State of New Jersey
DIVISION OF RATE COUNSEL
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June 6, 2025

Via Electronic Mail board.secretary@bpu.nj.gov
Sherri L. Lewis
Secretary of the Board
44 South Clinton Ave., 1st Floor
PO Box 350
Trenton, NJ 08625-0350

Re: In the Matter of Comprehensive Energy Efficiency and Renewable Energy Resource Analysis for Fiscal Year 2026 Clean Energy Program
BPU Docket No. QO25040205

In the Matter of the Clean Energy Programs and Budget for the Fiscal Year 2026
BPU Docket No. QO25040206

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 May 7, 2025. 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.

Thank you for your consideration and attention to this matter.

Respectfully submitted,

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Director, Division of Rate Counsel

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Megan C. Lupo, Esq.
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MCL
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In the Matter of Comprehensive Energy Efficiency and Renewable Energy Resource Analysis for Fiscal Year 2026 Clean Energy Programs
BPU Docket No. QO25040205

In the Matter of Clean Energy Programs and Budget for the Fiscal Year 2026
BPU Docket No. QO25040206

Comments of the New Jersey Division of Rate Counsel June 6, 2025

INTRODUCTION

The New Jersey Division of Rate Counsel ("Rate Counsel") appreciates the opportunity to comment on the proposed New Jersey Clean Energy Program ("NJCEP") Fiscal Year 2026 ("FY26") Comprehensive Energy Efficiency & Renewable Energy Resource Analysis ("CRA") and the associated proposed FY26 Budget and compliance filings. The FY26 Budget is funded through the Societal Benefits Charge ("SBC"), a component of electric and natural gas utility rates paid for by ratepayers and collected from them by utilities and as such directly impacts customer bills. The Board of Public Utilities' ("Board" or "BPU") issued its Notice requesting comments on the FY26 CRA Straw Proposal and the FY26 program budgets and compliance filings on May 7, 2025. However, the compliance filings and budget were not made publicly available until May 22, 2025. Rate Counsel provided oral comments at the two public hearings on May 28 and June 3, 2025. Written comments from stakeholders on over 200 pages of materials are due on June 6, 2025—merely nine business days after the BPU made the materials publicly available.

At a time when affordability is at the forefront of the utility regulatory discussion, it is incumbent upon the Board to ensure that every penny charged to New Jersey utility ratepayers is indeed needed. This proposal fails to meet this burden. The failure to comply with even the basic tenants of due process and utter refusal to follow the clear statutory requirements for the

CRA budget process leaves Rate Counsel unable to support this filing. Indeed, unless Board Staff agrees to go back to the drawing board and remedy this process, Rate Counsel will be forced to oppose this budget. As described more fully below, this proposal is simply not ready for Board review and the Board should require Staff to fix this filing and resubmit when it is in fact ready.

Rate Counsel has reviewed the following materials ("FY26 Materials") posted for comment[1]:

- "New Jersey Clean Energy Program – Fiscal Year 2026 Draft Budget" dated May 22, 2025 ("FY26 Draft Budget");
- Division of Clean Energy's ("DCE"), "Comprehensive Energy Efficiency & Renewable Energy Resource Analysis, Funding Levels – Fiscal Year 2026" Draft for Public Comment, dated May 22, 2025 ("DCE FY26 Draft CRA");
- DCE, "Renewable Energy Programs, Energy Efficiency Programs, Distributed Energy Resources and NJCEP Administration Activities," Draft for Public Comment dated May 22, 2025 ("DCE FY26 Compliance Filing");
- TRC, "Energy Efficiency and Renewable Energy Program Plan Filing" dated May 22, 2025 ("TRC FY26 Compliance Filing");
- Center for Sustainable Energy, "Charge Up New Jersey Fiscal Year 2025 Compliance Filing" dated May 22, 2025 ("Charge Up FY26 Compliance Filing");
- "Utility Residential Low Income Comfort Partners Program, Proposed Program Description and Budget" dated May 22, 2025 ("Comfort Partners FY26 Compliance Filing"); and
- "BPU and DPMC Designated Project List State Facilities Initiative Funds FY26."

Based upon its somewhat rushed review, its participation in the May 28 and June 3 public hearings, and

[1] Available on the NJCEP website at https://www.njcleanenergy.com/main/njcep-policy-updates-request-comments/policy-updates-and-request-comments. The term "FY25 Materials" collectively refers to the FY counterparts of these listed documents, also available at the same webpage.

participation in prior fiscal years CRA and budget filings, Rate Counsel finds ("Findings") the following:

A. The FY26 Draft Budget requests to maintain the same $344.7 million rate impact on New Jersey electric and natural gas utility customers during a time in which electricity rates are dramatically increasing. This is particularly concerning as electric ratepayers are facing a nearly 20% increase in rates this month.

B. The FY26 Materials do not comply with the statutory requirement to provide a Comprehensive Resource Analysis at least once every four years and the budget be based on that analysis.

C. The FY26 Materials do not provide the necessary information necessary for stakeholders or the Board to assess the proposed programs and budget.

D. The FY26 Draft Budget proposes to collect $173.7 million dollars from ratepayers only to later rebate that amount to ratepayers.

E. The FY26 Draft Budget continues the historical practice of using unspent funds from prior fiscal years while not correspondingly reducing the FY26 SBC, resulting in the likely continued over collection of funds from ratepayers in FY26.

Based upon these Findings, the vast majority of the FY26 Draft Budget should not be funded for the activities Board Staff ("Staff") has requested. Rate Counsel recommends ("Rate Counsel Recommendations") the following:

1. **<u>A single, comprehensive, well-organized, multi-year plan</u>** that clearly explains in detail the proposed programs should be prepared by Staff. This plan should include:

    a. An analysis of the resources available to meet the State's clean energy goals, the cost to acquire each resource, and how the proposed expenditures will contribute to the State's clean energy goals;

    b. A comparison of the proposed budget allocations with prior years' budgets and performance;

    c. An explanation of the previous year's spending

d. An explanation of why the previous years' carryforward funds were not spent, and whether they are anticipated to be spent in the coming year;

e. A detailed explanation of how the proposed new funding is allocated to the specific programs; and

f. A complete description of each program, including information, where applicable, about the measures offered, incentives per measure, program participation, energy savings, emissions reductions, costs broken out by cost type (planning, marketing, rebates/incentives, evaluation, etc.), cost per energy saved or generated, cost per emissions reduced, benefits, net benefits, and benefit-cost ratios.

2. **A reduction in the SBC.** It is abundantly clear that the BPU cannot spend funding allocated annually to this effort through the current SBC. We recommend right sizing the proposed budget by reducing the SBC to a level that provides adequate support for anticipated clean energy programming without any carryforward from one year to the next or diversion of ratepayer funds to the general fund as is currently done with the funding for the State Energy Initiatives. More information about the performance and cost-effectiveness of programs will better inform future decision-making regarding the best program allocations for this funding. Until that information is made available, Rate Counsel proposes an FY26 Interim Budget discussed in this filing and detailed in Appendix I.

3. **Additional time** for stakeholders to file comments. The time available for comment is far too short. More time between the filing and the stakeholder meetings, as well as between the stakeholder meetings and the comment deadline is necessary. The documents are too voluminous and technical to be dealt with in less than two weeks, inclusive of Memorial Day weekend. Rate Counsel recommends releasing the supporting budget documents as early as April to allow stakeholders adequate time to review and comment.

4. **An evidentiary proceeding** that enables Rate Counsel, other stakeholders, and the Board to obtain the data and information necessary to evaluate the FY26 Materials and FY26 Draft Budget. At the very least, Staff should entertain questions at the public hearings held on the CRA budget. Rate Counsel notes that at the May 28th public hearing, stakeholders were informed that Staff would not be answering questions.

Considering Rate Counsel's Findings and Recommendations, the Board at its June 18, 2025 Agenda Meeting should not approve the collection of any new SBC funds. Instead, the Board should establish an evidentiary process over the next several months that provides for sufficient time to allow stakeholders to i) request additional materials from Staff and its consultants, ii) submit interrogatories that Staff and its consultants must answer, iii) the opportunity to cross-examine Staff and consultants, and iv) submit comments. At the end of this process, the Board will be in the position to evaluate a potentially revised FY26 NJCEP based upon a complete record.

The next section of these comments entitled "General Comments," provides overall support of Rate Counsel's Findings. After the General Comments, Rate Counsel conducts a program-by-program analysis of the FY26 Materials and FY26 Draft Budgets in Section I through VI. These general and program-by-program comments are the basis for Rate Counsel's Findings and Recommendations. The filing concludes, followed by Appendix I, which proposes an FY26 Draft Budget ("Rate Counsel FY26 Draft Budget") based on Rate Counsel's Findings and Recommendations.

GENERAL COMMENTS

In this section, General Comments, Rate Counsel provides support for Findings A through E. A more detailed analysis supporting Rate Counsel Findings is provided in Sections I through IV.

A. Approval of the NJCEP Budget Requires More Detailed Information to Provide All Parties With Adequate Due Process.

On its webpage, the Board clearly states its responsibility with respect to utility rates: "The law requires the Board to ensure safe, adequate, and proper utility services at reasonable rates for customers in New Jersey."[2] For rate cases, "[t]he Board is considered a quasi-judicial body, meaning that it functions similar to a court or judge," the case "goes through a legal process that may involve public hearings, briefs, discovery, and testimony," and "All evidence, arguments, and comments provided at the public hearings are made part of the record to ensure that the OAL [Office of Administrative Law] judge and/or the Board is making an informed and impartial decision based upon the facts as presented by both sides."[3] For those reasons stated more fully herein, Rate Counsel urges the Board to apply similar processes and rigor to the decision-making involved in approving the NJCEP budget.

The New Jersey Appellate Division has articulated a three-prong test to examine due process: "(1) the private interest at stake; (2) the risk of erroneous deprivation of that interest through the use of agency procedures and the probable value of additional or substitute safeguards; and (3) the state interest, including the burdens entailed by additional procedural requirements." High Horizons Devel. Co. v. State, Dep't of Transp., 120 N.J. 40, 51-52 (1990); See also In re Bell Atlantic-New Jersey, 342 N.J. Super. 439, 445 (App. Div. 2001).

Due process may not always require an evidentiary hearing. Nevertheless, a State Agency's decisions "must be supported by the underlying record, regardless of the manner in

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[2] New Jersey BPU, About NJBPU, available at https://www.nj.gov/bpu/about/index.html.; see generally, N.J.S.A. 48:2-16, N.J.S.A. 48:2-21, N.J.S.A. 48:3-1; 3-7; 3-9.
[3] New Jersey BPU, About NJBPU, available at https://www.nj.gov/bpu/about/index.html.; see also, N.J.S.A. 48:2-32, et seq.

which due process requires that the record be created." In re Proposed Quest Academy Charter School of Montclair Founders Grou, 216 N.J. 370, 386 (2013). "The obligation that there be substantial evidence in the record requires a sifting of the record," and the ability of the reviewing tribunal to find support for the conclusions reached by the State agency "under the [agency's] statutory framework" and is required to satisfy due process regardless of whether the agency acts in a quasi-judicial or quasi-legislative capacity. Id. The New Jersey Supreme Court has stated that:

> Sometimes nothing more is required than notice and the opportunity to present reasons, either orally or in writing, why the proposed action should not be taken. At other times, however, in addition to notice and the opportunity to be heard, due process may also require further procedural safeguards such as the opportunity to confront and cross-examine adverse witnesses, oral argument, presentation of evidence, and the right to retain an attorney.
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> [In re Request for Solid Waste Util. Customer Lists, 106 N.J. 508, 521 (1987). (internal citations omitted).]

Moreover, the Appellate Division has found that "an agency is never free to act on undisclosed evidence that parties have had no opportunities to rebut." High Horizons, at 53.

Where specific constitutional protections do not adequately safeguard an important interest, our State courts apply principles of fundamental fairness. See State v. P.Z., 152 N.J. 86, 117 (1997). New Jersey's doctrine of fundamental fairness protects against "unjust and arbitrary governmental actions, and specifically against governmental procedures that tend to operate arbitrarily." John Doe v. Poritz, 142 N.J. 1, 108 (1995). Thus, even rights not considered "fundamental" may merit due process protection based on a balancing of "the nature of the affected right, the extent to which the governmental restriction intrudes upon it, and the public need for the restriction." Greenberg v. Kimmelman, 99 N.J. 552, 567 (1985).

After over a decade of carry-overs and non-explanations for unspent SBC funds in this matter, the Board should now be required to provide additional evidence and reasoning for how it crafts the NJCEP budget to satisfy the aforementioned due process requirements. This can be provided through answering interrogatories with ample time to engage with responses far in advance of a Board decision date and, under the circumstances, may even include an evidentiary hearing with the opportunity to question Staff on any data it relied upon.

