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November 17, 2023

Members of the Senate Environment and Energy Committee
Statehouse Annex
P.O. Box 068
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RE: S2978 Draft Senate Committee Substitute (Revises State Renewable Energy Portfolio Standards /Concerning Renewable Electric Power Generation Facilities)

Members of the Senate Environment and Energy Committee:

I write on behalf of the Division of Rate Counsel regarding the draft Senate Committee S2978 (concerning renewable electric power generation facilities) that was received by our office on November 15, 2023. This bill is up before the Senate committee on November 20, 2023. I hope you will consider our comments. As we previously expressed, we have several concerns about this bill, especially its significant financial impact on ratepayers and its failure to provide a real analysis of cost verses benefits.

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.

The 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. 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.

Although the legislative findings 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. 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 cost down. Based on the State's experience with the legacy SREC program, this is not a foregone conclusion. When SREC prices fell with increase 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.

In this regard, it is important to keep in mind, since the CEAC program would 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, including the costly subsidies for solar and nuclear facilities, or the costs of future subsidies as offshore wind facilities come online. The cost of CEAC compliance will be in addition to those costs. While, in theory, this legislation could be viewed as part of a transition to a comprehensive technology-neutral clean electricity standard, the bill itself does not create a clear pathway to phasing out the existing programs.

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 the COVID-19 pandemic and the Ukraine war serve as a stark reminder of the hardships that can result from increased energy costs and why affordability must be part of the equation.

We encourage the Committee not to pass this bill out of committee, until its impacts on ratepayer can be fully analyzed. However if the Committee is inclined to advance this legislation, Rate Counsel urges that the bill be amended to include stronger ratepayer protections.

The most important and effective protection against excessive cost would be a strong, clearly defined cap on costs. 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 offsets 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 an the dollar costs that low through to the bills paid by New Jersey residents an benefits, and it should be based on an unambiguous objective standard. Rate Counsel recommends the following as an additional section to be added to the bill:

Notwithstanding the other provisions of P.L. , c. (C.) (pending before the Legislature as this bill) to the contrary, the Board shall take all steps necessary to prevent the costs of electricity supply for New Jersey electricity users from exceeding _____ in any energy year, including adjusting the CEAC requirement or other programs that incentivize the development and use of clean energy production facilities. For the purpose of implementation of this restriction, the costs of electricity supply shall be estimated by the Board on an annual basis using the following methodology: Energy payments (including transmission losses, plus capacity payments plus CEAC, Class I REC, OREC, SREC, SREC-II, TREC, and ZEC payments, plus payments required under section 9 of P.L. , c. (C.) (pending before the Legislature as this bill), less PJM-level transmission revenue allocable to the New Jersey load serving entities, and less demonstrated energy supply cost savings resulting from distributed solar, with the result divided by total New Jersey gross load.

Rate Counsel is willing to further discuss an appropriate measurement for a cap on costs to protect ratepayers.

In addition, the Committee should consider several other amendments to the bill as proposed.

Section 4.c of the bill provides as follows:

A facility seeking to be designated as a clean energy production facility shall apply to the board, in a form and manner determined by the board, and shall be certified and classified by the board in consultation with department.

This provision appears to contemplate a facility-by facility qualification process, which would be unwieldy and would have the effect of limiting supply and increasing CEAC values. Instead the bill should direct the Board and the Department of Environmental Protection to issue rules on this issue. Rate Counsel suggests the following substitute language, which also changes “clean energy” to “clean electricity” consistent with the usage elsewhere in the bill:

The board, in consultation with the department, shall issue regulations criteria and process for facilities to be designated as clean electricity production facilities.

This language would allow the Board the flexibility to adopt categorical qualifications for technologies that are proven to be non-emitting.

Section 5.a (2) of the bill states that the Board may accelerate the achievement of the 100 percent clean electricity standard through a “downward sloping demand curve” or other mechanism. The meaning of “downward sloping demand curve” is unclear. Rate Counsel recommends the following revision, with changes from the text as proposed shown in underlined and strikeout type:

The board may establish a market structure that accelerates the achievement of the 100 percent clean electricity standard ~~either through the establishment of a downward sloping demand curve, or another appropriate mechanism~~, if the board determines that ~~the benefits of doing so outweigh the costs to New Jersey residents~~. such an alternative market design would lead to net public benefit and would be consistent with the cap on electricity supply costs provided in section ___ of P.L. , c. (C.) (pending before the Legislature as this bill).

Section 5.c. should be modified as follows to strengthen the proposed provisions on market monitoring and mitigation:

The board shall implement an independent market power monitoring and function that includes mitigation measures to prevent the exercise of market power under the clean energy standard established pursuant to subsection a. of this section. Authorized market power mitigation measures shall include, but are not limited to, the requirement that all offers of eligible qualified CEACs into a regional marketplace shall be subject to independent review of their competitiveness, and may be rejected or modified if found to be non-competitive in terms of both conduct and impact. The market power monitor selected by the Board to conduct these functions will prepare and provide an annual report to the Board on the status of competitive clean electricity markets.

Sections 5.d (1) and (2) of the bill allow the nuclear power plants that receive ZECs to elect instead to receive CEACs. While the legislation allows the Board to cap the value of CEACs awarded to existing nuclear units, the cap could be higher than the current cap of \$10 per megawatt hour of nuclear generation. Further, there would be no cap on the value of CEACs for new nuclear generation. While nuclear generation is not carbon-emitting at the point of generation, it is not truly “clean,” and should not be incentivized on the same footing as other non-emitting technologies. Accordingly, Rate Counsel suggests the following language to be added to the end sections 5.d (2): “... provided, however, that the value of CEACs awarded to any nuclear plant shall not exceed \$10 per megawatt hour of electric production.”

Section 5.i. allows the Board to establish an alternative compliance payment (“ACP”) as a substitute or the requirement to purchase and retire CEACs. ACPs are an important protection against excessive costs to ratepayers. Rate Counsel recommends the following changes to this provision, to make ACPs mandatory and change its focus to consumer protection:

- b. The board ~~may~~ shall establish an alternative compliance payment to enable basic generation service providers and electric power suppliers to comply with the requirements of subsection a. of this section, and lead to an provided

~~that the alternative compliance payment levels are established at a level sufficient to incentivize the development of efficient, commercially available, new clean electricity production facilities-market. The alternative compliance payment shall be set by the Board in an annual process on a rolling five-year basis. The alternative compliance payment shall decrease for each and every year of the rolling five-year schedule.~~

Section 9.b. of the bill requires the Board to develop and implement a program or programs to “promote the development and deployment of zero- or reduced-emission technologies to cost-effectively meet the State’s reliability requirements for electric capacity” Rate Counsel has three concerns about this proposal. First, it contemplates additional subsidies for electric capacity, which would be in addition to the State’s existing program and the new CEAC program, which are paid based on energy generation. Second, it appears to contemplate ratepayer-funded research and development, which is more appropriately funded by sources other than ratepayers, such as federal funding, the State’s General Fund, and private industry. Third, by including reduced-emission technologies in addition to zero-emission technologies as potential beneficiaries of the mandated programs, this provision as proposed, opens the door to ratepayer funding of fossil-fueled technologies that are claimed to be more fuel-efficient. For these reasons, section 9.b should be deleted from the bill.

We hope you will consider our comments. Please let us know if you have any questions. We very much appreciate the opportunity to share our comments on behalf of the State’s ratepayers. Please feel free to contact our office if you have any questions. Thank you for your attention to these important matters.

Sincerely,

/s/ Brian O. Lipman

Brian O. Lipman
Director, Division of Rate Counsel

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