



State of New Jersey  
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December 8, 2021

Members of the Senate Environment and Energy Committee  
P.O. Box 098  
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**RE: S4214 (Requires Division of Rate Counsel to Consider Environmental Impacts of Proposed Rate or Service Measure when Representing Public Interest in Certain Proceedings and Appeals)**

Members of the Senate Environment and Energy Committee:

I write on behalf of the Division of Rate Counsel regarding S4214 (Requires Division of Rate Counsel to consider environmental impacts of proposed rate or service measure when representing public interest in certain proceedings and appeals), which is up before the committee on December 9, 2021. We have significant concerns about this bill, especially its significant financial impact and removal of protections for New Jersey's ratepayers.

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, which is comprised of a staff of experienced utility attorneys, is a party in cases where New Jersey utilities seek changes in their rates or services. Rate Counsel does this by intervening in almost every case before the Board of Public Utilities (BPU) and many others at the Federal Energy Regulatory Commission (FERC). We review all the filings, retain experts and provide input on a variety of issues including, accounting, return on equity, and depreciation. These issues can equate to significant charges to ratepayers, and our office ensures that ratepayers' interests are protected. The majority of cases result in a settlement of the issues. In cases where the parties cannot settle, a full record is created before the BPU, with Rate Counsel presenting evidence and analysis on behalf of ratepayers. 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. This is done not only by testifying here on proposed bills that impact ratepayers, but also participating in multiple stakeholder meetings before the BPU and at PJM. Often Rate Counsel is the only consumer voice at these proceedings and is able to present a perspective that would otherwise not be part of the discussion.

This bill directs the Division of Rate Counsel (“Rate Counsel”) to consider the climate and environmental impacts, including, among other things, the social cost of carbon, in its handling of some cases, and to prioritize cases that have the most potential to affect the climate and the environment. Rate Counsel opposes this bill for several reasons. First, Rate Counsel already considers the impact on climate change and the environment as part of its analysis when representing the State’s utility ratepayers. Indeed, Rate Counsel has agreed to many programs in part because of the environmental benefits they provide. For example Rate Counsel is currently working with the utilities and BPU Staff to refine the New Jersey Cost Test, which is a tool that takes into account emissions savings when looking at the costs and benefits of energy efficiency programs. Rate Counsel has continually supported energy efficiency programs despite their increased upfront cost to ratepayers, since at least 2007, recognizing their environmental benefits. Rate Counsel has also taken into account the environmental benefits of offshore wind and other renewable energy programs when signing off on settlements providing for ratepayer contributions to those programs. Given the substantial contribution ratepayers have already made to such programs, legislation is not necessary to assure that our office considers these issues.

Second, Rate Counsel’s core mission is to represent the economic interests of New Jersey ratepayers. Other organizations and state agencies already exist to represent environmental causes as their primary focus. Many of those organizations are involved in matters before the BPU. Moreover, these issues are included in the powers of the Board of Public Utilities under N.J.S.A. 48:2-23. Rate Counsel’s role, on the other hand, is to assure that costs are considered and are fairly allocated when environmental initiatives affect utility rates. In the decades of Rate Counsel’s existence, Rate Counsel’s independent input has been valued by ratepayers, policy makers, federal and state officials and environmental and community organizations. While Rate Counsel should and does consider the environment, its primary focus should remain the customers who cannot afford their utility bills, and the companies that are downsizing or leaving the State because of the high cost of energy. Rate Counsel also plays an important role in assuring that the state’s clean energy expenditures, which are funded in large part by ratepayers, are cost-effective. If the state spends too much on some clean energy projects, there will be less money to spend on other projects. Ratepayers are not an infinite source of money, and Rate Counsel exists to protect their interests.

As part of its role, Rate Counsel also encourages the utilities and the BPU to evaluate other potential avenues to fund clean energy initiatives that do not focus as heavily on ratepayer contributions. While alternative funding initiatives may require more time and creativity, they must be explored. These avenues could include funding through private market investment or federal funding which will reach the state as a result of the recently-passed federal Infrastructure Investment and Jobs Act. Ratepayers are a captive audience and while ratepayer subsidies are a relatively quick and easy strategy to fund clean energy, Legislators must be aware that ratepayer

subsidies are also an expensive way to fund clean energy since New Jersey is one of four states where utilities earn a return on many of their clean energy investments. It is also significantly more regressive than other means of funding these programs, as low income residents pay the same rates as higher income ratepayers and thus may end up having to devote a higher percentage of their income to paying their electric bills.

While it is appropriate for Rate Counsel to consider the environment, this bill appears to be an attempt to change Rate Counsel's core mission and place limits on its ability to protect ratepayers' economic interests. Rate Counsel's determinations on how to represent ratepayers' interests would be subject to second guessing by third parties. Further, by requiring Rate Counsel to "prioritize" cases based on environmental impact, the bill also invites second-guessing by others of Rate Counsel's decisions on how to manage its case load and resources. These changes would compromise Rate Counsel's ability to act independently in a way that best represents the interests of the State's utility ratepayers.

We are at a pivotal time with respect to New Jersey's energy policy and have an ambitious agenda aimed at achieving sustainable reductions in greenhouse gas emissions while retaining safe, adequate and proper utility service at just and reasonable rates. At the same time, however, recent studies show that nearly 4 in 10 New Jersey households struggle to pay for basic necessities, making affordability a necessary priority when crafting energy policy. Adding to this struggle is a pandemic in which thousands of utility customers are in arrears (approximately over \$800 million as of September 30, 2021). Throughout this time, utilities continue to ask for rate increases and to collect subsidies and other increases for various projects. If Rate Counsel is required to shift its focus, there will be no one to fully look out for these struggling customers.

For all of these reasons, we urge you to not pass this bill out of committee.

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.

**Respectfully,**

*/s/ Brian O. Lipman*

**Brian O. Lipman, Director  
NJ Division of Rate Counsel**

cc:

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