Although the Board has in the past provided written responses to stakeholders' comments on the NJCEP budget, in recent years, there has been no direct public engagement of the questions raised by stakeholders and certainly no opportunity to gain further access to the basis for the Board's decision to approve specific dollar amounts for each program in the budget. In fact, at the public hearing on May 28th, stakeholders were specifically informed that any questions raised would not be answered at that time. Nor did Staff provide an opportunity for stakeholders to offer comments at the conclusion of the May 28 meeting who neglected to indicate that they wished to speak at the time of registration. Due process requires the Board to demonstrate the reasoning behind the assigned dollar amounts in the budget.

Carryover and Surplus Budgets Have Not Been Explained and Therefore Constitute a Lack of Due Process.

The unexplained reasons for the Board's carryforward of increasingly larger sums of the Societal Benefits Charge (SBC), which are set by the Board under N.J.S.A. 48:3-60(a), raises significant due process concerns. The Board has now recommended new SBC funding of $344 million every year since 2015. Yet, the Board has carried forward an ever increasing surplus of

SBC funding every year for over a decade. Indeed, for the past two fiscal years the Board carried forward SBC funding in excess of $300million with no explanation or justification for such a large surplus.[4]

In FY 2026, the Board proposes to carryforward $524.3million.[5] As Rate Counsel stated in comments to the Board's FY25 CRA budget, it is clear that the Board cannot or is not spending the SBC funds as intended by the Legislature and expected by ratepayers.[6] Nor has the Board made it clear in the True Up Budget process that the SBC funds are spent on the programs and services for which they are collected to support NJCEP.[7]

The Board is also required to conduct a Comprehensive Resource Analysis (CRA) every four years pursuant to N.J.S.A. 48:3-60(a)(3), and use the CRA as the basis for determining SBC funding requirements for the NJCEP. The last multi-year funding proposal adopted by the Board was for 2009 through 2012.[8] Since that time, the Board has not conducted a single CRA as contemplated by the Legislature.[9] Rather, the Board has submitted annual CRAs, which are largely identical and seemingly cut and pasted from prior years.

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[4] "Renewable Energy Programs, Energy Efficiency Programs, Distributed Energy Resources and NJCEP Administration Activities," Drafts for Public Comment dated May 12, 2023 (DCE Compliance Filing, dated May 12, 2023); (DCE Compliance Filing, dated May 24, 2024).

[5] DCE Compliance Filing, dated May 22, 2025.

[6] I/M/O Clean Energy Programs and Budget for the Fiscal Year 2025 - True Up, Revised Budgets and Program Changes, BPU Dkt.t No. QO24040224, Rate Counsel Comments (March 28, 2025").

[7] Ibid.

[8] I/M/O Comprehensive Energy Efficiency and Renewable Energy Resource Analysis for the 2009-2012 Clean Energy Program, BPU Dkt. No. EO07030203, Order Establishing 2009-2012 Funding Level (Sept.30, 2008). The Clean Energy Program budgets were established on a calendar year basis until November of 2012, when the Board extended the 2012 Clean Energy Program year for six months into 2013, in order to align the Clean Energy Program budget year with the State fiscal year. I/M/O Comprehensive Energy Efficiency and Renewable Energy Resource Analysis for the 2009 – 2012 Clean Energy Program: Revised 2021 Programs and Budgets; and Initial 2013 Programs and Budgets, BPU Dkt. Nos. EO07030203 & EO11100631V, Order at 6, 34 (Nov. 20, 2012).

[9] While aligning the Clean Energy Program budget year with the State fiscal year may account for submitting a budget annually to correspond with the State fiscal budget, it does not excuse the Board from conducting the CRA every four years to support its continued collection of SBC funds without accounting for NJCPA expenditures.

Because utility companies include SBC as surcharges on ratepayers' monthly bills, this situation raises significant substantive due process concerns. The increasing surplus of SBC funds implies that the funds are not used for their defined purposes, which raises the question of whether the collection of SBC itself is serving a legitimate government function. New Jersey ratepayers are entitled to know that the SBC funds collected are used to support the NJCEP programs and services for which the SBC funds are intended.

The Board is tasked with assuring that the rates New Jersey customers pay for utilities are "just and reasonable." N.J.S.A. 48:2-21(b). The Board's carryforward of such significantly high amounts of SBC funds, while still collecting $344 million in SBC surcharges on utility bills every year, indicates the SBC rate is no longer just and reasonable. Based on the sparse information provided by the Board on this issue every year, neither stakeholders invited to submit comments nor ratepayers can discern if the Board allocates SBC funds in a way that promotes NJCEP programs and services or even the general welfare of New Jersey. Thus, the Board is depriving ratepayers of an explanation of the benefits that should flow from the collection of SBC funds through mandatory surcharges in ratepayers' utility bills. This constitutes a violation of rate payers' due process rights.

The following history of the Board's annual budget proposals highlights Rate Counsel's concern over the Board's continued carryforward of unused SBC funds, while collecting an apparently excessive SBC surcharge on rate payer's monthly bills.

- FY24 carryforward. As in prior years, the Board's FY24 budget assumed about $345 million in new SBC funding.[10] However, the FY24 budget assumed about **$315.4 million in carryforward** from FY23, which was 47.8% of the NJCEP budget.

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[10] NJBPU Division of Clean Energy Public Notice dated May 12, 2023, I/M/O Comprehensive Energy Efficiency and Renewable Energy Resource Analysis for Fiscal Year 2024 Clean Energy Program, BPU Dkt. No. QO23040235, and I/M/O the Clean Energy Programs and Budget for the Fiscal Year 2024, BPU Dkt.No. QO23040236, posted May 12, 2023, available at:

- FY25 carryforward. The Board assumed the same $345 million in new SBC funds and **carried forward from FY2024 approximately $441.5 million** in SBC funds, which was 56% of the overall NJCEP budget.[11]

- FY26 carryforward. The Board again proposes to collect approximately $345 million in new SBC funding.[12] **Over $524.3 million or 60% of the 2026 FY budget for NJCEP programs and services is supported by carryforward SBC funds**.

The repeated annual carryforward of ever increasing SBC funds strongly implies the new SBC funding collected by the Board to support NJCEP programs, services, and initiatives is entirely unspent in prior years. Moreover, despite repeated requests by Rate Counsel and other stakeholders in the True Up process for the Board's FY2025 budget for the information on how the SBC funds were allocated, the Board never provided an explanation of why such significant amounts of SBC funds were not spent in prior years.[13]

Likewise, the Board provides little or no explanation of how the proposed FY26 SBC funding surplus or new SBC funds are allocated to support specific NJCEP programs and services. The Board's FY26 budget proposal is obviously the result of "top down" budgeting, with the budget figures reflecting nothing more than allocations geared to meeting a spending goal; rather than a legitimate analysis of what resources are needed to meet specific clean energy goals.[14] Last year and again in March of this year, Rate Counsel suggested a variety of more

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https://www.nj.gov/bpu/pdf/publicnotice/Notice_PublicHearing_FY24Proposed_CRA_Budgets_ProgramPlans.pdfThe NJCEP FY24 Proposed Comprehensive Resource Analysis, Budgets, and Programs," including the "New Jersey Clean Energy Program – Fiscal Year 2024 Draft Budget" dated May 22, 2023, available at https://www.njcleanenergy.com/files/file/BPU/FY24/1_%20FY24%20Budget%20Table.pdf .

[11] I/M/O the Clean Energy Programs and Budget for the Fiscal Year 2025, BPU Dkt. No. QO24040224.

12 I/M/O the Clean Energy Programs and Budget for the Fiscal Year 2026, BPU Dkt. No. QO25040206.

[13] Rate Counsel Comments (March 28, 2025).

[14] For example, as Rate Counsel noted last fiscal year, under N.J.S.A. 48:3-60(a)(3), the Board is empowered to establish funding levels for "energy efficiency, … electric vehicles … and … charging infrastructure, and Class I renewable energy programs …." Without more detail on how BPU proposes to spend the funds collected from ratepayers, it is not possible to determine whether those expenditures are for the energy efficiency, EV, and renewable energy programs which are appropriately funded through the SBC. See I/M/O the Clean Energy

useful and cost-effective ways for the Board to allocate the SBC fund carryforward and new SBC funds collected. To preserve ratepayers' due process rights, Rate Counsel urges the Board to appropriately align the collection and expenditure of SBC funds in the manner intended by the Legislature under N.J.S.A. 48:3-60. Rate Counsel explains below the details that are missing which demonstrate a deprivation of due process in determining an appropriate NJCEP budget.

B. The FY26 Draft Budget Seeks an Additional $344.7 Million from New Jersey Utility Ratepayers.

Staff is proposing a total budget of $869 million for State Energy Initiatives and the NJCEP, with about $524 million in estimated unspent budget carried forward from FY25 and $344.7 million in new funding. Table 1 provides the topline summary of the proposed FY26 Draft Budget and compares it to FY25. The FY25 carryforward budget includes funds that Staff collected through SBC budgets in previous years and did not spend in FY25, which it proposes to spend in FY26.[15]

Table 1: Summary of Proposed FY26 New Jersey Clean Energy Draft Budget and Comparison to FY25[16]

	FY25 True-Up Budget ($M)	Carryforward from FY25 to FY26 ($M)	FY26 New Funding ($M)	FY26 Total Budget ($M)
Total NJCEP + State Initiatives	865.5	524.4	344.7	869.0

Note: M denotes millions.

<u>Programs and Budget for the Fiscal Year 2025</u>, BPU Dkt. No. QO2404022, Rate Counsel Comments (June 27, 2024).

[15] Carryforward is the sum of the third, fourth, and fifth columns in the FY26 Draft Budget, labeled, respectively, "FY25 Estimated Carryforward – Pending Board Approval," FY25 Estimated Carryforward – Board Approved," and "FY25 Estimated Committed Carryforward."

[16] FY26 Draft Budget.

The $344.7 million new SBC funding request ("FY26 SBC Rate Increase") proposes to increase utility rates and should be treated as such.[17] Rate Counsel calculated the FY26 SBC rate increase that would be applied to electric and gas ratepayers as $0.003 per kilowatt-hour ("kWh") and $0.026 per therm, respectively.[18]

Staff's proposal to collect additional funding that it may not even spend in FY26, as discussed further below, on unsubstantiated programs comes at a time when many ratepayers are still struggling to recover from the impacts of the COVID-19 pandemic and the associated recession in early 2020. These events have been particularly devastating to low- and moderate-income families and historically overburdened communities. Many of these families continue to struggle to pay their energy bills. As of February 2023, the Board reported data indicating that there were more than 983,000 overdue electric and gas utility accounts, with arrearages totaling more than $638 million.[19] On top of this, all of New Jersey's electric ratepayers are seeing a nearly 20% increase in their bills. The Board should not be permitted to place additional costs on these customers without first providing evidence that Staff's proposed programs will provide direct benefits to ratepayers and are a prudent use of their monies.

If a regulated utility requested a rate increase similar to the FY26 Draft Budget, then a formal rate case would be initiated. The requesting utility would be required to provide expert testimony and evidence that the requested rate is reasonable. Furthermore, the Board would provide Rate Counsel and other stakeholders sufficient time to review the utility's filings and

[17] The Draft CRA confirms that the SBC is collected by utilities via an increase to electric and natural gas rates, pages 22-23.
[18] We divide the total fiscal year funding levels by utility (Comprehensive Energy Efficiency & Renewable Energy Resource Analysis, Monthly Utility Funding Levels table, page 23) by the total fiscal year projected sales volumes by utility (Comprehensive Energy Efficiency & Renewable Energy Resource Analysis, Projected Sales Volumes table, page 24).
[19] New Jersey Electric and Gas Public Utility Arrearages as February 2023, available at https://www.nj.gov/bpu/newsroom/reports/covid19/February%202023-%20Arrearage%20Data-%20Energy%20(2).pdf.

testimony, request additional information and work papers, submit their evidence and testimony, and subject the utility's witnesses to discovery and cross-examination. As Rate Counsel's detailed program-by-program analysis in Sections I through VI demonstrates, the FY26 Draft Budget and FY26 Materials do not provide the basic information for Rate Counsel, stakeholders, or the Board to assess Staff's proposal. The Board would never approve a rate increase for a regulated utility based on the present record.

C. The FY26 CRA Does Not Comply with the Statutory Mandated Four-Year Comprehensive Resource Analysis.

The Board is under a statutory mandate to undertake a "comprehensive resource analysis ["CRA"] of energy programs."[20] The Board is required to complete the CRA every four years and use that as a basis for determining funding levels. However, the last four-year funding proposal adopted by the Board was for 2009 through 2012.[6] Since that time, the Board has proposed and approved funding levels on a one-year basis without any meaningful comprehensive resource analysis.[21] Similar to previous proposals, this fiscal year's proposal contains projected budgets for one year only and no indication of the comprehensive analysis statutorily-required to inform the budget amount.

