

NJBPU Fourth Solicitation Comments

Re: Docket No. QO24020109

Keith Moore

Defend Brigantine Beach Inc.

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1. The State of New Jersey Government website defines the **Mission of NJ Division of the Rate Counsel** and roles and responsibilities as the following:

WHAT IS THE DIVISION OF RATE COUNSEL?

"The New Jersey Division of Rate Counsel is an independent state agency in but not of the NJ Department of Treasury. Formerly the Division of the Ratepayer Advocate within the now-defunct Department of the Public Advocate, the Division represents the interests of consumers of electric, natural gas, water/sewer, telecommunications, cable TV service, and insurance (residential, small business, commercial and industrial customers).

Rate Counsel is a member of several state utility policy making groups and also represents consumers in setting energy, water and telecommunications policy that will affect the provision of services into the future. The New Jersey Legislature charged Rate Counsel with being "devoted to the maximum extent possible to ensuring adequate representation of the interest of those consumers whose interest would otherwise be inadequately represented in matters within the jurisdiction of the Division of Rate Counsel."

The mission of Rate Counsel is to serve as an independent advocate and make sure that all classes of utility consumers receive safe, adequate, and proper utility service at affordable rates that are just and nondiscriminatory. In addition, Rate Counsel works to ensure that all consumers are knowledgeable about the choices they have with utility competition. In January 2006, the Division began representing consumers in certain insurance cases."

HOW DOES RATE COUNSEL REPRESENT RATEPAYERS?

A utility cannot increase its rates -- the charge to consumers for use of utility services -- until the New Jersey Board of Public Utilities ("BPU") approves the change. The BPU must also approve requests by utilities to add or change programs or services. To obtain BPU approval, the utility must "prove" that such a change is merited. The utility files its application with the BPU to demonstrate that an increase or change is justified.

Rate Counsel is a party to every proceeding before the BPU in which utilities seek to alter their rates or services. In each case, Rate Counsel thoroughly investigates all aspects of the company's request and creates the evidentiary record upon which the BPU and its Staff will analyze and decide the case.

The investigation is based on detailed information that the utility provides regarding its request for changes in service or rate increases. Rate Counsel's attorneys, along with consulting economists, accountants, engineers, and financial experts, analyze that information and develop independent conclusions regarding the reasonableness of the utility's request, and prepare and file testimony that supports those conclusions and advocates for the ratepayers' interests. Later, as a party to evidentiary hearings, Rate Counsel cross-examines the utility's witnesses and submits evidence to support the Division's position. Subsequently, if necessary, Rate Counsel will seek a better outcome for ratepayers, by an appeal in the appropriate state or federal court.

DOES RATE COUNSEL NEGOTIATE WITH UTILITIES TO AVOID THE EXPENSES OF LITIGATION?

Good consumer advocates must be ready to litigate to protect consumers' interests. However, litigation is expensive, and, in the case of utility litigation, a part of the expense may be passed on by utilities to consumers. To avoid the expense of litigation whenever it is in the best interest of ratepayers, Rate Counsel negotiates with utilities and attempts to settle as many issues as possible without or before going to a contested hearing.

HOW ELSE DOES RATE COUNSEL WORK FOR RATEPAYERS?

Rate Counsel plays an active role in policy making at the state and federal level. As an independent voice for the consumer, the Division is active in a number of policy-setting groups such as the Clean Energy Council and the state's Energy Master Plan working group.

Additionally, the Division provides input to policy makers at the BPU and other agencies and the New Jersey State Legislature to develop long-term energy, water and telecommunications policy and goals that affect all New Jersey ratepayers. By assuring that the consumer's voice is heard at the outset of the ratemaking and policymaking processes, Rate Counsel promotes the development of consensus and spares the State and its residents the expense and inefficiency of unnecessary litigation.

DOES PARTICIPATION IN PUBLIC HEARINGS MATTER?

Yes! Public hearings provide an opportunity for ratepayers to comment on proposed rate changes as well as utility services. These voices, joined with that of Rate Counsel, can make a big difference. Speaking at a public hearing is important so ratepayers can communicate their positions to Rate Counsel and the BPU. Public participation affects Rate Counsel's challenges to rate increase requests and affects decisions of the BPU.

1. Based on the NJ Division of Rate Counsel roles and responsibilities highlighted text above, to the best of our knowledge we believe that the Division of Rate Counsel for the State of NJ has violated many its primary responsibilities are as stated below with respect to the financial awards for the Offshore Wind Energy companies in the State of New Jersey:

- The New Jersey Legislature charged Rate Counsel with being "devoted to the maximum extent possible to ensuring adequate representation of the interest of those consumers whose interest would otherwise be inadequately represented in matters within the jurisdiction of the Division of Rate Counsel."

- The mission of Rate Counsel is to serve as an independent advocate and make sure that all classes of utility consumers receive safe, adequate, and proper utility service at affordable rates that are just and nondiscriminatory. In addition, Rate Counsel works to ensure that all consumers are knowledgeable about the choices they have with utility competition.
- Subsequently, if necessary, Rate Counsel will seek a better outcome for ratepayers, by an appeal in the appropriate state or federal court.
- Rate Counsel plays an active role in policy making at the state and federal level. As an independent voice for the consumer, the Division is active in a number of policy-setting groups such as the Clean Energy Council and the state's Energy Master Plan working group.

