce measurable ratepayer savings and proposes use of the Ratepayer Impact Measure ("RIM"), supplemented by other cost-effectiveness tests, reporting requirements, and a benefit-cost ratio ("BCR") greater than 1.0 for each EDC proposal. Rate Counsel supports the RIM as the primary screen because it directly asks whether a program causes rates paid by non-participants to increase. Rate Counsel is very concerned that the Board is proposing the VPP program before establishing the New Jersey-specific process and measures necessary to demonstrate net savings to ratepayers and cost allocation issues to ratepayers. The entire need for a VPP is being driven by a class of new loads, data centers, that simply need to be required to pay for the costs of these new, and necessary capacity resources. Rate Counsel supports requiring EDCs to disclose the underlying calculations, assumptions, budgets, dispatch performance, and realized savings associated with each proposed program.[4] Such an approach is consistent with prior Board policies implementing the CEA for energy efficiency resources and should be continued with VPP programs as well.

VPP program-level screens are necessary and important, but they do not by themselves establish the quantity of VPP resources that is needed or whether ratepayers should fund the institutional, infrastructure, incentive, and administrative costs necessary to support the proposed program or market design. A VPP program or investment may produce a RIM test result above one and still impose greater costs than another reasonably available means of meeting the same identified system need without increasing the costs to ratepayers. Moreover, evaluating a VPP

[4] See Straw §§ 2.6, 2.8(b) & 2.9, at 36-38, 42-46 (proposing RIM and TRC analyses, performance-based contracts, cost-per-kW limits, reporting, and program-specific benefit-cost demonstrations); Rate Counsel Initial Comments, Response to Question 56, at 24-25.

program in isolation may not capture the cumulative bill impact of adding its costs to existing programs and investments. A VPP program or investment can also pass a RIM test while increasing total customer bills because its costs are layered on top of existing programs, duplicate resources already available, or procure more capability than the system requires. The Board, therefore, should not rely on the RIM test as a substitute for a comparative analysis of demonstrated system needs, existing capabilities, reasonably available alternatives, and incremental ratepayer value to include savings.

The Proposed Straw's preliminary savings estimate illustrates the problem. Staff estimates that a three-percent peak reduction could avoid roughly $60 million in annual capacity payments. Appendix A provided with the Proposed Straw confirms that this $60 million is a gross estimate, not a calculation of net customer benefits. The $60 million benefits estimate excludes a variety of other costs that includes program incentives, aggregator payments, measurement and verification, administration, enabling infrastructure, other material costs and costs to achieve such savings, and the actual rate impacts that will arise from funding these programs. Therefore, although Rate counsel is utilizing this $60 million estimate in our comments, we remain skeptical that this number is within the ballpark of a useful estimate. A rate impact analysis is particularly important here because any projected VPP savings should be evaluated against the total incremental costs that ratepayers will incur to implement and operate the program and the resulting impact on customer bills.

Further, a more comprehensive cost-benefit-analysis ("CBA") than the one outlined by Staff is necessary because Staff's preliminary savings estimates depend materially on assumed VPP performance. Appendix A presents statewide gross annual capacity savings of approximately $61.3 million at a ninety-one-percent realization factor, but approximately $42.6 million using the sixty-four-percent realization factor derived from average 2025 demand-response participation.[5] Staff expressly acknowledges that these estimates reflect gross savings rather than net benefits and do not include program costs, including incentives, aggregator payments, measurement and verification, or administration.[6] Gross savings is an important data point, but it cannot be the end of the analysis.

The Proposed Straw nevertheless relies upon these projected capacity savings as evidence of the VPP Interim Program's potential ratepayer value while proposing approximately $68 million in preliminary EDC budgets for the two-year Interim Program.[7] The Straw also simultaneously contemplates that certain hardware incentives for thermostats, chargers, storage, and related devices will remain in other Board-approved programs. Although subsequent MFR filings may include additional cost-effectiveness information, neither the preliminary VPP budget nor Staff's gross capacity-savings estimate presently provides a substantively complete comparison of the ratepayer cost of assembling, enabling, operating, and compensating the resources expected to deliver the claimed savings. Comparing a projected, and highly speculative gross annual benefit with an incomplete multi-year budget that includes program costs that may be incurred and recovered through multiple proceedings cannot, by itself, establish the likely net effect on customer bills..[8] Indeed, such an incomplete comparison is more likely to obscure rather than illuminate the likely effect on customer bills.

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[5] See Straw § 2.7 & App. A, at 38-41, 90-93. Appendix A identifies the estimate as gross savings and presents alternative realization factors based on PJM accreditation and historical demand-response participation.

[6] *See Straw*, App. A at 93 (expressly identifying "[p]rogram costs: incentives, aggregator payments, M&V, administration" among items "NOT included" and explaining that "gross savings [are] shown, not net benefits").

[7] *See Id.*

[8] See Straw § 2.4, at 33-35 (proposing approximately $30 million for PSE&G, $16 million for JCP&L, $20 million for ACE, and $2 million for RECO, while proposing that hardware incentives remain in other Board programs).

A defensible record supporting Board approval should place all costs and benefits on a consistent basis and in the same time period. That record should include, at a minimum, customer and aggregator incentives; EDC and implementation-contractor costs; acquisition and marketing costs; EM&V; AMI and data-access costs; Grid DERMS and interface investments; edge-DERMS integration; communications and telemetry; interconnection and distribution upgrades; cybersecurity; regulatory administration; financing and carrying costs; and *any* costs recovered in Triennium, GSESP, EV, grid-modernization, NEM, base-rate, or other proceedings. Wholesale revenues, avoided costs, and other claimed benefits must be credited as ratepayer benefits only when they are incremental, realizable, and expected to flow to New Jersey customers rather than remain with asset owners, aggregators, or utilities.[9]

The Board must also distinguish among participant savings, gross system benefits, utility revenue-requirement reductions, and actual bill savings. A payment to a participating customer is a cost incurred to procure a claimed benefit, and the analysis must demonstrate that the incremental benefit exceeds that cost. A modeled avoided distribution project should not be treated as a realized customer saving unless the associated capital expenditure is actually avoided, deferred, reduced, or otherwise reflected in the EDC's revenue requirement or capital plan. A reduction in a PJM obligation is not a realized benefit unless PJM recognizes the reduction and it flows through the applicable Basic Generation Service ("BGS") or transmission allocation mechanism. A wholesale-market payment is not an additional societal benefit if it is funded by the same

[9] See Rate Counsel Initial Comments, Responses to Questions 19, 37, 62, 69 & 72, at 8-9, 17-19, 27, 31-34 (addressing enabling infrastructure, interconnection, incentive stacking, comprehensive costs, and administrative cost recovery); see also VPP Straw, App. A at 93 (expressly identifying critical missing information from the Board's analysis in the Straw; to include: "[p]rogram costs: incentives, aggregator payments, M&V, administration" among items "NOT included" and explaining that "gross savings [are] shown, not net benefits").

customers whose retail rates are increased to support the new VPP program. These considerations must be included in every EDC VPP filing and any final Board Order on the matter.

Rate Counsel recommends that the Board require a New Jersey-specific baseline and counterfactual for each proposed VPP use case. The counterfactual should identify the conventional capacity, transmission, distribution, demand-response, or rate-design alternative that the VPP is expected to avoid, the timing and probability of that alternative, and the customers whose loads create the need. The analysis should use sensitivity cases for capacity prices, load forecasts, participation, opt-outs, dispatch success, technology costs, program costs, project deferral periods, and wholesale-market recognition. Modeled benefits should materially exceed modeled costs to account for forecast error and the fact that ratepayers bear most implementation and underperformance risk.

Finally, cost-effectiveness must be verified after implementation, not merely forecast before approval. The Board should require annual true-ups using actual dispatch performance, actual program expenditures, realized wholesale revenues, verified capital deferrals, and bill impacts by customer class. Non-cost benefits, including resilience, environmental, or economic-development claims, may be considered where authorized, but they should be independently measurable and conservatively valued; they should not be used to justify a program that fails the primary ratepayer cost test. By requiring a more comprehensive analysis, the Board can develop the record necessary to support its findings and approvals and ensure the proposed VPP program meets the stated goal of actual ratepayer savings. A sufficiently developed record will also reduce the risk that a target, tariff, or compensation pathway becomes effectively entrenched once approved, even if subsequent experience fails to substantiate the forecasts upon which the approval was based.[10]

1.2. The Straw Does Not Provide A Sufficiently Holistic Evaluation Of The Proposed VPP Development

The Straw acknowledges that VPP implementation intersects with storage, Triennium demand-response and energy-efficiency programs review and approvals, electric transportation/vehicle issues, AMI deployment and utilization, GridFlex, proactive distribution infrastructure planning, solar capacity development and market design, solar NEM, general energy rate design and pricing, and PJM (wholesale) market participation. That recognition is important. But describing coordination among proceedings is not the same as conducting an integrated economic and resource assessment of VPP and identifying how VPP will interact and serve as a complement or substitute to each issue. Ratepayers receive one electric bill and for the most part, they do not pay separate and unique rates for VPP, storage, energy efficiency, AMI, DERMS, EV, solar, transmission, and capacity resource development; they experience the combined revenue requirement and the cumulative effects of all programs (with limited exceptions such as various surcharges and riders).[11]

Before authorizing additional ratepayer financial commitments, the Board should require a consolidated inventory of existing and planned resources capable of providing VPP services, identify remaining market barriers to current VPP development, determine what additional incentives, if any, are necessary to obtain incremental VPP capability or reduce those barriers, and identify contract terms necessary to minimize financial and performance risks to ratepayers,

[10] See Rate Counsel Initial Comments, Responses to Questions 56-58, 61 & 75, at 24-27, 35-39 (recommending verified savings, conservative valuation, annual incentive review, comparative analysis, budget caps, and exit provisions).

[11] See Straw at 10-11 and § 4, at 64-75 (identifying related storage, Triennium, GridFlex, PSUP, AMI, EV, NEM, and rate-design workstreams); Rate Counsel Initial Comments, Response to Question 75(2), at 36.

enabling distribution and administrative support systems, and cost-recovery mechanisms that include assigning costs to the primary cost-causers in the market today: data centers and other new large system loads. That inventory should show which VPP resources already exist, which have been ratepayer funded to date, the amount, level and average amount funded by ratepayers per the given level is installation or capacity, identification regarding which resources are already obligated (due to their funding) to provide VPP-type services, what incremental VPP resource capability is available (and the type such as distributed generation or storage), and what additional financial payments are necessary to develop this higher level of VPP resource.

The VPP resource inventory analysis should also identify overlaps and incompatibilities among programs and explain how the Board will prevent over-procurement, over-incentives, and multiple recovery or duplication of the same costs. The VPP inventory analysis should proceed from demonstrated system needs and existing resource capabilities, rather than assuming that enrollment of every eligible device or monetization of every potential value stream necessarily produces incremental ratepayer value.

1.2.1. VPPs Must Be Evaluated in the Context of Existing and Prospective Behind-the-Meter Generation and Storage

New Jersey already has substantial behind-the-meter solar, customer-owned storage, smart inverters, EV chargers, and other connected devices. Some resources were installed with private capital; others receive or may receive NEM credits, ratepayer funded solar incentives across an almost two decade period, storage incentives, EV incentives, tax benefits, or utility program support. The first question is therefore not how much nameplate capacity can be placed in a VPP registry which itself is important but, rather, how much incremental capability those resources can provide when and where needed, and whether that service has not already been funded or compensated through another program or mechanism.

The Board should require each EDC to distinguish among technical potential, installed nameplate capacity, enrolled capacity, contractually committed capacity, expected available capacity, and verified deliverable capacity. Solar output that is not coincident with the relevant peak should not be counted as dispatchable capacity. A battery serving customer resilience or bill management cannot be assumed to maintain the state of charge required for grid dispatch without identifying the resulting opportunity cost and customer obligation. A resource subject to interconnection, export, feeder, or hosting-capacity constraints cannot be valued as though its full nameplate output were available everywhere. These limitations should be reflected in procurement quantities, performance assumptions, and compensation—not deferred until after enrollment.

Existing ratepayer funded financial compensation must also be incorporated into the analysis. Ratepayer-funded programs should identify the service and commitment purchased by that incentive before authorizing another payment for another type of "resource need." Where an asset earns NEM credits or wholesale revenues, those revenue streams must be disclosed and reflected in the amount, if any, that ratepayers should provide for an incremental distribution service. That a single asset is technically capable of providing multiple services does not establish that each service provides a distinct, incremental benefit to ratepayers, beyond the services or capabilities already compensated, sufficient to justify an additional cost to ratepayers.[12] As noted elsewhere in our comments, Rate Counsel remains concerned about double counting incentives and this should continue to be a primary focal point for the BPU.

Prospective adoption should be modeled conservatively as well. Installations for solar, storage, EVs, controls, and smart appliances may continue for a variety of reasons that include

[12] See Straw §§ 3.3, 3.5, 4.2 & 4.5, at 49-59, 67-68, 71; Rate Counsel Initial Comments, Responses to Questions 35-37 and 42-43, at 16-19.

resilience, tax, environmental, or private economic reasons: the Board needs to identify these to assure no "free riders" much like they currently do with EE program approvals under the CEA. Ratepayers should not be required to support additional financial incentives that are not needed. Any ratepayer-funded financial incentive should be limited to a documented market gap/market failure associated with a specific incremental grid service, supported by evidence in the record supporting of the Board's decisions that the payment is necessary, more cost-effective than reasonable alternatives, , and subject to recapture if the promised capability is not maintained or delivered. Further, where possible, the Board must inject competitive discipline into the VPP resource acquisition process by utilizing market-based mechanisms like auctions and competitive bidding. Although the Proposed Straw contemplates competitive participation and market-based mechanisms, it does not sufficiently address whether or how competitive procurement will be used to establish VPP resource prices, test proposed compensation against market alternatives, and minimize unnecessary ratepayer costs. In short, this section of the Proposed Straw does not adequately address important resource development considerations that can enhance efficiencies and reduce costs.

1.2.2. VPPs Must Be Evaluated in the Context of Existing and Prospective Demand Resources

The Proposed Straw includes an interim program intended to build upon and migrate existing Triennium demand-response programs, enrolled customers, AMI infrastructure, utility platforms, original-equipment-manufacturer relationships, and implementation contractors. That approach may reduce startup costs, but it also creates a substantial risk that existing demand-response capability will be relabeled as new VPP capability and credited with savings that customers have already paid to obtain through another program. To prevent this situation, the Board should require an auditable baseline showing existing enrollments, historical budgets, contractual obligations, dispatch rights, performance, remaining useful lives, and PJM registrations before any migrated resource is counted toward a new target or receives new compensation through the proposed VPP Program.[13]

The record should separately identify persistent efficiency savings, behavioral conservation, daily load management, time-of-use response, direct load control, emergency demand response, economic demand response, and dispatchable DER output. These resources have different availability, measurement, persistence, customer-impact, and capacity-value characteristics. Combining them under a broad VPP label can mask differences in cost and performance and can create multiple claims to the same load reduction. A reduction already embedded in a customer baseline, load forecast, energy-efficiency savings claim, or rate design should not also be paid as incremental event performance.

The Board should also evaluate the role of large-load in the need for these significant VPP initiatives. The Straw and the underlying policy record identify data centers, electrification, and other large loads as important drivers of future capacity and infrastructure needs. Cost-causation requires the Board to determine whether those classes of customers can provide, procure, or directly fund flexible-load solutions before shifting the cost to existing residential and small-commercial customers. Where a new load creates a localized or system capacity need, the cost of meeting that need should be assigned primarily to the cost-causing load or recovered through a mechanism that protects other classes from cross-subsidization. Further, the Board needs to consider large load flexibility as part of the resource picture particularly the flexibility that can be liberated through changes in rate design and pricing.

[13] See Straw §§ 2.1-2.3 & 4.3, at 29-33, 68 (proposing to build upon and migrate existing Triennium demand-response programs and infrastructure); Rate Counsel Initial Comments, Responses to Questions 15 and 50, at 6-8, 21-23.

1.2.3. VPP Compensation Must Be Integrated with Rate Design, Energy Efficiency, and Other Retail Policies

Rate design can produce many of the same load-shifting outcomes that the VPP proposal seeks to purchase through explicit compensation. Properly designed time-of-use or demand-based rates may induce customers to move consumption away from costly periods without a separate dispatch payment. Conversely, poorly coordinated rate and VPP signals may pay customers twice for the same response, create baselines that overstate incremental performance, or direct customers to act against the price signal reflected in their tariff. The Proposed Straw recognizes these risks, but they require a single accounting framework rather than separate program-specific assurances.[14]

Potentially, VPP eligible resources that are now subject to time-varying rates should already be exhibiting some form of measurable load-shifting. Rate Counsel opposes giving these existing resources additional VPP financial compensation for no new incremental resource development. Here, financial incentives could be either a direct payment or a lower off-peak price, an avoided demand charge, or another tariff mechanism. If a dispatch instruction conflicts with the applicable rate signal, the EDC should demonstrate that the incremental grid value exceeds the additional customer and system cost created by the conflict. Further, revenue neutrality at the class level is not a substitute for customer protection because individual customers—particularly those with limited flexibility—may still experience bill increases which is why overall cost allocations are important to Rate Counsel in this proceeding.

The same principles apply to energy-efficiency and hardware incentives. If Triennium or another Board program pays for a smart thermostat, water heater, charger, battery, or control system, the cost and service obligation associated with that incentive must be included in the VPP

[14] See Straw § 4.7, at 72-74 (recognizing interaction among TOU rates, baselines, VPP compensation, double payment, customer bill effects, and equity).

cost-benefit analysis. An enrollment adder may be appropriate only if it purchases a distinct incremental commitment not already required by the original incentive. Program administrators should not allocate device, enrollment, dispatch, administration, and infrastructure costs across different dockets in a manner that prevents the Board and stakeholders from identifying the full cost of providing the VPP service and its cumulative impact on ratepayer bills.

Affordability and equity must be evaluated through this cumulative lens. Renters, low- and moderate-income households, customers in multifamily buildings, and customers without suitable devices may be unable to participate, yet may be required to fund incentives, platforms, administration, and utility investments. A program is not equitable merely because it offers an enrollment pathway to some members of a customer class. The Board should require class-specific bill impacts, participant and non-participant analyses, distributional assessments, and protections demonstrating that customers with the least ability to acquire DERs are not financing disproportionate benefits for asset owners, vendors, aggregators, or utilities.[15] It is essential that an analysis of these issues be present in Board decisions approving EDC VPP programs.

1.2.4. VPP Development Must Be Reconciled with PJM, Transmission, and Other Capacity Initiatives

FERC Order No. 2222 and PJM's implementation framework create opportunities for aggregated DERs to participate in wholesale markets. They do not establish that New Jersey ratepayers should fund a separate retail subsidy, guarantee aggregator revenues, or construct EDC infrastructure and operating/billing systems without new, incremental net benefits. Market access and ratepayer support are distinct questions that address market barriers (which have not been

[15] See Rate Counsel Initial Comments, Responses to Questions 9, 16, 50, 56 & 75(2), at 3-8, 21-25, 36 (addressing participant and non-participant impacts, affordability, LMI participation, and measurable ratepayer benefits).

identified or quantified in the Proposed Straw). A resource capable of earning PJM capacity, energy, or ancillary-service revenues should first be evaluated on the basis of those market revenues and obligations before the Board authorizes additional retail compensation.

The Board should require precise accounting for the mechanism through which each claimed wholesale benefit will arise. Peak-shaving adjustments, reductions in peak load contribution or network service peak load, PJM demand-response registration, DER aggregation market participation, and distribution-level dispatch are not interchangeable. These peak reduction opportunities have different timing, measurement, accreditation, settlement, and double-counting rules. The same megawatt should not simultaneously be treated as a reduction to the load forecast, a capacity-market resource, an existing demand-response commitment, and a separately compensated retail distribution service unless the proponent demonstrates that each claimed value is distinct, incremental, and operationally compatible.[16]

A complete resource availability analysis must also account for other bulk-power and state initiatives intended to address the same reliability or capacity concern. Those may include capacity procured through PJM, the Reliability Backstop Procurement process, new or retained generation, transmission expansions and upgrades, state-supported supply initiatives, bilateral procurement, and load-serving arrangements for large customers. Approving VPP targets without incorporating these developments can produce over-procurement: customers may pay for a VPP resource and for the capacity, transmission, or generation resource it was assumed to avoid. This is especially important in the current market and regulatory environment where so many public policy entities

[16] See Straw §§ 1.4 & 3.5 and App. A, at 17-18, 56-59, 92-93 (addressing FERC Order No. 2222, PJM participation, peak-shaving treatment, dispatch priority, and double-counting risks).

at the state and federal level (both legislative and executive) are scrambling to adopt as many resource initiatives as possible to address this perceived large load crisis.

For each proposed VPP forecast scenario, the EDC should therefore identify the alternative resource or cost that will actually be displaced, the regulatory or market action necessary to produce that displacement, and the mechanism by which the resulting savings will be returned to customers. If no identifiable procurement, project, or obligation is expected to change, the claimed avoided cost should not be treated as a cash saving. Rate Counsel supports allowing DERs to compete where they can meet the defined need at lower all-in cost; it does not support insulating them from comparison with the resources against which their value is asserted. Nevertheless, the Board must ensure that any resulting decisions on the VPP program address these issues on a sufficiently developed record that explains and supports the basis for the Boards' determinations.

1.3. The Straw Does Not Adequately Prevent Over-Incentives and Incentive Inefficiencies

The Proposed Straw seeks to maximize the value stack available to enrolled DERs while preventing duplicative compensation. The Proposed Straw also contemplates hardware incentives funded through Triennium, GSESP, and EV programs; a long-term tariff with enrollment, capacity-reservation, and pay-for-performance pathways; distribution-service payments; PJM revenues; NEM credits; time-of-use savings; and possible sustained-participation incentives. Each component may have a rationale in a particular use case. Collectively, however, these proposed incentives create a substantial risk that total compensation will exceed the incremental, verified value delivered to ratepayers.[17]

[17] See Straw §§ 1.3(iv), 2.4, 3.2-3.5, 4.2, 4.5 & 4.7, at 16-17, 33-35, 48-59, 67-68, 71-74.

A general prohibition against paying twice for the identical service is necessary but too narrow. Ratepayers may still overpay when separate programs characterize overlapping benefits differently; when one payment supports device installation and another pays for availability that was expected as a condition of the first payment; when an enrollment payment continues after connectivity costs have been recovered; when capacity reservation and dispatch compensation both recover the same opportunity cost; or when retail compensation supplements wholesale revenue even though the wholesale revenue already supports the asset's economic viability. The relevant test is total compensation relative to total incremental value, not merely whether two invoices use the same service label.

Rate Counsel recommends a resource-level compensation ledger integrated with a DER registry. Before enrollment, and at least annually thereafter, the asset owner and aggregator should disclose all public, utility, ratepayer-funded, tax-supported, retail, and wholesale compensation associated with the resource, together with the service, period, and obligation attached to each payment. This should be required of any DER or VPP resource receiving New Jersey ratepayer financial support. The EDC should identify which value streams are incremental and which overlap. The Board and parties should have access to sufficient non-confidential information to test the calculation, and the annual VPP report should quantify offsets, forfeitures, recaptures, and avoided duplicate payments. Other critical information should be provided but kept confidential.

It may be necessary that a resource receiving a ratepayer-funded deployment or performance incentive under GSESP or another program elect one compensation pathway. If the Board permits cross-program participation, all overlapping ratepayer-funded compensation should be subject to a full one-for-one offset, and total compensation should be capped below the verified incremental value delivered so that a meaningful share of savings remains with the customers who bear the cost and risk. Wholesale revenues should be included in this calculation (much as they are for other New Jersey funded resources like OSW) and, where ratepayers funded the enabling asset or platform, should be credited in a manner that reduces the revenue requirement.[18]

Compensation should be predominantly performance-based and where possible, eligible VPP resources should be subjected to market based mechanisms like competitive bidding or an auction. Upfront or enrollment payments should be allowed only where the proponent demonstrates a documented, service-specific market barrier; shows that the payment is necessary to obtain incremental capability; and accepts enforceable enrollment, availability, performance, clawback, and repayment requirements. Capacity-reservation payments should be supported by evidence of actual opportunity cost and should not duplicate PJM capacity revenue or the availability obligation purchased through another incentive. Performance payments should be based on independently verified delivery at the time and location of need, with no payment for baseline manipulation, ordinary customer behavior, or services already reflected in a rate or forecast.[19]

Incentive levels should be reviewed and reset at least annually using current technology costs, participation, verified performance, avoided-cost benchmarks, PJM revenues, market conditions, and cumulative rate impacts. Multi-year commitments should be limited in duration and should include automatic reduction, suspension, or termination provisions if costs exceed benefits, participation is not incremental, or the compensated value declines. A seven-year

[18] See Rate Counsel Initial Comments, Responses to Questions 42-43 and 62, at 18-19, 27 (recommending election between programs or a full one-for-one offset so that compensation does not exceed verified value).

[19] See Rate Counsel Initial Comments, Responses to Questions 15 and 19, at 6-9 (supporting pay-for-performance, avoided-cost benchmarks, incremental-value demonstrations, and non-performance remedies).

enrollment condition or other long-term commitment should not become a guaranteed revenue stream that outlasts the assumptions on which it was approved.[20]

The Proposed Straw's proposed customer pass-through requirement is a useful consumer-protection concept, but it does not resolve over-incentive risk given the overlap of existing programs to the proposed VPP Program. Requiring an aggregator to pass through a percentage of a payment addresses the division of compensation between the aggregator and participant; it does not establish that the underlying payment is necessary, that non-participants receive net benefits, or that total compensation is below the value delivered. The Board must decide both questions: whether the program should pay the amount at all and, only then, how the approved amount should be shared.[21] The resulting record of the Board's decision should identify the compensation streams considered and explain how the Board determined that any additional compensation purchases distinct incremental value rather than resulting in duplicative or excessive compensation.