There is no justification for the Board's continuing reliance on single-year funding plans based on only the most cursory analysis of a single fiscal year. Staff claims that "Since 2012, the CRA has provided a single year funding level in order to advance the goals of the New Jersey Clean Energy Program ("NJCEP")."[22] Staff gives no reason how a single year funding request advances the goal of the NJCEP. More importantly, even if there were such

[20] N.J.S.A. 48:3(a)(3).
[21] Draft CRA, p. 5.
[22] Draft CRA, p. 5. The cited statement is footnoted, but the footnote only makes clear the switch from calendar to fiscal year budget cycle in 2012.

a reason, it is irrelevant because the Board is legally required to conduct a four-year CRA. Instead, the Board has chosen year after year to perform a mere cursory review with no meaningful analysis as evidenced by the repeated and identical level of new SBC funding for the past 10+ years.

In response to Rate Counsel's comments on the FY25 CRA budget, Staff responded that "Staff disagrees with the commenter regarding the advantages of a multi-year budget or CRA. The Board determined that the CRA and NJCEP budget should be adjusted in 2012 to better align with the timing of the State's annual budget. Also, this annual approach to developing the CRA and NJCEP budget allows for greater stakeholder input and enables Staff to assess better changes that impact program needs."[23]

As mentioned above, it is not for Staff to agree or disagree with the Board's statutory mandate. In mandating the four-year CRA process, the New Jersey Legislature did not think that aligning with the State's annual budget was necessary. As discussed in Section I, State Energy Initiatives, SBC funds are being routinely reallocated to unspecified State uses. It appears that the desire to have an annual Budget is to enable this annual reallocation of funds, not to improve the costs versus benefits of NJCEP programs. Furthermore, aligning the CRA and NJCEP budgets with the State's annual budget can be accomplished by having annual budgets for each year in the four-year CRA period.

Finally, the claim that the Board's disregard for its statutory mandate allows for greater stakeholder input is ironic given the nine business days stakeholders were given to review and submit comments on the FY26 Materials, which exceed over 200 pages, and the fact that Staff routinely ignores or brushes aside stakeholder comments. Staff's rationale for an annual budget

[23] I/M/O the Comprehensive Energy Efficiency and Renewable Energy Resource Analysis for Fiscal Year 2025 Clean Energy Program, BPU Dkt. No. QO24040223, Order at 4 (June 27, 2024).

also defies common sense as the Board could provide stakeholders with the opportunity to provide input as part of annual budget updates and program reviews.

The absence of a transparent four-year plan based on a meaningful analysis of the State's clean energy goals and the resources available to meet those goals violates the law and ultimately harms the NJCEP. The lack of the required four-year budget contributes to the excessive and reoccurring carryforwards from one fiscal year to the next, (as discussed below), since future-year funding obligations and revenues are not considered when determining the current fiscal year's budget. As indicated in Table 1, the FY26 Draft Budget contains $524 million in carryforward funding, which 60% of the FY26 Draft Budget of $344.7 million.

D. The FY26 CRA Materials Do Not Provide the Necessary Information or Time for Stakeholders or the Board to Assess the FY26 CRA Straw Proposal

As the section-by-section analysis conducted below in Sections I through VI demonstrates, the FY26 Materials and FY26 Draft Budget do not provide the necessary information for Rate Counsel, stakeholders, or the Board to assess the materials. Rate Counsel and others have raised the lack of information in prior CRA filings over multiple years.[24]

In response to last year's NJCEP filing,[25] Rate Counsel pointed out that the FY25 Materials were confusing, omitted progress towards meeting clean energy goals, did not

[24] I/M/O the Comprehensive Energy Efficiency and Renewable Energy Resource Analysis for Fiscal Year 2025 Clean Energy Program, Order, BPU Dkt. No. QO24040223 Order at 4 and 7 (June 27, 2024); N.J.S.A. 48:3-49 et seq. The New Jersey League of Conservation Voters ("NJLCV") raised concerns that the FY25 Budget "lacks clear explanations for fund allocations and program needs" (page 7). The response was "However, Staff believe that the existing budget and compliance filings provide the appropriate level of detail on how the funding will be utilized for each program" (page 7), but Staff provides no reason for this assertion.

[25] I/M/O Comprehensive Energy Efficiency and Renewable Resource Analysis for Fiscal Year 2025 Clean Energy BPU Dkt. No. QO24040223 and I/M/O of Clean Energy Programs and Budget for the Fiscal Year 2024 BPU Dkt. No. QO24040224, New Jersey Division of Rate Counsel Comments (June 14, 2024).

conduct multi-year planning, did not compare the proposed budget with previous budgets, had significant funding carryforward, did not explain how proposed funding was allocated to programs, and, in general, lacked data and information. Those 2024 findings by Rate Counsel are also applicable to the FY26 Materials.

Much, if not most, of the text in the CRA Materials is identical and appears to be cut-and-pasted from the FY25 Materials. What initially appears as extensive and detailed materials is actually historical context and past-year program mechanics that do not adequately explain what is being proposed in FY26 and for what reasons. In the rare cases when FY26 is mentioned in the FY26 Materials, the description is cursory and lacks key elements such as desired outcomes, evaluation of past performance, last year's spending levels, justification for the FY26 budget request, and explanations of why the FY26 budget should be increased or decreased. In several cases, Staff is requesting funding for programs prior to their final development such as the Urban Heat Island Mitigation Grant and Grid Modernization programs (Section VI). Instead of the FY26 Materials, each program and budget line should be accompanied with the information identified above in Rate Counsel's Recommendation 1.

In addition to the missing basic program information, the CRA materials are lacking in other respects. First, multiple programs have been combined in a single budget line, and the relevant compliance filings do not specify how much is proposed to be allocated to each program. Second, the format of the FY26 Materials is disjointed and confusing to navigate. For example, the FY26 Draft Budget is a single table listing multiple budget lines grouped by program; however, the written descriptions supporting each budget line are dispersed across multiple documents and are not grouped by the same program lines. Third, because the Board cuts and pastes reports from prior years, commenters also have to parse through prior budget reports to determine if the information supplied by the Board is current or historical.

Therefore, it is time consuming for stakeholders to piece together the different filings to form a complete picture of the programs. Finally, the FY26 Draft Budget also fails to identify the programs that have been added to the current fiscal year or removed from the previous one.

It is worth asking whether the Board could make a reasoned decision regarding the proposed FY26 NJCEPs given that it likely plans to make its determination on June 18, 2025, at its next scheduled meeting, eight working days after the date for submitting written comments by stakeholders. In those eight days, the Board must evaluate stakeholder comments, assess Staff's responses to stakeholder comments, obtain the necessary missing information, and have a Board Order drafted. Rate Counsel submits that is not possible for the Board to reach a reasoned decision in eight working days.

Due process requires that an "'administrative agency must set forth basic findings of fact supported by the evidence and supporting the ultimate conclusions and final determination so that the parties and any reviewing tribunal will know the basis on which the final decision was reached.'" <u>In re Issuance of Permit by Dep't of Envtl. Prot. Etc.</u>, 120 N.J. 164, 181 (1990)(quoting <u>Riverside Gen. Hosp. v. New Jersey Rate Setting Commn'n</u>, 98 N.J. 458, 468 (1985)). "By making such findings, an administrative agency provides an adequate record for appellate review and affords the public the opportunity to contest those conclusions." <u>Ibid.</u>

Staff mischaracterizes Rate Counsel's position when it claimed in response to Rate Counsel's FY25 comments: "The fact that Rate Counsel does not receive all of the information it seeks on the timeline it would prefer does not constitute a due process violation."[26] Instead, as stated in prior Rate Counsel comments, the Board is required to create a record to support a reasoned decision which is lacking, and Staff's refusal to develop one, despite multiple requests over multiple years, places any Board Order in this matter in jeopardy of being found invalid. See In re Proposed Quest Academy Charter School of Montclair Founders Group, 216 N.J. 370, 386 (2013) ("[T]he arbitrary, capricious, or unreasonable standard applicable in the review of administrative agency decisions subsumes the need to find sufficient support in the record to sustain the decision"). Staff must remedy this issue and provide relevant factual support for this budget as explained above and further described below.

E. The FY26 Draft Budget Proposes to Over Collect $173.7 Million Only to Return it to Ratepayers.

The Draft Budget proposes to collect $173.7 million dollars from ratepayers only to rebate that amount to ratepayers later. The FY26 Draft Budget includes two entries, one for "Residential Energy Assistance Payment", $48.7 million, and the second for "Energy Bill Assistance", $125 million. The DCE FY26 Draft Compliance Filing seems to indicate that these amounts are to be refunded to ratepayers.[27] It is an ironic misnomer to label these initiatives as bill or payment assistance when it is the FY26 Draft Budget and prior year budgets that are causing the over collection. Instead of collecting $173.7 million in the FY26 budget as an SBC rate increase only to return that amount to ratepayers later, the proposed FY26 budget should be reduced by $173.7 million.

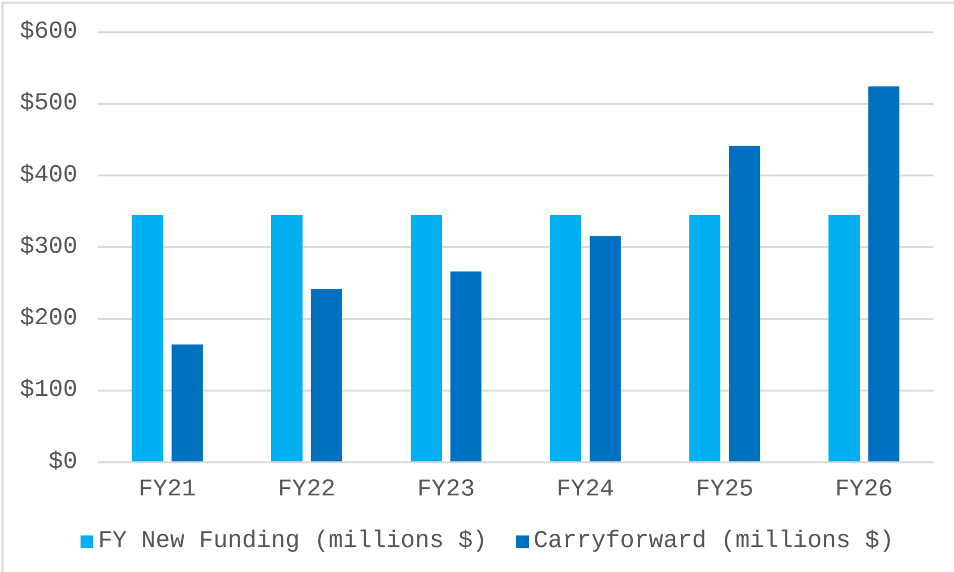
[26] I/M/O of the Comprehensive Energy Efficiency and Renewable Energy Resource Analysis for Fiscal Year 2025 Clean Energy Program, BPU Dkt. No. QO24040223 at 6 (June 27, 2024).
[27] Page 29.

F. The FY26 CRA Continues to Carryforward Substantial Amounts of Unspent Funds from Prior Fiscal Year Without Reducing the Proposed SBC from Prior Years.

Staff indicates that the proposed FY26 budget recommendations "considered NJCEP's historic results and forecasts for the year."[28] However, there is no comparison of the proposed budget allocations with those of prior years or their performance. As Figure 1 indicates, the amount of carryforward funding (dark blue bars has increased over time from $165 million in FY21 to $524 million in FY26 while the SBC has stayed constant (light blue bars). Similarly, the ratio of funding carried forward to requested new funding is increasing over time, from 48% in FY21 to 152% in FY26. The FY26 Materials do not explain the disconnect between the lack of spending in previous years and the proposed budget increase from FY25 to FY26. Presumably, a four-year CRA budget as mandated by statute, would help reduce carryforward and the associated increases on utility rates and ratepayer bills.

[28] Draft CRA page 7.

Figure 1: Comparison of Carryforward Funding to Requested New Funding, 2021-2026[29]



Staff is proposing to continue collecting the same amount of $345 million from ratepayers since at least FY21 (despite ceding significant programs back to the utilities and not spending the funding already collected for FY21-FY25). Staff provides little to no explanation of how the proposed FY26 New Funding is allocated to specific programs, little or no analysis of the efficiency or effectiveness of the proposed expenditures in meeting the State's clean energy goals, and, in some cases, only yet-to-be-formulated plans to expend the pre-determined allocated funds. The proposal appears to be the result of "top-down" budgeting with the budget allocations geared to meeting a spending goal, rather than a "bottom-up" approach based on an analysis of what resources are needed to meet specific energy goals.

