



Save Long Beach Island, Inc.
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June 6, 2026

Honorary Jennifer Davenport
Attorney General of New Jersey
Richard J. Hughes Justice Complex
25 Market Street
Trenton, New Jersey 08625

**Re: State of New Jersey’s Challenge to the Department of the Interior–
TotalEnergies Settlement Concerning Lease OCS A-0538.**

Dear Attorney General Davenport:

This letter is on behalf of Save Long Beach Island Inc.(hereinafter, “SLBI”), a non-partisan, charitable organization of over 10,000 supporters intent on preserving our natural and lovely shore and marine environment, and pursuing sensible energy policies for the State. I believe we can also speak for millions more who prize the Jersey Shore and are about to descend upon it.

Toward that end, we have strenuously opposed a number of offshore wind projects based on substantial, sound, professionally gathered information regarding their lack of benefit and extreme monetary and environmental costs.

When Governor Sherrill took office we provided that information and were encouraged by Executive Order No. 2 on energy which focused on energy reliability and affordability, neither of which is provided by offshore wind projects, and appeared to pivot away from offshore wind towards more sensible and less costly sources like advanced nuclear, natural gas and solar.

So, we were disappointed to see the State departing from the practical, sensible approach in that Executive Order by supporting the lawsuit seeking to stop the arrangement reached regarding the Attentive Energy projects and the TotalEnergies company to cancel that offshore wind lease.

SLBI suggests that the Attorney General reconsider New Jersey’s participation in this lawsuit. The new direction it signals towards the State’ energy approach is troubling.

We believe that the approach taken by the Administration for the agreement is sound and frankly are hopeful that it is applied to other projects including the ill-conceived project contemplated directly off Long Beach Island. The Complaint claims are problematic for numerous legal and factual reasons, including but not limited to the following.

Legal Issues with the States' Case

First, the lawsuit underplays the key fact that Attentive/TotalEnergies agreed to the settlement. This was not a situation in which the federal government unilaterally seized a lease over the lessee's objection and the lessee sought judicial relief. The lease belonged to Attentive Energy. Any contract claim belonged to Attentive. The party directly affected by the lease rights and compensation is not objecting to the settlement.

Second, the provisions of the Outer Continental Shelf Lands Act (OCSLA) cited in the States' Complaint contemplate scenarios wherein the federal government unilaterally seeks to cancel the lessee's lease, and as such, proper due process, right to hearing, etc., is afforded to the lessee. But this is not a situation of unilateral cancellation over the objection of the lessee. Indeed, the TotalEnergies settlement agreement much more closely approximates 30 CFR §585.435 functionally, which provides for voluntary relinquishment of a lease or grant. Those regulatory provisions, appropriate for relinquishment of a lease, afford the lessee no entitlement to hearing or other procedures attendant a unilateral, adversarial cancellation by the government. The Department of Interior-TotalEnergies settlement agreement is substantively and functionally much more consonant with 30 CFR § 585.435 (relinquishment) than 30 CFR § 585.422. Thus, the States are mischaracterizing the Settlement Agreement as a unilateral cancellation, when in reality, the lessee bargained for, and fully consented to, the arrangement.

Third, the States' Judgment Fund theory fails because payment **is not** "otherwise provided for" within the meaning of 31 U.S.C. § 1304(a). The States invoke the incorrect statutory provision for unilateral lease cancellation. The States cite §1334 which is nonspecific and originally contemplated for oil and gas, but §1337 is the relevant provision for renewable energy, and § 1337 does not contain a compensation requirement for lessees. Even assuming §1334(a)(2) has relevance to renewable-energy leases, the States' theory still fails because that provision addresses unilateral government cancellation over the lessee's objection, not a consensual settlement in which the lessee agreed to relinquish its lease rights in exchange for consideration.

Fourth, even if, hypothetically, the States were correct that OCSLA provides a substantive framework for lease cancellation compensation, that does not necessarily mean payment is "otherwise provided for." Nor does the Judgment Fund Act require a lawsuit already to have been filed; 28 U.S.C. § 2414 expressly permits compromise settlements of claims referred to the Attorney General for defense of imminent litigation. Here, the settlement indicated that Attentive would have pursued a Court of Federal Claims action if BOEM suspended or prevented development of the lease. Attentive provided consideration by surrendering lease rights and covenanting not to sue. The fact that TotalEnergies preferred settlement does not make the agreement a sham as States assert in their Complaint. Settlements are customarily mutually accepted resolutions. The States were not parties to the monetary claim, the payment was not made to them, and abrogating the payment would not redress their alleged

energy, climate, or reliability injuries because it would not force TotalEnergies to develop the project.

