



(“OWEDA”) and to proceed with an initial Solicitation (the “Solicitation”) of offshore wind (“OSW”) capacity as a first step in meeting the State’s goal of 3,500 MW of OSW capacity by 2030 (now 7,500 MW by 2035). In support of this Petition, the Company respectfully shows:

**I. BACKGROUND**

1. Governor Murphy’s Executive Order No. 8 called upon the Board to fully implement OWEDA and to proceed with an initial Solicitation (the “Solicitation”) of offshore wind (“OSW”) capacity as a first step in meeting the State’s goal of 3,500 MW of OSW capacity by 2030 (now 7,500 MW by 2035).

2. Ocean Wind submitted an application on December 28, 2018 (the “Application”) in response to the Solicitation.

3. In its June 21, 2019 Order (the “June 21 Order”), the Board considered the applications received in the Solicitation and approved the Project, granting Ocean Wind QOWP status and establishing Ocean Wind’s Annual OREC Allowance of 4,851,489 MWh. The June 21 Order also established an OREC pricing schedule for each energy year in which the Project is in operation over a 20-year OREC term.

4. In addition, by Order dated March 24, 2021, the Board approved PSEG Renewable Generation, LLC’s acquisition of a 25% equity interest in Ocean Wind (which transaction closed on April 12, 2021). Thus, Ocean Wind is now owned indirectly by Orsted North America, Inc. (75%) and by PSEG Renewable Generation, LLC (25%).

5. Since the issuance of the June 21 Order, Ocean Wind has been in the planning, permitting and pre-construction phase of the Project. A significant aspect of these preconstruction activities concerns the onshore cable route. The onshore cable route is necessary to bring the renewable electricity from the wind turbines in the Atlantic Ocean to interconnect

with the existing electricity grid onshore, to bring the benefits of renewable wind generation to residents and businesses in New Jersey.

## II. JURISDICTION AND REGULATORY STANDARD FOR APPROVAL

6. Ocean Wind is filing this Petition pursuant to *N.J.S.A.* 48:3-87.1(f), which provides, *inter alia*:

Notwithstanding the provisions of any other State law, rule, or regulation to the contrary, a qualified offshore wind project or an open access offshore wind transmission facility approved by the board pursuant to this section shall, after consultation with a municipality, county, or other political subdivision of the State, or any agency, authority, or other entity thereof:

\* \* \*

(2) be authorized to obtain easements, rights-of-way, or other real property interests on, over, or through any real property other than public streets, thoroughfares, or rights-of-way, owned by a municipality, county, or other political subdivision of the State, or any agency, authority, or other entity thereof, that are reasonably necessary for the construction or operation of a qualified offshore wind project or an open access offshore wind transmission facility. If a qualified offshore wind project or an open access offshore wind transmission facility is unable to obtain an easement, right-of-way, or other real property interest from a municipality, county, or other political subdivision of the State, or any agency, authority, or other entity thereof, **after 90 days of a written request therefor to the applicable entity, the qualified offshore wind project or open access offshore wind transmission facility, as the case may be, may file a petition with the board seeking authority to obtain the easement, right-of-way, or other real property interest.**

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Following the public hearing and receipt of public comment on the petition, **the board shall determine whether the requested easement, right-of-way, or other real property interest are reasonably necessary for the construction or operation of the qualified offshore wind project** or open access offshore wind transmission facility.

*N.J.S.A.* 48:3-87.1(f)(2)(emphasis added).

The statute further provides that, should the Board approve a QOWP's Petition under this subsection and

determines that the requested easement, right-of-way, or other real property interest are reasonably necessary for the construction or operation of the qualified offshore wind project or open access offshore wind transmission facility, **the board shall issue an order approving the acquisition of the requested easement, right-of-way, or other real property interest, and notwithstanding the provisions of any other State law, rule, or regulation to the contrary, such order shall effectuate the qualified offshore wind project's or the open access offshore wind transmission facility's property interest and shall be recorded by the appropriate county recording officer at the request of the qualified offshore wind project** or open access offshore wind transmission facility.