These safeguards are not intended to prevent useful VPP resources from participating but they are intended to make resources compete on the basis of the value they actually provide and to ensure that New Jersey customers—not program administrators, utilities, aggregators, vendors, or asset owners—receive the predominant benefit from ratepayer-funded policy. Before approving final budgets, binding targets, long-term tariffs, or enabling investments, the Board should require a New Jersey-specific needs-and-alternatives analysis, a consolidated bill-impact and compensation accounting, enforceable anti-overpayment protections, and a record demonstrating

[20] See Rate Counsel Initial Comments, Response to Question 61, at 27, and Response to Question 75(7), at 38-39 (recommending annual review and shorter commitments to limit overcompensation and technology lock-in); Straw § 3.3(a), at 50-51 (proposing a seven-year enrollment condition for certain hardware incentives).

[21] See Straw § 3.7(a), at 60-61 (proposing a minimum seventy-percent pass-through of pay-for-performance compensation and acknowledging the need to prevent over-subsidization).

that each proposed VPP use case is least-cost compared with the resources or investments it is intended to displace and produces verified net savings for ratepayers.

2. Procedural issues: straw proposal fails to address important procedural and due process issues

The proposed Straw offers a few limited improvements in the important procedural issues raised in Rate Counsel's original response to the RFI. For instance, the Straw proposal places the VPP discussion in a dedicated docket; proposes a two-stage structure consisting of an interim program and a later open-access tariff; identifies detailed minimum filing requirements ("MFRs"); contemplates public reporting, a VPP working group, and a twelve-month program review; and schedules a public stakeholder meeting followed by written comments.[22] Rate Counsel appreciates these procedural clarifications since they provide more structure than the original procedures outlined in the RFI and do, in part, respond to Rate Counsel's concern that program design should proceed incrementally and should be supported by measurable performance information.

Those improvements, however, do not resolve the principal procedural defects identified by Rate Counsel in our response to the initial RFI. The proposed Straw still does not establish an integrated procedural roadmap for the overlapping VPP issues including: distributed generation and storage; GridFlex; proactive system planning; energy efficiency; electric vehicle; advanced metering; and net-metering proceedings. The proposed Straw does not identify which docket will decide which issues, how overlapping issues will be raised (nor how parties will be allowed to raise them independently), how records from one docket will be incorporated into another (or even if this process will be allowed), or when parties will have an opportunity to respond to new proposals developed in parallel proceedings. The proposed Straw does not provide sufficient

[22] See proposed Straw at 7-12, 36-46, 75, 87-90.

reply-comment rounds, formal discovery or data-request processes, proposed decision processes, or defined method for resolving disputed factual assumptions before issuance of the MFR Order.

The proposed Straw also leaves the structure and governance of the proposed working group largely undefined. These procedural omissions are especially problematic given the potential expansive financial scope of any new VPP initiatives that could include as much as $68 million in preliminary interim-program budgets, separate hardware incentives recovered through other programs, a recommended peak-reduction target of at least three percent, and EDC filings and Board action on a highly compressed schedule.[23]

Rate Counsel, therefore, recommends that the Board adopt a procedural order before issuing the Final VPP Order. The procedural issues raised in the Final Order should define the scope and sequence of related dockets, establish transparent record-development and response opportunities, require a comparative needs and alternatives analysis and a cumulative bill-impact assessment, and impose enforceable budget caps, performance gates, sunset provisions, and reauthorization requirements. These steps are not obstacles to timely action but represent best regulatory practices that will help avoid fragmented decisions, reduce implementation errors, reduce inefficiencies and unnecessary rate increases, and develop a record capable of supporting reasoned findings. These proposed procedural steps will also reduce regulatory uncertainty and the administrative costs associated with subsequent disputes or challenges by ensuring that affected parties understand the governing standards, the evidentiary requirements, and the basis for the Board's determinations.

[23] Straw at 33-46, 89-93.

2.1. The Straw does not address threshold procedural issues

Rate Counsel's May 20 comments identified several related procedural concerns that remain unresolved in the Proposed Straw.[24] First, although the Straw addresses cost-effectiveness and identifies potential avoided capacity and other system costs, it does not yet establish whether the proposed VPP expenditures are least-cost or cost-effective compared with the resources or investments they are intended to displace, or whether the resulting program will generate net savings for New Jersey ratepayers consistent with the objectives of EO-2. Second, although the Proposed Straw identifies and proposes coordination with numerous existing Board programs and proceedings, it does not provide an assessment of the cumulative ratepayer costs and bill impacts associated with those programs and the additional VPP expenditures proposed here. Third, the accelerated implementation schedule increases the importance of establishing sufficiently defined analytical standards, performance requirements, and record-development procedures *before* the Board formally decides upon material program commitments and expenditures to be recovered from ratepayers through their utility bills. Fourth, although the most recent Proposed Straw proposes preliminary budgets, performance requirements, subsequent evaluation, and the possibility of modifying or phasing out the Interim Program, the Proposed Straw continues to lack defined budget caps, performance gates, and adequate criteria for the continuation or termination of programs that are no longer necessary, fail to meet established performance requirements, or no longer provide sufficient incremental value to ratepayers. Fifth, the number of related and concurrently developing Board proceedings reinforces the need for a clearly defined process that coordinates the relevant dockets, avoids inconsistent assumptions or methodologies, and permits

[24] Rate Counsel Comments at 35-38.

meaningful stakeholder participation. If Rate Counsel's suggested procedural processes to address these issues is unacceptable to the Board, we welcome the Board's alternative proposals before these identified issues impede the VPP Program's objectives of generating customer savings and reducing peak demand.

The Straw acknowledges several of these concerns but appears to dismiss the importance of these concerns since the interim program is transitional and has other requirements such as; requiring each EDC to submit budgets, forecasts, benefit-cost calculations, measurement and verification plans, and public performance reports; requiring performance-based EDC-aggregator contracts; and proposing an evaluation after approximately twelve months under which the Board may continue, modify, expand, or phase out the interim program.[25] The proposed Straw also includes provisions for an advisory VPP Implementation Working Group and recurring stakeholder discussions.[26] These provisions are useful and should be retained but the Board needs to recognize they cannot serve as a substitute for a well defined decision-making process with evidentiary standards needed to ensure confidence and transparency in what will likely be an expansive set of new public policy initiatives.

For instance, the twelve-month review occurs after programs launch and ratepayer costs are incurred. The proposed evaluation does not establish automatic suspension or termination thresholds. The preliminary budgets are not paired with a clear prohibition against transfers, overruns, or recovery of related costs in other proceedings without a new Board order. Further, although the Straw says Staff reviewed the RFI record and incorporated stakeholder recommendations, it does not provide an issue matrix explaining which material recommendations were accepted, rejected, or deferred, and rationale for each action. That omission makes it difficult

[25] Straw at 36-46.
[26] Straw at 75, 87.

to determine whether concerns were resolved or merely moved to another docket or future working group. Rate Counsel urges the Board to consider the cost to ratepayers of moving these critical considerations to a future administrative process, particularly since no such future administrative process has yet been sufficiently developed or defined.

2.2. Straw needs further clarification

2.2.1. One integrated roadmap for interdependent proceedings

The proposed Straw itself identifies at least eight active or anticipated Board proceedings that will interact with the currently proposed VPP program. Yet, the Straw does not assign decision responsibility among these proceedings. For example, GridFlex may define distribution services and compensation; the proactive system upgrade process may identify grid needs and DERMS investments; Triennium and storage proceedings may fund customer hardware; AMI rules govern data access; and the VPP docket may approve dispatch, aggregation, and cost recovery. A decision in any one of these proceedings could alter the costs, benefits, or feasibility of the others as well as what is currently envisioned with the proposed VPP initiatives. Without an issue-and-docket map, parties cannot know where a question will be decided or whether a position must be repeated in several forums to preserve it. This situation could require interested parties to participate in multiple proceedings addressing overlapping issues. Moreover, given different staff on different issues, different or competing answers to the same questions can occur. This all underscores the need for the Board to establish a coordinated process identifying where and how material VPP policy, cost, and implementation issues will be decided.

This is not an abstract concern. The RFI responses from the EDCs underscores this potential confusion.[27] For instance, ACE warned that fragmented program design, inconsistent

[27] See summary trade press article provided by MAGNIFYI Staff, "Extensive Comments Filed Re: Establishing a Virtual Power Plant Program," May 27, 2026, https://magnifyi.com/extensive-comments-filed-re-establishing-a-virtual-power-plant-program/ (quoting and summarizing the May 20, 2026 comments of Atlantic City

metering, and uncoordinated dispatch can increase costs and reduce reliability value; JCP&L similarly urged a coordinated or consolidated framework to avoid duplicative incentives and incompatible requirements; and PSE&G emphasized that larger-scale VPP deployment is complex and should be integrated into broader resource-adequacy and distribution-planning policy. Although Rate Counsel may disagree with aspects of those parties' substantive proposals, their procedural concern is consistent with Rate Counsel's: coordinated policy cannot be produced through disconnected records and unclear sequencing.

2.2.2. Opportunities to provide alternative and rebuttal materials

The July 30 stakeholder meeting and August 17 written-comment deadline provide useful initial input for parties to comment on general concepts but do not suffice for full VPP program implementation. Further, the proposed Straw appears to be fast-tracking, and limiting, if not eliminating opportunities for continued input in anticipating a Final MFR Order in the fourth quarter of 2026, followed up with EDC compliance-related filings by December 31, and resolution of those compliance filings in the second quarter of 2027. Considerable more vetting and input is needed and Rate Counsel remains concerned that eh presently proposed schedule may not be realistic.

The proposed Straw does not provide a reply round after initial comments, a technical conference focused on contested modeling assumptions, discovery or data requests, Staff responses to questions, or circulation of a revised proposal before the MFR Order. Nor does it explain what the timeline's phrase "MFR Filing Settled" involves; including: which parties will be allowed to participate (and how they will be allowed to participate); whether discovery or data

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Electric Company, Jersey Central Power & Light Company, and Public Service Electric & Gas Company, In re Advancing Virtual Power Plant Program in the State of New Jersey, N.J. Board of Public Utilities Docket No. QO26030099).

requests will be allowed; how non-settling positions will be preserved; or what findings the Board will make before approving cost recovery from ratepayers.

New Jersey administrative law requires a level of notice and opportunity to comment commensurate with the breadth and effect of agency action. *See Provision of Basic Generation Service for the Period Beginning June 1, 2008,* 205 N.J. 339, 347-68 (2011) (BPU decision affecting ratepayers vacated because issues had become conflated across proceedings and Rate Counsel lacked clear notice and a meaningful opportunity to respond). State agencies may use flexible or hybrid procedures but that the procedure must be transparent and allow affected parties to address the actual proposal under consideration. *Id.* The concern is directly relevant here, where the Straw expressly relies on multiple parallel proceedings and contemplates generally applicable, prospective program rules and significant expenditures, the costs of which will ultimately be passed on to ratepayers.

The Board's own BGS process illustrates a workable approach. The current BGS schedule includes proposal filings, discovery requests and responses, initial comments, a legislative-type hearing, public hearings, final comments, and a Board decision based on the developed record. A VPP proceeding need not duplicate every BGS step, but it should provide comparable opportunities where material cost, performance, and allocation assumptions can be disputed and the Board can develop the appropriate record to support its decisions.

2.2.3. Proposed working groups are not a substitute for required procedures or Board decisions based on substantial evidence

The proposed VPP Working Group may be valuable for technical coordination, but the Straw leaves its membership, voting or consensus rules, meeting cadence, scope, notice requirements, and documentation procedures unresolved. This lack of resolution can lead to biases in purported “working group” proposals and solutions. The proposed Straw also describes the group as advisory while stating that it will develop recommendations ahead of key milestones.

Rate Counsel feels strongly that if these working group recommendations may influence or act as recommendations for future Board action/votes, all agendas, presentations, data, minutes, and non-consensus positions should be filed promptly in the docket and all participants should be given the opportunity to challenge, on an evidentiary basis, the recommendations of the working group. Rate Counsel also recommends equal participation/representation among EDCs, aggregators, consumer representatives, environmental and equity advocates, technology providers, and other affected interests. If a working group is used, then the Board needs to clearly state that working-group discussions do not waive any party's litigation or policy position and do not substitute for formal notice, comments, discovery, evidentiary proceedings, or Board findings.

2.2.4. Threshold cost and cost allocation issues lack a sufficiently defined process

The Straw presents an illustrative estimate of approximately $60 million in annual avoided capacity costs at a three-percent peak reduction, but Appendix A expressly identifies the estimate as gross savings and excludes program costs, incentives, aggregator payments, measurement and verification, and administration. (Straw at 39-41, 90-93.) At the same time, the Straw proposes approximately $68 million in interim-program budgets and assigns hardware incentives to separate Triennium, storage, and electric-vehicle programs. Thus, the proposal ties a high-level gross benefit estimate to future Board action without first developing an EDC-specific record demonstrating the net ratepayer benefits of the proposed expenditures. A generic proceeding would facilitate a reviewable record before the Board approves material program design, investments, and expenditures that ratepayers may ultimately be required to fund. Proceeding without such an analysis and developed record risks utility service affordability and subjects ratepayers to the full financial, regulatory, and performance risks of the envisioned VPP initiative.

Before approving budgets or binding targets, the Board should conduct a generic proceeding, comparable to those conducted for utilities in the EE triennial filings, that examines VPP opportunities requiring each EDC to provide consolidated ratepayer-impacts showing annual and cumulative revenue requirements, bill impacts by customer class, interactions with existing programs, avoided-cost assumptions, wholesale revenue credits, administrative costs, and sensitivity cases. It should also identify the need being addressed, the customers or loads causing that need, and the least-cost portfolio reasonably capable of meeting those loads along with clear direction on cost allocation, particularly allocation to those customers creating such new capacity resource procurement needs. Absent such a process, the Board risks making material VPP cost and cost-allocation determinations through separate proceedings without a substantiated record demonstrating the basis for those determinations, their cumulative effect on ratepayers, and whether the resulting costs and benefits support the Board's ultimate findings and approvals.

2.2.5. Review provisions need enforceable roadmaps or exit ramps

The proposed twelve-month review is a constructive step, but a discretionary future review is not an enforceable safeguard. The MFR Order should specify *ex ante* performance and cost thresholds that trigger suspension, redesign, or termination; prohibit budget increases or category transfers without notice and a new Board order; require return or credit of unspent balances and disallowed or duplicative payments; and sunset each interim program unless affirmatively reauthorized on an updated record. Long-term tariff authority should be considered in a separate phase after verified interim results are filed and tested. No interim contract should create a de facto entitlement to long-term compensation or constrain the Board's ability to protect ratepayers as technology, PJM rules, market prices, and system needs change.

2.3. Proposed straw process is inconsistent with processes adopted in other regulatory jurisdictions

California's development of its demand-flexibility framework followed a staged process: an exploratory Staff workshop and informal stakeholder comments; a Staff white paper; a workshop on that paper; a formal order instituting rulemaking; a prehearing conference and scoping memo; separate procedural tracks; working groups with maintained materials and recordings; additional workshops with recordings and transcripts; and opening and reply testimony.[28] The importance of the California example is procedural, not substantive. California separated issue development from final decision-making and created repeated opportunities to test tools, correct errors, and respond to competing proposals.

Maryland implemented the DRIVE Act through Case No. 9761 and related PC44 proceedings using a docketed sequence of Commission orders, stakeholder comments, workgroup reports identifying non-consensus issues, utility pilot applications and proposed tariff pages, notices of hearings and comment deadlines, maintained service lists, written comments from consumer advocates and market participants, a legislative-style hearing, bench requests and responses, a stenographic transcript, and Commission orders deciding—and requiring revisions

[28] California Public Utilities Commission, Energy Division, *Demand Flexibility Rulemaking (R.22-07-005)*, "Background" and "Procedural Timeline" (identifying the May 25, 2021 exploratory workshop, June 22, 2022 Staff white paper, July 21, 2022 workshop, November 2022 scoping memo and working groups, subsequent workshop recordings and transcripts, and opening and rebuttal testimony), last visited Aug. 4, 2026; California Public Utilities Commission, *Order Instituting Rulemaking to Advance Demand Flexibility Through Electric Rates*, Rulemaking 22-07-005, at 6–10 (filed July 14, 2022) (describing the Staff white paper, contemplated working groups, preliminary scoping process, comments, prehearing conference, workshops, and procedural schedule); California Public Utilities Commission, *Assigned Commissioner's Phase 1 Scoping Memo and Ruling*, Rulemaking 22-07-005, at 1–9 (Nov. 2, 2022) (dividing Phase 1 into two concurrent tracks, establishing working groups, and scheduling workshops, working-group reports, opening testimony, reply testimony, comments, and reply comments).

to—the utilities' proposals. [29] This record reflects a sustained, orderly, diligent, and evidence-based process.

Likewise, Maryland's earlier energy-storage pilot proceeding, Case No. 9619, included Energy Storage Workgroup submissions, utility applications and amended proposals, formal opportunities for intervention and public comment, legislative-style hearings, supplemental information and data responses, stenographic transcripts, compliance filings, and multiple Commission orders. This sustained public process allowed competing positions and unresolved issues to be identified, developed in the docketed record, and presented to the Commission before it approved or modified individual pilot proposals.[30]

Connecticut also established its Energy Storage Solutions program in a dedicated proceeding and thereafter subjected the program to separate annual-review dockets. T hat recurring, record-based review has produced material program-design changes. Most recently,

[29] Md. Pub. Serv. Comm'n, *In re DRIVE Act Implementation*, Case No. 9761, Docket Sheet, Docket Item Nos. 1–84 (including Order No. 91218, Maillog No. 310790 (July 11, 2024); stakeholder comments, Docket Item Nos. 2–12; Order No. 91391, Maillog No. 313160 (Oct. 25, 2024); PC44 Interconnection Workgroup Leader, *PC44 Interconnection Workgroup Non-Consensus Issues*, Maillog No. 315285 (Jan. 31, 2025); utility pilot applications and proposed tariff pages, Maillog Nos. 320089, 320092, 320115 & 320116 (July 1, 2025); Notice of Hearing and Request for Comments, Maillog No. 320216 (July 7, 2025); stakeholder comments, Docket Item Nos. 54–76; responses to Commission bench requests, Maillog Nos. 322258 & 322378 (Sept. 10 & 15, 2025); and stenographic record of Sept. 3, 2025 hearing, Maillog No. 322853 (Sept. 30, 2025)); Md. Pub. Serv. Comm'n, Order No. 91917, *Order on DRIVE Act Implementation Proposals*, Case No. 9761, at 1–6 (Oct. 21, 2025) (summarizing the procedural history, utility filings, written stakeholder comments, and legislative-style hearing, and directing the utilities to revise and resubmit their distribution-system-support pilot proposals).

[30] Md. Pub. Serv. Comm'n, *In re Maryland Energy Storage Pilot Program*, Case No. 9619, Docket Sheet, including Order No. 89240, *Order Establishing an Energy Storage Pilot Program*, Maillog No. 226537 (Aug. 23, 2019); PC44 Energy Storage Working Group Submission, Maillog No. 228020 (Dec. 31, 2019); Potomac Edison Co., *Petition for Participation in Energy Storage Pilot Program*, Maillog No. 229737 (Apr. 15, 2020); Baltimore Gas & Electric Co. and PHI Utilities, *Joint Application for Approval of Energy Storage Pilot Projects*, Maillog No. 229744 (Apr. 15, 2020); Notice of Comment Period, Hearing Date, and Opportunity to Intervene, Maillog No. 229950 (Apr. 27, 2020); Grant of Petitions to Intervene, Maillog No. 230427 (May 27, 2020); stakeholder comments, Docket Item Nos. 11 and 14–27; Supplemental Notice of Virtual Legislative-Style Hearing, Maillog No. 230922 (June 29, 2020); Delmarva Power & Light Co., Data Response, Maillog No. 231215 (July 21, 2020); Stenographic Record of July 13, 2020 Hearing, Maillog No. 231305 (July 30, 2020); Order No. 89664, *Energy Storage Pilot Proposal Order*, Maillog No. 232509 (Nov. 6, 2020); Notice of Virtual Hearing, Maillog No. 233972 (Mar. 1, 2021); Stenographic Record of March 24, 2021 Hearing, Maillog No. 234772 (Apr. 14, 2021); Order Nos. 89783 and 89805, Maillog Nos. 234407 and 234898 (Mar. 30 and Apr. 21, 2021).

after multiple rounds of written comments and technical meetings, Connecticut PURA phased out passive dispatch for new participants and shifted most compensation to a pay-for-performance structure, with only a smaller, targeted enrollment incentive. PURA explained that tying compensation to actual, measured dispatch performance would improve accountability and reduce ratepayer exposure to nonperforming assets. This approach is consistent with PURA's broader institutional position that, as a quasi-judicial agency, it may decide matters only on the record evidence placed before it and that greater stakeholder awareness and participation produce a more robust decisional record.[31] New Jersey can preserve an accelerated interim phase while adopting the same basic discipline: defined records, periodic review, transparent changes, and express reauthorization. Without these safeguards, the Board risks making interdependent VPP decisions on fragmented records that obscure cumulative ratepayer impacts and the basis for determining whether the resulting program delivers its projected benefits.

2.4. Rate Counsel's recommended procedural actions

Before issuing the VPP MFR Order, Rate Counsel respectfully requests that the Board issue a procedural order containing at least the following provisions:

- An issue-and-docket roadmap identifying which proceeding will decide each material VPP issue, the sequence of those decisions, and the method for incorporating and citing records from related proceedings.
- A Staff response matrix summarizing material comments from the RFI and Straw process and identifying whether each issue is accepted, rejected, deferred, or assigned to another docket, with a brief explanation.

[31] Conn. Pub. Utils. Regul. Auth., Final Decision, Docket No. 17-12-03RE03, PURA Investigation into Distribution System Planning of the Electric Distribution Companies—Electric Storage, at 43–44 (July 28, 2021) (establishing the Energy Storage Solutions program's annual-review process and periodic comprehensive program review); Conn. Pub. Utils. Regul. Auth., Final Decision, Docket No. 25-08-05, Annual Energy Storage Solutions Program Review—Year 5, at 3–4, 13, 20–21, 39 & 52 (Dec. 17, 2025) (describing the annual-review history and stakeholder process; adopting a pay-for-performance framework with a smaller targeted enrollment incentive; and explaining that performance-based payments tied to actual, measured dispatch reduce ratepayer risk); Conn. Pub. Utils. Regul. Auth., Energy Storage Solutions Program (listing the program-authorization decision and annual-review decisions in Docket Nos. 21-08-05 through 25-08-05); Conn. Pub. Utils. Regul. Auth., 2025 Annual Report 2 (Mar. 2026) (explaining that PURA, as a quasi-judicial agency, can decide only on record evidence and that increased stakeholder awareness and participation make its decisions more robust).

- At least one focused technical conference after initial Straw comments, with agendas, models, assumptions, and workpapers filed sufficiently in advance; a transcript or detailed minutes; and written responses to unresolved technical questions.
- A revised MFR proposal followed by initial and reply comments before Board action. Material proposals first raised after the reply deadline should receive separate notice and an opportunity to respond.
- A defined review process for each EDC filing, including intervention or participant procedures, discovery or information requests, public and confidential data protocols, initial and reply comments, settlement procedures, preservation of non-settling positions, and a Board order containing express findings on need, cost-effectiveness, cost allocation, and rate impacts. The timeframe for this review process must be sufficient to meet all the procedural requirements of such review.
- A written VPP Working Group charter providing balanced representation, public notice, filed agendas and materials, minutes, disclosure of non-consensus positions, and an express statement that working-group activity does not replace formal record procedures.
- Before final budgets and targets are approved, a comparative needs-and-alternatives analysis and a consolidated cumulative bill-impact assessment covering VPP, storage, Triennium, GridFlex, PSUP, AMI, EV, NEM, and related investments and incentives.
- Hard program and subprogram budget caps; restrictions on transfers and recovery through other dockets; performance-based compensation; anti-duplication controls; automatic suspension or termination triggers; return of unspent or unsupported costs; and a fixed sunset requiring affirmative reauthorization.
- A uniform statewide analytical template for all EDC filings, including common baseline methodologies, avoided-cost assumptions, cost categories, benefit definitions, sensitivity cases, and bill-impact reporting, with any material deviation specifically identified and justified.
- Disclosure of material existing incentives, compensation, and service obligations applicable to participating DERs, together with identification of the distinct incremental service or commitment purchased through any additional VPP compensation.
- A separate, later record and Board decision for any long-term tariff or expanded utility investment, based on verified interim performance and updated PJM, technology, market, and affordability conditions.

3. Straw does not fully resolve important ratepayer issues raised in Rate Counsel's initial May 2026 comments

Rate Counsel's initial May comments offered important observations and recommendations regarding potential ratepayer impacts of the Board's initial VPP proposals. While the proposed Straw offers a few promising ratepayer protections ideas, these ideas and concepts are mostly limited, inadequate as offered, or leave several key consumer-protection issues and implementation details unresolved.[32] Throughout our original May comments, Rate Counsel identified several specific ratepayer risks and proposed corresponding safeguards. The proposed Straw, however, does not fully resolve several of the risks and corresponding safeguards identified by Rate Counsel and, in some instances, defers development of the applicable mitigation mechanism or safeguard to a future filing, proceeding, or other regulatory process. The proposed Straw leaves important program financial, regulatory, and operational risks insufficiently defined or unresolved, even though ratepayers may ultimately bear substantial portions of those risks. Rate Counsel finds this unacceptable and specifically reiterates these important ratepayer concerns as follows.

3.1. Straw does not address how cost-effectiveness or cost-benefit will be addressed in selecting VPP options/resources

Rate Counsel commends the proposed straw for identifying a key cost-effectiveness ("CE") standard by which VPP measures and investments will be measured. The Straw proposal recommends the adoption of the Ratepayer Impact Measure ("RIM") as the primary cost-effectiveness test and the Total Resource Cost ("TRC") test as a secondary test.[33] The proposed Straw will require future EDC filings to demonstrate a benefit-cost ratio ("BCR") greater than 1.0 for any proposed VPP measures or investments.[34] In addition, the proposed Straw will require retail aggregators to pass through at least 70 percent of pay-for-performance payments to enrolled customers.[35]

[32] *Straw Proposal: Virtual Power Plant Program*, BPU Docket No. QO26030099 (cited herein as "VPP Straw Proposal," by section and page).

