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June 26, 2023

Members of the Senate Budget and Appropriations Committee  
Statehouse Annex  
P.O. Box 068  
Trenton, New Jersey 08625

**Re: S4019/A5651 (Concerns federal tax benefits for certain qualified offshore wind projects)**

Members of the Senate Budget and Appropriations Committee:

I write on behalf of the Division of Rate Counsel ("Rate Counsel") regarding S4019/A5651 (Concerns federal tax benefits for certain qualified offshore wind projects), which is up before the committee on June 27, 2023. I regret I am unable to attend the meeting, but hope you will consider our comments. Please note we have significant concerns about this bill, its impact on ratepayers and the lack of accountability by the beneficiary of this bill.

We urge you not to pass this bill out of committee. To the extent that you do wish to move this bill forward, we offer several amendments to ensure protection of the ratepayers who will ultimately fund these projects and the profits earned by the unregulated offshore wind developers building them.

As you are aware, Rate Counsel represents and protects the interests of all utility customers – 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.

Preliminarily, it should be clear that statements claiming that this bill will not cost ratepayers additional costs are inaccurate. The offshore wind renewable energy certificate ("OREC") price paid by ratepayers is subject to a number of offsets, including tax credits earned by the offshore wind developers. To the extent that the developer keeps that tax credit, the reduction in the OREC is decreased - leading to higher OREC prices for ratepayers. In essence, the developer will receive a double credit, first, when they keep the tax credit, and again, when they collect ORECs at an elevated price which should have been reduced by the amount of the tax credit. There should be no doubt that this bill will increase the amount the developer earns

on this project and will result in higher OREC prices being paid by ratepayers. That is the inevitable result of this bill.

To the extent this bill does go forward, Rate Counsel is concerned that by providing the offshore wind projects with additional tax benefits, the projects could earn more than they would have if the law were not changed. On the whole, project developers are already meeting, if not exceeding, their expected earnings. In fact, a chief executive of Ørsted indicated that it was “on track to outperform our previous [Earnings before interest, taxes, depreciation and amortization (“EBITDA”)] and [Return on Capital Employed (“ROCE”)] targets for 2020-2027, confirming the significant value in [Ørsted’s] portfolio of renewable projects”<sup>1</sup> and the Company had booked a record operating profit of \$4.68 billion for 2022, despite supply chain challenges and inflation.<sup>2</sup> Based on these publically reported numbers, Rate Counsel questions whether this bill is even necessary. Indeed, there has been no review of any project numbers to indicate actual need. Rather, there are just unproven, bald assertions in the press by one project developer.

If the Committee must advance this bill, Rate Counsel suggests that language be added that tries to ensure that, by giving the offshore wind projects tax benefits, the projects are not earning more than they would have had the law not changed. Specifically, Rate Counsel suggests adding the following to the Section 3 a:

Notwithstanding the provisions of P.L.2010, c.57 (C.48:3-87.1 et al.) or of any other law, rule, or regulation, or board regulation or order concerning the development of offshore wind projects, to the contrary, a qualified offshore wind project awarded prior to July 1, 2019 that satisfies the requirements in section 4 of P.L. , c. (C. ) (pending before the Legislature as this bill), as determined by the board, may elect to retain any incremental federal tax benefits that the project receives pursuant to the “Taxpayer Certainty and Disaster Tax Relief Act of 2020,” Pub.L.116-260, the “Inflation Reduction Act of 2022,” Pub.L.117-169, and section 41 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.41) provided that the retention of such tax benefits does not materially increase the profitability of a board-approved qualified offshore wind project and that qualified offshore wind project’s board-approved OREC-financing plan.

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<sup>1</sup> Terje Solsvik and Nina Chestney, *Ørsted to Invest \$68 Billion in Power Capacity by 2030*, Reuters, June 8, 2023, <https://www.reuters.com/sustainability/orsted-invest-68-bln-by-2030-renewable-energy-2023-06-08/>.

<sup>2</sup> Benjamin Storrow, *Developer Claims \$360M Loss on N.Y. Offshore Wind Project*, January 20, 2023, <https://subscriber.politicopro.com/article/eenews/2023/01/20/developer-claims-360m-loss-on-n-y-offshore-wind-project-00078667>.

Indeed, to the extent the developers object to this type of language, Rate Counsel advises that this raises a red flag that perhaps developers do not need this additional incentive from ratepayers.

Rate Counsel further suggests that a provision pertaining to the Board of Public Utilities' ("Board") review of the compliance filing be included so that the filing is not simply rejected, but that the Board explains the issue within 30 days and provides the applicant an opportunity to correct any deficiencies within 30 days. The affidavit from the corporate officer accompanying the compliance filing should also be a sworn statement, under penalty of perjury, in order to ensure that the information contained in the same is accurate. A sworn affidavit from a similar corporate officer should also be included that explicitly states and provides the Board-approved qualified offshore wind project's originally estimated rate of return based upon the Board-approved OREC financing plan for said qualified offshore wind project. The applicant should be required to include a true-up and credit to ratepayers any excess annual revenues resulting in project rates of return higher than those certified by the sworn affidavit.

In addition, Rate Counsel suggests that the filing be required to be submitted to the Board under the same docket number, which will assist with any notice or due process issues since the OREC terms are being changed.

We very much appreciate the opportunity to share our comments on behalf of the State's ratepayers and hope you will consider them. We urge you not to vote this bill out of committee as currently drafted. If the bill is advanced, we urge that it be amended to reflect the suggested changes. Please feel free to contact our office if you have any questions. Thank you for your attention to this important matter.

Sincerely,

*s/s Brian O. Lipman*  
Brian O. Lipman, Esq.  
Director, Division of Rate Counsel

c: Chris Eilert, Chief of Staff, Senator Sarlo  
Senator Bob Smith  
Joey Guerrentz/Matthew Peterson/Democratic Aides  
Rebecca Panitch, Republican Aide,  
Assemblyman Louis Greenwald  
Eric Hansen, OLS Committee Aide  
Assemblyman Paul Moriarity  
Nohemi Soria, Chief of Staff, Sen. Cruz-Perez  
Elizabeth Mahn, Democratic Aide/Budget & Policy Director, NJ Senate  
Daniel Ward, Democratic Aide  
Erika Nava, Democratic Aide  
Christine Dobisch/Christopher Myles, OLS Aides  
Millie Peralta, Chief of Staff, Sen. Cunningham

Tom Neff, Republican Aide  
Senator Patrick Diegnan  
Senator Paul Sarlo  
Kellie Reyes, Legislative Counsel, Senator Sarlo  
Brenda Bektas, Secretary to the Committee  
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David Wand, Managing Attorney for Electric, Rate Counsel  
Robyn Roberts, Public Information Officer & Legislative Liaison, Rate Counsel