*N.J.S.A. 48:3-87.1(f)(2)(emphasis added).*

7. This section of OWEDA also provides that a QOWP:

**(3) be authorized to file a petition with the board seeking a determination that all municipal or county approvals, consents, or affirmative filings with other public entities required to construct or operate a qualified offshore wind project or an open access offshore wind transmission facility are preempted and superseded, upon a finding by the board that such municipal or county approvals, consents, or affirmative filings are reasonably necessary for the construction or operation of the qualified offshore wind project** or the open access offshore wind transmission facility. If the board makes a determination pursuant to this paragraph preempting a municipal or county action that is a condition of the issuance of a permit or other approval of the Department of Environmental Protection or any other department or agency of the State, then notwithstanding the provisions of any other State law, rule, or regulation to the contrary, the department or agency, as applicable, may act without prior municipal or county approval, consent, or affirmative filing. To the extent that a municipal or county approval, consent, or affirmative filing involves the acquisition of an easement, right-of-way, or other real property interest, the procedures set forth in paragraph (2) of this subsection shall apply.

*N.J.S.A. 48:3-87.1(f)(3)(emphasis added).*

8. Beginning in 2019, Ocean Wind commenced discussions and written communications with Cape May County about the Project, including the consents and property rights required from and with respect to the County. Because the Project had not been able to secure the required consents and property rights, on September 28, 2021, Ocean Wind submitted a formal,

written request to Cape May County concerning the property rights, consents, and associated actions it required from the County. *See* Testimony of Madeline Urbish, Exhibit OW-3. More than 90 days have passed since the September 28, 2021 letter, and Ocean Wind has been unable to obtain the required easements, consents and associated actions from Cape May County.

9. Accordingly, Ocean Wind is filing this Petition, along with its supporting pre-filed testimony, exhibits and attachments, pursuant to *N.J.S.A.* 48:3-87.1(f)(2) and (3). Specifically, Ocean Wind requests a Board Order that finds that certain easements over property owned by Cape May County are reasonably necessary for the construction and operation of the Ocean Wind 1 QOWP; and that certain County consents and approvals are preempted and superseded as they are reasonably necessary for the construction and operation of the Ocean Wind 1 QOWP. Specifically, the County consents and approvals are required for the issuance of certain environmental permits, approvals and licenses by the New Jersey Department of Environmental Protection (“NJDEP”) in, and with respect to, property (including portions of the road right-of-way (“ROW”<sup>1</sup>)) located in Cape May County.

10. This Petition raises issues of first impression under OWEDA.<sup>2</sup> However, in similar contexts involving public utility projects, both the Board and the courts of this State have long-held that the welfare of the public generally transcends the municipal borders and local municipal concerns. As explained by the New Jersey Supreme Court in *Petition of Monmouth Consolidated Water Company*, 47 *N.J.* 251, 258 (1966), the Board’s jurisdiction is appropriate

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<sup>1</sup> Ocean Wind has a statutory right to construct the underground electric facilities in the public road ROW. *See N.J.S.A.* 48:3-87.1(f)(1). *See* discussion below at Paragraph 24.

<sup>2</sup> On February 4, 2022, Ocean Wind filed a petition with the Board under *N.J.S.A.* 48:3-87.1(f) with respect to Ocean City. That matter is pending before the Board in Docket No. QO22020041. The instant filing only addresses issues related specifically to property owned by or under the jurisdiction of Cape May County.

and important because local officials cannot be expected to balance local interests against the greater good of the public.

11. For the reasons set forth in this Petition and supporting testimony, exhibits and attachments, the relief requested herein with respect to the onshore portion of the Project is reasonably necessary to allow Ocean Wind to construct or operate the Project.

### **III. DESCRIPTION OF THE PROJECT AND THE ONSHORE CABLE ROUTE**

12. The Project is an approximate 1,110 MW offshore wind farm. The offshore wind turbines will be located in the United States Department of the Interior, Bureau of Ocean Energy Management (“BOEM”) lease area OCS-A-498. The wind turbines will be connected to an offshore substation. From the offshore substation, a transmission cable installed under the seabed will bring the electricity onshore.

13. As discussed in the direct testimony of Ocean Wind witnesses Jason Kalwa (Exhibit OW-1) and Pilar Patterson (Exhibit OW-2), an undersea cable will come ashore in the City of Ocean City (“Ocean City”), making landfall at the beach lots owned by Ocean City via horizontal directional drilling (“HDD<sup>3</sup>”) at 35th Street in Ocean City. The underground cable will travel west to Bay Avenue, north on Bay Avenue to Roosevelt Boulevard (County Route 623), west across Peck Bay<sup>4</sup> (undeveloped area) at Roosevelt Boulevard Bridge (via HDD) and then continue on within the Roosevelt Boulevard ROW, turning north on State Route 9 (North Shore Road) to the proposed substation property near the decommissioned B.L. England

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<sup>3</sup> HDD is a trenchless method of construction that is accomplished in phases using a specialized horizontal drilling rig with ancillary tools and equipment. The HDD method involves drilling a hole under a waterbody or other features and subsequently pulling a prefabricated segment of pipe back through the hole. No surface impacts are anticipated, and the surface use will remain the same after construction.