[29] FY New Funding and Carryforward are from the Draft Budget for each FY, e.g., FY26 Draft Budget, etc., available at https://www.njcleanenergy.com/main/njcep-policy-updates-request-comments/policy-updates-and-request-comments.

I. FY26 STATE ENERGY INITIATIVES

This section comments on State Energy Initiatives. The only information provided for this budget line item in the FY26 Materials is in the FY26 Draft Budget.

A. Summary of the FY26 State Energy Initiatives Budget Request

The FY26 Draft Budget for State Energy Initiatives requests $91.2 million, none of which is in the estimated carryforward amount from FY25. It comprises 10% of the total proposed FY26 Budget and is an increase of $20 million from the FY25 Budget (Table 2).

Table 2: Summary of Proposed FY26 State Energy Initiatives Budget

State Energy Initiatives	FY25 True-Up Budget ($M)	Carryforward from FY25 to FY26 ($M)	FY26 New Funding ($M)	FY26 Total Budget ($M)	% of FY26 Total Budget
Total State Energy Initiatives	**71.2**	**0.0**	**91.2**	**91.2**	**10%**
Total NJCEP + State Initiatives	**865.5**	**524.4**	**344.7**	**869.0**	**100%**

B. Comments on FY26 State Energy Initiatives

This budget line is the amount of SBC funds being diverted to the State's General Fund. Rate Counsel continues to believe that any diversion to the general fund is an inappropriate use of ratepayer monies. State priorities that are neither directly nor transparently related to the achievement of the State's clean energy objectives should not be funded by ratepayers, especially the many who are struggling to pay their energy bills.

Until the Board conducts an evidentiary process that satisfies fundamental regulatory and ratemaking due process as mentioned above, no new FY26 funds for State Energy Initiatives should be collected, and the FY26 Budget should be reduced as indicated in the Appendix I below.

C. Detailed Comments on the FY26 State Energy Initiatives

In addition, Rate Counsel offers the following specific comments on the FY26 State Energy Initiatives budget line item:

- None of the CRA FY26 Materials define or describe what the term "State Energy Initiatives" means. The term itself is incredibly vague and could mean almost anything.
- None of the CRA FY26 Materials provide any regulatory or legal support or justification for the use of SBC Funds for State Energy Initiatives.
- None of the CRA FY26 Documents provide any data, information, or analysis supporting the FY26 State Energy Initiatives budget request or why the FY26 proposed budget increases $20 million from the FY25 budget of 71.2 million. Both the FY26 and FY25 numbers are reported exactly as being $91,200,000 and $71,200,000 suggesting that they were not arrived at via a bottoms-up budgetary process the sum the costs of individual projects.

II. ENERGY EFFICIENCY PROGRAMS

This section comments on Energy Efficiency Programs discussed in the DCE FY26 Compliance Filing and the TRC FY26 Compliance Filing.

A. Summary of the FY26 Energy Efficiency Budget

The FY26 Budget for Energy Efficiency Programs requests $191.4 million, including $129.6 million (68%) of estimated carryforward funds from FY25 (Table 3). The continued increased spending by DCE is all the more troubling because DCE ceded the bulk of Energy

Efficiency to the utilities for an extremely higher budget. One would anticipate, given the reduction in programs for DCE and the significant increases elsewhere, the DCE Energy Efficiency budget would be gradually reduced over time instead of increasing it by $62 million in this proposal. There are four supporting budget subcategories under the Energy Efficiency budget requested budget: Commercial and Industrial Energy Efficiency Programs ("C&I EE Programs"), New Construction Programs, State Facilities Initiative, and Acoustical Testing Pilot.

Table 3: Summary of Proposed FY26 Energy Efficiency Budget

Energy Efficiency Programs	**FY25 True-Up Budget ($M)**	**Carryforward from FY25 to FY26 ($M)**	**FY26 New Funding ($M)**	**FY26 Total Budget ($M)**	**% of FY26 Total Budget**
C&I EE Programs	55.8	39.1	28.4	67.5	8%
C&I Buildings	47.5	35.9	24.4	60.4	7%
LGEA	8.3	3.1	4.0	7.1	1%
New Construction Programs	60.4	35.8	33.4	69.2	8%
New Construction	60.4	35.8	33.4	69.2	8%
State Facilities Initiative	60.2	54.7	0.0	54.7	6%
Acoustical Testing Pilot	0.2	0.1	0.0	0.1	0%
LED Streetlights Replacement	0.0	0.0	0.0	0.0	0%
Total Energy Efficiency Programs	**176.6**	**129.6**	**61.8**	**191.4**	**22%**
Total NJCEP + State Initiatives	**865.5**	**524.4**	**344.7**	**869.0**	**100%**

Note: LED Streetlights Replacement is not listed in the FY26 Draft Budget but is listed in to provide a complete comparison between FY26 and FY25.

B. General Comments on FY26 Energy Efficiency Programs

The DCE and the TRC FY26 Compliance Filings do not provide evidence or justification for the requested $191.4 million budget. A substantial amount of the text in the TRC Compliance Filing is identical to the prior FY compliance filing suggesting that the TRC did not conduct an updated budgetary analysis. As noted in the title page of the TRC Compliance Filing, it only covers six months, from July 1 through December 31, 2025, and no explanation is provided why this is the case.

Until the Board conducts an evidentiary process that satisfies fundamental regulatory and ratemaking reason-decision-making as mentioned above, no new FY26 funds for FY26 Energy Efficiency Programs should be collected, and the FY26 Budget should be reduced as indicated in Appendix I.

C. **Detailed Comments on the FY26 Energy Efficiency Programs**

<u>C&I EE Programs: C&I Buildings and Local Government Energy Audit (TRC Compliance Filing, pages 13-26)</u>

- The TRC FY26 Compliance Filing does not provide any new data, information, or materials related to the proposed FY26 programs or budgets. For example, the TRC Compliance Filing states that the C&I Buildings Programs consist of the Large Energy Users Program ("LEUP") and the LEUP Decarbonization Pilot for which Staff is proposing a budget of $60,390,071. However, the Compliance Filing provides no explanation on how the funds are to be distributed between the two programs – only that incentive caps have been established to ensure equitable access due to the size of a potential project. Rate Counsel previously expressed concern about this issue in comments filing June 14, 2023 in the Board's Docket No. QO23040236 concerning the lack of specificity provided on how $60,390,071 proposed for C&I Buildings would be allocated between the two programs. Rate Counsel understands that the LEUP Decarbonization Pilot funds will be distributed on a first-come-first serve basis, however, more specificity is required to properly evaluate this line item.

<u>New Construction Programs ("NCP") (TRC Compliance Filing, page 26)</u>

- The TRC FY26 Compliance Filing does not provide any new data, information, or materials related to the proposed FY26 programs or budgets. Rate Counsel notes, however, the New Construction Program recently launched on May 1, 2025 and we look forward to reviewing the progress of the NCP in a subsequent true-up filing.

<u>State Facilities Initiative (DCE FY26 Compliance Filing, pages 25-26)</u>

- The DCE FY26 Compliance Filing refers to the FY26 Designated Project List (DPL) that identifies the projects and funding proposed for FY26. All the funding for FY26 is from the FY25 Estimated Committed Carryforward of $54,675,202.
- The DCE FY26 Compliance Filing does not provide any data, information, or materials related to the proposed FY26 programs or budgets. Instead, it provides, without further explanation, that no new funding has been provided and the current funds were carried over from FY25 based on updated project timelines. Rate Counsel has raised concerns about this program in previous years because DCE has not provided energy savings and cost-effectiveness data concerning this program. These concerns remain since the information still has not been provided.
- The DCE FY25 Compliance Filing does not explain how the Annual State Facility Energy Consumption Report will help inform State agencies. Rate Counsel notes that the most recent published report was for FY21.

<u>Acoustical Testing Pilot (DCE FY26 Compliance Filing, page 22)</u>

- The DCE FY26 Compliance Filing states that there will not be a standalone program in FY26, although $62,626 of FY25 Estimated Carryforward is budgeted for FY26. This program should be ended as soon as practical and no funding committed to or budgeted for FY27.

III. DISTRIBUTED ENERGY RESOURCES

This section comments on Distributed Energy Resources discussed in DCE FY26 Compliance Filing, pages 18-19 and TRC FY26 Compliance Filing, pages 42-47.

A. Summary of the FY26 Distributed Energy Resources Budget

The FY26 Budget for Renewable Energy requests $31.9 million, of which $21.7 million (68%) is the estimated carryforward from FY25 (Table 4). In FY25, the budget was $152.2 million, almost five times greater. There are three supporting budget subcategories under the Renewable Energy requested budget: CHP-FC (combined heat and power-fuel cell), Microgrids, and Energy Storage.

Table 4: Summary of Proposed FY26 Distributed Energy Resources Budget

Distributed Energy Resources	FY25 True-Up Budget ($M)	Carryforward from FY25 to FY26 ($M)	FY26 New Funding ($M)	FY26 Total Budget ($M)	% of FY26 Total Budget
CHP – FC	31.5	9.1	10.2	19.3	2%
Microgrids	0.9	0.7	0.0	0.7	0%
Energy Storage	119.8	11.9	0.0	11.9	1%
Total Distributed Energy Resources	**152.2**	**21.7**	**10.2**	**31.9**	**4%**
Total NJCEP + State Initiatives	**865.5**	**524.4**	**344.7**	**869.0**	**100%**

Note: The FY26 Draft Budget contains a note, denoted by "***", regarding reallocating funds for Energy Storage to support Energy Bill Assistance but does not specify the amount or from which fiscal year.

B. General Comments on FY26 Distributed Energy Resource Programs

The DCE Compliance Filing does not provide evidence or justification for its request of a $31.9 million budget. Most of the text in the DCE Compliance Filing is identical to the prior FY compliance filing suggesting that Staff did not conduct an updated budgetary analysis.

The FY26 funding request is $120.3 million less than FY25. The reasons for this substantial reduction are not provided in either the DCE or TRC FY25 Compliance Filings.

Until the Board conducts an evidentiary process that satisfies fundamental regulatory and ratemaking reason-decision-making, no new FY26 funds for Distributed Energy Resources should be collected, and the FY26 Budget should be reduced as indicated in Appendix I.

C. Detailed Comments on the FY26 Distributed Energy Resources Budget

CHP-FC (TRC pp. 42-27; DCE pp. 26-27)

- The TRC FY26 Compliance Filing does not describe the number and type of CHP-FC facilities it funded in prior years, the number and type it expects to fund in FY26, the actual and expected emission reductions due to these facilities, or any analysis of their cost effectiveness.[30]
- Rate Counsel has previously expressed its concerns about providing ratepayer funding for CHP and FC technologies and reiterates those concerns.[31] The CHP-FC program provides incentives for mature technologies that use fossil fuels and can cause increased emissions and other adverse impacts on communities that are already burdened with more than their fair share of undesirable infrastructure.
- Rate Counsel disagrees with providing incentives for fossil-fueled CHP and FC projects. Given the goals of the Energy Master Plan and recent Executive Orders from the Governor seeking to move away from fossil fuel usage, the Board should consider limiting eligibility for incentives to fossil fueled facilities. Further, CHP and FC are

[30] The TRC FY26 Compliance filing has cost-benefit results for Distributed Energy Resources (p. 74) but does not break down the results to specific technologies such as CHP, fuel cells, or distributed solar.
[31] I/M/O Comprehensive Energy Efficiency and Renewable Energy Resource Analysis for Fiscal Year 2025 Clean Energy BPU Dkt No. QO24040223 and I/M/O Clean Energy Programs and Budget for the Fiscal Year 2025 – Electric Vehicle Issues BPU Dkt. No. QO24040224, Rate Counsel Comments at 20-21 (June 14, 2024).

mature technologies with established markets. Rate Counsel understands that CHP and FC facilities can provide efficient generation and contribute to system resiliency and reliability. However, the Board should re-evaluate the justification for continuing to use limited ratepayer funds to incentivize mature technologies that use fossil fuel.