To the best of our knowledge:

For all of the wind solicitations awarded in New Jersey and now including the work done for Solicitation 4, there have been ***little or no efforts by the Division of Rate Counsel to be "devoted to the maximum extent possible to ensuring adequate representation of the interest of the consumers (ratepayers)."***

There has been little, or no work done by The Division of Rate Counsel to ensure that ratepayers receive adequate and proper utility service at affordable rates.... and ensure that all consumers are knowledgeable about choices they have with utility competition. There has been NO discussion regarding clean energy alternatives such as safe modular nuclear or clean natural gas for New Jersey nor an analysis of those alternatives. In fact, we could not even find it in the 2019 New Jersey Energy Master Plan. The wind energy mantra has been fast-tracked by the Governor of New Jersey with complete disregard for the significant impact that it will have on the ratepayer of New Jersey, not to mention all of the associated well publicized destruction that comes with it.

Nor has the Division of Rate Counsel filed an appeal in state or federal court seeking better clean energy alternatives and the associated cost/benefit analyses to ensure that these other alternatives are being considered for New Jersey in the best interests of those ratepayers, the coastal environment, and the New Jersey tourism economy.

Conclusion: As the Division of Rate Counsel mandate is to "play an active role in policy making at the state and federal levels as an independent voice for the consumer," he and his organization have failed in their mission, based on the rationale above.

The documentation below confirms our statements above:

2. To the best of our knowledge, for BPU Solicitation 3 there was no communication from the Rate Counsel to the New Jersey Ratepayers which released information regarding how much the New Jersey Ratepayer would be paying in increases to their electricity bills as a result of the OREC pricing that was guaranteed to Attentive Energy and Leading Light. In addition, OPRA requests for NJBPU documentation, including the Rate Counsel documentation approving moving forward for Solicitation 3 were heavily redacted, precluding any ability to analyze the decisions.

3. Defend Brigantine Beach and Protect Our Coast NJ sued the NJBPU in Appeals Court with regard to the lack of transparency regarding Solicitation 3 on all of the issues stated above. What are NJBPU plans to remedy this issue and be completely transparent with the ratepayers for Solicitation 4? When will the Division or Rate Council provide fully unredacted documentation that will significantly affect the ratepayers of New Jersey?

4. Defend Brigantine Beach strongly objects to the provisions in Solicitation 4, Section 1.6 allowing bidders who were awarded ORECs in the First and Second Solicitations to submit re-bids of those contracts into this Fourth Solicitation. Defend Brigantine Beach will be watching this closely. We believe that this is a feature that is only included to allow Atlantic Shores to rebid their Atlantic Shores 1 project. This clause was not present in previous solicitations, and it is not in the interest of NJ ratepayers to include these new provisions. Please provide a detailed explanation as to why Section 1.6 has been included in Solicitation 4.

5. In Solicitation 4, why is the NJBPU unilaterally offering companies the opportunity to change the terms of their valid signed contracts with the State of NJ in order to seek higher OREC prices, which will surely be the outcome if they are successful in re-bidding those contracts? Why would the NJBPU and the Division of Rate Counsel believe that this is in the best interests of NJ ratepayers who will end up paying significantly more for the same power contracted from these

already approved offshore wind projects? We believe Atlantic Shores 1 award constitutes a binding contract with the NJBPU to deliver power at a given date for the agreed upon price. It most certainly seems like another a “get well” project for Atlantic Shores and it is not unlike what Governor Murphy and the NJ Legislature tried to do with Orsted. And how does that meet the OWEDA cost benefit requirement which is State Law? This section also allows the previous developers who become eligible under Solicitation, whether or not they are selected for an award, to have their prior agreements terminated. So merely by submitting a qualifying bid they “are let off the hook” for their prior contractual commitment. How is that in the interest of the NJ ratepayer and citizens? ***Once again, where is the completely unredacted Division of Rate Council Opinion with regard to allowing this?*** As you may recall, Defend Brigantine Beach and Protect Our Coast filed litigation against the State of NJ and the Orsted on a similar issue. We will be watching this decision very closely.

6. Regarding Solicitation 4, we expect to see detailed and comprehensive summary of what both Solicitation 3 and Solicitation 4 awards would result in the increased utility costs to the New Jersey ratepayer in the following classifications: individual residential homes, small businesses, schools and other NJ public institutions (County and Township Government increases in rateables associated with these large utility increase to County operations), and large commercial and industrial companies in New Jersey. Recent independent analyses with available data have shown anywhere from 30 to 50 percent increases in ratepayer electric bills depending on classification. This excludes the additional costs discussed in Item No. 7.

7. All of these ratepayers increase summaries should also include the costs of any and all shore connections including cable landings, installation equipment, DC-to-AC conversion and any other transmission and monitoring equipment. Recent analyses have shown that these onshore infrastructure costs could add over \$5B in new costs to the ratepayer as well, yet to the best of my knowledge both the NJBPU and the Rate Counsel have never released the information.

8. Please provide a detailed and comprehensive summary of what the complete “all-up” cost to the NJ ratepayer will be when all of the wind energy areas are built out and operational based on Solicitations 1 through 4. To date there has been no communication to the ratepayer from the NJBPU or from the Division of Rate Council. These projects have been one-off standalone decisions. This summary also must include all of the onshore new and or modification costs required and broken out separately as part of the OREC pricing, to operate these wind energy areas. The ratepayer has a right to know what this complete project will cost when all are wind lease areas are completed and operational. Again, the following categories are requested: NJ public institutions (County and Township Government increases in rateables associated with these large utility increase to County operations), and large commercial and industrial companies in New Jersey.

9. **We expect to see that the information described in Item 6 through 8 is publicly communicated in written form by the NJBPU and Rate Counsel, fully unredacted and available for public scrutiny, immediately upon the award of Solicitation 4, including all NJBPU analysis and independent Rate Counsel analysis and recommendations, to the ratepayers in New Jersey.** Failure to do so will result in additional actions on our behalf to obtain all unredacted information as described above.