<sup>4</sup> The crossing is where Crook Horn Creek meets Peck Bay.

Generating Station (“B.L. England”), in Upper Township, New Jersey. This route is referred to as the “Preferred Route” in this Petition.

14. As also discussed in the testimony and exhibits of Pilar Patterson (Exhibit OW-2), Ocean Wind conducted a comprehensive analysis to determine the best route for the onshore portion of the Project.

15. Ocean Wind first examined potential points of interconnection. Initially, a total of 15 interconnection points were reviewed for the Project. Based on further study, Ocean Wind identified three potential interconnection points. After one of these potential interconnection points was eliminated, the Project developed offshore and onshore export cable route corridors, landfall options and export cable routes. A main goal of this process was to site onshore components within previously disturbed areas and existing road ROWs to the maximum extent practicable to minimize environmental impacts.

16. Ultimately, the site of the former Oyster Creek nuclear generating station (in Lacey Township) and the B.L. England facilities were selected as interconnection points for the Project. The onshore cable facilities at issue in this matter are those required for the interconnection at B.L. England.

17. Ocean Wind then undertook additional analysis to determine opportunities and constraints for the offshore and onshore export cables. Resource maps were developed using existing GIS resource data. Existing resources were reviewed and included bathymetry, geology, contaminated sediments, commercial and recreational fishing activities, navigation channels, anchorage areas, shipping activities, restricted areas, public open space, environmentally sensitive areas, cultural and historical resources, existing infrastructure, surface waters (wetlands

and watercourses), and threatened and endangered species, as these resources are likely to impact the development, permitting, and construction of the Project.

18. The resource maps were used to identify and develop Study Areas, corridors, and route options. Corridors were selected to take advantage of opportunities and avoid constraints where possible. Route options were then developed based on resource opportunities and constraints in combination with engineering requirements. Onshore routes that crossed railroad ROWs were eliminated based on engineering and construction challenges; and routes that crossed inlets, wildlife refuges, and wildlife management areas were eliminated due to sensitive habitats and permitting requirements.

19. Several landfall options were identified within each Study Area during the desktop study. These landfall sites were then reviewed to see if they met design and construction criteria. If the landfall did not meet those criteria it was removed from further evaluation. The remaining landfalls were then screened based on real estate availability, windshield surveys, and meetings with the local municipalities.

20. Ocean Wind ultimately identified several potential landfall sites and routes to B.L. England. These included three routes through Ocean City, including the Preferred Route; a route through Great Egg Harbor Inlet, the Shipping Channel and Great Egg Harbor Bay; a landfall in Strathmere, within Upper Township, Cape May County, continuing west to Sea Isle City and to the substation; and a landfall in Sea Isle City, continuing west to the substation at B.L. England. *See Exhibit OW-2.*

21. Based on the detailed analysis discussed in Pilar Patterson's direct testimony (Exhibit OW-2), Ocean Wind determined that the Preferred Route was the best alternative. The Preferred



Route has the least impacts to natural resources, including wetlands and water bodies, and residential and historic properties.

22. Specific to properties owned by Cape May County, Ocean Wind has identified two alternatives within the Preferred Route for the crossing of Peck Bay at Crook Horn Creek. Ms. Patterson discusses these two alternatives, which are designated as Alternatives 1 and 2, in her testimony (Exhibit OW-2). Mr. Kalwa also discusses issues related to the construction of the facilities at the crossing of Peck Bay in his testimony (Exhibit OW-1).

#### **IV. CONSTRUCTION AND INTERCONNECTION**

23. The details of the construction, engineering and interconnection of the onshore cable are discussed in the direct testimony of Jason Kalwa (Exhibit OW-1). As Mr. Kalwa explains, the Project will require an underground electric transmission cable that will come ashore underground and run underground within Cape May County public road ROWs, as well as under and through properties owned in fee by Cape May County for which easements are required. The cable will connect to a substation, comprised of switchgear and transformers, which, in turn, will interconnect with the PJM grid.