[33] *VPP Straw Proposal*, § 2.6, at 37.

[34] *VPP Straw Proposal*, § 2.9, at 45.

[35] *VPP Straw Proposal*, § 3.7, at 61.

First, Rate Counsel strongly supports the use of the RIM CE test to evaluate CE VPP programs, investments, and market design changes and encourages Board Staff to hold firm on this recommendation. A measure/investment/program passing a RIM test is one that, under the assumptions employed in the Straw, does not produce a net adverse rate impact on non-participating customers. Rate Counsel believes this is an appropriate test for any VPP initiative given the nature of the load requirements, and capacity pressures reflective of today's market trends. Future demand growth, and new capacity resource needs, are being driven substantially by one subset of large energy users: data centers and other large computational/data storage facilities. It is reasonable and appropriate to assure that no other ratepayer class is being called upon to facilitate capacity resources that are largely being driven by users that are not primarily residential and small commercial customers. The use of a RIM test is consistent with a cost-causation and will minimize any potential cost-shifting or cross subsidization that could arise from future VPP initiatives.

However, while the proposed Straw's CE proposals may be meaningful on a forward-going, programmatic basis, they do not address the threshold issue of whether there are any CE opportunities necessitating the major policy overhaul envisioned in the original Board RFI The Board has not yet provided or, to Rate Counsel's knowledge, conducted a relevant and sufficiently comprehensive state-level analysis of the CE potentials for VPP in New Jersey. Broad policy changes were offered in the RFI but without any corresponding empirical evidence that the benefits (i.e., rate decreases) outweighed potential costs to ratepayers. Absent demonstrable record evidence of present CE opportunities that are consistent with the VPP goals of energy efficiency and cost reduction, Rate Counsel must urge the Board to refrain from dedicating ratepayer revenues to such initiatives.

As we noted in our initial comments, the RFI asked stakeholders how to design a VPP program, but not whether a VPP program is more cost-effective than the available alternatives nor whether an expansive VPP program would duplicate decades worth of investments already borne by New Jersey ratepayers. The Straw does not include an appropriate comprehensive comparative analysis to estimate whether VPP programs and other DER and storage investments are more cost effective than conventional supply-side bulk power investments such as combined-cycle gas turbines ("CCGT"), high voltage transmission investments and upgrades, lower voltage distribution-level investment and upgrades, and how all of this related to the myriad initiatives currently underway at not only the PJM level,[36] but also at the state level where many state regulators are scrambling to encourage supply side resource development to meet looming generation capacity needs. Nowhere does the proposed Straw verify and quantify whether an expansive set of new VPP investments, program development, and market design will be (individually nor collectively) more cost-effective than the resource or investment it would displace. That comparison must include all program costs, including ratepayer-funded incentives, DERMS infrastructure, AMI upgrades, DER developer incentives, aggregator compensation, program administration, and regulatory oversight.[37]

Instead, the proposed Straw cites national research indicating that VPP peaking capacity may cost a utility system approximately 60 percent less, on a net basis, than an equivalent new gas peaker.[38] That national comparison, while relevant as a general benchmark, does not by itself establish the cost-effectiveness of the proposed New Jersey VPP framework because it is not based

[36]*Rate Counsel Comments*, Response to Question 75(1), at 35.

[37]*Rate Counsel Comments*, Response to Question 69(3), at 31-32.

[38]*VPP Straw Proposal*, § 1.1, at 9.

on New Jersey-specific program costs, resource conditions, or implementation assumptions. Again, this is a threshold question that must be answered before moving forward on any new major VPP policy initiative.

The use of a new CE test, based on rate impacts[39] is meritorious, and the Straw proposal to establish a cost per kilowatt "cap" on dispatched demand reduction is also positive. But, it is important to note that the ratepayer-protection value of this cap is limited if it is not benchmarked against PJM capacity prices or the cost of a reasonably comparable alternative resource.[40] Rate Counsel is also concerned with the proposed Straw's reliance on the preliminary $60 million estimated avoided capacity value as support for the potential benefits to ratepayers in these specific VPP initiatives.[41]

Board Staff needs to be mindful that costs AND benefits need to be considered in tandem: that includes an evaluation of ALL of the benefits and costs (like ratepayer impacts). An expansive, untested VPP program in New Jersey could clearly result in benefits that pass the Straw's proposed CE screens and still cost ratepayers more per deliverable megawatt than the alternative it is intended to avoid. Likewise, an expansive and untested VPP program in New Jersey could also result in considerable capacity savings but could cost more than the capacity benefits offered. In evaluating and developing a viable plan to address the identified capacity and related energy needs of New Jersey, the Board should compare the VPP program against firm capacity available through PJM and conventional generation. Those alternatives may provide dispatchable capacity at a known cost and with an established performance record, while a

[39] *VPP Straw Proposal*, § 2.9, at 45.

[40] *VPP Straw Proposal*, § 2.8, at 43.

[41] *VPP Straw Proposal*, § 2.7(d), at 41.

distributed program requires program development, customer enrollment, enabling infrastructure, and ongoing administration before it can deliver capacity.[42] Rate Counsel does not oppose a wide range of VPP-style programs and investments as a matter of principle, but does recommend that the Board adopt such programs only when they result in net benefits, that consider the rate increases needed to fund such programs.[43]

3.2. Straw does not estimate/address cost exposure/rate impacts from program redundancy

3.3. Straw does not address how cost-effectiveness or cost-benefit will be addressed in selecting VPP options/resources

Rate Counsel commends the proposed straw for identifying a key cost-effectiveness ("CE") standard by which VPP measures and investments will be measured. The Straw proposal recommends the adoption of the Ratepayer Impact Measure ("RIM") as the primary cost-effectiveness test and the Total Resource Cost ("TRC") test as a secondary test.[44] The proposed Straw will require future EDC filings to demonstrate a benefit-cost ratio ("BCR") greater than 1.0 for any proposed VPP measures or investments.[45] In addition, the proposed Straw will require retail aggregators to pass through at least 70 percent of pay-for-performance payments to enrolled customers.[46]

First, Rate Counsel strongly supports the use of the RIM CE test to evaluate CE VPP programs, investments, and market design changes and encourages Board Staff to hold firm on

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[42] *Rate Counsel Comments*, Response to Question 75(6), at 38.

[43] *Rate Counsel Comments*, Response to Question 75(1), at 35.

[44] *VPP Straw Proposal*, § 2.6, at 37.

[45] *VPP Straw Proposal*, § 2.9, at 45.

[46] *VPP Straw Proposal*, § 3.7, at 61.

this recommendation. A measure/investment/program passing a RIM test is one that will (a) benefit VPP program participants, but (b) have no negative rate impact on non-participating customers. Rate Counsel believes this is an appropriate test for any VPP initiative given the nature of the load requirements, and capacity pressures reflective of today's market trends. Future demand growth, and new capacity resource needs, are being driven almost exclusively by one subset of large energy users: data centers and other large computational/data storage facilities. It is reasonable and appropriate to assure that no other ratepayer class is being called upon to facilitate capacity resources that are largely being driven by users that are not primarily residential and small commercial customers. The use of a RIM test is consistent with a cost-causation and will minimize any potential cost-shifting or cross subsidization that could arise from future VPP initiatives. However, Rate Counsel notes that while the proposed Straw's CE proposals may be meaningful on a forward-going, programmatic basis, they do not address the threshold issue of whether or not there are any CE opportunities necessitating the major policy overhaul envisioned in the original Board RFI.

Rate Counsel clearly noted, in our original comments, that there has been no broad, state-level analysis of the CE potentials for VPP in New Jersey. Broad policy changes were offered in the RFI without any corresponding empirical evidence that the benefits (i.e., rate decreases) outweighed potential costs: this is a key, threshold issue, the answer to which should define whether it is even appropriate to move forward with any major VPP policy initiative like those envisioned in the RFI. Otherwise, the VPP Straw is a solution in search of a problem.

As we noted in our initial comments, the RFI asked stakeholders how to design a VPP program, but not whether a VPP program is more cost-effective than the available alternatives nor whether an expansive VPP program would duplicate decades worth of investments already borne by New Jersey ratepayers. No analysis has been conducted to estimate whether VPP programs and other DER and storage investments are more cost effective than conventional supply-side bulk power investments such as combined-cycle gas turbines ("CCGT"), high voltage transmission investments and upgrades, lower voltage distribution-level investment and upgrades, and how all of this related to the myriad initiatives currently underway at not only the PJM level,[47] but also at the state level where many state regulators are scrambling to encourage supply side resource development to meet looming generation capacity needs. Nowhere does the proposed Straw verify and quantify whether an expansive set of new VPP investments, program development, and market design will be (individually nor collectively) more cost-effective than the resource or investment it would displace. That comparison must include all program costs, including ratepayer-funded incentives, DERMS infrastructure, AMI upgrades, DER developer incentives, aggregator compensation, program administration, and regulatory oversight.[48]

Instead, the proposed Straw cites national research indicating that VPP peaking capacity may cost a utility system approximately 60 percent less, on a net basis, than an equivalent new gas peaker.[49] This estimate does not support the changes proposed in the RFI since it is national in nature, highly aggregated, generalized, based on a considerably large number of optimistic assumptions (from a VPP development perspective, and, most importantly, is not a New Jersey-specific data and conditions. Again, this is a threshold question that must be answered before moving forward on any new major VPP policy initiative.

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[47] *Rate Counsel Comments*, Response to Question 75(1), at 35.

[48] *Rate Counsel Comments*, Response to Question 69(3), at 31-32.

[49] *VPP Straw Proposal*, § 1.1, at 9.

While the use of a new CE test, based on rate impacts[50] is meritorious, and the Straw proposal to establish a cost per kilowatt "cap" on dispatched demand reduction is also positive, it is important to note that this cap is without meaning if it is not tied to PJM capacity prices or the cost of a conventional generation alternative.[51] Likewise, Rate Counsel has concerns with the proposed Straw's use of a $60 million preliminary, estimated avoided capacity value as justification for moving forward with these expansive VPP initiatives.[52]

However, Board Staff needs to be mindful that costs <u>and</u> benefits need to be considered in tandem: that includes an evaluation of <u>all</u> the benefits and costs (like ratepayer impacts). An expansive, untested VPP program in New Jersey could clearly result in benefits that pass the Straw's proposed CE screens and still cost ratepayers more per deliverable megawatt than the alternative it is intended to avoid. Likewise, an expansive and untested VPP program in New Jersey could also result in considerable capacity savings but could cost more than the capacity benefits offered. If the identified capacity need is real, then the Board should compare the VPP program against firm capacity available through PJM and conventional generation. Those alternatives may provide dispatchable capacity at a known cost and with an established performance record, while a distributed program requires program development, customer enrollment, enabling infrastructure, and ongoing administration before it can deliver capacity.[53] Rate Counsel does not oppose a wide range of VPP-style programs and investments as a matter of

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[50] *VPP Straw Proposal*, § 2.9, at 45.

[51] *VPP Straw Proposal*, § 2.8, at 43.

[52] *VPP Straw Proposal*, § 2.7(d), at 41.

[53] *Rate Counsel Comments*, Response to Question 75(6), at 38.

principle, but does recommend that the Board adopt such programs only when they result in net benefits, and those benefits account for the rate increases needed to fund such programs.[54]

3.4. Straw does not estimate/address cost exposure/rate impacts from program redundancy

New Jersey ratepayers are already funding or may soon fund multiple overlapping initiatives that are all clearly related to those addressed in the initial RFI and the proposed Straw including: (1) the Garden State Energy Storage Program Phase 1 and Phase 2; (2) VPP program development; (3) Third Program Cycle ("third triennial") energy efficiency and peak demand reduction programs; (4) Grid Modernization Forum initiatives such as GridFlex and IDDER, AMI deployment; (5) ongoing solar energy net metering costs; (6) and potential additional subsidies for nuclear and/or gas generation. To date, no proceeding has produced a comprehensive accounting of the combined ratepayer cost of these programs nor has Boards Staff prepared any program-specific BCAs to show the cumulative effect on of these respective programs and their impacts on customer bills.[55] Nowhere has Board Staff addressed how redundancies, overlaps, or even synergies between these various initiatives will be addressed. Also important is the fact that the Proposed Straw does not address how, from a procedural perspective, all of these initiatives will be reconciled. Failure to account for the cumulative effect will of all the current programs risks ratepayers double-paying for the same "benefit."

Rate Counsel therefore continues to ask the Board to evaluate total ratepayer cost exposure across all active and planned distributed energy resource, storage, VPP, energy efficiency, and grid modernization programs before approving additional commitments. The Board must also

[54] *Rate Counsel Comments*, Response to Question 75(1), at 35.

[55] *Rate Counsel Comments*, Response to Question 75(2), at 36.

determine actual procurement needs, because even individually cost-effective programs can increase bills unnecessarily when the system over-procures.[56]

The proposed Straw addresses the relationship among programs primarily as a coordination issue. It proposes a VPP Working Group to align related workstreams,[57] and presents preliminary EDC program budgets as standalone figures for comment.[58] Both proposals are woefully lacking and fail to adequately serve ratepayer interests since they do not address the fundamental issue: how overlap, redundance, and inefficiencies can lead to unnecessary rate increases at a time when the affordability of energy services is challenged, and becoming more, not less challenged. Affordability itself is determined by the total customer bill, not on an individual or piecemeal process that examines the cost of any single VPP program viewed in isolation. As Rate Counsel explained in its initial comments, neither EDECA nor subsequent legislation eliminates the Board's obligation to ensure just and reasonable rates, and accelerated deployment cannot come at the expense of basic ratepayer protections.[59]

3.5. Straw does not address sunset provisions, termination triggers or budget caps

Rate Counsel's original comments recommend the Board include clear financial and performance controls in both the VPP and Phase 2 programs. Those controls should include cost-effectiveness/CBA benchmarks to evaluate anticipated and actual program performance (similar to the Board-approved EE programs under the CEA), defined thresholds for suspension or termination of the specific VPP programs and/or investments, and hard VPP program/investment

[56] *Rate Counsel Comments*, Response to Question 75(2), at 36.

[57] *VPP Straw Proposal*, § 4.9, at 75.

[58] *VPP Straw Proposal*, § 2.4, at 33.

[59] *Rate Counsel Comments*, Response to Question 75(2), at 36.

budget caps that cannot be exceeded without a new Board order supported by an updated CBA showing continued cost-effective ratepayer net benefits. Failure to include such vital protections will leave ratepayers with an open-ended financial obligation with no regulatory remedy if program costs exceed benefits.[60] Rate Counsel's original comments also recommended a set of minimum filing requirements ("MFRs") in which vital program information can be evaluated in order conduct a reasonably expedited regulatory program review that does not shift the entire regulatory review risk onto ratepayers.[61]

Rate Counsel is encouraged with the proposed Straw's review proposal, but notes that this review does not include a critical enforceable trigger. It calls for a comprehensive evaluation within twelve months after program launch, after which the Board may continue, modify, expand, or phase out the program.[62] The proposed budgets remain preliminary and subject to later refinement, with no hard cap and no automatic consequence if the program/investment BCR falls below 1.0.[63] The Straw's enforcement provisions instead focus on aggregator performance. Aggregators must maintain a sustained response rate of at least 80 percent of enrolled capacity,[64] and dispatch underperformance may reduce performance compensation by 25 percent.[65]

Rate Counsel recommends that VPP program performance be evaluated on both delivery and cost. Rate Counsel specifically recommended ratepayer protections against cost overruns and

[60] *Rate Counsel Comments*, Response to Question 75(4), at 37.

[61] *Rate Counsel Comments*, Response to Question 69(4), at 32.

[62] *VPP Straw Proposal*, § 2.6, at 37.

[63] *VPP Straw Proposal*, § 2.4, at 33.

[64] *VPP Straw Proposal*, § 3.7, at 61.

[65] *VPP Straw Proposal*, § 3.5, at 58.

recommended that cost performance be evaluated together with dispatch and reliability results.[66] The Straw imposes consequences when an aggregator fails to deliver megawatts, but it establishes no comparable consequences when the program delivers those megawatts at an unreasonable cost. A program that meets its dispatch target, but exceeds its cost benchmark, is not a successful outcome for ratepayers. Rate Counsel recommends these deficiencies be addressed in any final program rules on this matter.

3.6. Straw Proposal does not address data center cost-causation

Rate Counsel's cost-causation position relative to VPP program development, financial incentives and investment is straightforward: all VPP-related costs (program design, incentives, investments, and other program related costs) should be assigned to the customers or entities that are creating the need for these specific types of capacity investments. The Board should recognize that the identified supply-demand gap is being driven almost exclusively by data-center load growth. [67] Rate Counsel recommends the VPP straw directly call out this cost causation fact and assure, in the final program rules, that these new sources of load will be primarily (not exclusively) responsible for the VPP-related costs being incurred to predominately meet their load and reliability requirements.[68]

The same principle applies to interconnection-related distribution upgrades needed to facilitate new loads. Those interconnection upgrades may be substantial, and socializing their costs across all customers would require non-participating ratepayers to subsidize privately-owned

[66] *Rate Counsel Comments*, Response to Question 69(2), at 31.

[67] *Rate Counsel Comments*, Response to Question 75(6), at 38.

[68] *Rate Counsel Comments*, Conclusion, at 39.

storage resources from which they receive no direct benefit.[69] The proposed Straw, for instance, identifies electrification and large loads, including data centers, as drivers that the long-term framework must address.[70] It does not, however, establish a cost-causation rule, or policy preference/directive, assigning data-center-driven capacity costs to data centers. Rate Counsel strongly recommends the Board include a provision that directs utilities to recover costs in a fashion that sets fair, just and reasonable prices for those loads causing these new capacity requirements, not existing ratepayers. Failure to do this shifts the entire regulatory and ratemaking risks of these new VPP initiatives entirely onto ratepayers.

3.7. Straw Proposal does not address forfeiture election between GSEP-II and VPP

Rate Counsel continues to recommend the Board reject any VPP rule provisions that allow any energy storage resource from receiving compensation under both the GSESP Phase 2 and the VPP program. Phase 2-eligible systems already receive ratepayer-funded incentives to support their development. Additional VPP compensation would require ratepayers to support the same asset through two separate programs. If the Phase 2 incentive is insufficient without stacked revenues, the underlying cost-effectiveness assumptions for Phase 2 should be revisited before additional compensation through a separate program is authorized.[71] The Board should first fix any incentive/funding issues with the Phase 2 program before creating new inefficiencies by allowing multiple program participation.

If the Board permits cross-participation, Rate Counsel proposed a clear election requirement: a storage system should forfeit its Phase 2 incentives in full before enrolling in the

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[69] *Rate Counsel Comments*, Response to Question 37, at 17-18.

[70] *VPP Straw Proposal*, § 3.1, at 48.

[71] *Rate Counsel Comments*, Response to Question 42, at 18.

VPP program. A partial offset would leave a residual subsidy funded by non-participating customers.[72] More generally, participants should select one compensation pathway. If any subsidy stacking is permitted despite Rate Counsel's objection, combined ratepayer-funded compensation should be subject to a full one-for-one offset and should not exceed the verified value delivered by the resource.[73]

Rate Counsel disagrees with the Straw Proposal to the extent that it allows for coordination between the VPP and Phase 2 programs rather than requiring an explicit election,[74] permits enrolled resources to access the available value stack,[75] and then relies on anti-double-counting provisions to prevent payment for the same service twice.[76] While this proposal, on its face, may appear to prevent duplicate payment for an identical service, it does not eliminate the broader cross-program subsidy created when the same asset receives support from two ratepayer-funded programs. Rate Counsel recommends this prohibition on cross participation be directly included in any Final program.

3.8. Straw allows EDC VPP ownership/generation participation

Rate Counsel continues to oppose EDC ownership of energy storage. Notwithstanding the statutory limits of utility-owned generation under EDECA, utility-owned storage allows EDCs the opportunity to earn an almost risk-free return on and of its program-eligible investments regardless of whether the asset provides them with a corresponding benefit (a benefit against which private investors cannot compete). Such a regulatory outcome shifts regulatory, performance, and

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[72] *Rate Counsel Comments*, Response to Question 43, at 18-19.

[73] *Rate Counsel Comments*, Response to Question 62, at 27.

[74] *VPP Straw Proposal*, § 4.2, at 67.

[75] *VPP Straw Proposal*, § 3.5, at 56.

[76] *VPP Straw Proposal*, § 3.2, at 49.

financial risks entirely onto ratepayers, reducing competitive discipline, and creating an inherent conflict of interest, with a potential for less than competitive outcomes since EDCs will be allowed to both owns storage assets and evaluates whether other market alternatives/ competitors are the least-cost solution for a distribution level storage need.[77] A program which allows utility owned VPP assets is anti-competitive since the utility also controls the interconnection process and important distribution-system information. Rate Counsel believes that the Board should view, with a wary eye, claims of operation need or preference for EDC participation. To the extent these operational constraints may arise, Rate Counsel recommends they be clearly identified and addressed through competitive procurement with appropriate performance requirements, without utility ownership.[78]

Rate Counsel also strongly opposes establishing a capacity/megawatt procurement target for EDC-owned distributed storage. A mandatory target would presume that utility ownership is appropriate: a conclusion that has not been supported and for which Rate Counsel believes the Board would need evidentiary evidence before adoption.[79]

Rate Counsel believes the proposed Straw consideration of utility ownership should be dismissed. While Staff seeks comment on whether EDC ownership should be permitted for constrained circuits identified through the Proactive System Upgrade Plan process,[80] and identifies EDC-owned storage operated as a non-traditional distribution solution as one possible deployment model[81], none of these serve as adequate reasons for overriding the strong reasons why EDCs

[77] *Rate Counsel Comments*, Response to Question 33, at 14.

[78] *Rate Counsel Comments*, Response to Question 54, at 23.

[79] *Rate Counsel Comments*, Response to Question 55, at 24.

[80] *VPP Straw Proposal*, § 3.8, at 62.

[81] *VPP Straw Proposal*, § 3.8, at 63.

should be prohibited from storage ownership and program participation. Allowing EDC ownership is in direct contradiction of the EDECA's separation of generation and distribution functions, which itself raises a host of legal eligibility questions, which Board Staff seems to recognize.[82] The fact that the Straw Proposal seeks comments on an issue with identified dubious legality indicates further study and review is required before any final Board review. Thus, Rate Counsel recommends the Board find EDCs ineligible from participation in storage programs in any Final program.

3.9. Straw Proposal extends commitment periods

Rate Counsel continues to support and recommend that performance incentive rates be reevaluated at least annually. Long-term ratepayer-funded incentives create a risk of continued over-compensation as technology costs, performance, market conditions, public policies, general economic conditions, and system requirements change. The annual review should consider verified savings realized by the EDC, changes in avoided-cost benchmarks, the cost of alternative resources available through PJM, and cumulative ratepayer impacts. The Board should also retain authority to reduce or suspend incentive payments when the program no longer produces net benefits.[83]

The proposed Straw establishes the compensation structure without establishing a corresponding review cycle. It includes an enrollment option based on an annual payment per enrolled kilowatt,[84] while its suspension remedies apply to aggregators that fail to maintain the

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[82] *VPP Straw Proposal*, § 3.8, at 62-63.

[83] *Rate Counsel Comments*, Response to Question 61, at 27.

[84] *VPP Straw Proposal*, § 3.3(a), at 50-51.

required dispatch response rate.[85] Nothing in the Straw proposal requires the Board to reevaluate the incentive rates on a defined schedule or identifies the criteria for doing so comparable to other Board programs such as the Solar ADI financial support program which re-evaluates incentive structures every three years and provides for a mandatory percent incentive reduction in some instances. Without periodic review, an incentive established at program launch may remain in place after changes in costs or market conditions make that level of compensation unnecessary. Rate Counsel recommends the Board include this review provision in the Final program.

3.10. Straw does not adequately address public reporting

Rate Counsel originally highlighted significant problems that can arise in programs like this related to long-term technology lock-in. Phase 2, for instance, contemplates ten-year performance incentive commitments even though battery storage technology and costs continue to change. A decade-long commitment may require ratepayers to support systems that become less economic than later alternatives. Rate Counsel therefore recommends the Board use shorter initial terms with periodic reassessment to preserve flexibility as technology and market conditions evolve.[86]

The proposed Straw, however, proposes a minimum enrollment period of seven years. This duration is simply too long and remains a significant commitment with downside risk.[87] When combined with annual enrollment payments and no required periodic reassessment, the enrollment proposal locks ratepayers into a multi-year compensation structure without a defined opportunity to adjust the program as conditions change.

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[85] *VPP Straw Proposal*, § 3.7, at 61.

[86] *Rate Counsel Comments*, Response to Question 75(7), at 38-39.

[87] *VPP Straw Proposal*, § 3.3, at 54.

3.11. The Straw Does Not Require Public Reporting of EDC Override or Curtailment Events

Rate Counsel recommends that EDC override or curtailment authority be narrow, documented, and limited to verifiable emergency conditions involving an immediate threat to system safety or equipment protection. Developers/owners may invest their own capital in behind-the-meter storage based on the expected economic value of the asset, and broader curtailment authority could materially reduce that value.[88] Rate Counsel also believes that circumstances requiring an override should be uncommon because most behind-the-meter storage serves the customer's own load and is interconnected under IEEE 1547 anti-islanding requirements.[89]

The proposed Straw addresses aggregator performance obligations and the consequences of nonperformance.[90] However, the proposed Straw does not require public, event-level reporting of EDC curtailments or overrides, including the specific safety or reliability condition supporting each action. Without that reporting, customers cannot verify whether a curtailment was necessary, and the Board cannot determine whether override authority is being used only for emergencies or as a routine operating tool.