- Additionally, the DCE FY26 Compliance Filing does consider the potential damage of the CHP-FC program on communities that are already overburdened with adverse environmental impacts. Rate Counsel is concerned that projects incentivized by the CHP and FC facilities will be sited where they will create additional emissions, visual and noise pollution, and other adverse impacts in communities that are already burdened with more than their share of undesirable infrastructure. Rate Counsel notes that FCs may create fewer adverse impacts than combustion-based technologies, but they can create emissions depending on fuel source, as well as other safety impacts such as heat and fire hazards.[32] If the CHP and FC programs continue, the Board should establish siting requirements to minimize the impact of these facilities on Overburdened Communities. In June 2024, Staff committed to investigate this issue, but no additional information has been provided.[33]
- Rate Counsel disagrees with providing subsidies for less-efficient FC projects. Staff is proposing to continue to provide subsidies to FC projects with annual system efficiencies as low as 40 percent while the CHPs are subject to a 60 percent minimum

[32] U.S. Department of Labor, Occupational Safety and Health Administration, Hydrogen Fuel Cells: Fire and Explosion, available at https://www.osha.gov/green-jobs/hydrogen/fire-explosion#:~:text=lower%20flammability%20limit.-,Hydrogen%20used%20in%20the%20fuel%20cells%20is%20a%20very%20flammable,that%20a%20flame%20is%20present.

[33] I/M/O the Comprehensive Energy Efficiency and Renewable Energy Resource Analysis for Fiscal Year 2025 Clean Energy Program, BPU Dkt. No. QO24040223, Order at 12 (June 27, 2024).

efficiency threshold for CHPs.[34] The Board should eliminate this discrepancy.

Microgrids

- The DCE FY26 Compliance Filing proposes a $732,000 budget for Microgrids, 100% of it is estimated to be FY25 carryforward. Staff has not provided any evidence that microgrid funding provides any tangible benefit to ratepayers. Furthermore, Rate Counsel is concerned that microgrids are new sources of noise and air emission especially in communities already burdened disproportionately from environmental harms. Rate Counsel recommends not funding microgrids in future years and only expend funds on this program that were committed to in FY25 or earlier.

Energy Storage

- The DCE Compliance Filing does not provide a description or a justification for its requested $11.9 million budget except to note that it provides a State match of U.S. Department of Energy funding (without stating the amount) and that aims to incentivize transmission-scale energy storage projects.[35]
- The DCE Compliance Filing does not demonstrate whether the proposed incentives are necessary to meet the State's goals for storage given the other revenue sources available for storage such as the PJM energy, capacity, and ancillary service markets, federal funding, tax benefits and solar-plus-storage tranche of the Competitive Solar Incentive program. In addition, DCE FY26 Compliance Filing does not address serious technical issues such as the lack of readily available metrics to use in developing performance-

[34] TRC FY26 Compliance Filing, p. 46.

[35] Rate Counsel raised "serious technical issues" regarding energy storage and Staff committed to provide a solution, which to Rate Counsel's knowledge has not been released. See I/M/O of the Comprehensive Energy Efficiency and Renewable Energy Resource Analysis for Fiscal Year 2025 Clean Energy Program, BPU Dkt No. QO24040223 at 13 (June 27, 2024).

based incentives and monitoring the effectiveness of the program in reducing greenhouse gas emissions.

- The DCE Compliance Filing notes that FY26 funding for the anticipated launch of the Garden State Energy Storage Program (GSESP) is primarily supported by $125 million received in the Ocean Wind Projects settlement without identifying how much the settlement will fund the FY26 Energy Storage program.

There is simply no need for fixed incentives for grid storage projects. Currently there are more than enough projects in the PJM queue to meet the 2,000 MW mandate; these projects have been proposed and developed without the existence of additional incentives. Furthermore, a key barrier to building grid supply storage projects is the backlog in PJM's interconnection queue, and Staff does not make clear how an upfront fixed incentive will make the interconnection process more efficient. Additionally, Rate Counsel notes that at the most recent Board Agenda meeting on May 21, 2015, the Board approved a Notice of Adoption and Notice of Proposed Substantial Changes Upon Adoption for regulations related to grid modernization (BPU Docket No. QO21010085). Rate Counsel expects to review these shortly when they are available in the NJ Register. Moreover, Rate Counsel notes that currently pending at the state legislature is a bill (S4289) that would require ratepayers to fund over $900 million over 15 years in subsidies through SBC and other funds for energy storage and Staff should be aware of the potential for overlapping funding requirements for energy storage.

- Rate Counsel notes that there is no need for a fixed incentive for energy storage projects and instead recommends, assuming that the threshold question of whether the NJCEP should be funding energy storage is met, that a competitive solicitation process for grid supply resources would best balance the interests of the ratepayers and the ambitious energy supply goals. Additionally, Rate Counsel notes that Staff released draft rules related to energy storage in late 2024 (BPU Docket No. QO22080540) and has yet to propose formal rules in this area.

D. Detailed Comments on the Benefit-Cost Analysis in TRC FY26 Compliance Filing

TRC reports the result of a benefit-cost analysis for EE Programs (C&I EE and New Construction) and Distributed Energy Resources (pp. 73-74).

- The benefit-cost analysis only covers some of the NJCEP. Staff should provide similar analyses for all programs or explain why a benefit-cost analysis is not applicable.
- TRC does not report or reference any of its assumptions (e.g., incremental energy efficiency measure costs, avoided energy cost, discount rate, etc.) in its filing. It is not obvious if such information is available or if it is, how to access it. Given the extremely short time stakeholders have to submit comments, it should not be incumbent upon stakeholders to try to guess if and where such information is located.

IV. RENEWABLE ENERGY PROGRAMS

This section comments on Renewable Energy Programs discussed in the DCE FY26 Compliance Filing, pages 11-19.

The DCE FY26 Compliance Filing is not aligned with the FY26 Budget Table in how various subprograms are categorized under Renewable Energy Programs and Distributed Energy Resources. In this section, under the general term of Renewable Energy Programs, Rate Counsel reviews the subcategories of Renewable Energy (Nuclear Energy, Solar, and Community Solar) and Solar Registration. Energy Storage is reviewed in Section III under the category of Distributed Energy Resources along with CHP-FC (combined heat and power and fuel cells) and Microgrids.

A. Summary of the FY26 Renewable Energy Requested Budget

The FY26 Draft Budget for Renewable Energy requests $7.4 million, of which $4.3 million (59%) is estimated to be carried forward from FY25 (Table 5). The FY26 Draft Budget is a $15.9 million decrease from FY25. There are two supporting budget subcategories under the Renewable Energy requested budget: Resource Adequacy and Solar Registration.

Table 5: Summary of Proposed FY26 Renewable Energy Requested Budget

RE Programs	FY25 True-Up Budget ($M)	Carryforward from FY25 to FY26 ($M)	FY26 New Funding ($M)	FY26 Total Budget ($M)	% of FY26 Total Budget
Resource Adequacy	0.0	4.3	0.0	4.3	1%
Solar Registration	4.1	0.0	3.0	3.0	0%
Offshore Wind	19.1	0.0	0.0	0.0	0%
Total RE Programs	**23.3**	**4.3**	**3.0**	**7.4**	**1%**
Total NJCEP + State Initiatives	**865.5**	**524.4**	**344.7**	**869.0**	**100%**

Note: Offshore Wind is not listed in the FY26 Draft Budget but is listed in to provide a complete comparison between FY26 and FY25.

B. General Comments on FY26 Renewable Energy Programs

The DCE Compliance Filing does not clearly state which subprograms fall under the Renewable Energy Programs in general nor under its two subcategories of Resource Adequacy and Solar Registration.

The DCE Compliance Filing also fails to provide evidence or a justification for its request of a $7.4 million budget. Most of the text in the DCE Compliance Filing is identical to the prior FY compliance filing suggesting that the DCE did not conduct an updated budgetary analysis.

The FY26 Draft Budget request of $3.0 million of new funding is substantially less than the total of carryforward funds of $4.3 million suggesting that carryforward funds may be sufficient to fund FY26 activities.

Until the Board conducts an evidentiary process that satisfies fundamental regulatory and ratemaking reason-decision-making, no FY26 new funds for Renewable Energy Programs should be collected, and the FY26 Draft Budget should be reduced as indicated in Appendix I.

C. Detailed Comments on the FY26 Renewable Energy Program Budget of the DCE Compliance Filing

Resource Adequacy (pp. 11-13)

Rate Counsel offers the following specific comments and observations on the Renewable Energy Program budget line item:

- Offshore Wind: The DCE Compliance Filing does not provide the connection with funding the National Offshore Wind Research and Development Consortium (NOWRDC) and the Rutgers Center for Ocean Observation Leadership (RUCOOL) and resource adequacy, does not state the amount of the funding, and does not contain any analysis of the effectiveness of past activities by these entities.
- Nuclear: The DCE Compliance Filing does not state the amount of funding requested to obtain and review stakeholder input and information related to advance new nuclear generation in New Jersey. Nor does it explain why ratepayer funds should be used to support unregulated generation.

Solar Registration (pp.11-18)

With respect to the Solar Registration budget line item:

- The DCE Compliance Filing does not state how much of the $3.0 million budget for

Solar Registration funding is for Solar and how much is for Community Solar.

- Solar: The DCE Compliance Filing does not describe the FY26 activities the requested funding supports, the amount of the requested funding, or how the funding will achieve specific clean energy objectives.
- Community Solar: The DCE Compliance Filing does not describe the FY26 activities the requested funding supports, the amount of the requested funding, or how the funding will achieve specific clean energy objectives.

V. PLANNING AND ADMINISTRATION

This section comments on Planning and Administration initiatives discussed in the DCE FY26 Compliance Filing, pages 32-34.

A. Summary of the FY26 Planning and Administration Budget

The FY26 Draft Budget for Planning and Administration requests $70.4 million, of which $51.7 million (73%) is estimated as carryforward from FY25 (Table 6). The various sub-program budget requests are similar to FY25, in some cases they are small increases in FY26 from FY25 and in some cases, they are small decreases.

Table 6: Summary of Proposed FY26 Planning and Administration Budget

Planning and Administration Initiatives	FY25 True-Up Budget ($M)	Carryforward from FY25 to FY26 ($M)	FY26 New Funding ($M)	FY26 Total Budget ($M)	% of FY26 Total Budget
BPU Program Administration	10.0	10.4	0.0	10.4	1%
Marketing	7.1	2.1	4.9	7.0	1%
CEP Website	1.5	1.4	0.0	1.4	0%
Program Evaluation/Analysis	45.7	36.8	7.8	44.7	5%
Outreach and Education	6.2	0.8	6.0	6.8	1%
Sustainable Jersey	1.2	0.5	1.0	1.4	0%
NJIT Learning Center	0.7	0.3	0.7	1.1	0%
Outreach, System Maintenance, Other (Program Administrator)	4.3	0.0	4.3	4.3	0%
Conference	0.0	0.0	0.0	0.0	0%
Memberships	0.2	0.1	0.1	0.1	0%
Total Planning and Administration Initiatives	**70.6**	**51.7**	**18.7**	**70.4**	**8%**
Total NJCEP + State Initiatives	**865.5**	**524.4**	**344.7**	**869.0**	**100%**

Note: Conference is not listed in the FY26 Draft Budget.

B. General Comments on FY26 Planning and Administrative Budget

The DCE FY26 Compliance Filing does not provide evidence or justification for its request of a $70.4 million budget. Rate Counsel agrees with Staff’s decision to eliminate the proposed Clean Energy Conference.

Until the Board conducts an evidentiary process that satisfies fundamental regulatory and ratemaking reason-decision-making, no new FY26 funds for Planning and Administration should be budgeted, and the FY26 Draft Budget should be reduced as indicated in Appendix I.

C. Detailed Comments on the FY26 Planning and Administrative Budget of the DCE Compliance Filing

<u>BPU Program Administration (pp. 32-33)</u>

- In this subsection, the DCE Compliance Filing text is identical to its FY25 counterpart, except that it removes the last short paragraph from the FY25 stating that DCE needs additional capacity to perform its functions.

<u>Marketing (p. 33)</u>

- The DCE Compliance Filing provides no evidence or support regarding the impact of past or anticipated marketing plans.

<u>NJCEP Website (pp. 33-34)</u>

- The DCE Compliance Filling provides no evidence or support for its requested budget of $1.4 million, all of which is estimated to be carried forward from FY25. Indeed, it is unclear why a state agency would be expending any funds to maintain a state website.

<u>BPU Program Evaluation/Analysis (p. 34)</u>

- Rate Counsel questions why an additional nearly $4.4 million is proposed to be transferred to program evaluation and analysis.
- Rate Counsel notes that each utility has its own evaluation budget and resources also paid for by utility ratepayers. Staff should demonstrate that its evaluation activities do not overlap or duplicate those conducted by the utilities.