24. In regard to the portion of the onshore cable that will be installed within the public road ROWs, *N.J.S.A. 48:3-87.1(f)(1)* provides:

(f) Notwithstanding the provisions of any other State law, rule, or regulation to the contrary, a qualified offshore wind project or an open access offshore wind transmission facility approved by the board pursuant to this section shall, after consultation with a municipality, county, or other political subdivision of the State, or any agency, authority, or other entity thereof:

(1) have authority to place, replace, construct, reconstruct, install, reinstall, add to, extend, use, operate, inspect, and maintain wires, conduits, lines, and associated infrastructure, whether within, under, or upon the public streets, thoroughfares, or rights-of-way of any municipality, county, or other political subdivision of the State, or any agency, authority, or other entity thereof, provided

that the wires, conduits, lines, and associated infrastructure are located underground, except to the extent necessary as determined by the board.

Notwithstanding the provisions of any other State law, rule, or regulation to the contrary, no municipality, county, or other political subdivision of the State, or any agency, authority, or other entity thereof, shall prohibit, or charge a fee for, the use of public streets, thoroughfares, or rights-of way for the purposes set forth in this subsection, other than a fee for a road opening permit, and the issuance of a road opening permit shall not be withheld, except for bona fide public safety reasons;

Accordingly, Ocean Wind does not require BPU approval (or County consent) to install the underground portions of the onshore cable within the public ROWs in Cape May County. Ocean Wind has included a description of this portion of the Project in this filing so that the Board has a complete record of the planned construction through Cape May County. *See* Mr. Kalwa's direct testimony, Exhibit OW-1. Nonetheless, Ocean Wind recognizes that *N.J.S.A.* 48:3-87.1(f)(1) is a recently-enacted amendment to OWEDA and the Board's interpretation of it may differ. Accordingly, if the Board interprets *N.J.S.A.* 48:3-87.1(f)(1) to require its approval of a QOWP's use of the public road ROW, Ocean Wind requests that the Board make such a determination and conclude that Ocean Wind's use of the public road ROW as set forth in this Petition is reasonably necessary for the construction and operation of the Project.

25. The portion of the onshore cable at issue in this Petition will be constructed underground. As Mr. Kalwa explains in his testimony, the transmission cable installation will likely be a configuration of underground duct banks where the cable is installed in conduits to reduce the footprint of activities and ensure they can be located within existing roadways, to the extent possible, to minimize disturbance using conventional construction activities utilizing standard traffic management arrangements.

26. The export cable voltage is expected to be 275 kV. The grid interconnection cable (i.e., the cable at the point of the interconnection with the substation in Upper Township) is

expected to be 138 kV. A short portion of the interconnection cable (which is not at issue here) will use overhead construction where it interconnects with the substation.

27. The export cable construction will follow typical utility construction techniques. The duct bank portion will mostly involve creating a trench, installing the facilities, and then back-filling and restoring the area (e.g., paving). Construction will utilize the HDD installation method where necessary to minimize impacts. A road opening permit from the Cape May County Board of Commissioners or County Engineer will be required prior to commencing construction on County-owned roads. Once construction is complete, the area will be fully restored.

28. Routine maintenance of the underground cable will be required, much as it is for other existing underground electric facilities. Mr. Kalwa's direct testimony provides additional details of the maintenance of the facilities. *See* Exhibit OW-1.

29. As discussed above, the onshore cable will interconnect with the PJM grid at a substation to be located in Upper Township, New Jersey. Accordingly, an interconnection agreement among Ocean Wind, Atlantic City Electric Company, and PJM has been executed.

**V. EASEMENTS AND ASSOCIATED RIGHTS REQUIRED WITHIN CAPE MAY COUNTY**

30. For the portion of the Preferred Route described as Alternative 1 in the Direct Testimony of Pilar Patterson (Exhibit OW-2), Ocean Wind requires a temporary easement upon, across and under Block 3350.01, Lot 17.01 on the Official Tax Map of the City of Ocean City, totaling 0.257 acres, for use during the construction phase of the onshore export cable. The duration of this temporary easement will be 18 months from the start of construction. A drawing depicting the temporary easement is included in Appendix D to Exhibit OW-2.

31. In addition, for Alternative 1, Ocean Wind also requires a permanent easement upon, across, and under Block 3350.01, Lot 17.01 on the Official Tax Map of the City of Ocean City, approximately 30 feet in width and totaling 0.357 acres, for the construction, reconstruction, installation, operation, maintenance, inspection, patrolling, decommissioning, replacement and repair of a certain onshore export cable and associated equipment and facilities. Please refer to Appendix D to Exhibit OW-2 for the details of the permanent easement. Ocean Wind has confirmed with the NJDEP that no portion of Block 3350.01, Lot 17.01 owned by the County is encumbered with Green Acres restrictions. *See* Direct Testimony of Pilar Patterson, Exhibit OW-2, for additional details concerning the temporary and permanent easements.

