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Remarks of Stefanie A. Brand, Director of the N.J. Division of Rate Counsel Regarding S2036, the Offshore Wind Economic Development Act, Presented at the Senate Environment and Energy Committee Meeting June 14, 2010

Good morning. My name is Stefanie Brand. I am the Director of the Division of Rate Counsel. I would like to thank Chairman Smith and Members of the Senate Environment and Energy Committee for the opportunity to testify today regarding Bill S2036, the Offshore Wind Economic Development Act.

The Division of Rate Counsel represents and protects the interest of all utility consumers—residential customers, small business customers, small and large industrial customers, schools, libraries and other institutions in our communities. Rate Counsel is a party in cases where New Jersey utilities seek changes in their rates or services. Rate Counsel also gives consumers a voice in setting energy, water and telecommunications policy that will affect the rendering of utility services well into the future.

First, I would like to applaud the sponsors for their efforts in making New Jersey a leader in renewable energy. The Division of Rate Counsel supports efforts to develop Offshore Wind, with the hope and the expectation that it will lead to a long-term reliable, sustainable and affordablesource of electricity for New Jersey's ratepayers. The Division also supports diversifying the state's economy through the development of new

industries dedicated to the manufacturing of new and emerging renewable energy technologies. The green economy presents a fantastic opportunity and I applaud the Legislature for its efforts to get New Jersey in line early to be a part of it.

However, as we all know, renewable energy is currently very expensive. While we all hope that the costs of these technologies will go down over time, we do know that the estimated total cost of meeting our solar Renewable Portfolio Standard (RPS), and developing 1,100 MW of wind capacity, could amount to somewhere in the order of $5.6 billion dollars in net present terms. Over time, this will translate into a monthly surcharge of between $5 to $8 per month for each residential customer in the state. For commercial and industrial customers, who use considerable volumes of electricity, monthly bill impacts from these two initiatives alone are likely to be considerable since these fees are typically assessed on a per usage basis (per kWh). These charges could change business profitability, and as such, will certainly have implications for the economic health of our state.

Given the significant potential rate impact, we must approach renewable energy policy and financial support mechanism with a few guiding principles in mind:

1. Ratepayers should not unnecessarily "over-incent" renewable energy development through unnecessary financial subsidies. We should provide incentives only in places where market forces are either unavailable, or inadequate, to encourage renewable investment. While we know that today, these projects are not "cost effective" from traditional perspectives, that does not eliminate the need to conduct comprehensive cost-benefit analyses of not only the level of financial incentives provided, but the

actual regulatory mechanisms used to deliver those incentives. Programs that don't provide public benefits that are in excess of costs should not be approved.

2. Ratepayers should not assume the developers' risk. Investors and shareholders typically provide capital to renewable energy projects with a certain expectation of risk. Renewable energy policy needs to balance and reflect the traditional risk-reward relationships commonly found in other markets. High risk projects should be accompanied by higher returns, whereas lower risk project should be accompanied by lower returns. Developers should not be allowed to earn excessive returns if the overall risk associated with a renewable energy project, like offshore wind, is borne almost entirely by ratepayers.
3. If we buy it we own it. Being able to reap the benefit in the long term of a stable and affordable energy supply is one of the reasons why a ratepayer subsidy is even palatable. Any effort to limit the time period, or the amount of wind energy that is available to meet New Jersey's energy and capacity needs, should be rejected. While we must certainly bend to the constitutional requirements of the Commerce Clause, there is no good policy reason to limit New Jersey's ratepayers' access to the output of the facilities they have helped financially support.
4. Finally, the old adage "haste makes waste" definitely applies here. Right now, the meteorological towers needed to measure the viability of the proposed wind facilities have not even been installed. That data is

needed to get federal leases and financing. Transmission infrastructure must also be considered and approved so that the energy generated by these facilities can be integrated into the grid without causing problems. Thus, assuming all goes well, these facilities will not be built and generating electricity for a very long time. It is questionable whether we even need legislation at this time, but even if we decide to go forward to demonstrate New Jersey's commitment to Offshore Wind, there is no reason to rush the process established in this bill for configuring the economics of New Jersey's Offshore Wind program.

This leads to the number one amendment I believe must be added to this bill. The Bill contemplates an extensive proceeding before the BPU to determine which projects will be entitled to a ratepayer subsidy, how that subsidy will be structured, and the time period over which that subsidy will be paid. In addition, the Board will determine the overall conditions and exceptions associated with receiving this subsidy. While the current Bill requires the applicants to provide a relatively extensive amount of information (which we support), it also sets up an impossible timeframe for the Board review, and stakeholder participation and input.