3.12. Straw Proposal does not address administrative cost recovery

Rate Counsel recommends recovering VPP administrative costs through program-specific fees assessed to participating VPP projects rather than through charges to all ratepayers. These costs include program management, application processing, measurement and verification, incentive administration, DERMS integration, reporting, and compliance monitoring. They are

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[88] *Rate Counsel Comments*, Response to Question 36, at 16.

[89] *Rate Counsel Comments*, Response to Question 36, at 16.

[90] *VPP Straw Proposal*, § 3.7, at 61.

incurred to administer a program whose direct benefits primarily accrue to participating resources.[91]

The proposed Straw presents preliminary program budgets but does not establish who will bear the administrative costs.[92] Without an express allocation rule, those costs may be socialized across all customers. Rate Counsel does not dispute that reasonable administrative costs may be necessary; the issue is whether non-participating residential customers should be required to fund the administration of a program in which they do not participate and from which they receive no direct benefit, especially before any benefit can reasonably be expected to accrue. As noted earlier, large data center loads are primarily responsible for the need driving these investments and should be allocated these costs.

3.13. Straw does not address program costs and affordability conflicts

Rate Counsel identified affordability as a central barrier to customer participation in behind-the-meter storage programs. Executive Order No. 2 likewise identifies rising energy costs as a central concern. The ratepayers the Board seeks to assist are therefore the same ratepayers who would bear the cost of new ratepayer-funded incentive programs. Adding those costs to the bills of non-participating customers does not address affordability and may worsen it.[93]

Rate Counsel also recommends a clear evidentiary standard for non-cost benefits. Ratepayer cost savings should remain the primary criterion. Reliability and emissions benefits may be relevant, but they should not be used to support a program that fails a ratepayer cost-

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[91] *Rate Counsel Comments*, Response to Question 72, at 33.

[92] *VPP Straw Proposal*, § 2.4, at 33.

[93] *Rate Counsel Comments*, Response to Question 50, at 21.

effectiveness test. To the extent the Board credits those benefits, they should be measurable, independently verifiable, and valued using conservative methods. General claims of reliability or emissions improvements are not a substitute for quantified evidence.[94] The Board must set a clear objective for the VPP program – lower customer bills.

This affordability concern applies across the unresolved issues discussed above. Non-participating customers may be required to fund incentives, enabling infrastructure, and program administration, while the most direct benefits flow to participants, aggregators, and asset owners. Rate Counsel supports cost-effective grid modernization, storage, and integrated distributed resource solutions. The Board should ensure, however, that these programs do not deepen the affordability problem they are intended to address.[95]

4. Response to specific straw proposal sections

4.1.1. Rate Counsel is supportive of Phase 1, with reservations.

Rate Counsel is generally supportive of the Phase 1 VPP Interim Program structure outlined in Section 2 of the Straw Proposal, though this support is expressly conditioned upon the reservations and safeguards detailed throughout these comments. The Interim Program's two-year timeframe (2027-2029) and stated objective of leveraging existing Advanced Metering Infrastructure ("AMI"), direct load control platforms, and demand response customer bases represent a reasonable near-term approach to testing VPP concepts while collecting operational data.

However, Rate Counsel emphasizes that support for the Interim Program framework does not constitute endorsement of any specific program design, budget allocation, compensation

[94] *Rate Counsel Comments*, Response to Question 56, at 24.

[95] *Rate Counsel Comments*, Response to Question 75(2), at 36.

mechanism, or performance target until the EDCs file detailed proposals in response to the Board's Minimum Filing Requirements Order. Rate Counsel reserves all rights to evaluate, support, or oppose individual EDC proposals based on demonstrated cost-effectiveness, appropriate risk allocation, and ratepayer protection.

4.1.1.1. Benefits Should Be Modeled Through Sensitivity Analyses

The Straw Proposal correctly identifies ratepayer savings and cost-effectiveness as the first guiding principle for VPP programs.[96]. Rate Counsel strongly supports this principle but cautions that cost-effectiveness demonstrations must be robust, transparent, and conservative in their assumptions. Benefit estimates should be modeled through sensitivity analyses to represent multiple potential future states (particularly with respect to variation in the value of avoided capacity, as indicated above). Modeled benefits must significantly exceed modeled costs, thereby ‘baking in’ benefits for customers in exchange for benefit variation risk and the program cost risks assigned to customers in various demand response programs. This approach is particularly critical for avoided capacity cost assumptions, which the Straw Proposal identifies as a primary source of ratepayer savings.[97]

4.1.1.2. Transition Period Plans Require Full Transparency and Ratepayer Protections

Rate Counsel reserves the right to withhold judgement on ‘transition period plans’ until the utilities provide complete, detailed transition frameworks as part of their Minimum Filing Requirement filings.. In particular, Rate Counsel is concerned that the transition clauses in implementation contractor agreements and other aspect of the transition will be designed—whether intentionally or through inadequate oversight— to advance shareholder interests to the

[96] See Straw Proposal at 15-16, Section 1.3(i)
[97] See Straw Proposal at 39, Section 2.7(b); Appendix A at 90-92.

detriment of customers and third party aggregators. Transition arrangements create significant opportunities for incumbent utilities and their contracted Implementation Contractors to entrench market position, limit competitive entry, and extract ongoing revenue streams that persist beyond the Interim Program period.

Any costs incurred during the transition period—including contract termination payments, system integration expenses, or administrative overhead—must be separately identified, justified as incremental to normal Interim Program operations, and subject to prudence review. Ratepayers should not bear transition costs that result from poor initial contract design or from contractual arrangements that prioritized EDC or Implementation Contractor interests over smooth, cost-effective program evolution.

Rate Counsel's May 20, 2026 comments addressed related concerns in the context of EDC roles and aggregator coordination, emphasizing that "[e]mbedding Phase 2 administrative costs in general rate recovery obscures the true cost of the program, eliminates transparency, and guarantees that ratepayers who neither participate in nor benefit from distributed storage deployment subsidize its administration." See Rate Counsel May 20, 2026 Comments at 34, Response to Question 72. The same principle applies to transition period costs: those who cause and benefit from transition complexity should bear associated costs, not all ratepayers indiscriminately.

4.1.2. Concerns about VPP Phase 2

While Rate Counsel's conditional support for the Interim Program reflects recognition that a limited-duration pilot can generate useful operational data, Rate Counsel is extremely skeptical of the long-term VPP framework (Phase 2) contemplated in Section 3 of the Straw Proposal. This skepticism stems from fundamental concerns regarding cost allocation, cost-effectiveness demonstration, and structural features that appear designed to maximize distributed energy resource compensation rather than ratepayer savings.

4.1.2.1. Rate Payer Savings and Cost-Effectiveness Framework Principle.

4.1.2.1.1. Accurate Accounting of Distribution Grid Capacity Upgrade Costs

The Straw Proposal's first guiding principle states that "VPP programs must deliver measurable ratepayer savings over time" and that "[a]ll program designs must include a robust cost-effectiveness analysis."[98] Rate Counsel reminds the Board that **all costs should be considered** in cost-effectiveness tests, not merely direct program administration and incentive costs. As an example, the VPP Phase 2 Strawman appears to have been designed with the objective of increasing compensation to PV and PV+Storage installations.[99] As compensation increases, more PV and PV+Storage instal4lations can be expected, and this will generate significant distribution grid capacity upgrade costs. These grid upgrade costs must also be considered in VPP program cost-effectiveness tests. Failing to account for distribution infrastructure costs in program benefit-cost analysis systematically understates the true cost of VPP resources and creates an misleading comparison against supply-side alternatives. If a VPP program requires $50 million in distribution system upgrades to accommodate the distributed generation assets it incentivizes, that $50 million is a program cost as real and consequential as direct incentive payments to participants.

4.1.2.1.2. Beneficiary Pays Cost Causation Principle Should Govern Cost Allocation

Under basic cost causation principles, entities that require and utilize distribution system capacity to conduct their business should contribute to the cost of providing that capacity. This principle applies broadly in utility regulation: industrial customers with high peak demands pay

[98] See Straw Proposal at 15-16, Section 1.3(i).
[99] See Straw Proposal at 46-63, Section 3 (describing long-term open-access framework, three-pathway compensation mechanism, and revenue stacking provisions).

demand charges; customers requiring distribution extensions contribute to extension costs; transmission customers pay for network upgrades their interconnections necessitate. The same principle should apply to distributed generation that exports to the grid.

For PV and PV+Storage facilities interconnected to the distribution grid, the grid represents the only way to get those facilities' products (capacity and energy) to market. As such, PV and PV+Storage must share in the cost of grid capacity upgrade construction, overall grid operations/maintenance, and EDC business functions under the cost causation principle. Rate Counsel recommends the Board Order EDCs to add DER exporters as a class of customers in upcoming rate case class cost of service studies, and to include a tariff to be charged to those facilities in future rate cases. For example, ACE reports outstanding DER interconnection requests of 295.7MW, or 10.9% percent of ACE's coincident system peak demand. (Straw p. 90, Table 1). Substantial costs will be required to accommodate these interconnections in rural areas and must be reflected in program cost-effectiveness analysis.

4.1.2.2. Value Stacking and Coordination Across Programs Principle.

4.1.2.2.1 The Straw Proposal's fourth guiding principle embraces "value stacking and coordination across programs," stating that "[a]ggregated DERs should be able to leverage their technology and device agnosticism to access multiple value streams simultaneously."[100] Rate Counsel has raised concerns about value stacking and double compensation in multiple prior proceedings and reiterates those concerns here. See Rate Counsel May 20, 2026 Comments at 7, Response to Question 15 (cautioning against value stacking arrangements that "introduce complexity and raise the risk of duplicative compensation for overlapping services, the costs of which are borne by ratepayers").

[100] See Straw Proposal at 16, Section 1.3(iv).

4.1.2.2.2 Rate Counsel does not believe most DERs will be able to simultaneously provide value to wholesale markets and local distribution needs in the manner the Straw Proposal's value stacking framework assumes. The physical reality of DER dispatch creates unavoidable conflicts between competing value streams. When an asset is dispatched to address a local distribution need, it may no longer be available to meet a wholesale market call later that day, and vice versa. The Straw Proposal acknowledges this tension vaguely when discussing dispatch coordination in Section 2.8(b), noting that "[i]n the event of distribution-level safety dispatches, the EDC's dispatch shall take priority over all aggregator dispatches in its service territory." See Straw Proposal at 61, Section 3.7(b). But the conflict is more fundamental than safety overrides. It is a basic physical constraint. Similarly, a demand response resource, such as a smart thermostat or a managed EV charger, that curtails load during a distribution-level event may have exhausted its demand reduction capability by the time a wholesale market event is called later that day.

To address these physical limitations and prevent illusory value stacking that overstates DER capability and overcompensates participants, Rate Counsel recommends clear separation. Rate Counsel recommends VPP dispatchable by wholesale market requests be precluded from local distribution dispatch/compensation, and vice versa, unless the DER has sufficient capacity to meet the commitments made separately and distinctly to a wholesale market and to an EDC. This recommendation does not prohibit all value stacking. It requires that any DER asset claiming compensation from multiple value streams must demonstrate that it possesses the physical capability to deliver both services.

Local Distribution Services May Provide Minimal Value

Rate Counsel contends that some local distribution services touted by VPP value stacking proponents, such as 'voltage support', may be of minimal value. Rate Counsel is unaware of significant instances of insufficient voltage levels on EDC distribution grids that would justify paying VPP resources to provide voltage support.. Indeed, the EDCs' conservation voltage reduction programs in Triennial 2 are designed specifically to reduce energy use and demand by reducing unnecessarily high voltage levels. The fact that CVR programs are being implemented suggests that voltage support from DERs is addressing a problem that may not exist outside particularly unique situations. Moreover, New Jersey's distribution systems are mature systems with years and billions of dollars in accelerated infrastructure program investments. Before the Board approves compensation for voltage support services, it should require EDCs to quantify the actual incidence of voltage violations, the cost of resolving those violations through traditional means, and whether DER-provided voltage support offers a cost-effective alternative. Absent this demonstration, voltage support as a compensable value stream risks becoming another mechanism for inflating DER compensation without corresponding ratepayer benefit.

4.1.2.3. Integration of DER Grid Services Into EDC Plans Faces Structural Barriers

The Straw Proposal's third guiding principle for the long-term VPP framework states that "[i]n the long term, the Board will adopt structures that support a competitive market for third-party aggregators to build and operate VPPs" capable of "deferring or avoiding traditional infrastructure upgrades where possible." See Straw Proposal at 16, Section 1.3(iii). Section 3.8 further contemplates that VPPs will provide distribution services that defer or avoid costly traditional distribution upgrades. See Straw Proposal at 62-64, Section 3.8. However, Rate Counsel is extremely skeptical that EDCs will employ DER grid services to reduce local distribution capital spending in the manner the Straw Proposal envisions.

First, capital bias discourages EDCs from doing so, and EDCs will argue that reliance on DER grid services is relatively riskier than wired solutions, owing to intermittent availability of grid services from DERs. If the EDC must maintain traditional backup capability in case the VPP underperforms, then the non-wires alternative has not truly avoided costs. Rather, it adds a layer of expensive redundancy. The Straw Proposal does not address how the Board will overcome this structural disincentive. Absent regulatory reforms that provide EDCs with equivalent incentives for non-wires alternatives, EDCs will continue to prefer traditional capital investments.

4.1.2.3.2 Second, it is often less costly to increase circuit and/or substation capacity through investment in distribution equipment than through adding non-wires alternatives (NWA). NWAs should be evaluated for cost-effectiveness against traditional grid investments on a case-by-case basis. The increased complexity of NWA may involve additional, site-specific costs and risks not observed in traditional solutions. The Board's forthcoming Proactive System Upgrade Plan ("PSUP") framework, discussed in Section 4.1 of the Straw Proposal, should consider these evaluations.[101] If PSUP filings are required to identify distribution needs and evaluate both traditional and non-traditional solutions in a transparent, standardized format, the Board and stakeholders should be able to assess where non-wires alternatives genuinely offer cost-effective solutions and where they do not.

Third, adding storage capacity is typically associated with short-term deferral of capital spending, and rarely makes long-term elimination of capacity increase spending possible. For example, load growth is typically persistent, not static. If customer load on the feeder continues to grow, due to housing development, commercial expansion, large load additions, electric

[101] See Straw Proposal at 47-48, Section 3.1; at 64-66, Section 4.1.

vehicle adoption, or electrification of heating, the battery's peak-shaving capability becomes progressively less adequate. A battery that successfully manages a 5% thermal overload can defer an upgrade for several years, but if load grows at 2-3% annually, the overload will eventually exceed the battery's capability, and the traditional infrastructure upgrade will still be required. Moreover, batteries have finite cycle life and require replacement after 10-15 years of operation. The deferred distribution infrastructure, once built, will provide service for 40 years or more. From a lifecycle cost perspective, deferring a long-lived capital asset through a shorter-lived alternative may not generate net savings if the deferral period is brief and the traditional upgrade must ultimately be built.

The Board must be realistic about the long-term benefits it projects. Most distribution constraints that would otherwise require traditional upgrades may eventually require those upgrades even if storage or other non-wires alternatives provide temporary deferral.

4.2. Specific straw observations

4.2.1. VPP interim program proposal

4.2.1.1. Program purpose and proposals

Rate Counsel supports several of the objectives identified for the Interim Program, subject to the qualifications discussed below. Rate Counsel questions whether the July 1, 2027 peak reduction goal and date may be too aggressive. It is unclear whether the Board has assessed the actual need for these procurement obligations. Moreover, if EDCs do not file their VPP plans until December 2026, and those plans are not approved until Q1 or Q2 2027, there may be insufficient time for EDCs and third-party aggregators to recruit enough participants to grow their existing DR programs to the three percent goal by the specified date. It may be more realistic to set the reduction goal after it has assessed actual peak demand deficiencies that need to be addressed Once demonstrated need has been established and the cost-effectiveness of DER solutions relative to alternatives and ratepayer impacts evaluated, EDCs should be held accountable to achieving the established goals. The BPU should consider penalties for non-achievement (ex. Dis-allowance of recovery of a portion of VPP interim program costs based on the percentage of load reduction goal achieved).

The Proposed Straw also seeks to rely on existing utility, DER aggregator, and AMI capabilities. Rate Counsel supports this objective as EDCs current systems should be capable of delivering the load reductions discussed without the need for investment in additional, expensive management systems. Likewise, the capabilities of existing AMI systems should be sufficient to meet EM&V requirements of the VPP programs.

Operational data collection will be particularly important to the development of any long-term framework. Rate Counsel agrees collecting this type of operational data will be extremely important to inform development of long-term tariff structures to support VPPs. An additional data element that should be collected is when local distribution events occur (ex. The need for voltage support, circuit capacity constraints, etc.) as compared to when larger system events are called. This information combined with DER availability information will help determine how realistic various "value stacking" scenarios will be in the future.

The Interim Program can also serve an important customer-education and market-development function. Rate Counsel agrees the interim program will help facilitate customer education and potentially expand the customer base.

Rate Counsel also supports testing communication protocols, performance measurement methodologies, and data reporting standards, as well as, establishing a competitive EDC-aggregator contracting framework during the Interim Program.

With respect to compensation, Rate Counsel supports pay-for-performance incentive models and believes these should represent the majority of any incentive funding. Rate Counsel recognizes that enrollment incentives are often necessary for customer recruitment, but enrollment or other fixed incentives should be minimized. The use of third-party aggregators may facilitate this. EDCs, using ratepayer funds, can offer aggregators pay-for-performance incentives, while aggregators would be free to construct whatever incentive structure they can best use to capture DER resources. This structure will help shift risk away from captive ratepayers and onto program participants.

Rate Counsel also supports collecting data to quantify retail peak-load reductions and distribution-level grid-service values. As discussed above, operational data will be important to inform long-term tariff structures and evaluating the feasibility of various value-stacking scenarios.

With respect to evaluating the potential for VPPs to lower costs for program participants and all ratepayers, Rate Counsel believes this can be accomplished most directly through the RIM test . Rate Counsel stresses that in any cost-benefit analysis <u>all</u> costs associated with the program must be accounted for. In the case of VPPs relying on incremental PV and PV + storage DERs, those costs must include the cost of distribution grid upgrades, including both capacity increases and interconnection costs, necessary to accommodate said DERs.

Rate Counsel believes that any long-term VPP programs should include the same goals to validate the continued benefit and cost-effectiveness of such programs. Establishing load reduction targets will keep VPP providers focused on the primary objective. Having EDCs and aggregators continue to collect the data elements detailed above will allow for continual EM&V for the programs, as well as, provide insight into which program elements are no longer effective, or which program innovations are beneficial, because the Board cannot manage what EDCs do not measure.

4.2.1.2. Program eligibility

The proposed interim program peak shave goal is 589 MW, inclusive of all EDCs. Were each aggregate group to only meet the minimum size requirement there would be 58,900 groups to manage. Though many groups are sure to exceed the minimum threshold, Rate Counsel still believes the minimum aggregation size of 10 kW per event is too small. Overhead costs for administering such small aggregations will weaken overall program cost-effectiveness. The 100 kW minimum size proposed for the long-term program should be sufficient for the interim program as well. Rate Counsel does not recommend creating separate thresholds for residential and C&I customer aggregation groups, as doing so is likely to add a layer of complexity without any discernible benefits. Rate Counsel also believes the aggregation threshold should be measured as capacity deliverable during a dispatch event. It would be the aggregators' responsibility to ensure their aggregated DERs can deliver the load relief required. For example, if an aggregator anticipates a 10 percent opt-out rate for customers enrolled in their program, the aggregator would need to oversubscribe by ~11 percent to assure its load relief target is met. Tying the minimum threshold to deliverable capacity will make tracking and reporting easier as different resource aggregations will likely have different opt-out and performance rates.

4.2.1.3. Enabling technologies

Rate Counsel believes the communications protocols identified in the Proposed Straw should be encouraged for the interim and long-term programs, as this will help move the industry towards adopting standards. However, exceptions to these standards could and should be considered if doing so would enable an aggregator to quickly implement load relief. Such an exception might be a vendor with a base of deployed DERs which operate under a proprietary communications protocol. If such a protocol could be adopted by the EDC for little cost, it would benefit ratepayers to allow such devices into the program. As the DER market matures, communications protocols that are currently proprietary could conceivably become an industry standard. An analogous example might be EV charging plugs. Early market entrants favored the CHAdeMO plug standard. Now CHAdeMO is rapidly being phased out in favor of the CCS and the once proprietary Tesla NACS plug.

4.2.1.4. EDC program budgets

Rate Counsel has concerns with the overall size of the budget in comparison to the projected savings. Table 1 below was constructed using the estimated savings figures presented within the Appendices. The estimated capacity cost savings over the two-year interim program is $122.6 million. The proposed budget is ~$68.0 million. More than half of the potential capacity savings would go toward the VPP program (operations and participant incentives), greatly reducing benefits seen by EDC customers. The assumptions regarding ACE and RECO greatly exacerbate this issue. While both PSE&G and JCP&L programs are estimated to deliver greater than 50 percent of the savings to customers, RECO will only deliver 23 percent of savings to customers while ACE's participation in the interim program will actually cost customers money. Using the current assumptions, New Jersey would benefit if ACE and RECO do not participate in the VPP program.

Table 1: Interim VPP Program estimated targets, costs, and savings

EDC	MW Target (MW/yr - 3%)	Capacity Cost Savings Target ($mm/yr)	kW Value ($/kW)	2 yr Budget ($mm)	2 yr Savings ($mm)	$mm Saved	% saved	VPP Cost ($/kW)
PSE&G	306.9	$ 31.9	$ 103.94	$ 30.0	$ 63.80	$ 33.80	53%	$ 48.88
JCP&L	188.2	$ 19.6	$ 104.14	$ 16.0	$ 39.20	$ 23.20	59%	$ 42.51
ACE	81.3	$ 8.5	$ 104.55	$ 20.0	$ 17.00	$ (3.00)	-18%	$ 123.00
RECO	12.7	$ 1.3	$ 102.36	$ 2.0	$ 2.60	$ 0.60	23%	$ 78.74
Total	589.1	$ 61.3	$ 104.06	$ 68.0	$ 122.60	$ 54.60	45%	$ 57.72

Programs which reduce peak capacity at the lowest costs will result in the greatest amount of rate relief for customers. This is why Rate Counsel stresses that the BPU should focus EDCs on implementation of low-cost/no-cost measures which impact peak demand, such as the introduction of demand rates coincident with PJM system peaks. Referencing Table 1 above, the cost to deliver capacity reductions is estimated to be ~$58/kW. This value appears comparable to the costs reported by utilities operating similar demand response programs. Rate Counsel believes any hardware incentive costs must be incorporated into the VPP interim budget to provide an accurate picture of the total costs associated with claimed program benefits.

With respect to the transition from existing programs to the VPP framework, Rate Counsel is supportive of advancing any programs resulting from the Triennium without waiting for the rollout of the VPP programs, thereby capturing savings for ratepayers more quickly. From administrative, operational, and reporting standpoints, Rate Counsel believes it beneficial to roll all similar DR/VPP programs under the new VPP Program umbrella.

4.2.1.5. Event dispatch protocols

With respect to event design, Rate Counsel believes the proposed event duration and number of events appear reasonable. The minimum advance notification period could be reduced to one hour, with EDCs using best efforts to notify customers further in advance (e.g., 24 hours if a known weather event is expected). Rate Counsel agrees that customers should be able to opt out, with incentives appropriately reduced for customers that choose to do so, consistent with a pay-for-performance approach.

With respect to the Board's review of EDC-proposed dispatch parameters, Rate Counsel believes dispatch parameters should be largely consistent across EDCs. For evaluation purposes, EDCs should be required to show the forecasted data that resulted in a dispatch, for both system-wide and local distribution events.

4.2.1.6. Performance measurement, reporting and review

Rate Counsel concurs with Staff that the RIM test is the best-suited test for cost-effectiveness based on the current directive of trying to deliver rate savings to EDC customers. As Staff discusses, the various other tests mentioned are all designed to measure cost-effectiveness from different perspectives. Each test can provide insight into the program as a whole, and Rate Counsel recommends EDCs collect the necessary data and calculate each of the tests as part of their reporting requirements. Overall program success and whether a program ultimately continues should be contingent upon it passing the RIM test.

Though Rate Counsel recognizes that attribution of avoided T&D cost benefits is a standard part of DSM program design and benefit-cost tests, Rate Counsel believes it may be time to question the validity of this practice. Consider a substation serving 4,000 customers. If 5 percent of those customers participate and provide an average demand response of 1.2 kW each, that amounts to 240 kW. For a substation serving 4,000 customers, 240 kW is probably a rounding error in distribution capacity planning.

Further, Rate Counsel questions whether any VPP designed to reduce demand system-wide can also deliver avoided T&D cost benefits. A VPP called upon for a system-wide event might not be available for a local distribution event called later the same day, and vice versa. As a result of these concerns, Rate Counsel believes VPPs designed for system-wide response will likely not provide any significant avoided distribution cost benefits.

4.2.1.7. Program targets

With respect to the proposed target, Rate Counsel is unclear as to when the three percent demand reduction goal is to be achieved, either immediately, at the end of year one, or at the end of year two. It is further unclear when and where the demand reduction will result in lower rates for customers. Is it through a capacity price? Is it through a lower energy prices? Is it only seen for BGS customers? Will shopping customers see a decrease? These questions all remain unaddressed in the Straw Proposal.

Although Rate Counsel advises against establishing quantitative targets before the Board has assessed actual peak demand deficiencies, because the cost-effectiveness of DER solutions relative to alternatives, and ratepayer impacts will be arbitrary and could drive procurement obligations untethered to demonstrated need the three percent target appears attainable based on the relatively small DR programs the EDCs currently operate. This target should be considered a floor. However, for any target amount to be an effective incentive, the EDCs must face consequences if the target is not met. Disallowing recovery of VPP program funds if targets aren't met would be an appropriate consequence, because those investments will not have been prudently incurred.

Rate Counsel believes the RIM test should be used to evaluate realized cost savings and ensure that VPP programs result in direct ratepayer benefits.