32. For the reasons set forth in the direct testimonies of Ms. Patterson and Mr. Kalwa, these easements are reasonably necessary for both the construction and operation of the Project.<sup>5</sup>

**VI. ENVIRONMENTAL PERMITS REQUIRED FOR CONSTRUCTION WITHIN CAPE MAY COUNTY**

33. Ocean Wind requires consents for the following environmental permits, approvals and licenses for construction within the Cape May County properties and/or County public road ROW:

- New Jersey Department of Environmental Protection (NJDEP) Division of Land Resource Protection (DLRP) permits, including:
  - NJDEP DLRP Multi-Permit Application
  - Waterfront Development Permit
  - Coastal Areas Facility Review Act (CAFRA) Permit and Coastal Consistency Determination

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<sup>5</sup> As discussed in Ms. Patterson's direct testimony, for Alternative 2 at the Roosevelt Boulevard Bridge crossing, all construction would be within the County public road ROW and thus no easements would be required.

- Coastal Wetlands Permit
- Freshwater Wetlands Permit, Transition Area Waiver(s)
- Geotechnical Survey Investigation Permits (if additional surveys required)
- Tidelands license from the NJDEP Bureau of Tidelands Management where Cape May County is the upland owner.
- Cape Atlantic Conservation District Erosion and Sediment Control Approval for the cable installation.
- NJDEP Short Term de Minimis General Permit (B7) for groundwater discharge resulting from construction dewatering activities
- Temporary Dewatering permits for water withdrawal from construction dewatering activities

In addition, once construction is underway, additional NJDEP permits or approvals may be required. Please see the direct testimony of Pilar Patterson (Exhibit OW-2).

34. Ocean Wind must have the legal authority and/or consent from Cape May County to perform the Project activities on the properties owned by the County and within the County's road ROW for the NJDEP to issue the permits for the Project. As discussed in Ms. Patterson's direct testimony, Cape May County has been unwilling to provide consents needed for any NJDEP permit applications. Accordingly, Ocean Wind requests that the Board preempt and supersede Cape May County's municipal consent with respect to any and all permits, approvals and licenses the Project must receive from the NJDEP, and conclude that the Project may obtain the necessary permits and approvals from the NJDEP.

**VII. OCEAN WIND'S ATTEMPT TO SECURE CONSENTS AND PROPERTY RIGHTS FROM CAPE MAY COUNTY PRIOR TO FILING THIS PETITION**

35. Starting in 2019, Ocean Wind has been engaged in meaningful communications with Cape May County regard the Project and the consents and property rights required from and with

respect to Cape May County. Ocean Wind witness Madeline Urbish discusses these issues in detail in her pre-filed direct testimony. *See* Exhibit OW-3.

36. On August 21, 2019, County Engineer Robert Church authorized the Project to survey Cape May County roads for purposes of wetlands delineation. Then on February 7, 2020, County Engineer Church confirmed the County's jurisdiction over relevant roads for the proposed Project cable route. On February 28, 2020, a call took place between Project personnel and Cape May County representatives in which County Engineer Church stated that he had been instructed to provide the Board of Commissioners with an example license agreement for private utilities to utilize Cape May County roadways, as potentially applicable to Project needs. On July 13, 2020, a virtual meeting took place between Project representatives and Cape May County officials, including Commissioner Director Gerald Thornton and Commissioner Will Morey, to discuss the overall Project status and the likely need for easements within the County to further Project progress. Cape May County representatives advised Ocean Wind that the County would not grant easements until both Ocean City and Upper Township had agreed to their respective easements for the Project. On February 1, 2021, County Engineer Church authorized a road opening permit for the Project to survey Cape May County roads for archeological survey purposes.

37. On May 13, 2021, Ocean Wind sent a letter to Gerald Thornton, Commissioner Director of Cape May County. The letter thanked Mr. Thornton for his time and perspectives over the past two years of Project development and previewed a meeting request to discuss next steps. Ocean Wind proposed establishing a team of Ocean Wind representatives from the Project and government leadership representing Cape May County in order to share updates about the Project and discuss benefits the Project could provide to the communities of Cape May County.