<u>Outreach, System Maintenance, Other Education (pp. 22-24)</u>

- The DCE FY26 Compliance Filling provides no evidence or support for its requested budget of $1.4 million, of which $473,714 is estimated to be carried forward from FY25.
- The DCE FY26 Compliance Filing does not describe what the network of Sustainable Jersey[36] will do in FY26 and does not provide the associated justification for its requested budget.
- Rate Counsel could not find any evaluations or audits of Sustainable New Jersey posted on the New Jersey Clean Energy website.[37] If Sustainable New Jersey has not been evaluated and audited within the past three years, Rate Counsel recommends that an evaluation of its effectiveness and an audit of its finances be conducted to ensure that ratepayer funds are well spent.
- The DCE Compliance Filling does not describe what the New Jersey Institute of Technology (NJIT) Center for Building Knowledge (CBK) is proposing to accomplish in FY26 beyond continuing past activities and does not provide the associated justification for its requested budget.
- Rate Counsel could not find any evaluations or audits of NJIT CBK posted on the New Jersey Clean Energy website.[38] If NJIT CBK has not been evaluated and audited within the past three years, Rate Counsel recommends that an evaluation of its effectiveness and an audit of its finances be conducted to ensure that ratepayer funds are well spent.
- The DCE Compliance Filing does not describe what the Center for Urban Policy Research (CUPR) is proposing to accomplish in FY26 and does not provide the associated

[36] Rate Counsel understands Sustainable Jersey to be a network of municipalizes, schools and school districts.

[37] https://njcleanenergy.com/main/public-reports-and-library/market-analysis-protocols/market-analysis-baseline-studies/market-an.

[38] https://njcleanenergy.com/main/public-reports-and-library/market-analysis-protocols/market-analysis-baseline-studies/market-an.

justification for its requested budget.

- Rate Counsel could not find any evaluations or audits of CUPR posted on the New Jersey Clean Energy website.[39] If CUPR has not been evaluated and audited within the past three years, Rate Counsel recommends that an evaluation of its effectiveness and an audit of its finances be conducted to ensure that ratepayer funds are well spent.

<u>Memberships (pp. 36-37)</u>

- The DCE Compliance Filing does not state which memberships are budgeted for (except for the National State Energy Offices and the Clean Energy State Alliance) and does not state the amounts of each membership. Nor does the filing state any benefit to ratepayers for membership in any group or organization.
- The Membership budget includes $105,000 of estimated carryforward funds from FY25. Until DCE demonstrates that the total of annual membership fees exceeds $105.000, its budget request for additional funds of $44.9 thousand should not be approved.
- The DCE FY26 Compliance Filing uses the identical text from its FY25 counterpart, suggesting that the DCE did not conduct an updated budgetary analysis.

VI. BPU INITIATIVES

This section comments on BPU Initiatives discussed in the DCE Compliance Filing, pages 18-19.

A. Summary of the FY26 BPU Initiatives Requested Budget

The FY26 Budget for BPU Initiatives requests $476.7 million, of which $317.0 million (66%) is estimated as carryforward from FY25 (Table 7). There are four major budget

[39] https://njcleanenergy.com/main/public-reports-and-library/market-analysis-protocols/market-analysis-baseline-studies/market-an.

subcategories under the Renewable Energy requested budget: Clean Energy Affordability, Grid Modernization Efforts, Electric Vehicle Programs, and Workforce Development.

Table 7: Summary of Proposed FY26 BPU Initiatives Budget

BPU Initiatives	**FY25 True-Up Budget ($M)**	**Carryforward from FY25 to FY26 ($M)**	**FY26 New Funding ($M)**	**FY26 Total Budget ($M)**	**% of FY26 Total Budget**
Total BPU Initiatives	**371.5**	**317.0**	**159.7**	**476.7**	**55%**
Total NJCEP + State Initiatives	**865.5**	**524.4**	**344.7**	**869.0**	**100%**

B. General Comments on FY26 BPU Initiatives

The DCE Compliance Filing does not provide evidence or justification for its request of a $476.7 million budget. Most of the text in the DCE Compliance Filing is identical to the prior FY compliance filing suggesting that the DCE did not conduct an updated budgetary analysis.

The FY26 funding request is $169 million more than FY25. The reasons for this substantial increase are not provided.

The Board is required to complete the CRA every four years, and use that as a basis for determining funding levels under N.J.S.A. 48:3-60(a)(3). However, the last multi-year funding proposal adopted by the Board was for 2009 through 2012. Since that time, the Board has proposed and approved funding levels one year at a time. Like previous proposals, this fiscal year's proposal contains projected budgets for one year only. There is no justification for the Board's continuing reliance on single-year funding plans based on only the most cursory analysis. The absence of a multi-year plan based on a meaningful analysis of the State's clean energy goals and the resources available to meet those goals creates numerous issues, including the ability for stakeholders to provide meaningful input on the plan. It is also an inefficient use of stakeholders' time to review the same deficient plan year after year.

Until the Board conducts an evidentiary process that satisfies fundamental regulatory and ratemaking reason-decision-making, no new FY26 funds for BPU Initiatives should be collected, and the FY26 Budget should be reduced as indicated in Appendix I.

C. Comments on the FY26 Clean Energy Affordability

Table 8 summarizes the draft budget for Clean Energy Affordability. The FY26 Draft budget proposes an increase of $82.5 million from FY25, ironically under the guise to improve affordability. The budget lines of "Residential Energy Assistance Payment" and "Energy Bill Assistance" deserve special attention. The total is $173.7 million of already collected ratepayer monies that the FY26 Draft Budget intends to refund to ratepayers. As proposed in Appendix I, Rate Counsel recommends reducing the FY26 SBC by $173.7 million (in addition to its other proposed reductions) to avoid the absurdity of collecting funds from ratepayers in FY26 only to return the funds to ratepayers in FY26. The fact that the Residential Energy Assistance Payment of $48.7 was supposed to be returned to ratepayers in FY25 but has not been emphasizes the importance of not over collecting funds in the first place since their return may be delayed or not occur at all.

Table 8: Summary of Proposed FY26 Clean Energy Affordability Budget

Clean Energy Affordability	FY25 True-Up Budget ($M)	Carryforward from FY25 to FY26 ($M)	FY26 New Funding ($M)	FY26 Total Budget ($M)	% of FY26 Total Budget
Community Energy Grants	3.1	3.0	0.0	3.0	0%
Urban Heat Island Mitigation Grants	5.0	5.0	5.0	10.0	1%
Res Low Income (Comfort Partners)	62.9	9.3	53.6	62.9	7%
Residential Energy Assistance Payment	94.6	48.7	0.0	48.7	6%
Energy Bill Assistance	0.0	125.0	0.0	125.0	14%
Clean Local Energy Advisory and Resource Fellows	0.0	0.0	1.1	1.1	0%
Whole House	2.6	0.0	0.0	0.0	0%
Total Clean Energy Affordability	**168.3**	**191.0**	**59.8**	**250.8**	**29%**
Total NJCEP + State Initiatives	**865.5**	**524.4**	**344.7**	**869.0**	**100%**

Note: Whole House is not listed in the FY25 Draft Budget.

Clean Energy Equity[40]

Rate Counsel offers the following observations and comments on the Clean Energy Equity budget line item:

- Community Energy Plan Grants (CEPG): The DCE FY26 Compliance Filing is a cut-and-paste version of its FY25 counterpart, except that it adds one additional paragraph regarding the fourth round of CEPG.

[40] On the FY26 Budget Table, listed as "Clean Energy Affordability."

- Urban Heat Island Mitigation Grants: This proposed initiative has been under development since FY25, and the proposal is unlikely to be finalized anytime soon given that Staff released a Request for Public Comment in the Spring of 2025. Rate Counsel reiterates its April 17, 2025, comments on this topic, including Rate Counsel's belief that ratepayers should not be funding this initiative and requests Staff to provide detail responses to each comment made in that filing.[41]
- Energy Bill Assistance: Details for this $125 million have not been developed. Since these funds were collected in FY25, Rate Counsel recommends lowering the FY26 SBC by this amount as indicated in Appendix I.
- Residential Low Income (Comfort Partners)[42]: Rate Counsel concurs with the FY26 Draft Budget, which proposes to serve the same number of electric and natural gas service customers as in FY25.
- Whole House Pilot: Rate Counsel will comment on the evaluation report when it is released. In general, Rate Counsel supports initiatives such as Whole House if they can be cost-effectively administered and serve low- to moderate-income households.
- Clean Local Energy Advisory and Resource Fellows: The request for $1.1 million in new funding for a program that is still being developed should not be approved.

As Rate Counsel noted in March 2025 and June of 2024 in its Comments on the Board's FY2025 budget in Docket Nos. QO23040236 and QO22050327, a significant portion of the carryforward of SBC funds could be dedicated to the Universal Service Fund (USF). The USF is a well-established program that has a long track record providing timely assistance to customers

[41] I/M/O the Establishment of an Urban Heat Island ("UHI") Mitigation Program, BPU Dkt. No. QO24100834, Rate Counsel Comments (April 17, 2025).
[42] FY26 Comfort Partners Compliance Filing.

in need. DCE's Compliance Filing acknowledges that the cost of the USF program has increased as a result of the COVID pandemic and changes in the USF program rules. This cost must be borne by all ratepayers, including those that do not qualify for assistance but still struggle with their utility bills. Transferring the funds budgeted for energy bill assistance to the USF Program would ensure that this program continues providing benefits, while relieving other ratepayers of some of the burden of paying for recent cost increases. Additionally, USF is a program that provides year-round relief on energy bills which is more effective for reducing energy bills than one-time credits. The rising cost of utilities in New Jersey and ratepayers' inability to pay these costs requires a more efficient and evidence-based approach to the expenditure of SBC funds than is demonstrated in the Board's 2026 budget.

D. Grid Modernization Efforts Comments

Table 9 Summarizes the FY26 Draft Grid Modernization Budget.

Table 9: Summary of Proposed FY26 Grid Modernization Efforts Budget

Grid Modernization Efforts	FY25 True-Up Budget ($M)	Carryforward from FY25 to FY26 ($M)	FY26 New Funding ($M)	FY26 Total Budget ($M)	% of FY26 Total Budget
Total Grid Modernization Efforts	**25.0**	**15.0**	**0.0**	**15.0**	**2%**
Total NJCEP + State Initiatives	**865.5**	**524.4**	**344.7**	**869.0**	**100%**

The DCE Compliance Filing proposes a $15 million budget for Grid Modernization, all of which is from the FY25 carryforward, pending Board approval. According to the DCE FY26 filing, Staff is evaluating possible Grid Modernization efforts. Until a finalized and sufficiently detailed proposal is finalized and reviewed by stakeholders with appropriate due process protections, Rate Counsel submits that the $15 million should be removed from the FY26 budget. At this time, it is unclear why any grid modernization budget should be in the SBC as its only purpose is to subsidize private developers.

E. Comments on Electric Vehicles

This section comments on electric vehicle ("EV") programs, specifically the "Charge Up New Jersey - Fiscal Year 2026 Compliance Filing (Draft)"[43] ("Charge Up Compliance Filing") and the "New Jersey Clean Energy Program – Fiscal Year 2026 Program Descriptions and Budgets (Draft)"[44] ("DCE Compliance Filing"), both released by the Staff on May 22, 2025.

The Charge Up New Jersey Program ("CUNJ") was developed pursuant to N.J.S.A. 48:25-1 to -11 ("EV Act"), amended, in relevant part, by N.J.S.A. 48:3-60(a)(3), which directed the Board to establish and implement a program to incentivize the purchase or lease of new light-duty plug-in electric vehicles ("EV") in the State of New Jersey, as well as develop an incentive for residential, at-home EV charging equipment. The CUNJ program includes three rows in the New Jersey Clean Energy Program – Fiscal Year 2026 Budget, under the heading of BPU Initiatives: (1) Plug In EV Incentive Fund, (2) CUNJ Administrative Fund, and (3) CUNJ Residential Charger Incentive, while the DCE Compliance Filing contains eight additional budget lines covering (4) EV Studies, Pilots, and Administrative Support; (5) Clean Fleet; (6) Multi-Unit Dwellings (Chargers), (7) EV Tourism, (8) E-Mobility Programs, (9) Electric School

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[43] Center for Sustainable Energy, "Charge Up New Jersey," Fiscal Year 2026 Compliance Filing (Draft)," dated May 22, 2025, available at https://njcepfiles.s3.us-east-1.amazonaws.com/FY26+CUNJ+Compliance+Filing+draft+for+comment.pdf.
[44] New Jersey's Clean Energy Program, "Fiscal Year 2026 Program Descriptions and Budgets (Draft)," dated May 22, 2025, available at https://njcepfiles.s3.us-east-1.amazonaws.com/FY26+DCE+Compliance+Filing+draft+for+comment.pdf.

Buses; (10) School Bus V2G; and (11) MHD Deport.[45]

1. Summary of the FY26 EV Proposal

The FY26 Budget for EV programs requests $209.9 million, of which $110 million (52%) is a carryforward from FY25. The EV programs are the largest set of programs in the FY26 Draft Budget (24%). It proposes an increase of $47.7 million from the FY25 EV programs budget of $162.2 million. Table 10 compares the FY26 with the FY25 specific budget lines.