4.2.1.8. EDC and TPA coordination

Rate Counsel believes that EDCs (or their implementation contractor) should maintain dispatch authority, AMI provisioning, and PJM communication functions for the VPP interim program. It is likely the EDCs will have to maintain these functions into any long-term program. Third party aggregators may be able to begin marketing/enrollment activities within the interim program, and certainly should for the long-term program. Rate Counsel has concerns with the proposed transition period. At this time there are many uncertainties concerning the PJM market, making details of a long-term VPP program difficult to anticipate at this time.

Rate Counsel believes the EDCs' aggregator solicitation and selection processes should be designed to maximize flexibility in aggregator procurement. As examples, solicitation and selection processes should permit and encourage multiple Aggregators per EDC, per resource type, and per customer segment. Further, Rate Counsel believes that EDC-offered programs must compete against aggregator proposals on cost and effectiveness, with aggregator proposals selected over EDC-offered programs as appropriate.

With respect to aggregator contracting, Staff's assumption that aggregators will require revenue certainty is correct. The interim program's two-year timeframe may prove problematic in that it is too short. Aggregators could potentially invest in a lot of overhead for a relatively short performance period. This could severely limit the potential pool of aggregators who wish to participate or increase the compensation level aggregators require.

Consistent with these concerns, Rate Counsel believes that, to the greatest extent possible, the aggregator contracts should anticipate the transition. Of course, given PJM market uncertainty, aggregators may decide to avoid counting on any post-period benefits at all, which would raise the cost of the compensation the aggregators might propose.

4.2.1.9. Minimum filing requirements

Rate Counsel believes the components proposed for inclusion in the EDCs' VPP Interim Program MFR filings are acceptable. Rate Counsel continues to have reservations regarding the Transition Strategy, given the uncertainty surrounding the future state of the PJM market.

4.2.2. Long term VPP program proposal

4.2.2.1. System upgrade plan

Rate Counsel believes coordination of VPP tariff design with the PSUP process relates most directly to prospective developers of utility-scale PV solar facilities. The most critical inputs to developers' decisions are the initial interconnection and ongoing DER export tariff costs the developers will need to pay.

Generally, utility-scale PV solar facilities are cheapest to build in the more remote areas, because land values are less. However, these are precisely the parts of the distribution grid least likely to be designed with the requisite hosting capacity to get these developers' products (energy, and capacity if paired with storage) to market. As such, capacity increases to rural circuits and substations will be extremely costly components in PSUPs. Solar developers should bear the risk of balancing the cost between site acquisition and interconnection upgrades, not the EDCs' captive ratepayers.

4.2.2.2. Tariff design

Rate Counsel believes that cost certainty for prospective developers is best accomplished through a DER export tariff for exporting DER that features both an ongoing charge per kW generated and an ongoing charge per kWh generated. Interconnection fees could be patterned after policies used to calculate customer CIAC charges in line extension policies for loads.

A DER export tariff treats prospective developers like the EDC customers that they are, with all the rights and responsibilities attached thereto. A DER export tariff appropriately charges exporting DER with the costs of building and maintaining the grid that makes access to markets for energy (and, if paired with storage, capacity) possible. A DER export tariff also offers something of value to all parties: cost certainty to prospective developers; reductions in cross subsidization by all other customer classes; and new revenue streams for EDCs. Rate Counsel recommends the Board order all EDCs to include exporting DER as a customer class in EDCs' next class cost of service studies, and DER export tariffs in EDCs' next rate cases.

4.2.2.3. Compensation mechanisms

Rate Counsel does not object to the proposed milestones, except with respect to compensation structures and amounts.

Rate Counsel believes that any ratepayer-funded incentives should be pay-for-performance. Aggregators may need to offer Pathway 1 (enrollment) incentives to entice customers to participate. These enrollment incentives should be left to the discretion of the aggregators as each aggregator may offer a different selection of DERs under different business models. The EDCs and BPU should rely on the aggregator's expertise and not attempt to predict what incentive structure is required to drive the market and gain customer engagement.

As part of the solicitation process, the EDCs should ask aggregators (1) what target market they are pursuing; (2) mechanisms to be employed; (3) the capacity the aggregator proposes to provide through customer participation in the mechanism; and (4) the enrollment and other incentives the aggregator requires to deliver the participation and demand response proposed.

Rate Counsel recommends all EDC or BPU program incentives should be pay-for-performance. Enrollment incentives can be structured by aggregators as they deem necessary to recruit DER customers. Any VPP program should have a defined contractual length to provide third-party aggregators certainty (ex. 5 to 7 year guaranteed program length). Beyond that it is up to the aggregators to determine how they structure the incentives to compete for customers (i.e. offering enrollment incentives or opportunity/capacity reservation incentives) in the market. With respect to incentives funded through other programs, Rate Counsel contends that any other program incentives should only be offered if they are shown to have net benefits to ratepayers through their specific program offerings. Thermostat incentives should only be offered within the Energy Efficiency portfolio if thermostats save enough energy to pass cost-benefit tests. Likewise, EV chargers should only receive incentives if the overall benefits to ratepayers outweigh the cost of incentives plus program administration. If these conditions are met there should be no need to require participation in a VPP program or spend additional ratepayer funds on more subsidies.

To ensure ratepayers receive benefit from any VPP program, the total cost of the program (incentives plus program administration) must be substantially lower than the cost of procuring the traditional resource. The BPU should establish cost reduction targets, for example 50 percent, to set expectations for potential aggregators. Using the data provided within the appendix of the Straw Proposal and analyzing NJBPU filing data and utility tariffs provides an indication of the potential value VPPs can provide. The average peak capacity cost for the EDCs is $104/kW-yr ($61.3mm/589.0 MW). Therefore, costs associated with providing VPPs to avoid capacity must come in at less than $104/kW-yr and preferably around $52/kW-yr (providing 50 percent savings to customers).

Instead of generic assumptions about avoided T&D cost benefits, Rate Counsel favors location-specific avoided T&D cost benefit estimates from VPP programs, and payments for performance targeted at 50 percent of that value. Rate Counsel believes that rigorous analysis to estimate avoided T&D cost benefits would indicate that such benefits will be tiny, as described above. Further, if such benefits are not tiny in theory, they are likely to be tiny in practice. For example, if a VPP claims to be available for both system-wide and local distribution dispatch, will a VPP dispatched for system-wide value be available for local distribution dispatch the same day? Similarly, if only 35 events can be called per year, Rate Counsel believes it likely that the system-wide dispatch benefits will vastly outweigh avoided T&D cost benefits. The EDCs should therefore reserve events to the situations that will deliver the most avoided-cost benefit, which Rate Counsel contends will be system-wide rather than local (assuming local benefits are calculated appropriately).

Regarding the structure of the VPP tariff, Rate Counsel believes the VPP tariff should establish baseline terms and conditions of participation. However, rather than defining structures and payment levels by grid service and use case, Rate Counsel believes, consistent with the approach discussed above, that aggregator proposals should specify the pay-for-performance compensation structures and amounts aggregators would accept for delivering the demand response proposed. Rate Counsel expects aggregators to propose compensation structures and amounts that vary by mechanism and target market, and that EDCs should choose the most attractive of the aggregator proposals submitted for VPP program participation. As another market-oriented approach, the Board could establish a price per kW-yr ($57.72 on average based on the estimated VPP program costs presented in Table 1, though perhaps EDC-specific amounts would be more appropriate), and EDCs could select all qualified aggregators willing to provide capacity for those amounts. Or, similar to PJM's capacity market, aggregators could bid a $/kW-year amount they are willing to accept given their individual mechanisms and target markets, and the EDCs could use a reverse-auction approach (as PJM does) to set the compensation payable to all aggregators for performance.

4.2.2.4. DERMS architecture and infrastructure

Rate Counsel believes the Board should set minimum functionality requirements to be achieved by specific dates in order to communicate with aggregators, perform EM&V, and provide pay-for-performance incentives. It is likely that all EDCs can perform these minimum requirements today. However, Rate Counsel does not believe the Board should specify how EDCs should deliver minimum functionality requirements, for example, by requiring a DERMS or any other particular solution.

4.2.2.5. Revenue stacking and PJM participation

Rate Counsel believes the compensation mechanisms discussed above could go a long way toward easing transition issues and managing the uncertainty surrounding PJM market developments. Rate Counsel reiterates its concern that the value of distribution grid services will be small to zero for VPPs designed to participate in system-wide events. As discussed above, Rate Counsel questions whether VPPs designed for system-wide response will be available to provide distribution-level services when needed and, therefore, whether such VPPs will provide significant avoided distribution cost benefits.

Rate Counsel does not believe aggregators should receive additional incentives for sustained participation, as that is their contractual obligation. Incentives for overperformance should only be considered if such overperformance results in reduced costs for the EDC. If costs are reduced, it may be appropriate to pass a portion of those savings to the aggregator. It may be too early to establish a prescribed value or percentage for overperformance compensation.

4.2.2.6. Aggregation rules and qualification requirements

As discussed in Sections 4.2.1.6 and 4.2.2.3, Rate Counsel advocates for market-based approaches and light regulation whenever possible and appropriate. Consistent with the discussion of revenue stacking and PJM participation above, Rate Counsel believes early adoption of market-based approaches will likely ease transition issues and help manage the uncertainty of PJM market developments.

4.2.2.7. Open access requirements and frameworks

Rate Counsel does not believe the BPU should establish a minimum pass-through requirement. Aggregators and DER providers may offer many varied and unique purchasing arrangements with their customers. The pay-for-performance payment structure may not fit within the contractual arrangement between a DER provider or aggregator and its customer.

With respect to the open-access market rules and EDC coordination protocols, aggregators will need to weigh in on whether these rules provide sufficient certainty for long-term business decisions. Rate Counsel believes the BPU should establish a dispute resolution process between EDCs and aggregators.

4.2.2.8. Ownership issues

Rate Counsel believes all proposals, whether EDC or third party, should be evaluated on a total cost to customers basis. EDCs can be expected to add their own margins on top of any EPC contractor costs that an EDC incurs to place a DER asset in service. As long as the total cost to customers approach is used to evaluate proposals, Rate Counsel is of the opinion that EDCs will effectively be priced out of the market. Rate Counsel prefers market-based solutions to regulatory solutions. Thus, if the Board adopts a total cost to customers evaluation model, Rate Counsel does not believe a rule to exclude EDC ownership is needed. However, if the Board fails to adopt such an evaluation model, Rate Counsel believes a rule to exclude EDC ownership would be needed to preserve the EDC-neutrality principles of Section 3.7(a).

4.2.3. Coordination among Board Programs

The Proposed Straw correctly recognizes that a VPP program cannot be designed in isolation from the Board's grid-modernization, storage, energy-efficiency, transportation, solar, metering, and rate-design proceedings. The coordination described in Section 4, however, is largely administrative: related workstreams are identified, parallel activity is anticipated, and unresolved conflicts are to be flagged later. From a ratepayer perspective, meaningful coordination requires more. The Board must use one integrated record to identify the resource need being addressed, the resources and investments already funded, the incremental service expected from each new expenditure, the docket in which the issue will be decided, and the customers responsible for the resulting costs. Cross-references among proceedings do not prevent duplicate recovery, inconsistent assumptions, or cumulative bill impacts.[102]

Rate Counsel, therefore, recommends that the Final Order require a common program inventory, a resource-level compensation ledger, a cumulative revenue-requirement and bill-impact analysis, and an issue-and-docket map. The same assumptions concerning load growth, peak contribution, avoided capacity, distribution constraints, participation, performance, useful

[102]See N.J. Board of Public Utilities Staff, Straw Proposal: Virtual Power Plant Program, BPU Docket No. QO26030099, Section 4, at 64-75 (July 15, 2026) ("Straw"); N.J. Division of Rate Counsel, Comments in Response to the April 20, 2026 Request for Information, BPU Docket Nos. QO26030099, QO26040116, QO24020116, QO26030059 & QO24030199, Responses to Questions 69, 72 & 75, at 30-39 (May 20, 2026) ("Rate Counsel Initial Comments").

life, and technology cost should be used across the related proceedings unless the Board expressly finds that a different assumption is warranted. No cost should be recoverable in more than one docket, and no benefit should be counted more than once merely because it is described under a different program label.

4.2.3.1. Grid modernization

The GridFlex, Proactive System Upgrade Plan ("PSUP"), DER registry, CEVAR, and DERMS workstreams may provide useful planning inputs, but they should not become independent cost-recovery pathways that precede a demonstrated VPP need. The Proposed Straw includes VPP MFRs while GridFlex is still defining distribution services and compensation, and it anticipates launching the Interim Program before the PSUP filings are complete. That sequence risks approving compensation, enrollment targets, and enabling investments before the Board knows where a distribution need exists, what traditional upgrade is actually avoidable, or whether the VPP solution is less costly.[103]

Rate Counsel recommends that each claimed distribution benefit be tied to a specific, documented project or operating need. An EDC should not receive credit for an avoided or deferred capital project unless that project is removed from, reduced in, or affirmatively deferred within the EDC capital plan. If a VPP merely postpones an investment for a short period, the benefit should reflect only the present value of that deferral, net of all VPP costs. If the traditional upgrade remains in the plan, the claimed avoidance is not a ratepayer saving.

The Board also should prevent grid modernization from becoming a vehicle for speculative DERMS rate-base growth. Existing AMI, demand-response platforms, and third-party edge

[103]Straw Section 4.1, at 64-67; Rate Counsel Initial Comments, Responses to Questions 33-37, 54-55 & 69, at 14-18, 23-24, 30-32.

systems should be used first. A utility seeking recovery of new Grid DERMS, communications, or interface investments should identify the specific function, incremental cost, utilization level, alternatives considered, and VPP service that cannot be provided without the investment. Costs already included in rates, incurred for another purpose, or required by another proceeding should not be reclassified as VPP costs. Maryland Office of People's Counsel ("OPC"), the utility consumer advocate in that state, recently identified this exact problem when utilities included existing or multi-purpose DERMS spending in an estimate of the incremental cost of new system-planning rules.[104]

4.2.3.2. Energy storage

The Proposed Straw treats distributed storage as a high-value VPP resource and proposes coordination with GSESP Phase 2 on telemetry, compensation, anti-double-counting, and aggregator access. Rate Counsel agrees that technical standards should be compatible, but compatibility does not justify multiple ratepayer payments to the same asset. A storage system receiving a deployment incentive, a performance incentive, or a long-term revenue commitment under GSESP should not receive additional VPP enrollment, availability, or dispatch compensation unless the proponent demonstrates a distinct, incremental service and applies a full offset for overlapping support.[105]

The BPU's final Order on VPPs should require a resource-level election or compensation ledger before any storage asset is enrolled. The ledger should disclose all GSESP incentives,

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[104]See Maryland Office of People's Counsel, Comments on the Large Maryland Electric Utilities' Cost Estimates of Implementing the Electric System Planning Regulations, RM 89, at 1-3 (Dec. 18, 2025), https://opc.maryland.gov/LinkClick.aspx?fileticket=DggH251Bpwc%3D&mid=2652&portalid=0&tabid=1151.

[105]Straw Section 4.2, at 67-68; Rate Counsel Initial Comments, Responses to Questions 42-43, 57-63, at 18-19, 24-28.

Triennium incentives, NEM credits, tax-supported benefits, EDC payments, PJM revenues, and customer payments associated with the resource, together with the obligation purchased by each payment. Total ratepayer-funded compensation should remain below the verified incremental value delivered, and any wholesale revenues attributable to a ratepayer-funded asset or contract should reduce the revenue requirement. The same megawatt-hour cannot be treated simultaneously as load reduction, capacity, distribution deferral, and wholesale export unless each use is separately measurable, operationally compatible, and incremental.

The Board should also reject utility proposals that convert third-party storage contracts, incentives, or program administration into rate base assets earning the full utility weighted average cost of capital as well as any incentive returns. Instead, the Board should consider expensing storage-program operating costs when incurred, to limit carrying costs on any necessary deferral to the utility's cost of debt, and to prevent utilities from retaining upside risk while ratepayers bear all downside risk. Those principles noted in the Maryland OPC's comments in the Spring of 2025 are directly applicable here as well.[106]

4.2.3.3. Energy efficiency and CEA requirements

The Proposed Straw proposes to migrate existing Triennium demand-response and VPP pilots into the Interim Program while leaving hardware incentives for smart thermostats, water heaters, chargers, storage, and related devices in the Triennium framework. This division of responsibility could obscure the all-in cost of the VPP resource and create a new payment for capability that ratepayers already purchased. The Clean Energy Act ("CEA") cost-effectiveness,

[106]See Maryland Office of People's Counsel, Comments on Utility Procurement Proposals, Maryland Energy Storage Program, Case No. 9715, at 2-4, 22-25 (Apr. 3, 2025), https://opc.maryland.gov/LinkClick.aspx?fileticket=nOhzBUCw7H0%3D&mid=2652&portalid=0&tabid=1151.

evaluation, measurement, verification, and prudence requirements should continue to govern any CEA-funded measure, and migration should not change the recovery treatment or performance obligation attached to an existing investment.[107]

Before any migrated resource is counted toward a VPP target or receives a new payment, the EDC should file an auditable baseline showing existing enrollment, historical spending, remaining contractual obligations, dispatch rights, prior incentive amounts, remaining useful life, and historical performance. A reduction already embedded in an energy-efficiency savings claim, customer baseline, load forecast, or CEA demand-response obligation is not incremental VPP performance. Any new enrollment adder should be permitted only where it purchases an additional obligation not included in the original incentive.

The Board should further prohibit a utility from using migration to obtain more favorable ratemaking treatment such as earning an allowed return and potentially incentive returns by rate basing these expenses. The Board should not allow creative labelling to serve as an opportunity for higher shareholder returns at ratepayer expense.

4.2.3.4. Clean transportation and EV requirements

The Straw appropriately distinguishes passive managed charging, active managed charging, V2G, site-level load balancing, and event-based VPP dispatch. Those services have different costs and should not be combined into a single compensation stream. A customer already responding to an EV time-of-use rate or managed-charging requirement should receive VPP compensation only for an incremental response beyond the behavior induced by that rate or

[107]Straw Section 4.3, at 68; N.J.S.A. 48:3-87.8 et seq. and 48:3-98.1; Rate Counsel Initial Comments, Responses to Questions 15, 42-43, 67, 69 & 72, at 6-8, 18-19, 29-34.

program. Charger and make-ready incentives, customer rebates, utility platform costs, and any distribution upgrade costs must be included in the VPP cost-benefit analysis.[108]

Cost causation is especially important for large fleet depots and other concentrated charging loads. Where a fleet creates a local transformer, feeder, substation, or capacity need, the owner should pay the incremental interconnection and service costs through an appropriate tariff, contribution, or service agreement. A VPP payment should not be used to offset costs that the customer caused merely because the customer agrees to manage part of its load after creating the need.

For V2G resources, compensation should be based on independently verified net export or load reduction at the time and location of need, after accounting for charging energy, losses, battery degradation, customer mobility requirements, and other incentives. The Board should avoid long commitments until vehicle availability, participation persistence, and actual distribution value have been demonstrated.

4.2.3.5. Solar and net metering

The Straw correctly notes that fixed solar output is not inherently dispatchable and that the relationship among NEM, paired storage, and VPP compensation requires anti-double-counting controls. Rate Counsel recommends that the Board complete the relevant NEM accounting and tariff work before establishing a long-term VPP payment structure for exported energy. A VPP tariff should not assume that every solar kilowatt provides capacity or distribution value; value

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108Straw Section 4.4, at 68-71; Rate Counsel Initial Comments, Responses to Questions 45, 50-51 & 69, at 19-23, 30-32.

depends on coincidence, controllability, location, deliverability, and the customer's existing compensation.[109]

Where a customer receives a retail NEM credit, solar incentive, storage incentive, or tax-supported benefit, those amounts should be disclosed and reflected in any additional VPP payment. Exported energy should be separately metered where necessary to distinguish solar production, storage discharge, charging energy, and customer load. Ratepayers on the whole should not pay a retail NEM credit and a separate VPP payment for the same exported kilowatt-hour or for availability already required by a prior incentive.

The Board should also examine whether DER exporters impose identifiable distribution, interconnection, data, and administrative costs that should be recovered through an exporter or program-participant tariff rather than from non-participating customers. That analysis should occur through an appropriate cost-of-service record and should distinguish costs caused by export capability from costs created by new large loads. In all events, cross-subsidies should be transparent and affirmatively justified, not embedded through separate proceedings.

4.2.3.6. AMI data access

AMI data is necessary for enrollment verification, baseline development, settlement, and performance evaluation, but the existence of a VPP program does not justify duplicative AMI or data-platform spending. The Interim Program should use existing meter, Green Button, EDI, and demand-response capabilities to the maximum extent practicable. Each EDC should identify which data functions are already funded, which incremental functions are necessary, and why a

[109]Straw Section 4.5, at 71; Rate Counsel Initial Comments, Responses to Questions 42-43, 50, 57-62 & 74, at 18-19, 21-28, 35.

lower-cost third-party or standardized solution is unavailable.[110] If upgrades to an existing AMI meter are necessary to achieve a certain response or purpose, the EDC must demonstrate how the cost of the upgrade impacts to the proposed benefit.

All investments and expenses associated with things such as custom enrollment interfaces, expedited validation, telemetry, settlement support, and repeated data requests should be assigned to the aggregator, participating resource, or customer class that causes the cost unless the EDC demonstrates a measurable systemwide benefit. Aggregators should pay reasonable application, testing, data, and settlement fees. Rate Counsel is opposed to non-participating customers financing such customized commercial interfaces that principally reduce aggregator operating costs and such allocation policies should be explicitly enumerated in the Board' Final Rules on this matter.

The Board should resolve the proposed 24-hour settlement-data requirement against the existing 48-hour validation standard on a developed technical record. Any alternative device-level methodology must be auditable, consistent across EDCs, protective of customer privacy, and subject to independent verification. Cybersecurity and privacy costs should be proportional to risk and should not be used to justify open-ended utility platform investments.

4.2.3.7. TOU and rate design coordination

Cost-reflective rates may obtain a substantial portion of the load shifting that the Straw proposes to purchase through explicit VPP compensation. The Board should first determine whether time-of-use ("TOU"), critical-peak, demand charges, or other rate designs can produce

[110]Straw Section 4.6, at 71-72; Rate Counsel Initial Comments, Responses to Questions 38, 51, 69, 71-72, at 17, 23, 30-34.

the required response at lower cost. A VPP payment should be layered on top of a rate signal only when it causes an additional, measurable action that would not otherwise occur.[111]

The baseline must reflect the customer's actual behavior under the applicable rate, including pre-cooling, delayed charging, routine battery arbitrage, and ordinary demand-charge management. Otherwise, the VPP program will pay for behavior already induced by the tariff and will overstate available capacity. Rate signals and dispatch instructions also should not conflict; where they do, the EDC should demonstrate that the incremental grid benefit exceeds the additional customer and system cost created by the conflict.

Class-level revenue neutrality is not sufficient consumer protection. The EDC should provide bill-impact distributions by customer class, income, usage pattern, and participation status, together with opt-out protections and clear disclosures. Large data centers and other highly concentrated loads should be placed on rates that reflect their coincident-peak, capacity, and infrastructure impacts rather than relying on residential customers to fund broad VPP incentives intended to mitigate those loads.

4.2.3.8. VPP and other government entity coordination

NJ Transit, school districts, municipalities, and other governmental entities may own flexible loads and storage that can provide useful services. Public ownership, however, does not establish cost-effectiveness or justify preferential compensation. Each public-sector proposal should identify the operational constraint, expected availability, existing public funding, federal or

[111] Straw Section 4.7, at 72-74; California Public Advocates Office, Virtual Power Plants: Opportunities, Constraints, and Ratepayer Considerations (Mar. 10, 2026), https://www.publicadvocates.cpuc.ca.gov/press-room/commentary/260310-virtual-power-plants-opportunities-constraints-and-ratepayer-considerations.

State grants, make-ready support, vehicle or charger incentives, and other revenue streams. All non-ratepayer funding should reduce the amount recovered from utility customers.[112]

Any public-facility participation should be competitively procured where practicable and compensated on verified performance. The responsible governmental entity should bear site-specific interconnection, charging, communications, and operational costs unless the Board finds that a distinct system benefit justifies broader recovery. Revenues earned through PJM or the VPP tariff should be credited against the public investment and any ratepayer-funded costs. Pilot findings should be filed before the Board authorizes replication or scale-up.

4.2.3.9. VPP working group proposal

A VPP Working Group may assist with technical implementation, but it cannot cure the absence of a formal decisional record. The Straw leaves membership, voting or consensus rules, notice, documentation, scope, and treatment of non-consensus issues largely unresolved. The Final Order should include a written charter providing balanced representation, public agendas and materials, minutes or recordings, prompt filing of data and models, and a clear process for documenting non-consensus positions.[113]

The Working Group should remain advisory. It should not establish compensation levels, cost allocators, prudence presumptions, budget authority, or cost-recovery mechanisms. No party should waive a litigation or policy position by participating, and no recommendation should be

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112Straw Section 4.8, at 74-75; In re Memorandum of Understanding Between the Board and the Department of Environmental Protection to Fund DEP's FY26 Electric School Bus Program V2G Pilot, BPU Docket No. QO25110591 (Dec. 17, 2025).

113Straw Section 4.9, at 75; see also Rate Counsel's procedural recommendations in these Supplemental Reply Comments.

treated as consensus unless each represented interest affirmatively agrees. Material recommendations must be noticed in the docket and subject to written comment, information requests, and a Board order supported by record evidence.

The Board should also avoid duplicating GridFlex, PSUP, CEVAR, Triennium, storage, AMI, EV, and NEM workgroups. A single issue-and-docket map should identify which group develops a technical recommendation and which formal proceeding decides it. Workgroup participation is not a substitute for Rate Counsel's statutory role or for the Board's obligation to set just and reasonable rates.