38. On September 2, 2021, Ocean Wind submitted a letter to (former) Judge Michael J. Donohue, who was then Chief Administrative Official for the Cape May Board of Chosen Freeholders, requesting a meeting with members of the Cape May County Board of Commissioners to discuss Project updates and certain applications that would be submitted in connection with the Project. It had been conveyed to Ocean Wind that Judge Donohue would be serving as the attorney and point person for the County regarding the Project and its communications with Ocean Wind. The letter explained that Ocean Wind wished to explain the reason for its expected applications and to provide a general overview of the Project status. Ocean Wind followed up with Judge Donohue on September 9, 2021 to request a meeting with the Project team, but Judge Donohue responded that he was at least a couple weeks away from being prepared to meet with Ocean Wind to discuss the Project.

39. On September 28, 2021, pursuant to *N.J.S.A. 48:3-87.1 et seq.*, Ocean Wind sent a letter to Kevin Lare, Acting Administrator for the Board of County Commissioners for Cape May County, copying Gerald Thornton, Commissioner Director, and Leonard Desiderio, Commissioner Vice Director, providing the requisite 90-day statutory notice and requesting the specific approvals, consents and easements from Cape May County that are reasonably necessary for the construction and operation of the Project. The letter provided notice of specific requests related to certain permits, approvals, consents and easements needed for the Project from Cape May County. The letter detailed that Ocean Wind requested Cape May County's consent for the Project to apply for NJDEP DLRP permits and other applicable permits, approvals and licenses, including (i) the NJDEP DLRP multi-permit application; (ii) geotechnical survey investigation permits (if additional surveys are required); (iii) permissions or easements for the NJDEP Bureau of Tidelands Management tidelands grant or license for onshore cable route access across

mapped tidelands (if required); (iv) road opening permits and highway occupancy permits (if required) for specific routes within County rights-of-ways (with specific routes identified); (v) Cape Atlantic Conservation District erosion and sediment control approval for cable installation; (vi) NJDEP temporary dewatering permits for water withdrawal from construction dewatering activities (if required); and (vii) County consent for an application to the NJDEP for a diversion of specified Green Acres property (if required, and specified by block and lot number).

40. After the submission of the September 28, 2021 letter, a representative of PSEG sent an email requesting a meeting with Ocean Wind and the County to discuss the County's internal processes for environmental/land use permitting, the Project's schedule and timing, and DEP permit application requirements. The County responded, stating that Judge Donohue would serve as the County's liaison for the Project and requesting that PSEG and Ocean Wind coordinate scheduling with Judge Donohue.

41. On October 7, 2021, a representative of PSEG emailed the County Board of Commissioners to inform them of the upcoming Ocean Wind Open House, scheduled for November 6, 2021 in Ocean City. The purpose of this open house was to educate the public about the Project and answer questions from the audience both in-person and online.

42. After receiving no response from the County to the September 28, 2021 letter, Ocean Wind again reached out to Mr. Lare and Judge Donohue on October 20, 2021, requesting to schedule a meeting to discuss the Project. Judge Donohue responded that the County was conducting its own due diligence related to the Project and would reach out to Ocean Wind when it was ready to meet. Judge Donohue stated, without prejudice, that the County was willing to assist in technical issues and land-use-needs interactions between Ocean Wind and Cape May County. Ocean Wind responded to Judge Donohue to thank the County for its willingness to



assist Ocean Wind on the technical aspects of the Project while the County continues its due diligence, and to request the County reach out when it would be ready to schedule a meeting.

43. After not hearing back regarding a meeting between Ocean Wind and Cape May County, Ocean Wind submitted a letter to Judge Donohue on December 20, 2021. Ocean Wind reiterated in this letter that it was requesting County consent to Ocean Wind's submission of permit applications to the Division of Land Use at the NJDEP in order to allow for initiation of the environmental review process no later than by January 21, 2022. The letter explained that the County consent will not confer land rights to the Project, but rather will allow for the initiation of environmental review through the state permitting process. In the transmittal email accompanying the letter, Ocean Wind again requested to schedule a meeting with County officials to discuss the Project and potential benefits to the County.

44. On January 6, 2022, Cape May County reached out to Ocean Wind requesting to schedule a preliminary call to discuss logistics for a broader in-person meeting regarding the Project. This preliminary meeting was held via Zoom on January 7, 2022 with representatives of Ocean Wind and Cape May County in attendance. The attendees discussed scheduling a broader meeting and the Project's permitting needs and requests from the County, as previously set forth by Ocean Wind in the September 28, 2021 and December 20, 2021 letters. Following this meeting, Ocean Wind submitted to Cape May County the landowner consent forms needed for the NJDEP environmental permit applications.