[45] New Jersey Clean Energy Program – Fiscal Year 2026 Budget (Draft), May 22, 2025, available at https://njcepfiles.s3.us-east-1.amazonaws.com/FY26+Budget+Table+draft+for+comment.pdf.

Table 10: Summary of Proposed FY26 Electric Vehicle Programs

Electric Vehicle Program Initiatives	**FY25 True-Up Budget ($M)**	**Carryforward from FY25 to FY26 ($M)**	**FY26 New Funding ($M)**	**FY26 Total Budget ($M)**	**% of FY26 Total Budget**
Plug In EV Incentive Fund	57.6	30.9	50.0	80.9	9%
CUNJ Administrative Fund	5.5	3.3	4.8	8.1	1%
CUNJ Residential Charger Incentive	5.0	4.3	1.4	5.8	1%
EV Studies, Pilots, and Administrative Support	1.5	1.5	0.0	1.5	0%
Clean Fleet	25.9	25.4	3.7	29.2	3%
Multi-Unit Dwellings (Chargers)	27.9	25.7	7.0	32.8	4%
EV Tourism	9.9	9.8	10.0	19.8	2%
E-Mobility Pilot Programs	6	1.0	0.0	1.0	0%
Electric School Buses	30	0.0	15.0	15.0	2%
School Bus V2G	2.0	2.0	2.0	4.0	0%
MHD Depot	6.0	6.0	6.0	12.0	1%
Total Vehicle Program Initiatives	**177.3**	**110.0**	**99.9**	**209.9**	**24%**
Total NJCEP + State Initiatives	**865.5**	**524.4**	**344.7**	**869.0**	**100%**

2. General Comments on FY26 EV Programs

The EV Programs illustrate two fundamental problems with the NJCEP. First, it funds non-utility programs, and second funding can dramatically increase with little or no justification. Rate Counsel does not agree that EV incentives should be funded by utility ratepayers as noted previously.[46] EV transportation is simply not a public utility service; instead, EVs are part of the transportation industry. New Jersey Legislation that established the EV program only requires $30 million annually from SBC funds[47], not the $209.9 million proposed in the FY26 Budget for EV programs. The Charge Up and DCE Compliance filings do not offer any analysis or basis for the $209.9 million budget or any justification for expending nearly seven times more than the legislatively required amount of $30 million.[48]

As Rate Counsel noted in June of 2024, the Charge Up Compliance Filing and the DCE Compliance Filings fail to acknowledge that ratepayers are already committed to pay a total of $273.35 million to subsidize the EV incentive programs of the four electric utilities and will be required to pay for the expansion and reinforcement of the electric transmission and distribution systems to support EVs.[49] An additional $80 million in proposed Medium and Heavy Duty EV program expenditures are currently pending before the Board. Coordination between the Clean Energy EV Programs and utility EV programs is not occurring, potentially resulting in duplicative and ineffective spending of ratepayer money.

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[46] I/M/O Comprehensive Energy Efficiency and Renewable Energy Resource Analysis for Fiscal Year 2025 Clean Energy, BPU Dkt. No. QO24040223 and I/M/O Clean Energy Programs and Budget for the Fiscal Year 2025 – Electric Vehicle Issues BPU Docket No. QO24040224, June 14, 2024.

[47] New Jersey Board of Public Utilities, Murphy Launches Year Five of Charge Up New Jersey, July 10, 2024, available at https://www.nj.gov/bpu/newsroom/2024/approved/20240710.html.

[48] The FY26 Draft Budget also claims that the budget line for "Electric Scholl Buses" of $15 million is statutorily mandated but provides no supporting information that the funds must come from the SBC or that the three-year program continues in FY26. According to the Governor Office, "Funding for the program can come from the Clean Energy Fund, the Global Warming Solutions Fund (Regional Greenhouse Gas Initiative proceeds), monies available from utility programs to upgrade electrical infrastructure for vehicle charging, appropriations, or any other available funding. For Year One, the program's budget comes from the General Fund." See State of New Jersey, Governor Murphy Signs Legislation Requiring Establishment of Electric School Bus Program, August 4, 2022, available at https://www.nj.gov/governor/news/news/562022/20220804b.shtml.

[49] New Jersey Division of Rate Counsel, In the Matter of Comprehensive Energy Efficiency and Renewable Energy Resource Analysis for Fiscal Year 2025 Clean Energy BPU Docket No. QO24040223 and In the Matter of Clean Energy Programs and Budget for the Fiscal Year 2025 – Electric Vehicle Issues BPU Docket No. QO24040224, June 14, 2024, p. 4.

Rate Counsel also raised multiple comments in its June 2024 filing that are not addressed in the Charge Up or the DCE Compliance fillings. The Board's June 27, 2024, Order approving the FY25 Clean Energy Program funding did summarize Rate Counsel's comments and, in some cases, offered a partial response or commitment to further Staff action.[50]

3. Comments on the CUNJ Compliance Filing

The Charge Up FY26 Compliance Filing describes the CUNJ program, EV incentive eligibility, program requirements, EV charger incentives, call center coordination, and quality control provisions. The filing, however, does not provide any data, information, analysis, or evaluation and therefore provides no support for the FY26 EV budgets or programs. Incentives for EVs and Chargers for Non-LMI customers should be eliminated because they are not an appropriate use of ratepayer funds, disproportionately favor wealthier households, and are hard to enforce.[51] Incentives for LMI customers should be considered but vary between low- and moderate-income customers. The Charge-Up FY26 Compliance Filing does not address the increase risk to EV dealers that Rate Counsel has previously raised.[52]

4. Comments on the EV Related Sections of the DCE Compliance Filings

Although the DCE Compliance Filing provides some description of the various EV programs, it does not provide any data, information, evidence, or support for the EV portion of

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[50] NJ BPU, In the Matter of the Comprehensive Energy Efficiency and Renewable Energy Resource Analysis for Fiscal Year 2025 Clean Energy Program, Docket No. QO24040223, June 27, 2024, page 31-34.

[51] New Jersey Division of Rate Counsel, In the Matter of Comprehensive Energy Efficiency and Renewable Energy Resource Analysis for Fiscal Yer 2025 Clean Energy BPU Docket No. QO24040223 and In the Matter of Clean Energy Programs and Budget for the Fiscal Year 2025 – Electric Vehicle Issues BPU Docket No. QO24040224, June 14, 2024.

[52] New Jersey Division of Rate Counsel, In the Matter of Comprehensive Energy Efficiency and Renewable Energy Resource Analysis for Fiscal Yer 2025 Clean Energy BPU Docket No. QO24040223 and In the Matter of Clean Energy Programs and Budget for the Fiscal Year 2025 – Electric Vehicle Issues BPU Docket No. QO24040224, June 14, 2024, p. 7.

the SBC rate.

EV Studies, Pilots, and Administrative Support (p. 5)

- The need for "new skill sets and studies" is vague and unsubstantiated.
- BPU's EV EcoSystem plans are not described, and no reference is provided.
- The amount of funding "used to begin data aggregation services" is not provided and the status of the data aggregation and when it will be completed is not described.
- The timing of the completion of the "EV Roadmap" is not provided.
- The movement of funding to the Charge-Up Administrative line from the EV Studies, Pilots, and Administrative Support is not quantified. Information concerning the types of Clean Transportation programs and pilots that the $1.5 million will enable is not provided.

Clean Fleet Electric Vehicle Incentive Program (pp. 5-8)

- Rate Counsel supports reducing the EV incentive $1,500 from $2,000 because as electric vehicles become more prevalent in New Jersey, less of a financial incentive is need to induce consumers to purchase EVs.
- The proposed tiered incentive structure for some agricultural, construction, and landscaping equipment is vague, and no evidence or justification is provided. No explanation is provided why this equipment is being included in the NJCEP budget, what is the expected budgetary impact of these additions, and what are the expected decreases in emissions overall all and in overburdened communities.
- The stated goal of the Clean Fleet Program, which is to improve New Jersey's air quality and to assist in the transition to electronically fueled fleet, is not consistent with the Clean Energy goals of increased energy efficiency, renewable energy, and distributed energy

resources.[53]

- No data is provided regarding the number of the State's non-emergency light-duty vehicles that are now electric. There is also no forecast for this number in FY26 and beyond.
- While the number and type of chargers funded in FY23, FY24, and FY25 were provided, no forecast is provided for the number and types of EV chargers to be funded in FY26 and beyond.
- No evidence or justification is provided for the levels and incentives for the Clean Fleet Program.
- The proposed tiered incentive structure for some agricultural, construction, and landscaping equipment is vague, and no evidence or justification is provided.
- The possible "additional eligibility criteria and caps" that DCE Staff may implement for the Clean Fleet Program are not specified.

Multi-Unit Dwellings (Chargers) (pp. 8-9)

- Number of expected EV chargers to be funded in FY26 is not provided.
- No information is provided regarding the operability and use of EV chargers funded in prior fiscal years.
- No information is provided regarding improving the location and accessibility of EV chargers based upon prior efforts.
- No information is provided regarding the number of low-and moderate-income residents that own EVs.

[53] The Board's mandate is to ensure safe and adequate service at reasonable prices, not to address environmental concerns such as air quality. See In re Centex Homes, LLC, 411 N.J.Super. 244 (App. Div. 2009).

- No information is provided regarding whether the 50% bonus incentives, available to grant applicant(s) who reside in an overburdened municipality ("OBM") or who are deed restricted, remains the appropriate amount to incentivize EV ownership.

EV Tourism (pp. 9-10)

- No supporting evidence or references are provided for the assertion regarding EV range anxiety as it relates to New Jersey tourists. For instance, how many tourists use EVs to visit New Jersey, are they staying just for the day or overnight, how many more tourists with EVs would visit New Jersey if there were more EV chargers, etc.
- The EV Tourism program is also supporting EV chargers for residents, but no data is provided regarding how funding is split between tourism and residents.
- No data is provided regarding the percentage of hotels that have EV chargers or a projection for FY26 and beyond.
- No evidence or reference is provided to justify key program elements, such as hotels having to be within 1 mile of a designated highway, the appropriateness of the 50% bonus available to applicants who are in and OBM, and whether incentives can or cannot be stacked with utility EV charger incentives.

E-Mobility Pilot Program (pp. 10-11)

- The DCE Compliance Filing does not provide any support or justification for the E-Mobility Pilot $1 million FY26 budget.
- Rate Counsel strongly opposes ratepayer subsidies for e-bikes and e-scooters. The increased adoption of these personal transportation devices replaces traditional bicycles and pedestrian behavior and therefore do not contribute to the goals of the Clean Energy Program.
- E-Mobility is not defined and the 2022 BPU report cited does not have a complete reference,

preventing its review.

- The Compliance Filing does not provide any facts to establish either the social utility of these transportation devices or a basis for ratepayers to subsidize their sale.
- The Compliance Filing does not mention the safety issues related to the use of e-bikes and e-scooters. E-bikes and e-scooters move much faster than pedestrians. Numerous crashes have occurred as they are driven through busy pedestrian walkways and roadways. E-bike and e-scooter drivers are not trained or licensed, but the e- bikes and e-scooters are driven on busy roads, risking collision with motor vehicles. The batteries of e-bikes have also been implicated in numerous fires.[54] Rate Counsel does not see the social utility in funding incentives for E-bikes and E-scooters especially because they are likely not reducing CO2 emissions since people are not using these devices instead of internal combustion engine cars; they are simply upgrading their biking or pedestrian experience.
- This program is aimed at reducing vehicle miles travel (VMT), which is outside of the scope of energy efficiency and renewables and therefore the Board's jurisdiction.
- This program is presented as a pilot, suggesting that it is designed to test and learn from the program. No information is provided justifying the need for this pilot program or what will be learned from it.
- The planning work that is expected to continue into FY26 is not described.

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[54] A cursory internet search found numerous instances of pedestrian safety and e-bike battery fires. See, for example, NJ.com, N.J. woman on scooter struck, killed by vehicle while crossing highway, May 23, 2025, available at https://www.nj.com/middlesex/2025/05/nj-woman-on-scooter-struck-killed-by-vehicle-while-crossing-highway.html and Mayor Wayne D. Zitt, Jr & Town Council in Conjunction with Guttenberg, NJ Fire Prevention: Guide to E-Bike Lithium Battery Fire Danger, available at: https://www.guttenbergnj.org/_Content/pdf/E-Bike-Lithium-Battery.pdf.

