



State of New Jersey
DIVISION OF RATE COUNSEL
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PHIL MURPHY
Governor

SHEILA OLIVER
Lt. Governor

BRIAN O. LIPMAN
Director

August 30, 2023

Ms. Melinda Decker
Melinda.lbi4you@gmail.com

RE: Email inquiry- Opposition to OSW and Offshore Wind Renewable Credit or "OREC" tax credits

Dear Ms. Melinda Decker,

Rate Counsel is in receipt of your letter stating your concerns regarding recent legislation enacted by the Legislature and signed by Governor Murphy in regard to tax credits for Offshore Wind Developers.

The Division of Rate Counsel is statutorily mandated to represent and protect the interests of utility consumers, as a class, with regard to regulated electricity, natural gas, water, wastewater, cable, and telephone services. Rate Counsel also represents consumers in setting energy and telecommunication policies that affect the provision of services. Our division's mission is to ensure that consumers receive safe, adequate and proper utility service at affordable rates. Although we do not represent individual customers or organizations, provide individual legal advice, or process consumers' complaints, we respond to all inquiries by providing useful general information about public utility rates and we direct consumers to the appropriate agency when they have more individualized questions about their specific utility service, bills or usage.

Rate Counsel's core mission is to represent the economic interests of New Jersey ratepayers. Other organizations and state agencies, particularly the New Jersey Department of Environmental Protection, already exist to represent the public interest with environmental issues as their primary focus. Many of those organizations are involved in matters before the BPU. Rate Counsel's role, on the other hand, is to assure that costs are considered and are fairly allocated when environmental initiatives affect utility rates.

While Rate Counsel should and does consider the environment, its primary focus remains on representing the utility customers who cannot afford their utility bills, and the companies that are downsizing or leaving the State because of the high cost of utility services. Rate Counsel also plays an important role in assuring that the state's clean energy expenditures, which are funded in large part by utility ratepayers, are cost-effective. If the state spends too much on some clean

energy projects, there will be less money to spend on other projects. Ratepayers' pocketbooks are not an infinite source of money, and Rate Counsel exists to protect those financial interests.

Rate Counsel is aware of recent legislation signed into law that alters the Board's regulations at N.J.A.C. 14:8-6.5 (a)(5)(iv). That subsection was originally intended to pass along any future tax credits or other governmental benefits to ratepayers and was relied upon when the Offshore Wind projects were awarded. The purpose of this requirement was to keep ratepayer costs down.

On June 26, 2023, Rate Counsel expressed its concern about the then-pending legislation's effect on ratepayers. On that basis we opposed any change that would allow the developer to retain federal tax credits. We informed legislators that such a change would be harmful to ratepayers and detrimental to the bidding process by allowing a lower bidding offshore wind developer to change its bid after it was accepted by the BPU. A copy of Rate Counsel's letter to the Legislature can be found on our webpage at:

https://www.state.nj.us/rpa/docs/S4019_A5651_CONCERNS%20FEDERAL%20TAX%20BENEFITS%20FOR%20CERTAIN%20QUALIFIED%20OFFSHORE%20WIND%20PROJECTS_6-26-23.pdf

You have requested Rate Counsel sue the state to overturn the recently passed legislation. The recent legislation was proposed and passed by the New Jersey Legislature and signed into law by the Governor. While not the outcome we sought, the new state law supersedes the BPU's regulation. Accordingly, Rate Counsel does not believe there are grounds within our statutory mandate to challenge the legislation by way of the filing of a lawsuit. We are aware of the recent challenge to the legislation, and will review that litigation to determine what role, if any, would be appropriate for Rate Counsel. That said, we will also continue to monitor the new law's application to determine if there is any further action that should be taken on behalf of utility customers. We also will continue to review any filings by the offshore wind developers to hold them accountable for the promises made and opportunities to reduce ratepayer costs.

We thank you for contacting us about this issue and hope this information is useful.

Sincerely,

Brian O. Lipman

Brian O. Lipman
Director