45. On January 12, 2022, a broader meeting took place in-person with representatives of Ocean Wind and Cape May County. Attendees on behalf of the County included Gerald Thornton, Director Cape May County Board of Commissioners, Kevin Lare, County Administrator, and Judge Michael Donohue, County Liaison, as well as representatives of

Cultural Heritage Partners (a law firm retained by the County). Ocean Wind and the County agreed at the outset to treat this meeting and future meetings as confidential settlement discussions, and to refrain from publicizing the materials shared during the course of these meetings.

46. On January 24, 2022, counsel for Cape May County contacted Ocean Wind to request dates for a second meeting between the County and Ocean Wind. Counsel for Cape May County explained that the Board of Commissioners would be voting on January 25, 2022 on whether to grant consent in connection with Ocean Wind's environmental permit applications. Ocean Wind provided potential dates for a February 2022 meeting.

47. On February 11, 2022, Judge Donohue submitted a letter to Ocean Wind, stating that the County found the meeting on January 12, 2022 was productive and that the County was willing to engage in further dialogue with Project representatives. However, Judge Donohue explained that the Board of Commissioners voted unanimously to decline to grant its consent to Ocean Wind for its NJDEP permit applications.

48. On February 18, 2022, Ocean Wind responded to Judge Donohue with a letter thanking Cape May County for its willingness to have an ongoing dialogue. Ocean Wind explained that it filed the Ocean City petition after years of discussions regarding the necessary property rights and Ocean City was unwilling to advance these discussions and reach an agreement to allow the Project to proceed. Ocean Wind expressed to the County its desire to continue discussions both with Ocean City and with the County regarding the Project. The letter closed with a request to hold another meeting in order to continue discussions.

49. Since then, Ocean Wind has continued to engage with Cape May County officials concerning scheduling additional meetings and regarding consent to post required signage in

advance of a Green Acres hearing for property owned by the City of Ocean City. On April 12, 2022, Ocean Wind made an offer of compensation to the County for the necessary temporary and permanent easements. Efforts to fully assess the need for easements have been unsuccessful because Cape May County has been unwilling to provide information on the status of the land on which Ocean Wind is seeking easements.

50. After all the discussions, meetings, and letters exchanged by Ocean Wind and Cape May County, there has been no indication that the County will voluntarily provide Ocean Wind with any of the necessary approvals or consents for environmental permitting, or the required easements. While the Project will continue to engage in good faith discussions with Cape May County, as of the filing of this Petition, Ocean Wind has been unable to reach an agreement to obtain the necessary easements and consents.

#### **VIII. REQUEST FOR BOARD TO RETAIN THIS MATTER**

51. As discussed in the testimony of Pilar Patterson, Exhibit OW-2, resolution of this Petition is time-sensitive. Under the BPU's June 2019 Order, the first phase of commercial operation for the Project is required to begin May 1, 2024. In order for Ocean Wind to achieve the scheduled commercial operation dates, Ocean Wind must begin construction of the onshore portions of the Project by 2023. Resolution of the issues set forth in this Petition are necessary for Ocean Wind to acquire the necessary property rights and environmental permits, so that it may in turn begin construction. More specifically, for the BOEM to issue its Record of Decision for the Project, the NJDEP must issue its federal consistency determination for the Project on or before October 28, 2022. The Project anticipates that this date will be extended by agreement of both parties to January 2023. In order to meet the January deadline, Ocean Wind has been advised by NJDEP that the Project must receive all relevant NJDEP permits and approvals

before the NJDEP is in a position to issue its federal consistency determination. Given the time needed to construct the Project after all approvals and permits are issued, Ocean Wind respectfully requests that the Board retain this matter and not refer it to the Office of Administrative Law for hearings and an initial decision. The Board itself can hold any requisite hearings before a designated Commissioner.

**IX. PRE-FILED TESTIMONY**

52. Attached hereto and made part hereof is the following pre-filed direct testimony:

<u>Exhibit No.</u>	<u>Witness</u>	<u>Subject Matter of Testimony</u>
OW-1	Jason Kalwa	Ocean Wind 1 Onshore Transmission and Interconnection Related Facilities to be Constructed and Installed in Cape May County, New Jersey
OW-2	Pilar Patterson	Onshore Cable Routes Considered, Certain Easements Across County-Owned Property, and Consents Needed For Environmental Permits, approvals and licenses for the Ocean Wind 1 Project
OW-3	Madeline Urbish	Community Outreach, Including Ocean Wind’s Attempts to Secure the Necessary Easements Across County-Owned Properties and Consents Needed for NJDEP Permit Applications from the County of Cape May, New Jersey

**IX. PUBLIC NOTICE AND PUBLIC HEARING**

53. Under *N.J.S.A. 48:3-87.1(f)(2)*, the Board is required to “conduct, or cause to be conducted, a public hearing in order to provide an opportunity for public input on the Petition. Notice of the public hearing shall be given in a manner and form as determined by the [B]oard in order to provide an opportunity for public input to be received on the petition.” Accordingly,

Ocean Wind has included a draft form of public notice, which is provided as Appendix B to the Direct Testimony of Madeline Urbish (Exhibit OW-3).