4.3. Cost Recovery Mechanisms

Section 5 is the least developed portion of a Proposed Straw that contemplates approximately $68 million in preliminary Interim Program budgets, separate hardware incentives recovered through other Board programs, new utility and aggregator functions, new data and settlement obligations, potential DERMS investments, and a long-term tariff. Staff devotes only a few paragraphs to cost recovery. It identifies no proposed cost allocator, no customer-class impacts, no treatment of the data-center load growth underlying the asserted need, no participant-fee structure, no revenue-credit mechanism, no reconciliation standard, no limit on deferrals or carrying costs, and no allocation of cost-overrun or performance risk. Those matters cannot be deferred to an MFR Order after the program architecture and spending expectations have effectively been established.[114]

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[114] Straw Section 5, at 76; see also Straw Sections 2.4, 2.9, 3.3-3.5 & 6.1, at 33-35, 44-46, 49-59, 76-78.

The Board's ratemaking obligation is not satisfied by stating that VPPs are intended to lower costs. Any recovery mechanism must produce just and reasonable rates, avoid undue preferences and cross-subsidies, and assign costs in a manner consistent with causation and benefits. The utility bears the burden of demonstrating that each cost is prudent, incremental, necessary, used and useful where capital treatment is requested, and lower than reasonably available alternatives. Rate Counsel recommends that the final VPP Order establish the following principles before any EDC filing is submitted.[115]

No automatic rider, regulatory asset, or presumption of recovery.

The Board should not authorize a generic VPP surcharge or permit utilities to record all program-related spending for later recovery. Each material cost category should be approved prospectively within a hard budget and subject to prudence review, reconciliation, and disallowance. Costs incurred before approval, costs outside an authorized category, and costs shifted from another docket should remain at shareholder risk absent an extraordinary showing. An MFR filing should propose rates; it should not create an open-ended accounting entitlement.

Program costs should be expensed; third-party payments should not earn a utility return.

Customer incentives, aggregator compensation, implementation-contractor charges, marketing, enrollment, EM&V, data services, licensing, settlement, and routine program administration are operating expenses. They are not utility-owned plant and should not be placed in rate base. If extraordinary first-year bill impacts justify a limited deferral, the amortization

[115] See N.J.S.A. 48:2-21(b)(1), 48:3-1, and 48:3-4; Rate Counsel Initial Comments, Responses to Questions 24, 33, 37, 54-62, 69 & 72, at 14-18, 23-34.

period should be short, the balance should be reduced by all revenues and unused funds, and carrying costs should be limited to the EDC's actual cost of debt. The utility should not earn its full weighted average cost of capital on payments passed through to customers, aggregators, software vendors, or storage developers.

Maryland OPC has addressed the same issue in both VPP and storage proceedings. It opposed a utility request to place VPP costs in a regulatory asset earning the authorized WACC, explained that programmatic costs do not have the risk profile of utility-owned infrastructure, and recommended annual expensing or debt-cost carrying charges. It likewise urged rejection of WACC treatment for storage tolling-agreement payments because those payments are not capital expenditures. New Jersey should adopt that reasoning expressly.[116]

The customers creating the capacity need should bear the associated VPP costs.

The Proposed Straw and Executive Order No. 2 rely heavily on rapid large-load and data-center growth as the reason New Jersey must reduce peak demand and avoid additional capacity costs. That factual premise has a direct ratemaking consequence: to the extent a VPP program, storage incentive, DERMS investment, or peak-shaving procurement is undertaken because new data-center load creates or enlarges the need, the resulting costs are "but for" costs of those new loads. Existing residential and small-commercial customers should receive savings from the mitigation; they should not be charged to create the mitigation resource for a need they did not cause.

116Maryland OPC, Comments on DRIVE Act Implementation, Case No. 9761 & PC77, at 15-18 (Apr. 1, 2026); Maryland OPC, Comments on Utility Procurement Proposals, Case No. 9715, at 3-4, 23-25 (Apr. 3, 2025).

Rate Counsel recommends a dedicated large-load capacity-mitigation charge or special-contract mechanism applicable to new data centers and similarly situated extraordinary loads. The charge should recover the directly assigned and reasonably allocated costs of VPP procurement, enabling systems, incremental generation or capacity, transmission and distribution upgrades, studies, administration, and stranded-cost protection. Allocation should reflect contracted demand, ramp schedule, peak-load contribution, network-service peak contribution, and the specific facilities or procurements required. A large-load customer that provides verified, enforceable demand flexibility should receive a transparent credit against its obligation, but only for measured performance that reduces the cost it otherwise would cause.

This approach is consistent with developing consumer-protection practice. Maryland OPC supports direct assignment of all "but for" distribution investments to large-load customers and recommends service agreements, long-term commitments, collateral, exit protections, contributions in aid of construction, and a bring-your-own-new-generation framework. Ohio's approved AEP data-center tariff requires qualifying customers to pay for at least 85 percent of contracted capacity for up to twelve years. Virginia created a separate GS-5 large-load class and adopted a fourteen-year service obligation, minimum payment requirements for transmission, distribution, and generation demand, and collateral protections. These mechanisms reflect the same basic principle: existing customers should not finance extraordinary infrastructure or procurement risk created by speculative or concentrated new load.[117]

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[117] Maryland Office of People's Counsel, Comments on Large Load Tariff Workgroup Proposed Regulations, RM 93, at 3-8 (Jan. 21, 2026), https://opc.maryland.gov/LinkClick.aspx?fileticket=xsePOG1mZR8%3D&mid=2652&portalid=0&tabid=1151; Office of the Ohio Consumers' Counsel, Quick Facts: Data Centers in Ohio (explaining the approved 85-percent minimum commitment for up to twelve years),

Direct customer support for generation is commercially feasible. Several of the largest data-center operators have already entered long-term arrangements to support the resources needed for their operations. Microsoft's twenty-year PPA supports the restart of an approximately 835 MW nuclear unit; Google's Kairos arrangements contemplate up to 500 MW of advanced nuclear capacity; and Meta has entered long-term nuclear agreements and publicly states that it pays the full costs of the energy and related infrastructure used by its data centers. These arrangements are not identical to a regulated tariff, but they demonstrate that large technology customers can use long-term contracts and direct financial commitments to internalize incremental supply costs. VPP-related mitigation should not be treated differently merely because the selected resource is distributed rather than conventional generation.[118]

Program participants and commercial beneficiaries should pay program-specific costs.

Application processing, aggregator licensing, technical testing, data interfaces, settlement, telemetry review, interconnection studies, dispute resolution, and individualized reporting should

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https://www.occ.ohio.gov/factsheet/quick-facts-data-centers-ohio; Virginia State Corporation Commission, SCC Data Center Initiatives (Mar. 5, 2026), https://www.scc.virginia.gov/about-the-scc/scc-facts/.

[118] Constellation Energy, Constellation to Launch Crane Clean Energy Center, Restoring Jobs and Carbon-Free Power to the Grid (Sept. 20, 2024), https://investors.constellationenergy.com/news-releases/news-release-details/constellation-launch-crane-clean-energy-center-restoring-jobs; Google, Google Signs Advanced Nuclear Clean Energy Agreement with Kairos Power (Oct. 14, 2024), https://blog.google/company-news/outreach-and-initiatives/sustainability/google-kairos-power-nuclear-energy-agreement/; Meta, Meta Announces Nuclear Energy Projects, Unlocking Up to 6.6 GW to Power American Leadership in AI Innovation (Jan. 9, 2026), https://about.fb.com/news/2026/01/meta-nuclear-energy-projects-power-american-ai-leadership/.

be recovered through fees charged to aggregators, project owners, or participating customers. Hardware and interconnection costs that principally benefit a private resource should be directly assigned. Program-specific fees reveal the actual cost of participation and create useful market discipline. If a business model cannot support the administrative cost it causes, shifting that cost to captive non-participants does not make the model cost-effective.

Rate Counsel made the same recommendation in its Initial Comments: Phase 2 administrative costs should be recovered through project fees rather than embedded in O&M, A&G, base rates, or a broad rider. The same principle applies to VPP registration, licensing, data, and settlement costs.[119]

All revenues, penalties, and residual value must flow back to customers.

PJM capacity, energy, and ancillary-service revenues; avoided BGS and transmission charges; contractual damages; performance-security draws; clawbacks; forfeited incentives; unspent budgets; tax credits; grants; and asset-sale proceeds should reduce the program revenue requirement. Utilities and aggregators should not retain a share of wholesale upside while ratepayers guarantee contract costs, market shortfalls, or performance risk. Any proposed profit-sharing mechanism must be symmetrical: a utility seeking upside should bear a meaningful share of losses and cost overruns.

Maryland OPC opposed a storage proposal under which utilities could retain a portion of wholesale upside while ratepayers remained responsible when revenues fell below fixed contract costs. OPC also identified the double incentive created by allowing a utility to earn both a

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119Rate Counsel Initial Comments, Response to Question 72, at 33-34.

regulatory-asset return and a wholesale profit share. The Board should prohibit the same asymmetry in New Jersey.[120]

Performance-based ratemaking must protect ratepayers, not create a second earnings stream.

The Straw states that Staff intends to explore performance-based ratemaking, but does not define the performance, baseline, sharing factor, downside consequence, or interaction with rate base. Rate Counsel opposes any utility incentive based merely on enrollment, spending, installed capability, or gross peak reduction.

A utility should not earn a return on DERMS or other capital, recover all program expenses, and then receive an additional performance award for the same outcome. Nor should the Board attempt to preserve the earnings opportunity associated with a traditional capital project that a non-wires alternative is supposed to avoid. As Maryland OPC explained, treating the lower-cost alternative as though it were the higher-cost investment erodes the very savings the substitution is intended to produce.[121]

The Board must require hard budgets, annual reconciliation, and enforceable exit ramps.

Each EDC and subprogram should have a Board-approved budget cap by cost category. Transfers among administration, incentives, technology, marketing, and EM&V should require notice and approval. Annual true-ups should compare authorized and actual spending, contracted

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120 Maryland OPC, Comments on Utility Procurement Proposals, Case No. 9715, at 22-25.

121 Maryland OPC, Comments on DRIVE Act Implementation, Case No. 9761 & PC77, at 16-18.

and delivered megawatts, gross and net benefits, wholesale revenues, class bill impacts, and cost per verified kilowatt. Unsupported, duplicative, imprudent, or out-of-scope costs should be disallowed, and unspent balances should be returned promptly rather than rolled forward automatically.

The MFR Order should establish automatic suspension, redesign, and termination triggers. A program should pause if the RIM or other required test falls below the approved threshold, cost per delivered kilowatt exceeds the benchmark alternative, cumulative spending approaches the cap without proportional performance, or benefits fail to flow through customer rates. Interim authority should sunset unless affirmatively reauthorized on an updated record. No contract or accounting treatment should create a de facto entitlement to long-term recovery.

Cost allocation must be transparent at the customer-class level.

Every EDC filing should present annual and cumulative revenue requirements and bill impacts by class and participation status. Directly assignable costs should be removed before allocation of any residual common costs. Residual costs should be allocated using the factor that caused the cost - for example, coincident peak, contracted demand, number of enrolled accounts, data transactions, or interconnection requirements - rather than defaulting to broad volumetric recovery. The Board should expressly determine whether residential and small-commercial non-participants are held harmless and whether low-income customers experience any net bill increase.

The California Public Advocates Office has framed the same ratepayer standard for VPPs: resources should receive compensation only for incremental value, the resources should only be adopted when they are the least-cost means of meeting an identified need, and the resources should not receive duplicate payment for behavior already induced by a rate or another program. Those principles should control both the amount recovered and the customers from whom it is recovered.[122]

At a minimum, the Final Order should require each EDC MFR filing to include the following cost-recovery information:

(1) A complete, auditable budget by program, function, cost category, year, and vendor, identifying costs already included in rates or another Board proceeding;

(2) A proposed accounting and ratemaking treatment for each cost, with a demonstration supporting any claimed capital treatment, the cost of proposed upgrades to AMI meters, amortization, or carrying charge;

(3) A cost-causation study identifying the loads and customers creating the capacity, transmission, distribution, data, and administrative need, including data centers and other extraordinary new loads;

(4) A direct-assignment and large-load recovery proposal, including service agreements, minimum commitments, collateral, exit fees, contributions in aid of construction, and credits for verified load flexibility;

(5) A schedule of participant, aggregator, application, data, licensing, settlement, and interconnection fees designed to prevent recovery from non-participating customers;

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122 California Public Advocates Office, Virtual Power Plants: Opportunities, Constraints, and Ratepayer Considerations (Mar. 10, 2026).

(6) A consolidated resource-level accounting of all retail, wholesale, public, tax-supported, and ratepayer-funded revenues and incentives, with one-for-one offsets and anti-duplication controls;

(7) A forecast of gross benefits, net benefits, revenue-requirement reductions, and actual bill impacts by customer class under multiple load, price, participation, performance, and technology-cost scenarios;

(8) Hard program and subprogram budget caps, category-transfer restrictions, prudence standards, reconciliation procedures, and express disallowance authority;

(9) A symmetrical performance framework that bases any utility reward on independently verified net savings, includes meaningful downside risk, and prohibits duplicate earnings on rate base and program performance; and

(10) Automatic suspension and termination thresholds, return of unspent or unsupported balances, and a fixed sunset requiring affirmative Board reauthorization before continuation or expansion.[123]

Until these ratemaking protections are defined, the Board should not approve final budgets, a broad recovery rider, a regulatory asset, new utility earnings opportunities, or a long-term tariff. The central affordability question is not whether VPP expenditures can be collected from customers; it is whether the customers causing and benefiting from the expenditures will pay them,

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[123] These requirements are consistent with Rate Counsel Initial Comments, Responses to Questions 56-62, 69-72 & 75, at 24-39, and with the cross-jurisdictional consumer-advocate authorities cited above.

whether all other customers will receive verifiable net savings, and whether the Board can stop recovery promptly when the promised savings do not materialize.

4.4. Market Support Structures

4.4.1. Information sharing and transparency

With respect to EDC-to-aggregator data provision, Rate Counsel recommends enrollment verification and unenrollment confirmation on a monthly basis, and event-performance meter data within 10 days of the event. Monthly data should allow for customer data to be collected and updated between billing cycles. Event-performance data needs to be made available more frequently to provide customers and aggregators with actionable feedback so they can improve performance during later events.

For instances of EDC non-compliance with applicable data-sharing requirements, the Board could consider requiring sanctioned EDCs to account for compensation as regulatory assets (with return limited to WACC) until any non-compliance the Board identifies is cured.

With respect to scorecard reporting, Rate Counsel concurs that the suggested scorecard reporting requirements are appropriate. Program costs, inclusive of incentives and program management costs, and net benefits should also be clearly identifiable on the scorecard to provide an indication of the total value to ratepayers.

4.4.2. DER registry

Rate Counsel concurs that a single DER registry should be utilized, and therefore believes it would be best to add any additional data fields through the PSUP proceeding rather than tracking additional requirements through this proceeding. Rate Counsel defers to the DER providers, aggregators, and EDCs on whether additional data fields are required.

4.4.3. DER aggregation, licensing and codes of conduct

Rate Counsel believes the application requirements to be appropriately scoped, though, to the extent the Board adopts the more market-based approach discussed in Section 4.2.2.3, Rate Counsel believes the components described in that section should also be added.

Rate Counsel recommends that aggregator application and renewal fees be kept to a minimum so as not to limit applications. As to the estimated costs of a licensing program, Rate Counsel defers to the EDCs. Any shortfall of fees charged to aggregators relative to licensing program costs should be accounted for as costs in benefit-cost tests of programs.

4.4.4. Cybersecurity issues

Rate Counsel is concerned that costs and requirements may discourage potential aggregators from participating, thereby reducing the likelihood that the Straw Proposal's three percent coincident peak demand reduction goal can be achieved. A contractual requirement that aggregators install only 2030.5 and 1547.3-compliant equipment may be all that is required.

Consistent with this approach, Rate Counsel recommends that aggregator contracts require aggregators to comply with the principles of SOC 2 without requiring audits or Type II reports.

4.4.5. Equity and low-income access

LMI customers may face increased difficulty deploying DERs, especially in rental situations. Working with landlords and providing hardware incentives for eligible DER devices (ex. smart thermostats, smart water heaters) is one way to increase DER adoption across LMI customers. The customer can then receive VPP benefits by enrolling the device(s) in VPP programs.

4.5. VPP Marketing and Public Outreach

1.4.2 BPU marketing

Rate Counsel believes the BPU should make information on VPPs available on its website. Such information should include fundamentals of VPP, incentive/compensation (paid to aggregators), a list of eligible aggregators, and frequently asked questions.

1.4.3 EDC marketing

Rate Counsel believes individual EDCs should make information on VPPs available on their websites. Such information should include fundamentals of VPP, incentive/compensation (paid to aggregators), a list of eligible aggregators, and frequently asked questions.

Rate Counsel does not believe EDCs should be required to distribute aggregator marketing material. Rather, EDCs should promote the VPP program in general terms and provide a list of all approved aggregators within their material.

1.4.4 Third party provider marketing

Rate Counsel believes the bulk of marketing and customer education should be conducted by the aggregator as part of its customer acquisition process.

Conclusions

Rate Counsel thanks the Board for the opportunity to provide additional comments on the VPP Proposed Straw. Rate Counsel supports policy and resource development where it results in the disciplined use of customer-sited demand response, storage, managed charging, and other DERs where those resources can meet a defined system need at lower all-in cost than reasonably available alternatives. The threshold question, however, is not whether a resource can be called a

"VPP," or even if it could be used for capacity resource purposes, but instead is whether the proposed resource is necessary, incremental, deliverable at the time and location of need, and demonstrably capable of producing cost-effective, verified net savings for New Jersey ratepayers without shifting costs to non-participants or compensating the same capability more than once. Rate Counsel strongly encourages the Board to keep this question in mind in developing any new VPP policies or initiatives, particularly those that will be largely ratepayer funded.

Rate Counsel continues to recommend that the Board proceed incrementally. The Interim Program may be useful as a limited vehicle for testing performance, data protocols, aggregator participation, customer response, and actual costs. This Interim program should not, however, create an entitlement to future large utility (or market participant) capital budgets (or incentive budgets), long-term tariffs, utility investment, or compensation. The Board, before taking any steps on this matter, should require an integrated, transparent record demonstrating need, least-cost performance, affordability, proper cost allocation, and enforceable ratepayer protections. Rate Counsel's principal conclusions and recommendations on the VPP Proposed Straw are summarized below.

(1) Require a needs-and-alternatives showing before committing ratepayer funds. Each VPP use case should begin with a New Jersey-specific identification of the capacity, transmission, distribution, reliability, or load-management need; the customers and loads causing that need; the quantity, location, duration, and performance required; and the conventional or rate-design alternative the VPP is expected to displace. The Board should require a consolidated inventory of existing and planned DER, demand-response, storage, rate-design, AMI, grid-modernization, transmission, generation, and other capacity initiatives before establishing binding VPP targets or enabling investments. A claimed avoided cost should be recognized only when an identifiable procurement, project, or obligation is actually removed, reduced, or deferred and the resulting savings flow to customers.

(2) Use the RIM test as the primary ratepayer screen, but do not treat any single benefit-cost test as sufficient. Rate Counsel supports the Ratepayer Impact Measure as the primary cost-effectiveness test because it directly evaluates impacts on non-participants. EDCs should also calculate the other relevant tests and disclose all assumptions, workpapers, budgets, dispatch performance, and realized savings. Every analysis should include the full cost of incentives, aggregator and implementation payments, marketing, EM&V, AMI and data access, DERMS and communications, interconnection and distribution upgrades, cybersecurity, administration, financing and carrying costs, and costs recovered in other Board programs or rate proceedings. Gross system benefits must be distinguished from net benefits, revenue-requirement reductions, and actual customer bill savings. Modeled benefits should materially exceed modeled costs, and continuation should depend on actual—not merely forecast—RIM performance.

(3) Set practical Interim Program targets and attach consequences to performance.

Rate Counsel questions whether three-percent coincident-peak reduction goal is reasonable. It is unclear whether the Board has assessed the actual need for these procurement obligations based on cost effectiveness and ratepayer impacts. Further, the July 1, 2027 implementation date appears too aggressive given the filing and approval schedule. A more realistic structure would achieve reduction goal by the end of the first Interim Program year and a higher target should be considered for the end of the second year. Targets should be tied to both delivery and cost: an EDC that fails to achieve its approved load-reduction or cost benchmark should face disallowance or reduced recovery. Statewide targets should not force an EDC to implement a program that fails its own RIM or net-benefit showing.

(4) Favor low-cost load management, existing infrastructure, and verified performance over new platforms and fixed incentives.

The Board should first consider low-cost or no-cost measures—including cost-reflective demand and time-varying rate designs—that may reduce coincident peak demand without a separate VPP payment. Existing AMI, demand-response platforms, Green Button, EDI, utility systems, and third-party edge capabilities should be used to the maximum extent practicable before authorizing new DERMS, communications, or data-platform investments. Minimum functionality and interoperability standards are appropriate, but the Board should not mandate a particular technology where a lower-cost solution can perform the required function. Communications standards should be encouraged with reasonable exceptions where existing proprietary systems can provide timely, reliable load relief at little incremental cost.

(5) Make compensation predominantly pay-for-performance and subject all incentives to market discipline.

Ratepayer-funded compensation should principally pay for independently verified delivery at the time and location of need. Enrollment, hardware, availability, or capacity-reservation payments should be minimized and allowed only when they purchase a documented incremental obligation or overcome a demonstrated market barrier. Competitive solicitations, auctions, or similar market-based mechanisms should be used wherever practicable. Aggregators should be permitted to design customer-facing enrollment and incentive arrangements that fit their resource mix and business models, while EDC solicitations focus on the capacity offered, performance requirements, total cost, and net ratepayer savings. Rate Counsel does not recommend a universal minimum customer pass-through percentage as a substitute for competitive pricing and cost-effectiveness review.

(6) Prevent over-incentives, value-stacking inefficiencies, and double recovery through resource-level accounting.

The Board should establish one DER registry and an associated compensation ledger identifying all utility, ratepayer-funded, public, tax-supported, retail, NEM, GSESP, Triennium, EV, and wholesale revenues associated with each enrolled resource and the obligation purchased by each payment. As a default, a resource receiving ratepayer-funded support should elect one compensation pathway. If cross-program participation is allowed, overlapping compensation should receive a full one-for-one offset and total ratepayer-funded compensation should remain below the verified incremental value delivered. PJM revenues and other revenues attributable to ratepayer-supported assets or contracts should reduce the revenue requirement. The same megawatt or megawatt-hour should not be credited simultaneously to multiple programs unless each service is separately measurable, incremental, and operationally compatible.

(7) Apply cost causation and protect existing customers from large-load-driven costs. The record identifies data centers and other extraordinary new loads as principal drivers of the emerging capacity and infrastructure need.

VPP procurement, enabling infrastructure, interconnection, data, and administrative costs that arise because of those loads should be assigned primarily to the cost-causing customers through direct assignment, a large-load capacity-mitigation charge, special contracts, minimum commitments, collateral, exit protections, contributions in aid of construction, or other appropriate mechanisms. Existing residential and small-commercial customers should receive the savings produced by mitigation; they should not be required to finance the resource needed to serve load growth they did not cause. The same cost-causation principle should apply to concentrated fleet charging and other customers that create identifiable local system upgrades.

(8) Recover participant-specific and exporter-specific costs from the parties that cause them, and avoid speculative utility rate base.

Application processing, aggregator licensing, technical testing, customized data interfaces, settlement, telemetry review, interconnection studies, dispute resolution, and individualized reporting should be recovered through reasonable participant, aggregator, project, or service fees unless an EDC demonstrates a measurable systemwide benefit. Program administration and incentive costs should generally be treated as expenses rather than capital investments. The Board should not authorize an automatic rider, blanket regulatory asset, or presumption of recovery, and should not permit utilities to rate-base third-party contracts or program administration merely to create an earnings opportunity. DER exporters should be evaluated as a customer class in class cost-of-service studies, with appropriate export tariffs and interconnection charges that provide cost certainty and reduce cross-subsidization.

(9) Coordinate VPP compensation with energy efficiency, storage, EV, solar/NEM, and rate design on one cumulative record.

Migration of Triennium demand response or other existing programs into a VPP framework should not create new compensation for capabilities that ratepayers already funded. Before a migrated resource counts toward a VPP target or receives a new payment, the EDC should provide an auditable baseline of prior enrollment, spending, incentives, dispatch rights, contractual obligations, useful life, and historical performance. Hardware incentives justified independently under energy-efficiency, EV, storage, or other programs should remain subject to those programs' own cost-effectiveness and EM&V requirements; VPP enrollment should be required only when the incentive was specifically justified as purchasing VPP capability. A customer already responding to a rate signal should be paid only for incremental event response beyond the behavior induced by that tariff.

(10) Treat avoided transmission and distribution benefits conservatively and on a project-specific basis. Rate Counsel does not support generic or portfolio-wide assumptions that system-oriented VPPs will produce significant avoided distribution benefits.

Any locational T&D benefit should be tied to a specific documented constraint, capital project, or operating need, and the EDC should show that the traditional investment is actually removed, reduced, or affirmatively deferred. If a project is only postponed, the benefit should equal the present value of the verified deferral, net of all VPP costs. Payments for locational services should remain well below the verified avoided cost so that ratepayers retain a substantial share of the benefit. A resource committed to system-wide or PJM dispatch should not also receive local distribution compensation unless sufficient separate capacity exists to satisfy both commitments.

(11) Preserve competitive aggregator participation and assign operational roles pragmatically.

During the Interim Program, EDCs or their implementation contractors should retain core dispatch authority, AMI provisioning, and PJM communications, while third-party aggregators may begin and ultimately assume a larger role in marketing and enrollment. EDC solicitations should permit multiple aggregators by service territory, resource type, and customer segment, and EDC-sponsored offerings should compete against third-party proposals on total cost and effectiveness. The Interim Program should avoid unnecessarily small aggregations; Rate Counsel supports a 100 kW minimum aggregation threshold, measured on deliverable event capacity rather than enrolled nameplate capacity, without separate residential and C&I thresholds. Aggregator contracts may need sufficient duration to support customer-acquisition investment, but any multi-year term must remain subject to performance, cost review, and Board exit provisions and should not become a guaranteed long-term revenue stream.

