



State of New Jersey
DIVISION OF RATE COUNSEL
140 EAST FRONT STREET, 4TH FL
P.O. Box 003
TRENTON, NEW JERSEY 08625

PHIL MURPHY
Governor

TAHESHA L. WAY
Lt. Governor

BRIAN O. LIPMAN
Director

**Remarks of Brian O. Lipman, Director of Division of Rate Counsel, Regarding S2978
(Revises State Renewable Energy Portfolio Standards/ Substitute—Concerning Renewable
Electric Power Generation Facilities)
Presented at the Senate Environment and Energy Committee Meeting
November 20, 2023**

Good afternoon. My name is Brian Lipman, and I am the Director of the Division of Rate Counsel. I would like to thank Chairman Smith and members of the committee for the opportunity to testify today on S2978, which revises the state's renewable energy portfolio standards concerning renewable electric power generation facilities. Rate Counsel has several concerns about this bill, especially its potential for significant financial impacts on ratepayers and its failure to provide a real analysis of cost verses benefits. This bill would create a new requirement for each basic generation service provider to acquire and retire "clean energy attribute certificates" or "CEACs" to achieve a clean electricity standard of at least 80 percent of the State's retail electric sales by June 1, 2027, increasing to 85 percent by June 1, 2030 and 100 percent by June 1, 2035. Further, the legislation would establish a target of meeting 65 percent of the State's electricity demand with in-state clean electricity production facilities. The new CEAC requirement would be layered on top of the existing renewable portfolio standards, including the carve-outs for solar and offshore wind, and the zero emissions certificate ("ZEC") program that subsidize nuclear generation. Under this bill, renewable energy certificates ("RECs"), including Class I RECs, SRECs, TREC and SREC-IIs issued for in-state solar generation, ORECs issue for offshore wind generation, and ZECs could be used in lieu of CEACs to satisfy the clean electricity standard.

In our letter Rate Counsel submitted last Friday, we expressed a number of amendments to the bill that we believe will make it more equitable and address several technical concerns that we have. I do not intend to review all those amendments in detail, though I will summarize many of them. I am, of course, available to answer any questions about Rate Counsel's proposed amendments. I would like to start this testimony with a discussion about affordability. While it is mentioned in the bill, it is not truly addressed and I feel the need to explain why affordability is so important. Simply, there is a significant percentage of people in New Jersey—your constituents—who are hurting. A recent report by the United Way finds that 37% of the households in our state are living in functional poverty. That means that even if New Jersey residents are working, they are not earning enough to pay for food, shelter and yes, utilities. And to be clear, with or without this bill, electric prices are currently going up, and will continue to do so. One of our utilities recently presented a chart that shows it will seek to increase bills by a

little over \$5.00 a month in the next six months. That's just for roll-ins of various existing utility programs and does not include rate cases. In 2023 alone, three of the four electric utilities will have filed for base rate increases. In addition to increases to basic rates, JCP&L just filed an infrastructure program seeking to recover over \$900 million from ratepayers. The BPU has approved \$1.2 billion in upgrades to support offshore wind. It is imperative to note that each time a utility requests an infrastructure program, the cost of the program will ultimately come out of ratepayers' pockets. I could go on, but you get the picture, rates are going up. And not just for residents who will ask the question this winter, do I eat, buy medication or heat my home. Businesses will also see increasing rates. As rates go up for New Jersey's businesses, they will have to ask, can I raise my prices, do I lay off, do I close, do I move to another state. Please understand, these increases in rates lead to jobs being lost right here in New Jersey.

Affordability matters.

Rate Counsel supports renewable energy, and recognizes the importance of encouraging in-state renewable energy investments. We are, however, concerned about the impacts on New Jersey's residents and businesses and their ability to pay for basic living necessities in addition to continued increases in their energy bill. As committee members are aware, ratepayers were hit hard with the increases in natural gas rates that resulted from Russia's war with the Ukraine, and gas cost increases had a ripple effect on other energy costs such as electric. In addition, as many committee members know, the COVID-19 pandemic is still impacting New Jersey households and families and businesses. Although the proposed legislation will not take effect immediately, the impacts of recent events serve as a stark reminder of the hardships that can result from increased energy costs and why affordability must be part of the equation.