Electric Bill Impacts – Higher Costs, not Lower

The Attentive Energy projects are not consistent with the energy affordability direction in Executive Order 2 as they will increase, not “ultimately lower costs for our residents” as claimed in the June 2, 2026 Press Release. A detailed economic analysis by Whitestrand Consulting LLC¹ based on current state subsidy levels for these projects shows the following impacts on ratepayer bills.

Increased Electric Bills from the Attentive Energy One and Two Projects – in dollars per year and percentages (in parenthesis).

Sector	Attentive Energy One	Attentive Energy Two	Combined
Residential	\$110 (6.4%)	\$107(6.2%)	\$217(12.6%)
Commercial	\$935 (7.6%)	\$908 (7.4%)	\$1843 (15.0%)
Industrial	\$7,846 (8.6%)	\$7,613 (8.3%)	\$15459 (16.9%)

The projects combined would increase average electric bills by 15% . This assumes they would be eligible for federal Investment Tax Credits. Without the credits, which were recently repealed, they would need additional ratepayer subsidies of \$50-60 per megawatt-hour, raising bills another 6% to a staggering 21%.

The cumulative added cost to New Jersey ratepayers above PJM market rates over the lifetime of the projects is \$20 billion in present value. As a result of this generosity the developer would get an excessive rate of return on its investment of at least 22% per year. By contrast, a regulated utility is allowed a return on its invested capital of only 9% a year.

The New Jersey Offshore Wind Economic Development Act requires projects to demonstrate a benefit to cost ratio greater than one. The benefit to cost ratio for these projects is a meager 0.2.

Environmental Impacts

The Attentive Energy projects would not provide “clean” energy.

It is unfortunate that the current process for these projects does not require even a draft environmental analysis before lease areas are sold and state subsidies are offered. But even based on the limited information available the projects pose significant environmental problems.

The lease area and surrounding waters are increasingly used by the critically endangered North Atlantic right Whale (NARW). As stated in the project Site Assessment Plan of January 20th 2023, ”Foraging behaviors were most commonly observed in the New York Bight area by

NARW, humpback whales, fin whales, and minke whales, suggesting that the New York Bight is becoming a significant feeding ground for migrating whales (Murray et al. 2022; King et al. 2021)”. The whales would be impacted by the underwater noise from the pile driving of foundations and the long-term operation of the wind complex as a whole. BOEM has repeatedly acknowledged that the loss of even a single North Atlantic right whale can result in population-level effects that threaten the species viability.

A large section of the project’s lease area intersects the Hudson Canyon to Ambrose Southeastern vessel Fairway, Avoidance of the turbines would cause a reduction in the width of that fairway. National Academy of Science reports acknowledge that on board radars can be compromised by operational wind turbines, creating navigation safety concerns.

The project would displace significant commercial fishing activity in the lease area, including scallops, surf clams and ocean quahogs from cable laying, turbine foundation construction and operational turbine noise. As shown in Table 3.6.1–13 of the BOEM programmatic environmental impact statement for the New York Bight, significant revenue has accrued from the lease area from dredge scallop fishing, \$ 61,792,000 from 2008 to 2021.

Attentive Energy would have placed industrial-scale offshore wind facilities in an area heavily utilized by the scallop fleet and overlapping important New York Bight scallop fishing grounds. Commercial fishing organizations, including the Fisheries Survival Fund, warned BOEM that the project and broader New York Bight development could adversely affect scallop resources and fishing operations. Project export cable route studies also identified scallops and sensitive benthic habitats as important environmental concerns requiring review.

BOEM and Attentive Energy have identified commercial and recreational fisheries as major stakeholders requiring mitigation and compensation programs.

Recommendations

The State should reconsider its participation in this lawsuit and continue to pursue the pragmatic, sensible energy direction outlined in Executive Order 2.

Toward that end we would be glad to meet with staff to provide constructive energy supply suggestions and further explain our concerns regarding the offshore wind projects.

Alternatively, we will be forced to pursue our interests by intervening in this lawsuit in support of the TotalEnergies agreement method.

A response to our recommendations and clarification of the State’s energy policy direction as regards offshore wind projects would be appreciated.

Sincerely,

Bob Stern

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CC; Governor Mikie Sherrill.

About Save Long Beach Island, Inc.

Save LBI is a not-for-profit, non-partisan organization that has been active in ongoing litigation and other efforts to protect the coastal and marine environment from the senseless industrialization of our oceans, while promoting affordable and reliable electricity and practical climate initiatives. The organization is led by Beach Haven, N.J. resident Bob Stern, a Ph.D. scientist and a former manager of the U.S. Department of Energy office responsible for overseeing environmental reviews related to energy projects and of the Bureau of Air Quality Planning within the New Jersey DEP. For more information on Save LBI and its efforts, please visit [SaveLBI.org](https://www.SaveLBI.org).

¹ White Strand Consulting LLC, Economic Analysis of the Proposed Attentive Energy One and Community offshore Wind Projects, September 2024.