**X. SERVICE OF PAPERS**

54. This filing, including a copy of the Petition and all pre-filed testimony and exhibits, is being served on the Administrator of the Board of County Commissioners of the County of Cape May, the Commissioner Director of the Board of County Commissioners of the County of Cape May, the Cape May County Clerk, the Clerk of the City of Ocean City, the Mayor of the City of Ocean City, the members of the Ocean City Council, the City Solicitor for the City of Ocean City, the Department of Law & Public Safety, Division of Law, the Director of the Division of Rate Counsel, and the Commissioner of the Department of Environmental Protection.

55. Copies of all correspondence and other communications relating to this proceeding should be addressed to:

**Gregory Eisenstark, Esq.  
Michael Connolly, Esq.  
Cozen O'Connor, PC  
One Gateway Center, Suite 910  
Newark, New Jersey 07102**

**- and -**

**William Lesser, Esq.  
Cozen O'Connor, PC  
3 World Trade Center  
175 Greenwich Street, 55th Floor  
New York, NY 10007**

**- and -**

**Aaron Bullwinkel, Esq.  
Orsted Offshore North America  
399 Boylston Street, 12th Floor  
Boston, MA 02116**

-and-

**Cara Lewis, Esq.  
Ana Murteira, Esq.  
PSEG Services Corp.  
80 Park Plaza, T5  
Newark, NJ 07101**

**XI. CONCLUSION**

**WHEREFORE**, Ocean Wind LLC respectfully requests that the Board:

(i) Retain jurisdiction over this matter, designate a Presiding Commissioner, establish a hearing date, and designate the time and manner of notice and persons in interest to be given such notice;

(ii) Upon and after any such hearings, determine that the relief requested in this Petition, as more specifically described herein above, is reasonably necessary for the construction and operation of the Project;

(iii) Specifically find and determine that that the temporary and permanent easements described in this Petition over property owned by Cape May County are reasonably necessary for the construction and operation of the Ocean Wind 1 QOWP; and issue an Order approving the acquisition of the necessary easements across the County Property, as defined herein, which shall then be recorded in the Cape May County recording office.

(iv) Specifically find and determine that County consents or other affirmative filings needed from Cape May County that are a condition of the issuance of a permit or other approval of the NJDEP are reasonably necessary for the construction and operation of the Ocean Wind 1 QOWP, thereby preempting and superseding any required municipal consents or approvals; and

(v) Grant such other and further relief as the Board may deem appropriate or necessary.

Respectfully submitted,

**COZEN O'CONNOR, PC**  
Attorneys for Ocean Wind, LLC

Dated May 20, 2022

By:



\_\_\_\_\_  
Gregory Eisenstark  
One Gateway Center, Suite 910  
Newark, NJ 07102  
(973) 200-7411  
[geisenstark@cozen.com](mailto:geisenstark@cozen.com)

**AFFIDAVIT**  
**OF**  
**VERIFICATION**

Marc Reimer, being duly sworn upon his oath, deposes and says:

1. I am the Authorized Person of Ocean Wind LLC (“Ocean Wind”) and I am duly authorized to make this Affidavit of Verification on behalf of Ocean Wind.

2. I have read the contents of the foregoing Petition, and I hereby verify that the statements of fact and other information contained therein are true and correct to the best of my knowledge, information and belief.

*Marc Reimer*

\_\_\_\_\_  
Marc Reimer

Sworn to and subscribed  
electronically this 18<sup>th</sup> day  
of May, 2022

*Gregory Eisenstark*

\_\_\_\_\_  
Gregory Eisenstark  
Attorney-at-Law,  
State of New Jersey

The undersigned attorney, Gregory Eisenstark, certifies that the affiant electronically acknowledged the genuineness of the signature.

*Gregory Eisenstark*

\_\_\_\_\_  
Gregory Eisenstark, Esquire