It is for this reason that Rate Counsel has suggested the inclusion of a cost cap in this bill. This would be a mechanism by which we would say, if the costs of this bill go too high, we can scale back before costs become untenable. While the existing cap on the cost of New Jersey's Renewable Portfolio Standard provides some protection, Rate Counsel has concerns about the existing test because it is offset by environmental benefits. Environmental benefits are real, but they cannot be used to pay for rent, groceries, or medicine. For this reason, the cost test should be based on dollar costs that flow through to the bills paid by New Jersey residents, and it should be based on an unambiguous objective standard. Rate Counsel has suggested language for the cost cap, and we are willing to discuss specifics of the cap with other stakeholders, but the path to a clean energy future cannot be paid for with a blank check—we need to set reasonable limits to protect our ratepayers and more accurately measure affordability.

It is important to keep in mind that since the proposed CEAC program will be layered on top of existing requirements, the bill will not reduce the costs that are already being borne by ratepayers to support non-emitting generation, which include the costly subsidies for solar and nuclear facilities, and the costs of future subsidies as offshore wind facilities come online. With regard to offshore wind, we should be clear about two things. First, New Jersey will build offshore wind and second it will be costly—more costly than the recently canceled Orsted projects. The cost of CEAC compliance, however, will be in addition to those costs. Any discussion of affordability must include the other costs ratepayers are already paying toward the state's clean energy goals.

And, on the topic of offshore wind, the near future for New Jersey has dramatically changed. That change, however, is not reflected in this bill. Although the legislative findings in this bill state that the clean electricity standard will be affordable because it allows for a mix of in-state resources and lower-cost regional resources, the finding rests on assumptions that appear unrealistic. First and foremost, the recent cancellation of the Ocean Wind 1 and 2 projects, which were expected to add 11,000 megawatts of in-state non-emitting generation, will almost certainly make both the CEAC requirement overall and the in-state carve-outs physically unachievable in the time frames provided in the bill. Again, let me be clear—there will be offshore wind. It is just very unlikely that it will be in time to meet this bill’s current goals. With insufficient resources to satisfy the CEAC standard, and especially the in-state carve-out, CEAC prices could quickly reach unaffordable levels.

A related issue is that the CEAC program is intended to rely on an efficient, competitive market to keep costs down. Based on the State’s experience with the legacy SREC program, this is not a foregone conclusion. When SREC prices fell with increased solar development, industry lobbyists repeatedly went back to the Legislature to increase the solar renewable portfolio requirements, and SREC prices remained high despite decreasing costs. While the bill includes a provision requiring the Board to implement market power monitoring and mitigation measures, it is not clear that these efforts could be effective in the face of repeated legislative changes. At a minimum, any such market monitor should be independent. When establishing a market monitor at the federal level, FERC has repeatedly emphasized the need for an independent monitor. A market, however, must be allowed to function without constant interventions. Even with an independent monitor, our history in New Jersey does not support reliance on market forces to keep prices down.

Rate Counsel suggests another amendment with regards the Alternative Compliance Payment (“ACP”) to assist in keeping prices from escalating too high regards the Alternative Compliance Payment. This is a safety valve that allows generators to buy ACPs when the price of renewable energy is too high. While the current bill allows for an ACP, it states only that the Board may establish an ACP. Rate Counsel believes the ACP is an important consumer protection and the Board should be mandated to set an ACP and that the ACP should be reset each year to ensure that generators have the ability to purchase affordable ACPs when the renewable market becomes too expensive.

Finally, Section 9 of the bill appears to be contrary to the goals of the bill. First, it will allow research and development to be funded by ratepayers. This is inappropriate. Research and development is used to generate future products and hopefully profits. This should be funded by private industry or governmental grants. Ratepayers should never fund research and development. They will not own the technology developed, nor will they reap any of the profits earned should the technology become marketable. This places all the risk and none of the benefit on ratepayers. Second, and perhaps more troubling, this language appears to allow ratepayers to fund efficient fossil fuel generation. If the goal is in fact to reach zero emissions, lower emitting sources cannot be part of the mix. Ratepayers are already paying a lot—asking them to fund both lower emitting generation while also funding zero emitting generation is simply too much. Ratepayers are not a bottomless source of money. We must make sure that we are using ratepayer funds wisely. Subsidizing low emitting generation on our way to zero

emission is not cost effective and is overburdensome. Rate Counsel recommends deleting Section 9 of the bill.

As promised, I did not go over all the amendments recommended in our letter, but that is only because they are of a more technical nature and do not work well as testimony. Our amendments provide measurements to achieve the ratepayer affordability discussed in the bill. I would ask that you please review the amendments requested by Rate Counsel and consider them, as they will provide for important consumer protections and the steps toward achieving greater ratepayer affordability. Of course, I am happy to answer any questions you may have, either now or at some future time if you wish. Thank you.