

PRESS RELEASE

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Citizens Actions Groups File Litigation In NJ Appeals Court Citing New Jersey BPU Exceeded Its Statutory Authority and Violated Ratepayers Rights to Due Process By Issuing Awards to Attentive Energy and Invenergy as Part of the NJBPU Third Solicitation for Offshore Wind

Two Citizens Action Groups filed a Brief on January 2, 2025, in support of the Appeal of the New Jersey Board of Public Utilities (“NJBPU”) Third Round award for Offshore Wind Renewable Energy Certificates (ORECs) to Attentive Energy Wind LLC (“Attentive”) and Invenergy Offshore Wind LLC. The litigation was filed by Attorney Bruce Afran, Princeton, NJ representing Defend Brigantine Beach NJ.org and Protect Our Coast NJ.org. The legal action represents a fundamental challenge to the NJBPU’s ability to subsidize an entire new electric generation industry on the backs of New Jersey ratepayers.

The brief states that the NJBPU exceeded its statutory authority by failing to limit its cost-benefit analysis to only the State of New Jersey and only relying on worldwide impacts rather than a state-based analysis. In addition, using an analysis provided by The Levitan Group, the Board arbitrarily accepted, without explanation, a cost-benefit analysis that used discount factors that understated the costs and overstated the benefits of the Attentive and Invenergy Offshore Wind projects. As a result BPU violated the law in concluding that benefits of the projects outweighed costs to NJ ratepayers.

On January 10, 2024, the NJBPU’s independent consultants, Levitan & Associates issued their report and recommendations. Without debate, discussion or any witness from Levitan, the NJBPU unanimously accepted the Attentive and Invenergy proposals. Fourteen days later, on January 24, 2024, the NJBPU approved OREC awards and contracts for Invenergy Wind LLC and Attentive Energy LLC for two power projects in the N.Y. Bight, a region in the Atlantic Ocean off the New Jersey coast and issued two written decisions and orders.

The New Jersey Rate Counsel submitted two opinion letters on the Attentive and Invenergy proposals, but the letters were completely blacked out pursuant to the NJBPU’s practice of keeping all information from the proposed wind developers confidential and hidden from public ratepayer review. Due Process and the Administrative Procedure Act were violated by NJBPU’s failure to accept public comment following the issuance of the Levitan Report. The inability of the public and experts, such as plaintiffs’ expert Whitestrand Consulting LLC, to comment on the Levitan Report prior to the Board’s vote is among the grounds for the asserted Due Process violations.

“NJBPU illegally delegated its decision-making powers to a private consultant, The Levitan Group, and failed to engage in and independent adjudication and fact-finding as to the OREC awards and their associated ratepayer impacts,” stated Bruce Afran, Attorney for the Plaintiffs. “BPU’s findings must be vacated because the NJBPU arbitrarily accepted, without explanation, a cost-benefit analysis that used discount factors that understate the costs and overstate the benefits of the Attentive and Invenergy projects,” he said.

In addition, the BPU failed to include in its analysis of ratepayer subsidies the added cost of inflation adjustment which can automatically increase OREC prices by up to 15%, putting even more burden on the ratepayer. “It is clear to us that the NJBPU failed to act as an independent agency in adjudicating the awards to Attentive Energy and Invenergy and, instead, acted as an advocate for Governor Murphy’s political agenda of pursuing offshore wind energy no matter what the cost”, stated Keith Moore, Head of Government Affairs for Defend Brigantine Beach, NJ.org