(12) Require transparent EM&V, operational reporting, data access, and public accountability.

Dispatch parameters should be largely consistent across EDCs, and EDCs should disclose the forecasts supporting both system-wide and local dispatch decisions. Rate Counsel considers the proposed event duration and number of events generally reasonable, supports customer opt-out with corresponding pay-for-performance adjustments, and believes minimum notice can be reduced to approximately one hour with best efforts to provide earlier notice when practicable. Enrollment and unenrollment verification should be provided monthly, and event-performance meter data should be available within ten days of an event. Scorecards should clearly identify total program costs, incentives, program-management costs, gross benefits, net benefits, and other ratepayer-relevant metrics. EDC override or curtailment authority should be narrow, emergency-based, documented, and publicly reported.

(13) Protect customers through hard budgets, annual reconciliation, prudence review, and enforceable exit ramps.

Each EDC and subprogram should have a Board-approved budget cap by cost category, with transfers requiring notice and approval. Annual true-ups should compare authorized and actual spending, contracted and delivered megawatts, realized wholesale revenues, gross and net benefits, class bill impacts, and cost per verified kilowatt. Unsupported, duplicative, imprudent, or out-of-scope costs should be disallowed and unspent balances returned promptly. The Final Order should establish automatic suspension, redesign, and termination triggers when the RIM falls below the approved threshold, cost per delivered kilowatt exceeds the benchmark alternative, spending approaches a cap without proportional performance, or benefits fail to flow through rates. Interim authority should sunset unless affirmatively reauthorized on an updated record.

(14) Do not create preferential utility ownership or a second utility earnings stream. Rate Counsel opposes any procurement target, presumption, or preference for EDC-owned storage or other VPP resources.

All proposals should be evaluated on the total cost to customers and on an EDC-neutral basis. If a genuinely neutral total-cost framework is adopted, competitive discipline may itself prevent uneconomic utility ownership; absent such a framework, an express restriction on EDC ownership is necessary. A utility should not earn a return on enabling capital, recover all program expenses, and then receive an additional incentive for the same outcome or preserve the earnings opportunity associated with a traditional project that the VPP was supposed to avoid.

(15) Address affordability, equity, consumer protection, cybersecurity, and marketing without imposing unnecessary participation barriers.

EDC filings should show annual and cumulative revenue requirements and bill impacts by customer class and participation status, including distributional effects on low- and moderate-income customers, renters, multifamily customers, and customers without DER access. Hardware or landlord-oriented measures may be appropriate where they are independently cost-effective and broaden LMI access. Aggregator licensing should protect financial viability, customer service, privacy, and cybersecurity while avoiding unnecessary costs; application and renewal fees should be kept reasonable, equipment-compliance requirements should be practical, and aggregator contracts may require adherence to SOC 2 principles without imposing unnecessary audit burdens. The Board and EDCs should provide neutral VPP information and approved-aggregator lists, while the bulk of provider-specific marketing and customer acquisition should remain the aggregator's responsibility.

(16) Adopt a formal procedural roadmap and defer the permanent framework until the Interim Program has produced a usable record.

The VPP docket must be coordinated with GridFlex, PSUP, Triennium, storage, AMI, EV, NEM, rate-design, PJM, and other related proceedings through an issue-and-docket map and a cumulative bill-impact analysis. Before final program architecture is established, the Board should provide meaningful opportunities for technical conferences, information requests or discovery, initial and reply comments, and responses to material new proposals. Any VPP Working Group should be advisory, balanced, transparent, and expressly subordinate to the formal decisional record; it should not establish compensation, cost allocation, prudence presumptions, or budget authority. A long-term tariff or expanded utility investment should be considered only in a separate later record after verified Interim Program performance and updated PJM, technology, market, and affordability conditions are known.

Taken together, these safeguards implement a straightforward ratepayer standard: VPP resources should meet an identified need at lower all-in cost than alternatives; compensation should be limited to incremental, verified value; costs should follow causation and direct benefits; all revenues and offsets should flow back to customers; and the Board must be able to suspend, redesign, or terminate programs that fail to produce promised savings.

Rate Counsel therefore respectfully requests that the Board incorporate these protections into any Final Order and refrain from approving long-term compensation rights, open-ended cost recovery, material new utility investment, or a permanent VPP tariff until the record demonstrates those commitments are necessary, cost-effective, affordable, and consistent with just and reasonable rates.

NJ Division of Rate Counsel Responses to Stakeholder Comments Requested In the Matter of Establishment of a Virtual Power Plant Program, BPU Docket No. QO26030099

August 17, 2026

Stakeholder Comment 1

a**. Staff seeks stakeholder input on each of the objectives outlined for the Interim VPP Programs, such as methodology to determine what qualifies a grid stress condition and validation of performance measurement.**

> **i. Reduce peak demand by no less than 3% across each EDC service territory beginning no later than July 1, 2027, through the coordinated dispatch of BTM DERs aggregated by both EDCs and third-party aggregators. Dispatch events shall be informed by a reliable forecasting mechanism of PJM's 5 Coincident Peaks ("5CP"), but are not limited to 5CP hours, and should also be called during distribution-level thermal constraints, local congestion, and other qualifying grid stress conditions as determined by the EDCs.**
>
> **RESPONSE:** If EDCs do not file their VPP plans until December 2026, and those plans are not approved until Q1 or Q2 2027, there may be insufficient time for EDCs and third-party aggregators to recruit enough participants to grow their existing DR programs to the 3 percent goal by the specified date. To hold EDCs accountable to achieving these goals the BPU should institute penalties for non-achievement (ex. Dis-allowance of recovery of a portion of VPP interim program costs based on the percentage of load reduction goal achieved).
>
> **ii. Demonstrate the reliable and accurate delivery of grid services using existing utility and DER Aggregator systems, and demonstrate EM&V capability using existing AMI systems;**
>
> **RESPONSE:** Rate Counsel supports this objective as EDCs current systems should be capable of delivering the load reductions discussed without the need for ratepayer investment in additional, expensive management systems. Likewise, the capabilities of existing AMI systems should be sufficient to meet EM&V requirements of the VPP programs.
>
> **iii. Gather operational data – including, but not limited to, event response rates, baseline accuracy, resource mix performance, and dispatch latency, comparative performance across non-exporting and exporting (residential storage) configurations, and participant DER selection behavior – that will inform the technical requirements and compensation design of the long-term tariff structure;**

RESPONSE: Rate Counsel agrees collecting this type of operational data will be extremely important to inform development of long-term tariff structures to support VPPs. An additional data element that should be collected is when local distribution events occur (ex. The need for voltage support, circuit capacity constraints, etc.) as compared to when larger system events are called. This information combined with DER availability information will help determine how realistic various "value stacking" scenarios will be in the future.

iv. Enable customer familiarization with VPP participation and trust-building with the program and third-party aggregators, creating an enrolled customer base from which the long-term, aggregator-led market can grow;

RESPONSE: Rate Counsel agrees the interim program, if properly run, will help facilitate customer education and expand the customer base.

v. Test and validate the communication protocols, performance measurement methodologies, and data reporting standards between EDCs and third-party aggregators that will be carried forward into the long-term VPP framework and evaluate their consistency across EDCs.

RESPONSE: Rate Counsel agrees.

vi. Establish a structured, competitive EDC-aggregator contracting framework in New Jersey that progressively builds third-party aggregator operational capacity, market experience, and enrolled customer bases during the VPP Interim Program period, creating the market foundation necessary for the long-term open-access VPP tariff to function effectively upon its launch.

RESPONSE: Rate Counsel agrees.

vii. Evaluate compensation structures, including, but not limited to fixed enrollment payments and pay-for-performance models, and test appropriate incentive levels to identify designs that reliably obtain DER aggregator response, to inform compensation and tariff design for the long-term framework.

RESPONSE: Rate Counsel supports pay-for-performance incentive models and believes these should represent the majority of any incentive funding. Rate Counsel recognizes that enrollment incentives may be necessary for customer recruitment, but enrollment or other fixed incentives should be minimized. The use of third-party aggregators may facilitate this. EDCs, using ratepayer funds, can offer aggregators limited pay-for-performance incentives. The aggregator would be free to construct whatever incentive structure they can best use to capture DER resources. This structure will help shift risk away from ratepayers. Ultimately, the measurable benefits of the program must outweigh any ratepayer funded incentives.

viii. Collect data to quantify retail peak load reduction and distribution-level grid service values, in order to establish the evidence-based foundation for future procurement of locational distribution network benefits under the long-term framework.

RESPONSE: Rate Counsel agrees, please see earlier responses to Comment 1.a.iii and to a.iii above

ix. Evaluate the potential for VPPs to lower costs for both participants of the program, as well as for all ratepayers.

RESPONSE: This can be accomplished most directly through the ratepayer impact test ("RIM"). Rate Counsel stresses that in any cost-benefit analyze ALL costs associated with the program must be accounted for. In the case of VPPs relying on incremental PV and PV + storage DERs those costs must include the cost of distribution grid upgrades, including both the capacity increases and interconnection costs necessary to accommodate said DERs. and original costs to implement AMI should also be included.

b. Staff also seeks stakeholder input on whether such objectives are appropriate for the Long-Term VPP Programs.

RESPONSE: Rate Counsel believes that any long-term VPP programs should include the same goals to validate the continued benefit and cost-effectiveness of such programs. Establishing load reduction targets will keep VPP providers focused on that primary objective. Having EDCs and aggregators continue to collect the data elements detailed above will allow for continual EM&V for the programs as well as provide insight into which program elements are no longer effective or which program innovations are beneficial

Stakeholder Comment 2

a. Staff seeks stakeholder comments, under section iii, "Minimum Aggregation Size", on whether the proposed minimum thresholds of 10 kW and 100 kW are appropriate for the VPP Interim Program and the long-term tariff, respectively.

RESPONSE: The proposed interim program peak shave goal is 589 MW, inclusive of all EDCs. Were each aggregate group to only meet the minimum size requirement there would be 58,900 groups to manage. Though many groups are sure to exceed the minimum threshold, Rate Counsel still believes the minimum aggregation size of 10 kW per event is too small. Overhead costs for administering such small aggregations will weaken overall program cost-effectiveness. The 100 kW minimum size proposed for the long-term program should be satisfactory for the interim program as well.

b. Staff also seeks comments on whether separate thresholds should apply to residential and commercial & industrial ("C&I") sectors for the interim and long-term programs.

RESPONSE: Rate Counsel does not recommend creating separate thresholds for residential and C&I customer aggregation groups as it is likely to add a layer of complexity without any discernible benefits.

c. Staff further seeks comment on whether the 10 Kw interim threshold should be measured as enrolled capacity or as capacity deliverable during a dispatch event, and on how it should relate to the 20 Kw distribution-service threshold proposed in Section 3.5.

RESPONSE: Rate Counsel believes the aggregation threshold should be measured as capacity deliverable during a dispatch event. It would be the aggregators' responsibility to ensure their aggregated DERs can deliver the load relief required. For example, if an aggregator anticipates a 10% opt-out rate for customers enrolled in their program, the aggregator would need to oversubscribe by ~11% to assure its load relief target is met. Tying the minimum threshold to deliverable capacity will make tracking and reporting easier as different resource aggregations will likely have different opt-out and performance rates.

Stakeholder Comment 3

Staff seeks stakeholder comments, under section iv, "Communication Standards and Protocols", on whether the proposed standards (OpenADR 2.0b/3.0, IEEE 2030.5, and CTA 2045) are required for the VPP Interim Programs and the long-term tariff while balance the feasibility, cost, and time.

RESPONSE: Rate Counsel believes the communications protocol mentioned should be encouraged for the interim and long-term program as this will help move the industry towards adopting standards. However, exceptions to these standards could and should be considered if doing so would enable an aggregator to quickly implement load relief. Such an exception might be a vendor with a base of deployed DERs which operates under a proprietary communications protocol. If such a protocol could be adopted by the EDC for little cost, it would benefit ratepayers to allow such devices into the program. As the DER market matures, communications protocols that are currently proprietary could conceivably become an industry standard. An analogous example might be EV charging plugs. Early market entrants favored the CHAdeMO plug standard. Now CHAdeMO is rapidly being phased out in favor of the CCS and the once proprietary Tesla NACS plug.

Stakeholder Comment 4

Staff requests comment on whether the proposed budget is sufficient for EDC-administered VPP Interim Program and justification of budget that will meet the goals of the Interim Program

<u>RESPONSE:</u> Rate Counsel has concerns with the overall size of the budget in comparison to the projected savings. Table 1 below was constructed using the estimated savings figures presented within the Appendices. The estimated capacity cost savings over the two-year interim program is $122.6 million. The proposed budget is ~$68.0 million. More than half of the potential capacity savings would go toward the VPP program (operations and participant incentives), greatly reducing benefits seen by EDC customers. The assumptions regarding ACE and RECO greatly exacerbate this issue. While both PSE&G and JCP&L programs are estimated to deliver greater than 50% of the savings to customers, RECO will only deliver 23% of savings to customers while ACE's participation in the interim program will actually cost customers money. Using the current assumptions, New Jersey would benefit if ACE and RECO do not participate in the VPP program.

Table 1: Interim VPP Program estimated targets, costs, and savings

EDC	MW Target (MW/yr - 3%)	Capacity Cost Savings Target ($mm/yr)	kW Value ($/kW)	2 yr Budget ($mm)	2 yr Savings ($mm)	$mm Saved	% saved	VPP Cost ($/kW)
PSE&G	306.9	$ 31.9	$ 103.94	$ 30.0	$ 63.80	$ 33.80	53%	$ 48.88
JCP&L	188.2	$ 19.6	$ 104.14	$ 16.0	$ 39.20	$ 23.20	59%	$ 42.51
ACE	81.3	$ 8.5	$ 104.55	$ 20.0	$ 17.00	$ (3.00)	-18%	$ 123.00
RECO	12.7	$ 1.3	$ 102.36	$ 2.0	$ 2.60	$ 0.60	23%	$ 78.74
Total	589.1	$ 61.3	$ 104.06	$ 68.0	$ 122.60	$ 54.60	45%	$ 57.72

Programs which reduce peak capacity at the lowest costs will result in the greatest amount of rate relief for customers. Therefore, Rate Counsel stresses that the BPU should focus EDCs on implementation of low-cost/no-cost measures which impact peak demand, such as the introduction of demand rates coincident with PJM system peaks.

Stakeholder Comment 5

Staff requests comments on whether the proposed budget levels are appropriate, and on whether hardware incentives costs should be incorporated into the VPP Interim Program budget or maintained as separate program costs.

<u>RESPONSE:</u> Referencing Table 1 above, the cost to deliver capacity reductions is estimated to be ~$58/kW. This value appears comparable to the costs reported by utilities operating similar demand response programs. Rate Counsel believes any hardware incentive costs must be incorporated into the VPP interim budget to provide an accurate picture of the total costs associated with claimed program benefits.

Stakeholder Comment 6

Staff requests comments on the feasibility of bifurcating the start of the programs and on the feasibility of having any customers enrolling after the approval of the VPP programs to start under the VPP framework rather than the Triennium construct.

RESPONSE: Rate Counsel is supportive of advancing any programs resulting from the Triennium without waiting for the rollout of the VPP programs, thereby capturing savings for ratepayers more quickly. From administrative, operational, and reporting standpoints, Rate Counsel believes it beneficial to roll all similar DR/VPP programs under the new VPP Program umbrella. The goal should be to move forward efficiently and achieve measurable savins for ratepayers.

Stakeholder Comment 7

Staff requests feedback on:

a. Whether the proposed preliminary event parameters are appropriate or more refined and aggressive parameters are needed;

RESPONSE: Event duration and number of events appear reasonable.

Minimum advance notification could be reduced to 1 hour with EDC's best effort to notify customers further in advance (ex. 24 hours if a known weather event is expected).

Rate Counsel agrees that customers should be able to opt-out, and incentives should be appropriately reduced if they chose to do so (pay-for-performance).

b. What requirements and evaluation criteria the Board should apply in reviewing EDC-proposed dispatch parameters;

RESPONSE: Dispatch parameters should be largely consistent across EDCs.

For evaluation EDCs should be required to show the forecasted data which resulted in a dispatch, for both system-wide and local distribution events.

c. Whether an annual cap on total dispatch events is appropriate, and if so, what numeric limit (e.g., 35 events per year, inclusive of any shoulder-season events) would be reasonable; and

RESPONSE: No Comment

d. The creation of structures that will best maximize cost savings to customers and ratepayers.

<u>RESPONSE:</u> No Comment.

Stakeholder Comment 8

a. Staff requests comments on whether the proposed approach to the cost-effectiveness tests (the RIM, TRC, SCT, PACT, and PCT) are appropriate for evaluating the VPP Interim Program, or whether some should be modified, omitted, or supplemented. Staff is particularly interested in whether the RIM is well-suited to capture the full value of VPP dispatch, and whether any test should serve as the primary standard for the Board's program continuation determination.

<u>RESPONSE:</u> Rate Counsel concurs with Staff that the RIM test is the best-suited test for cost-effectiveness based on the current directive of trying to deliver rate savings to EDC customers. As Staff discusses, the various other tests mentioned are all designed to measure cost-effectiveness from different perspectives. Each test can provide insight into the program as a whole and Rate Counsel recommends EDCs collect the necessary data and calculate each of the tests as part of their reporting requirements. Overall program success and whether a program ultimately continues should be contingent upon it passing the RIM test.

b. Staff also seeks comment on standard methodology to quantify the savings from avoided costs related to distribution and transmission.

<u>RESPONSE:</u> Though Rate Counsel recognizes that attribution of avoided T&D cost benefits are a standard part of DSM program design and benefit-cost tests, Rate Counsel believes it may be time to question the validity of this practice. Consider a substation serving 4,000 customers. If 5% of those customers participate, and offer an average of demand response of 1.2kW each, that amounts to 240kW. For a substation serving 4,000 customers, 240kW is probably a rounding error in distribution capacity planning.

Further, Rate Counsel questions whether any VPP designed to reduce demand system-wide can also deliver avoided T&D cost benefits. A VPP called upon for a system-wide event might not be available for a local distribution event called later the same day, and vice-versa.

As a result of these concerns, Rate Counsel believes VPPs designed for system-wide response will not likely provide any significant avoided T&D cost benefits.

Noticeably absent from this inquiry is any discussion of the quantification of costs. It has been Rate Counsel's experience that costs have been significantly downplayed in evaluating similar programs. Any analysis must review all costs of the program, including any utility return on investment and other costs, such as grid buildout, that are necessary for the program to move forward and will be borne by ratepayers. Failure to fully consider all costs leads to programs being inappropriately deemed cost efficient when in fact, they result in significant increases in bills without actual benefit.

Stakeholder Comment 9

a. Staff seeks comment on the proposed 3% peak demand reduction target, including whether it should function as a binding floor, a non-binding reference, or an EDC-specific target set within the range in Table 1; and on whether targets should be uniform across EDCs or differentiated to reflect differences in existing demand-response infrastructure and DER penetration among the service territories.

RESPONSE: Rate Counsel is unclear when the 3% demand reduction goal is proposed to be obtained. It is unclear whether the goal is proposed to be met at the end of year 1 or at the end of year 2. This target should be considered a floor. But for it to be binding in any way, the EDCs must face economic consequences if the target is not met. Dis-allowing recovery of VPP program funds if targets are not met may be an appropriate consequence.

b. Staff seeks comment on the methodology and assumptions underlying the preliminary peak load figures in Table 1, including the appropriate peak-load basis (e.g., 5CP/PLC versus NSPL) for setting VPP Interim Program targets.

RESPONSE: Rate Counsel has no comment nor position on this issue at this time.

c. **Staff seeks comment on the proposed categories of cost savings, on the appropriate methodology for quantifying realized ratepayer savings – including the extent to which existing cost-effectiveness tests such as the TRC are sufficient – and on whether additional savings categories beyond those enumerated should be reflected in EDC cost-reduction goals.**

RESPONSE: The RIM test should be used to ensure programs result in direct ratepayer benefit.

d. Staff seeks comment on the approximate $60 million preliminary estimate of annual avoided capacity costs at a 3% reduction target, as detailed in Appendix A, including the capacity-pricing assumptions on which it relies and whether transmission and distribution avoided costs should be incorporated into future estimates.

RESPONSE: The methodology for the $60 million preliminary estimate seems correct. At this stage it is too early to definitively add in any additional distribution or transmission avoided cost benefits since those will be project specific. T&D avoided cost benefits can be added once it is shown that a particular VPP program is proven to have successfully delivered such benefits.

Stakeholder Comment 10

Staff seeks comment on whether dispatch authority, AMI data provisioning, PJM communication, and marketing/enrollment should remain EDC (or implementation contractor) functions during the VPP Interim Program and transition to third-party aggregators under the long-term framework, or whether they should transition sooner, and on how the transition clause described in Section 2.8(c) should address the migration of these functions.

RESPONSE: Rate Counsel believes that EDCs (or their implementation contractor) should maintain dispatch authority, AMI provisioning, and PJM communication functions for the VPP interim program. It is likely the EDCs will have to maintain these functions in any long-term program. Third party aggregators may be able to begin marketing/enrollment activities within the interim program, and certainly should for the long-term program. Rate Counsel voices concerns over the proposed transition period. At this time there are many uncertainties concerning the PJM market, making details of a long-term VPP program difficult to anticipate at this time.

Stakeholder Comment 11

Staff requests comments on whether the proposed Aggregator Solicitation Plan appropriately provides the customer choice and enables the inclusion of third-party aggregator during the EDCs' procurement processes.

RESPONSE: Rate Counsel believes the EDCs' aggregator solicitation and selection processes should be designed to maximize flexibility in aggregator procurement. As examples, solicitation and selection processes should permit and encourage multiple Aggregators per EDC, per resource type, and per customer segment. Further, Rate Counsel believes that EDC-offered programs must compete against aggregator proposals on cost and effectiveness, with aggregator proposals selected over EDC-offered programs as appropriate.

Stakeholder Comment 12

a. Staff seeks comment on whether the proposed contracting and procurement framework appropriately balances EDC operational flexibility with the Board's interest in fostering a competitive aggregator market, and on whether additional MFR requirements are warranted.

RESPONSE: Staff's assumption that aggregators will require revenue certainty is correct. The interim program's two-year timeframe may prove problematic in that it is too short. Aggregators could potentially invest in significant overhead for a relatively short performance period. This could severely limit the potential pool of aggregators who wish to participate/increase the compensation level aggregators require.

b. Staff seeks feedback on mechanisms to balance the need balance revenue certainty for aggregators with the Interim program's role as a bridge to a compensation-based tariff, including whether the Board's role should establish a minimum EDC-aggregator contract term or phase out Interim Program compensation for enrolled resources transitioning to the long-term tariff, and for what duration.

RESPONSE: Please see Rate Counsel comments on 11 and 12(a). Rate Counsel believes that, to the greatest extent possible, the aggregator contracts should anticipate the transition and encourage extended terms through and post-transition to provide long-term incentives for aggregators to invest in customer recruiting in the short term. Of course, given PJM market uncertainty, aggregators may decide to avoid counting on any post-period benefits at all, which would unfortunately raise the cost of the compensation the aggregators might propose.

c. Staff also seeks feedback on whether proposed transition timeline is reasonable.

Rate Counsel has express above its concerns with the proposed timeline.

Stakeholder Comment 13

Staff seeks comment on the proposed MFR structure; on the proposed performance reporting, including whether event-level reporting at the above granularity is necessary for Board oversight and what other reporting metrics are important; on the appropriate reporting cadence; on which elements of each report should be public versus confidential; and on whether the cost-effectiveness methodologies proposed here are sufficient.

RESPONSE: Components to be included within the EDC's VPP Interim Program MFR filing are reasonable. Rate Counsel continues to have reservations surrounding the Transition Strategy (item xi.) as the future state of the PJM market is in question.

Stakeholder Comment 14

a. Staff requests stakeholder comment on how to best coordinate VPP tariff design with the PSUP process, and on what specific information in the PSUP would be most useful for third-party aggregators designing VPP portfolios.

RESPONSE: Rate Counsel believes this request relates most directly to prospective developers of utility-scale PV solar facilities. The most critical inputs to developers' decisions are the initial (interconnection) and ongoing (DER export tariff) costs the developers will need to pay.

In Rate Counsel's experience of , utility scale PV solar facilities are cheapest to build in the most remote areas, where land is the least costly to acquire. These are precisely the parts of the distribution grid least likely to be designed with the requisite hosting capacity to get these developers' products (energy, and capacity if paired with storage) to market. As such, capacity increases to rural circuits and substations will be extremely costly components in PSUPs that should not be borne by captive ratepayers.

Therefore, Rate Counsel believes the best way to coordinate VPP tariff design with the PSUP process is to provide prospective developers with cost certainty. Rate Counsel believes the provision of cost certainty is best accomplished through a DER export tariff for exporting DER that features both an ongoing charge per kW generated and an ongoing charge per kWh generated. Interconnection fees could be patterned after policies used to calculate customer contribution in aid of construction ("CIAC") charges in line extension policies for loads.

A DER export tariff treats prospective developers like the EDC customers that they are, with all the rights and responsibilities attached thereto. A DER export tariff appropriately charges exporting DER with the costs of building and maintaining the grid that makes access to markets for energy (and, if paired with storage, capacity) possible. A DER export tariff also offers something of value to all parties: cost certainty to prospective developers; reductions in cross subsidization by all other customer classes; and new revenue streams for EDCs. Rate Counsel recommends the Board explore identifying exporting DER as a customer class in EDCs' next class cost of service studies, and DER export tariffs in EDCs' next rate cases.

b. Staff also requests comment on the milestone-based transition framework described in the introduction to Section 3, including whether the four proposed milestones are appropriate for launching the long-term Programs and whether any should be modified and added.

<u>RESPONSE:</u> Rate Counsel's only concern with the milestones is the compensation structures and amounts. For these, please see Rate Counsel's responses to 8(b) and 15(a) through 15(e).

Stakeholder Comment 15

a. Staff requests stakeholder comment on appropriate Pathway 1 payment levels for different resource types, recognizing that enrollment and connectivity costs vary substantially across device classes.