For instance, Section 3(d) of the proposed Bill starts the Board review clock at the time the developer submits an application to the Board. Rate Counsel believes this provision must be amended such that the Board review clock only starts at such time that the Board has certified the offshore wind application as being "complete." If a offshore wind developer submits some, but not all of the required information, that

developer should not be allowed to place other stakeholders, and the Board itself, at a regulatory disadvantage because of the filing deficiency. To do so is simply not good public policy and would clearly not be in the public interest.

Further, it is logistically impossible for the Board to do a complete review and rule on the merits of an offshore wind application that will cost ratepayers close to $6 billion within 90 days of submittal. The Bill appropriately allows the Board to hire experts to assist in its review, but in order to do that, the Board will have to solicit bids or follow other appropriate state procurement requirements. This alone will take 30-45 days at least. In addition, to be consistent with due process, the Board will have to afford interested parties a fair opportunity to comment on the application, and it may even need to conduct hearings to sort out factual issues. It is simply not possible to have a meaningful review of these applications in 90 days.

Furthermore, the Bill requires the BPU to establish an offshore wind renewable energy certificate (OREC) program within 180 after the enactment of the bill. However, because the OREC program must take into account the projected production of the projects deemed to be "qualified projects" in the process described above, the Board will be left with only 90 days, at best, for program and rule development. While the Bill recognizes the importance of due process, it's very provisions challenge the ability to offer due process since the rule development and notice provisions cannot all be met within the prescribed 90 day period.

Given the cost to ratepayers, and the fact that ORECs will not even be generated for many years to come, there is no legitimate reason for such short time periods. At the very least, the BPU should be given 180 days after the submission of a complete

application to rule on “qualified” projects, and it should be given an additional 120 days to adopt the OREC regulations. Further, potential projects should be required to file a certified 90 day advance notice to the Board so that the Board and other stakeholders can begin the process of securing the resources and technical expertise it will need to review the offshore wind application. As I noted earlier, the Board has state procurement regulations that it has to follow and a 90 day advanced notice provision will allow it to seek the most effective resources and still stay within its statutory procurement requirements. This is a reasonable and balanced suggestion that will signal the importance of a thoughtful, and not rushed regulatory review process. Such amendments will not dampen the policy commitment this Bill is intended to communicate since, in total, it’s language clearly signals to the world that New Jersey is actively promoting offshore wind development. We do not need to rush through this process, and run the risk of making a compromised decision for New Jersey’s ratepayers simply for the sake of moving fast.

To protect New Jersey’s ratepayers, we also need to ensure that after the program is established, the Board retains regulatory oversight authority to prevent cost overruns, and other inefficiencies that could ultimately get passed on to ratepayers. While the developers need a certain level of certainty to attract financing, they are not entitled, nor do they need, absolute and 100 percent insurance. Risk is something investors understand and know how to value. They get compensated to taking that risk. Ratepayers on the other hand cannot absorb the developer’s risk and they do not get compensated for doing so. Some form of circuit-breaker and off-ramp must be included in the form of continued BPU oversight and jurisdiction in order to adequately protect

ratepayers. Thus, while the ability of the BPU to modify its orders should be limited, there should not be an absolute prohibition where the original terms subsequently result in extreme hardship to ratepayers.

In closing, it is important to remember that the Board in these proceedings will to a certain extent be flying blind. Without even the benefit of meteorological data or any real basis on which to estimate output and price, the Board is being asked to set prices and values that will be in effect for decades to come. In fact, one of our other concerns is that the definition of "qualified project" does not require a lease from the Minerals Management Service. As such a lease is a necessary prerequisite to building these facilities in federal waters, all of the processes set forth in this statute, and all of the time and effort of the parties, could be for naught.

In other states, we have seen prices in long term contracts for wind that are more than double the cost we pay now for the commodity portion of our BGS rate. In Massachusetts, a 15 year contract starts in 2013 at 20.7 cents per kilowatt hour and rises to 34.7 cents by the time the contract ends. In Rhode Island the PUC recently rejected a $1 billion project because the cost was too high. Obviously, there are other benefits to wind that make it worth paying a little more for. Certainly the economic development potential of making New Jersey a home for the green economy is alluring. However, we must tread lightly and we must keep in mind the economic impacts of higher electricity prices on the residents and businesses of this state. With some of the amendments I have outlined above, this Bill represents a good start. But this is only the beginning of what must be a road taken slowly, carefully and with significant attention paid to protecting ratepayers.

I thank you for the opportunity to comment on this bill and will get our specific suggestions regarding amendments to committee and OLS staff. I am happy to answer any questions you may have.