Electric School Buses (p. 11)

- While Rate Counsel supports electrifying school buses or fleets (especially those that provide transportation options for low- and moderate-income residents), we recommend focusing incentives on school buses/fleets that are located in or travel through overburdened municipalities as opposed to increasing overall funding for the subprogram.
- No description of this program is provided, i.e., the program goals regarding the number of electric buses that will be supported, the program design and incentives to achieve the program goals, the evidence supporting the program design, or historical results.
- The FY26 text is identical to the FY25 DCE Compliance Filing[55] except the following sentence is added at the end of the section: "The FY25 budget proposes to fund the second year of the program."

V2G School Bus Pilot (p. 11)

- The DCE Compliance Filing is not clear whether the V2G School Bus Pilot is part of the same legislative requirement for the Electric School Bus Program.
- No program description is provided.
- The FY26 text is identical to the FY25 DCE Compliance Filing.

Medium Heavy Duty Depot (p. 11)

- The FY26 DCE Compliance Filing is identical to its FY25 counterpart.
- No program description is provided. No discussion about if and how to coordinate the Electric School Bus Program, the V2G School Bus Pilot, and the Medium Heavy Duty Depot Program to improve efficiency and outcomes for New Jersey is provided.

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[55] New Jersey's Clean Energy Program, "Fiscal Year 2025 Program Descriptions and Budgets," dated June 27, 2024, available at https://njcleanenergy.com/files/file/BPU/FY25/1_%20FY25%20-%20DCE%20Compliance%20Filing.pdf.

- No information regarding what was accomplished since the inception of the program in January 2024 is provided.
- The FY26 text is identical to the FY25 DCE Compliance Filing.

F. Workforce Development

This section comments on the workforce development initiative discussed in the DCE FY26 Compliance Filing.

1. Summary of the FY26 Workforce Development Proposal

The FY26 Budget for Workforce Development requests $1 million, all of which is carryforward from FY25 (Table 11).

Table 11: Summary of Proposed FY26 Workforce Development

Workforce Development	FY25 True-Up Budget ($M)	Carryforward from FY25 to FY26 ($M)	FY26 New Funding ($M)	FY26 Total Budget ($M)	% of FY26 Total Budget
Total Workforce Development	**1.0**	**1.0**	**0.0**	**1.0**	**0%**
Total NJCEP + State Initiatives	**865.5**	**524.4**	**344.7**	**869.0**	**100%**

2. General Comments on FY26 Workforce Development Programs

Rate Counsel does not support the use of SBC funds for workforce development. There are already government and private workforce development programs that can be leveraged to support the clean energy industry. Moreover, there is currently millions of dollars in funding for Workforce Development in the utilities' Triennium 2 Energy Efficiency programs. Additionally, the industry has incentive enough to train new recruits in the expanding clean energy industry and does not necessarily need more ratepayer subsidies through SBC funds to carry out additional training since training more employees will ultimately yield a direct economic benefit to contractors. The purpose of SBC funds is to benefit ratepayers, since they are the ones funding the SBC, with energy efficiency and renewable energy programs.

Until the Board conducts an evidentiary process that satisfies fundamental regulatory process and reasoned ratemaking, no new FY26 funds for Workforce Development should be collected, and the FY26 Budget should be reduced as indicated in Appendix I.

3. Detailed Comments on the Workforce Development Portion of the DCE Compliance Filing

The DCE Compliance Filing provides no evidence or justification that its vague FY26 proposal to work with the Rutgers University Heldrich Center will improve energy efficiency and renewable energy programs for ratepayers, or that these expenditures are cost effective. DCE should be directed to provide details on its proposed spending of the funds allocated for all workforce development activities with Rutgers University Heldrich Center before any funds are disbursed.

CONCLUSION

Based upon its review, its participation in the May 28 and June 3 public hearings, and participation in prior fiscal years CRA and budget filings, Rate Counsel reiterates its Findings:

A. The FY26 Draft Budget requests a $344.7 million rate increase on New Jersey electric and natural gas utility customers during a time in which electricity rates are dramatically increasing.

B. The FY26 Materials do not comply with the statutory requirement to provide a Comprehensive Resource Analysis and a four-year budget.

C. The FY26 Materials do not provide the necessary information necessary for stakeholders or the Board to assess the proposed programs and budget.

D. The FY26 Draft Budget proposes to collect $173.7 million dollars from ratepayers only to later rebate that amount to ratepayers.

E. The FY26 Draft Budget continues the historical practice of using unspent funds from prior fiscal years while not correspondingly reducing the FY26 SBC, resulting in the likely over collection of funds from ratepayers in FY26.

Based upon these Findings, the vast majority of the FY26 Draft Budget should not be funded for the activities Staff has requested. Rate Counsel Recommendations are as follows:

A. <u>A single, comprehensive, well-organized, multi-year plan</u> that clearly explains in detail the proposed programs should be prepared by Board Staff (“Staff”). This plan should include:

   1. An analysis of the resources available to meet the State’s clean energy goals, the cost to acquire each resource, and how the proposed expenditures will contribute to the State’s clean energy goals;

2. A comparison of the proposed budget allocations with prior years' budgets and performance;

3. An explanation of the prior year's spending

4. An explanation of why the previous years' carryforward funds were not spent, and whether they is anticipated to be spent in the coming year;

5. A detailed explanation of how the proposed new funding is allocated to the specific programs; and

6. A complete description of each program, including information, where applicable, about the measures offered, incentives per measure, program participation, energy savings, emissions reductions, costs broken out by cost type (planning, marketing, rebates/incentives, evaluation, etc.), cost per energy saved or generated, cost per emissions reduced, benefits, net benefits, and benefit-cost ratios.

B. A reduction in the SBC rate collected from ratepayers. It is abundantly clear that the BPU cannot spend the funding allocated annually to this effort through the current SBC. We recommend right sizing the proposed budget by reducing the SBC to a level that provides adequate support for anticipated clean energy programming without any carryforward from one year to the next or diversion of ratepayer funds to the general fund as is currently done with the funding for the State Energy Initiatives. More information about the performance and cost-effectiveness of programs will better inform future decision-making regarding the best program allocations for this funding. Until that information is made available, Rate Counsel proposes an FY26 Interim Budget discussed in this filing and detailed in Appendix I.

C. Additional time for stakeholders to file comments. The time available for comment is far too short. More time between the filing and the stakeholder meetings, as well as between the stakeholder meetings and the comment deadline is necessary.

D. Evidentiary proceeding that enables Rate Counsel, other stakeholders, and the Board to obtain the data and information necessary to evaluate the FY26 Materials and FY26 Draft Budget.

Considering Rate Counsel's Findings and Recommendations, the Board should not approve any new SBC funds. Instead, the Board should establish an evidentiary process over the next several months that provides for sufficient time to allow stakeholders to i) request additional materials from Staff and its consultants, ii) submit interrogatories that Staff and its Consultants must answer, iii) an opportunity to cross-examine Staff and consultants, and iv) submit comments.

At the end of this process, the Board will be in the position to evaluate a potentially revised FY26 Clean Energy Program based upon a complete record.

Appendix I: Rate Counsel Proposed New Jersey Clean Energy Program FY26 Budget Pending Completion of an Evidentiary Process

Rate Counsel proposes that until the Board completes an evidentiary process as described above, the Board should only approve new FY26 SBC funding for the Residential Low Income (Comfort Partners) program. Also, no expenditures listed under FY25 Estimated Carryforward – Pending Board Approval should be made. The $125 million proposed Energy Bill Assistance would be achieved by not collecting $125 million in FY26 SBC to fund back in a presumably one-time payment to ratepayers. The budget below includes $48.7 million for Residential Assistance Payment committed in FY25 and carryforward to FY26. One way to achieve this payment is to also reduce the FY26 SBC by this amount instead of issuing a rebate of $48.7 million, which will not provide the much-needed immediate relief from higher utility bills for New Jersey rate payers

Appendix Table 1: Rate Counsel Proposed New Jersey Clean Energy Program FY26 Budget Pending Completion of an Evidentiary Process***FY26 Program/Budget Line****	***FY26 New Funding***	***FY25 Estimated Carryforward – Pending Board Approval***	***FY25 Estimated Carryforward – Board Approved***	***FY25 Estimated Committed Carryforward***	***FY26 Budget***
Total NJCEP + State Initiatives	**53,646,461**	**0**	**38,540,411**	**293,309,839**	**385,496,711**
State Energy Initiatives	**0**	**0**	**0**	**0**	**-**
Total NJCEP	**53,646,461**	**0**	**38,540,411**	**293,309,839**	**385,496,711**
Energy Efficiency Programs	**0**	**0**	**0**	**129,616,263**	**129,616,263**
C&I EE Programs	**0**	**0**	**0**	**39,064,035**	**39,064,035**
C&I Buildings	0	0	0	35,941,700	35,941,700
LGEA	0	0	0	3,122,335	3,122,335
New Construction Programs	**0**	**0**	**0**	**35,814,400**	**35,814,400**
New Construction		0	0	35,814,400	35,814,400

Appendix Table 1: Rate Counsel Proposed New Jersey Clean Energy Program FY26 Budget Pending Completion of an Evidentiary Process*FY26 Program/Budget Line***	***FY26 New Funding***	***FY25 Estimated Carryforward – Pending Board Approval***	***FY25 Estimated Carryforward – Board Approved***	***FY25 Estimated Committed Carryforward***	***FY26 Budget***
State Facilities Initiative	**0**	**0**	**0**	**54,675,202**	**54,675,202**
Acoustical Testing Pilot	**0**	**0**	**0**	**62,626**	**62,626**
Distributed Energy Resources	**0**	**0**	**0**	**9,849,825**	**9,849,825**
CHP – FC		**0**	**0**	**9,118,087**	**9,118,087**
Microgrids	**0**	**0**	**0**	**731,738**	**731,738**
Energy Storage***	**0**		**0**	**0**	**-**
RE Programs	**0**	**0**	**353,015**	**2,633,660**	**2,986,675**
Resource Adequacy	**0**		**353,015**	**2,633,660**	**2,986,675**
Solar Registration		**0**	**0**	**0**	**-**
Planning and Administration	**0**	**0**	**11,677,209**	**16,182,216**	**27,859,425**
BPU Program Administration	**0**	**0**	**10,400,000**	**0**	**10,400,000**
Marketing	**0**	**0**	**0**	**500,000**	**500,000**
CEP Website	**0**	**0**	**0**	**1,423,000**	**1,423,000**
Program Evaluation/Analysis	**0**	**0**	**1,233,350**	**13,445,732**	**14,679,082**
Outreach and Education	**0**	**0**	**0**	**785,578**	**785,578**
Sustainable Jersey	0	0	0	473,714	473,714
NJIT Learning Center	0	0	0	311,864	311,864
Outreach, System Maintenance, Other (Program Administrator)	0	0	0	0	-
Memberships		0	**43,859**	**27,906**	**71,765**
BPU Initiatives	**53,646,461**	**0**	**26,510,187**	**135,027,875**	**215,184,523**
Clean Energy Affordability	**53,646,461**	**0**	**883,268**	**60,152,487**	**114,682,216**
Community Energy Grants	0	0	883,268	2,125,000	3,008,268
Urban Heat Island Mitigation Grants	0	0	0	0	-
Res Low Income (Comfort Partners)	53,646,461	0	0	9,284,562	62,931,023
Residential Energy Assistance Payment	0	0	0	48,742,925	48,742,925
Energy Bill Assistance***	0		0	0	-
Clean Local Energy Advisory and Resource Fellows	0	0	0	0	-

Appendix Table 1: Rate Counsel Proposed New Jersey Clean Energy Program FY26 Budget Pending Completion of an Evidentiary Process***FY26 Program/Budget Line*****	***FY26 New Funding***	***FY25 Estimated Carryforward – Pending Board Approval***	***FY25 Estimated Carryforward – Board Approved***	***FY25 Estimated Committed Carryforward***	***FY26 Budget***
Grid Modernization Efforts	**0**	**0**	**0**	**0**	**-**
Electric Vehicle Programs	**0**	**0**	**24,626,919**	**74,875,388**	**99,502,307**
Plug In EV Incentive Fund****		0	0	30,873,200	30,873,200
CUNJ Administrative Fund	0	0	0	3,345,188	3,345,188
CUNJ Residential Charger Incentive****	0	0	1,375,029	2,950,000	4,325,029
EV Studies, Pilots, and Administrative Support	0	0	0	0	-
Clean Fleet	0	0	11,257,289	14,157,000	25,414,289
Multi-Unit Dwellings (Chargers)	0	0	7,967,101	17,750,000	25,717,101
EV Tourism	0	0	4,027,500	5,800,000	9,827,500
E-Mobility Programs	0	0	0	0	-
Electric School Buses****	0	0	0	0	-
School Bus V2G	0	0	0	0	-
MHD Depot****	0	0	0	0	-
Workforce Development	**0**	**0**	**1,000,000**	**0**	**1,000,000**

*Numbers presented in the above table may not add up precisely to totals provided due to rounding.