<u>RESPONSE:</u> Rate Counsel believes that any ratepayer funded incentives should be pay-for-performance. Ratepayers should not be asked to fund programs without measurable benefits. Aggregators may need to offer Pathway 1 (enrollment) incentives to entice customers to participate. These enrollment incentives should be left to the discretion of the aggregators as each aggregator may offer a different selection of DERs under different business models. The EDCs and BPU should rely on the aggregator's expertise and not attempt to predict what incentive structure is required to drive the market and gain customer engagement.

As part of the solicitation process, the EDCs should ask aggregators 1) what target market they are pursuing; 2) mechanisms to be employed; 3) the capacity the aggregator proposes to provide through customer participation in the mechanism; and 3) the enrollment and other incentives the aggregator requires to deliver the participation and demand response proposed.

b. Staff requests further comment on the proposed seven-year minimum enrollment period (Pathway 1) for retaining upfront hardware incentives, including whether the period should vary by device class or incentive size.

<u>RESPONSE:</u> Rate Counsel believes all EDC or BPU program incentives should be pay-for-performance. Enrollment incentives can be structured by aggregators as they deem necessary to recruit DER customers. Any VPP program should have a defined contractual length to provide 3rd party aggregators certainty. Beyond that it is up to the aggregators to determine how they structure the incentives with their customers (i.e. offering enrollment incentives or opportunity/capacity reservation incentives).

Staff has asked if Pathway 1 incentives which may be funded through other programs (ex. Smart thermostat incentives through energy efficiency programs or EV charger incentives offered through EV programs) should require enrollment in a VPP tariff for a minimum period (ex. 7 years). Rate Counsel contends that any other program incentives should only be offered if they are shown to have net benefits to ratepayers through their specific program offerings. Thermostat incentives should only be offered within the utilities' Energy Efficiency portfolios if thermostats save enough energy to pass cost-benefit tests. Likewise, EV chargers should only receive incentives if the overall benefits to ratepayers outweigh the cost of incentives plus program administration. If these conditions are met there should be no need to require participation in a VPP program.

c. Staff requests stakeholder comments on the overall three-pathway compensation mechanism that is proposed under this section of the VPP Program Straw Proposal and solicitate the appropriate target payment ranges for each pathway differentiated by grid service provided.

<u>RESPONSE:</u> To ensure ratepayers receive benefit from any VPP program, the total cost of the program (incentives plus program administration) must be substantially lower than the cost of procuring the traditional resource. The BPU should establish cost reduction targets, 50%, to set expectations for potential aggregators.

Using the data provided within the appendix of the Straw Proposal and analyzing NJBPU filing data and utility tariffs provides an indication of the potential value VPPs can provide. The average peak capacity costs for the EDCs is $104/kW-yr ($61.3mm/589.0 MW). Therefore, costs associated with providing VPPs to avoid capacity must come in at less than $104/kW-yr and preferably around $52 /kW-yr (providing 50% savings to customers).

d. Also, staff requests comment on practicality of implementing location-differentiated payments in the long-term program, and on alternative approaches if locational differentiation is not immediately feasible.

RESPONSE: Though Rate Counsel recognizes that attribution of avoided T&D cost benefits are a standard part of DSM program design and benefit-cost tests, RC believes it may be time to question the validity of this practice. Consider a substation serving 4,000 customers. If 5% of those customers participate, and offer an average of demand response of 1.2kW each, that amounts to 240kW. 240kW for a substation serving 4,000 customers is probably a rounding error in distribution capacity planning, and in Rate Counsel's opinion does not provide any significant avoided Distribution cost benefits.

Instead of generic assumptions about avoided T&D cost benefits, Rate Counsel favors location-specific avoided T&D cost benefit estimates from VPP programs, and payments for performance targeted at 50% of that value. Rate Counsel believes that rigorous analysis to estimate avoided T&D cost benefits would indicate that such benefits will be tiny, as described above. Further, even if such benefits are not tiny in theory, they are likely to be tiny in practice. For example, if a VPP claims to be available for both system-wide and local distribution dispatch, will a VPP dispatched for system-wide value be available for local distribution dispatch the same day?

Similarly, if only 35 events can be called per year, Rate Counsel believes it likely that the system-wide dispatch benefits will vastly outweigh avoided T&D cost benefits. The EDCs should therefore reserve events to the situations that will deliver the most avoided-cost benefit, which Rate Counsel contends will be system-wide rather than local (assuming local benefits are calculated appropriately).

e. Staff further requests comment on whether the VPP tariff should specify default payment structures for each pathway, or should instead establish baseline terms and conditions of participation, with compensation structures and payment levels defined separately by grid service and use case.

RESPONSE: Rate Counsel believes the VPP tariff should establish baseline terms and conditions of participation. However, rather than defining structures and payment levels by grid service and use case, Rate Counsel believes, as described above in response to Comment 15(a), that aggregator proposals should specify the pay-for-performance compensation structures and amounts aggregators would accept for delivering the demand response proposed, Rate Counsel expects aggregators to propose compensation structures and amounts that vary by mechanism and target market, and that EDCs should choose the most attractive of the aggregator proposals submitted for VPP program participation.

As another market-oriented approach, the Board could establish a price per kW-yr ($57.72 on average per Table 1 in Rate Counsel response to comment 4, though perhaps EDC-specific amounts would be more appropriate), and EDCs could select all qualified aggregators willing to provide capacity for those amounts. Or, similar to PJM's capacity market, aggregators could bid a $/kW-year amount they are willing to accept given their individual mechanisms and target markets, and the EDCs could use a reverse-auction approach (as PJM does) to set the compensation payable to all aggregators for performance.

Stakeholder Comments 16

Staff requests comment on the appropriate timeline for Grid DERMS build-out and on whether the Board should set minimum functionality requirements that must be achieved by specific dates.

RESPONSE: Rate Counsel believes the Board should set minimum functionality requirements to be achieved by specific dates in order to communicate with aggregators, perform EM&V, and provide pay-for-performance incentives. It is likely that all EDCs can perform these minimum requirements today. However, Rate Counsel does not believe the Board should specify how EDCs should deliver minimum functionality requirements (for example, by requiring a DERMS or any other particular solution).

Stakeholder Comments17

a. Staff request stakeholder feedback on what aspects of the proposed long-term VPP regulatory framework should be revised to enable wholesale market participation, including the development and valuation of distribution grid services in conjunction with wholesale market participation.

RESPONSE: Rate Counsel believes the ideas offered in Comments 15(a) through 15 (e) could go a long way to easing the transition issues and managing the uncertainty of PJM market developments. Again, Rate Counsel reiterates its concern that distribution grid service value will be small to zero for VPPs designed to participate in system-wide events, as described in Rate Counsel's response to 8(b).

b. Staff also request feedback on whether the introduction of such program participation incentives is acceptable, or whether they would alter existing state program incentives and/or prohibit participation in PJM's wholesale energy markets.

RESPONSE: Rate Counsel does not believe aggregators should receive additional incentives for sustained participation as that is their contractual obligation. Incentives for overperformance should only be considered if such overperformance results in reduced costs for the EDC. If costs are reduced, it may be appropriate to pass a portion of those savings to the aggregator. It may be too early to establish a prescribed value/percentage for overperformance compensation.

Stakeholder Comments18

Staff requests comment on the appropriate number and definition of service pathways (e.g., specific response-time thresholds) needed to balance administrative simplicity against adequately capturing differentiated grid value, and on any additional technical performance criteria (beyond response time and telemetry granularity) the Board should consider in defining VPP grid services.

RESPONSE: See Rate Counsel's prior response to 8(b) and 15(a) through 15(e) which advocates for market-based approaches and light regulation whenever possible and appropriate. As indicated in Rate Counsel's response to 17(a), early adoption of market-based approaches will likely ease transition issues and help manage the uncertainty of PJM market developments.

Stakeholder Comments19

Staff seeks comment on whether a minimum pass-through requirement, a public offer-comparison platform, or a combination of both would best ensure enrolled customers receive fair value from VPP participation, and on if 70% is the appropriate level of any pass-through floor.

RESPONSE: Rate Counsel does not believe BPU should establish a minimum pass-through requirement. Aggregators and DER providers may offer many varied and unique purchasing arrangements with their customers. The pay-for-performance payment structure may not fit within the contractual arrangement between DER provider/aggregator and their customer.

Stakeholder Comments 20

Staff seeks comment on whether these open-access market rules and EDC coordination protocols provide sufficient certainty for aggregators to make long-term investment decisions in New Jersey, and on whether a formal EDC-aggregator dispute resolution process should be established by the Board.

__RESPONSE:__ Aggregators will need to weigh in on whether these rules provide sufficient certainty for long-term business decisions. Rate Counsel believes the BPU should establish a dispute resolution process between EDCs and aggregators.

Stakeholder Comments 21

Staff requests comment on whether EDC ownership or administration of DER assets (e.g., battery storage) should be available as a bounded exception to the open-access framework for targeted grid needs such as constrained circuits; on which deployment and ownership model or models (EDC-owned, customer-owned with EDC installation, or competitive RFP) would be most cost-effective for ratepayers; and on what safeguards are needed to ensure EDC-owned or EDC-administered resources do not undermine the EDC-neutrality principles of Section 3.7(a).

__RESPONSE:__ Rate Counsel believes all proposals, whether EDC or third party, should be evaluated on a total cost to customers basis. EDCs can be expected to add their own margins on top of any EDC contractor costs incurred to place a DER asset in service, As long as the total cost to customers approach is used to evaluate proposals, Rate Counsel is of the opinion that EDCs will effectively be priced out of the market. Rate Counsel prefers market-based solutions to regulatory solutions. Thus, if the Board adopts a total cost to customers evaluation model, Rate Counsel does not believe a rule to exclude EDC-ownership is needed. However, if the Board fails to adopt such an evaluation model, Rate Counsel believes a rule to exclude EDC-ownership would be needed to preserve the EDC-neutrality principles of Section 3.7 (a), and ensure fair competition.

Stakeholder Comments 22

a. Staff seeks comment on whether the proposed sequencing between GridFlex and the VPP MFR Order is sufficient to prevent definitional conflicts between distribution-level service compensation rules and VPP payment structures.

__RESPONSE:__ Rate Counsel does not agree that the proposed sequencing is sufficient to prevent definitional conflicts between distribution-level compensation and system-wide compensation. Rate Counsel believes VPPs must self-designate as either system-wide or location-specific solutions.

b. Staff also seeks comment on whether conditioning the long-term VPP tariff's open-access provisions on PSUP-reported DERMS Tier 2 or 3 maturities would be an appropriate trigger mechanism, and what specific DERMS capabilities should be required before that condition is satisfied.

__**RESPONSE:**__ As stated in Rate Counsel's Comments 15(a) through 15(e), market-based approaches will address many of the transition and PJM market uncertainty issues Staff is attempting to address with this portion of the Straw. As stated in Rate Counsel's Comment 16, minimum functionality requirements (the "what"), rather than mandatory software approaches/maturities (the "how"), be specified as any 'triggers' that might be needed.

Stakeholder Comments 23

Staff seeks stakeholder comment on if the proposed GSESP Phase 2 VPP-Integration provisions create sufficient forward compatibility and on whether any barriers to third-party aggregator access for Phase 2 resource should be addressed through program design modifications.

__**RESPONSE:**__ Rate Counsel believes there is sufficient forward compatibility between GSESP Phase 2 and the proposed VPP program. Rate Counsel stresses that measures must be taken to insure BESS assets are not double-counted and incentivized through both GSESP Phase 2 and the VPP program for the same service. But again, Rate Counsel believes that the market approaches described in Rate Counsel Comments 15(a) through 15(e) would go a long way to easing transition and PJM market uncertainty issues.

Stakeholder Comments 24

Staff seeks stakeholder comment on the proposed Triennium VPP coordination.

__**RESPONSE:**__ Rate Counsel agrees that existing DR offerings should be migrated to the new VPP program. Hardware incentives should be minimized in preference of pay-for-performance incentives. If deemed appropriate and cost beneficial, up-front hardware incentives must require enrollment in a VPP program (suggest 5 year minimum).

Stakeholder Comments 25

Staff seeks stakeholder comment on how NEM and VPP Program design should be coordinated to encourage customers to export energy at times of the most grid value, and what anti-double-counting provisions are needed, especially where NEM credit and VPP compensation apply to the same exported energy.

__**RESPONSE:**__ Energy storage systems should be allowed to export to the grid. Energy exported during events would be removed from NEM credit and compensated for VPP instead, thus ensuring energy is not double counted.

Stakeholder Comments 26

Staff seeks stakeholder comment on whether the AMI Data Access Standards can be feasibly implemented before the completion of the Interim VPP Program, and on alternative methodologies for event performance measurement that do not rely on EDC provided data.

RESPONSE: AMI Data Access Standards are not new and ratepayers should expect their EDC's to enable this functionality after having invested in AMI metering. Should AMI data access not be available, data from participating DERs can be utilized as a proxy for measuring performance. Utility-scale solar and storage assets have their own metering systems which can be used in lieu of AMI meter data. Smart devices such as thermostats and water heaters and/or the aggregator DERMS systems which control them have internal data logging capabilities which will show how the devices were functioning during VPP events.

Stakeholder Comments 27

a. Staff cautions that excessive rate fragmentation due to asset-specific TOU increases administrative complexity and customer confusion, and requests stakeholder input on the appropriate scope of technology-specific TOU options.

RESPONSE: Rate Counsel supports time-differentiated pricing such as TOU rates, but does not believe such rates should be technology specific. Rates should reflect cost causation principles which are independent of end use technology.

Further, Rate Counsel does not believe TOU rates are designed in a way that sufficiently targets demand reductions on a few dozen system coincident peak demand events annually. To better target customer behavior changes to demand response, and to maximize the value of AMI meter deployments, Rate Counsel continues to recommend peak-time rebate programs of the type employed by ACE's sister utilities in Maryland (BGE) and Illinois (ComEd).

b. Staff seeks stakeholder comment on the appropriate long-term relationship between cost-reflective rate design and VPP compensation.

RESPONSE: Rates should evolve to better reflect cost causation, which suggests peak demand charges should reflect coincidence with PJM's system peak. If rates better reflect time differentiate pricing, where more cost is associated with fewer hours, then DER and other technology providers can create products which help consumers avoid these price spikes. This will encourage the adoption of VPP technologies without the need for EDC or BPU run, ratepayer funded programs.

c. Staff seeks comment on how customers should be protected from bill increases when responding to VPP dispatch events that conflict with TOU price signals, such as events calling for increased consumption during peak-price periods or injection during off-peak periods.

RESPONSE: Rate Counsel believes VPP dispatch events are unlikely to conflict with TOU price signals, and that this is a low-priority issue that need not be addressed at this time.

d. Staff seeks comments on whether alternative interim approaches to preventing double-payment should be considered for the VPP Interim Program period and whether an alternative methodology should be considered under the long-term program.

RESPONSE: See Rate Counsel Comments 27(a). Rate Counsel does not believe TOU rates should be considered a demand response solution unless accompanied by a critical peak pricing feature (which inhibits TOU rate participation, and which Rate Counsel does not necessarily recommend as a result). The small benefit a TOU customer gets from shifting usage to off-peak periods will likely pale in comparison to the incentives available from responding to system-wide events.

e. Staff also seeks comment on whether the revenue-neutrality principle and the scope of technology-specific TOU options appropriately balance customer protection, grid benefit, and program operability.

RESPONSE: Rate Counsel agrees with this principle and the scope of TOU options.

Stakeholder Comments 28

a. Staff seeks stakeholder comment on the appropriate mechanism for integrating large public-sector fleet assets such as NJ Transit and Electric School Buses into the VPP framework that balance the cost-effectiveness, technology, and public interest.

RESPONSE: Rate Counsel believes that if the Board considers, and implements as appropriate, the suggestions inherent in Rate Counsel's other Comments, the incentives for public sector fleet assets to participate will be in place. As just one example, demand charges that reflect coincidence with PJM's system peak will encourage public sector fleets to participate. A reduction in train service on hot July weekday afternoons might not be feasible, but such a change could make energy storage investments more likely to pay off, and would certainly encourage electric fleet operators to avoid charging vehicles at coincident system peaks.

b. Staff also seeks feedback on other Government facility and assets that can be incorporated into the VPP Program, separated by Interim and long-term implementation.

RESPONSE: Most government facilities have a building management system which control HVAC and other mechanical and electrical systems within buildings. This technology can be readily utilized by facility operators and/or aggregators to reduce building load during VPP events. Utilizing this technology should be encouraged by designing VPP programs which allow the inclusion of building management systems, including allowing for proper communication protocols to facilitate participation and enabling additional data types for measuring event performance.

Stakeholder Comments 29

a. Staff seeks stakeholder comment on the structure, membership, scope and meeting cadence of the VPP Working Group.

<u>RESPONSE:</u> Rate Counsel acknowledges and appreciates BPU's desire to include Rate Counsel in VPP working groups. Workgroups should occur on a monthly basis at minimum during program development before the interim program is launched.

b. Staff also solicits comment on whether any additional coordination mechanisms should supplement the VPP WG process to ensure effective ongoing program governance.

<u>RESPONSE:</u> Rate Counsel believes the agendas for working group meetings should always include a review of whatever new operational data described in Comments 1.a.iii and 31.a might be available. Establishing this as a standard agenda item will ensure focus on results and encourage discussions on any course corrections that may be necessary.

Rate Counsel believes the agendas for working group meetings should always require reports and updates from related working groups, Board efforts, and constituencies, such as PSUP; tariff designs (from DER export tariffs to demand charges reflective of coincident system peaks); PJM market developments and EDC responses; etc.

Stakeholder Comments 30

Staff requests comment on what mechanisms the Board should consider for cost recovery, including the appropriate classification of program administration and incentive costs as expense versus capital investment, and whether any cost categories warrant amortization.

<u>RESPONSE:</u> Rate Counsel recommends that all program administration and incentive costs be considered expenses, not capital investment.

Stakeholder Comments 31

a. Staff seeks comment on appropriate response timeframes for each category of EDC-to-aggregator data provision – enrollment verification, unenrollment confirmation, and event-performance meter data – and on whether timeframes should differ by data category or customer class.

RESPONSE: Rate Counsel recommends enrollment verification monthly, unenrollment confirmation monthly, and event-performance meter data within 10 days of the event. Monthly data should allow for customer data to be collected and updated between billing cycles. Event-performance data needs to be made available more frequently to provide customers and aggregators with actionable feedback so they can improve performance during later events. The number of all potential participants and those who actually participated in the event should also be verified.

b. Staff further seeks comment on appropriate feedback protocols where an EDC cannot meet an applicable timeframe, and on what consequences or aggregator remedies the Board should establish for a documented pattern of non-compliance.

RESPONSE: The Board could consider requiring sanctioned EDCs to account for compensation as regulatory assets (with return limited to WACD) until any non-compliance the Board identifies is cured.

c. Staff also seeks comment on the appropriate scorecard reporting requirement and methodology to justify ratepayer cost reductions attributable to the VPP Programs.

RESPONSE: Rate Counsel concurs that the scorecard reporting requirements suggested are appropriate. Program costs, inclusive of incentives and program management costs, and net benefits should also be clearly identifiable on the scorecard to provide an indication of the total value to ratepayers.

Stakeholder Comments 32

Staff requests comment on whether any VPP-specific data fields should be added to the PSUP Appendix B field list through the PSUP proceeding rather than separately through this proceeding.

RESPONSE: Rate Counsel concurs that a single DER registry should be utilized and therefore it would be best to add any additional data fields through the PSUP proceeding rather than tracking additional requirements through this proceeding. Rate Counsel defers to the DER providers, aggregators, and EDCs on whether additional data fields are required.

Stakeholder Comments 33

Staff requests comment on the following aspects of the proposed DER aggregator licensing framework:

a. whether the proposed application requirements – covering financial viability, technical capability, customer service, data privacy, and cybersecurity – are appropriately scoped, and whether any additional or modified requirements should be considered;

RESPONSE: Rate Counsel believes the application requirements to be appropriately scoped, though with the addition of components described in Rate Counsel Comment 15(a) to the extent the Board adopts the more market-based approach Rate Counsel recommends.

b. whether the proposed fee is appropriate and sufficient to reflect the administrative costs of the licensing program;

RESPONSE: Rate Counsel recommends that aggregator application and renewal fees be kept to a minimum so as not to impede applications. As to the estimated costs of a licensing program, Rate Counsel defers to the EDCs. Any shortfall of fees charged to aggregators relative to licensing program costs should be accounted for as costs in benefit-cost tests of programs.

c. whether the proposed Code of Conduct adequately addresses consumer protection concerns relevant to New Jersey ratepayers, and whether any additional provisions should be included; and

RESPONSE: Rate Counsel offers no additional Code of Conduct provisions at this time.

d. whether the Board's proposed enforcement authorities and the EDC-maintained quarterly aggregator list are sufficient mechanisms to deter aggregator misconduct and support informed consumer choice.

RESPONSE: Rate Counsel offers no additional mechanisms to deter aggregator misconduct or improve consumer choice at this time.

Stakeholder Comments 34

Staff requests comment on the proposed shared-responsibility model and the allocation of roles among the Board, EDCs, aggregators, and customers; on whether the required and reference standards listed in this section are appropriate and sufficient for the VPP Interim Program and the long-term tariff.

RESPONSE: Rate Counsel offers no additional responsibilities for cybersecurity or data protection at this time.

Stakeholder Comments 35

Staff requests comment on whether this three-tier data-access structure (enrollment, interval meter, and real-time dispatch data) is the appropriate framework, and whether the consent and security requirements assigned to each tier are correctly calibrated.

RESPONSE: Rate Counsel offers no improvements to the three-tier data-access structure at this time.

Stakeholder Comments 36

a. Staff requests comment on appropriate methods for VPP aggregators to demonstrate compliance with IEEE 2030.5 and 2.0b/3.0 and IEEE 1547.3- 2023 through certification, third-party attestation, and/or vendor documentation.

RESPONSE: As implied by many comments, Rate Counsel is concerned that costs and requirements may discourage potential aggregators from participating, thereby reducing the likelihood that a 3% coincident peak demand reduction can be achieved. A contractual requirement that aggregators install only 2030.5 and 1547.3-compliant equipment may be all that is required here.

b. Staff recognizes that the cost of a SOC 2 Type II report may represent a significant financial barrier for some aggregators. As such, Staff requests comments from stakeholders on alternative compliance pathways that provide flexibly through certification, third-party attestation, or vendor documentation.

RESPONSE: See Rate Counsel's Comment 36(a). Rate Counsel recommends that aggregator contracts require aggregators to comply with the principles of SOC 2 without requiring audits or Type II reports.

Stakeholder Comments 37

Staff requests comment on whether the standards identified above are appropriate and sufficient for the VPP Program. Specifically, Staff seeks input on:

a. whether the standards required of all participants establish an adequate security baseline without imposing undue cost on smaller aggregators;

b. whether any listed standard should instead be treated as guidance, or any guidance standard elevated to a requirement;

c. whether all of the standards for EDC-operated Grid DERMS and operational-technology systems are necessary and whether their proposed interrelationship with NIST SP 800-53 is clear and appropriate;

d. whether additional standards – device-level certifications, or customer-data privacy codes – should be added; and

e. whether the required standards are achievable within the VPP Interim Program timeline.

RESPONSE: Rate Counsel offers no comment on this at this time, deferring to EDCs and prospective aggregators and suppliers.

Stakeholder Comments 38

Staff requests feedback on barriers that LMI customers might face in accessing VPP program benefits, and what specific program design features the Board should consider adopting to ensure equitable distribution of VPP benefits across all customer classes.

RESPONSE: LMI customers may face increased difficulty deploying DERs, especially in rental situations. Working with landlords and providing hardware incentives for eligible DER devices (ex. smart thermostats, smart water heaters) is one way to increase DER adoption across LMI customers. The customer can then receive VPP benefits by enrolling the device(s) in VPP programs.

Stakeholder Comments 39

a. Staff seeks feedback on the roles of the Board, EDCs, third-party VPP providers, and other relevant stakeholders in VPP education, outreach, and marketing.

RESPONSE: Rate Counsel believes the bulk of marketing and customer education should be conducted by the aggregator as part of their customer acquisition process. The BPU and individual EDCs should make information on VPPs available on their websites. Such information should include fundamentals of VPP, incentive/compensation (paid to aggregators), list of eligible aggregators, and frequently asked questions.

b. Staff seeks comment on the quarterly distribution requirement (under Section 7.3 EDC Marketing), including its cost treatment, and on whether Board review of aggregator marketing materials should be conducted through a standardized pre-approval process or a post-distribution audit.

RESPONSE: Rate Counsel does not believe EDCs should be required to distribute aggregator marketing material. Rather, EDCs should promote the VPP program in general terms and provide a list of all approved aggregators within their material.

Stakeholder Comments 40

Staff seeks feedback on the proposed timeline.

RESPONSE: BPU is managing multiple complex, interrelated filings. In many ways, the BPU is trying to build the plane while flying it. Due to the great number of interdependencies and uncertainties around the changing PJM market, it would serve the BPU to aim for simplicity and flexibility in any program design. Rate Counsel believes this means embracing market-based designs whenever possible, as described in various places in these Comments. It is quite possible to introduce an aggregator-led, market-based VPP program immediately if that program focuses on addressing capacity issues. Once the work of the Grid Flexibility Working Group and PSUP filings have been completed additional value (if any) for avoided transmission and distribution cost benefits can be layered into VPP program.

Stakeholder Comments 41

Staff welcomes comment on any aspect of the VPP Program Straw Proposal not addressed by the preceding questions, including issues Staff should consider that are not raised in this document. Commenters who believe the proposal omits necessary content are encouraged to provide proposed language and identify the section to which it should be added. For all comments, commenters are encouraged to identify the specific section and, where applicable, the Stakeholder Comment number to which their input relates.

RESPONSE: Rate Counsel offers the entirety of these Comments, including the sections preceding Rate Counsel responses to Staff's specific requests on the Proposed Straw, to raise issues and present perspectives not raised in the Proposed Straw.