

**IN THE MATTER OF THE PETITION OF OCEAN WIND, LLC PURSUANT TO N.J.S.A. 48:3-87.1(f) FOR A DETERMINATION THAT EASEMENTS ACROSS GREEN ACRES-RESTRICTED PROPERTIES AND CONSENTS NEEDED FOR CERTAIN ENVIRONMENTAL PERMITS IN, AND WITH RESPECT TO, THE CITY OF OCEAN CITY ARE REASONABLY NECESSARY FOR THE CONSTRUCTION OR OPERATION OF THE OCEAN WIND 1 QUALIFIED OFFSHORE WIND PROJECT**

**BPU Dkt. No. QO22020041**

**Ocean Wind LLC's Response to Written Public Comments**

Please accept this reply to written public comments on behalf of Ocean Wind LLC (“Ocean Wind”) in the above-referenced matter. In this reply, Ocean Wind responds to the comments filed by the Division of Rate Counsel on June 2, 2022 (“Rate Counsel Comments”). In addition, Ocean Wind responds to issues raised on other filed public comments.

**Response to Rate Counsel Comments**

Rate Counsel’s comments are a combination of untimely and irrelevant complaints about the Board of Public Utilities’ (“Board” or “BPU”) procedural schedule, misstatements of law concerning the issues before the Board in this matter, and factually erroneous statements concerning alleged impacts of the Board’s decision in this matter on rates that will be charged to utility customers. As a threshold matter, many of these issues are the same ones raised in the Direct Testimony of Maximilian Chang on behalf of Rate Counsel (“Chang Testimony”). Ocean Wind filed three pieces of rebuttal testimony responding to and entirely refuting Mr. Chang’s claims. Yet, in its filed public comments, Rate Counsel does not even acknowledge Ocean Wind’s rebuttal testimony, let alone admit that Mr. Chang’s alleged concerns have no merit. Rate Counsel’s comments are inaccurate and irrelevant and the Board should disregard them.

It is important to recognize this proceeding does not concern a public utility capital project and, therefore, the Board’s decision will not impact the rates (or bills) of electric public utility

customers at all. Rather, this matter concerns the Board’s consideration of the grant of easements (and related relief with respect to consents for certain environmental permits) to Ocean Wind for a segment of the on-shore transmission line that is required to move the electricity from the Ocean Wind 1 Project (“Project”) offshore wind turbines to the electric grid in New Jersey. As the Board is well-aware, both the price Ocean Wind will receive for Offshore Renewable Energy Certificates (“ORECs”) from the Project, as well as the quantity of ORECs, were determined in the Board’s June 21, 2019 Order.<sup>1</sup> Except in very narrow circumstances not applicable to this Petition, the OREC price that utility customers will pay, and that Ocean Wind will receive, has been set. Therefore, the Board’s decision in the instant matter will have zero impact on utility customers’ rates. For this reason (and leaving aside the factual inaccuracies in nearly all of Rate Counsel’s comments), all of Rate Counsel’s alleged concerns about impact on rates are irrelevant.

First, Rate Counsel erroneously argues that the issue for the Board to decide in this matter is “whether the Preferred Route of the Project’s onshore export cable is ‘reasonably necessary’ for the construction or operation of the qualified offshore wind project.” *Rate Counsel Comments* at p. 2. This is a clear misstatement of the statutory criteria under *N.J.S.A. 48:3-87.1(f)*. Rather, as Ocean Wind has stated in its Petition, the issues before the Board are: (1) whether the requested *easements* are reasonably necessary for the construction or operation of the Project; and (2) whether municipal consents needed for certain environmental permits in, and with respect to, the City of Ocean City are reasonably necessary for the construction or operation of the Project, in both cases along the route chosen by Ocean Wind. *Petition*, pp. 1, 3-4, 9-13, 18-19; Exhibits OW-1, OW-2, and OW-3. Ocean Wind used the descriptive term “Preferred Route” to describe the

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<sup>1</sup> *I/M/O the Board of Public Utilities Offshore Wind Solicitation for 1,100 MW – Evaluation of the Offshore Wind Applications*, BPU Dkt. No. QO18121289, Order dated June 21, 2019 (“June 21, 2019 Order”).

planned path for the interconnection at a new, onshore substation that will be constructed in Upper Township, New Jersey. However, Ocean Wind is not, through this Petition or any other, required to have the Board approve any particular onshore cable route. That decision is left to Ocean Wind.

In this regard, this Petition is dissimilar to a Petition filed by a public utility pursuant to *N.J.S.A. 40:55D-19* of the Municipal Land Use Law (“MLUL”). In such petitions, because the petitioner is normally a regulated public utility, the Board is properly concerned as to whether the route chosen for a utility capital project is reasonably necessary. Similarly, in such utility filings, the Board may be properly concerned with the cost of the chosen route and of alternatives, because the cost will ultimately be included in the public utility’s rate base and be “paid for” by the utility’s customers. Here, in contrast, Ocean Wind is *not* a public utility and has not filed a petition under the MLUL. It is Ocean Wind, and not utility customers, that bears the entire cost risk for the construction of the onshore cable at issue in this filing. Accordingly, there is no reason or requirement for the Board to require Ocean Wind to provide cost estimates of the alternative routes considered.

Rate Counsel’s misstatement of the main issue before the Board and its related attempt to subject this Petition to the same standards as utility filing under *N.J.S.A. 40:55D-19* is both the basis for many of its other claims and, at the same time, the reason such claims are not relevant here. Ocean Wind responds to each of Rate Counsel’s specific comments in turn.

Rate Counsel’s comments refer to the so-called “abandoned railroad right-of-way” alternative route that Ocean Wind described in its prefiled testimony in this matter. *Rate Counsel Comments*, at p. 3. In so doing, Rate Counsel refers to Mr. Chang’s testimony and alleges that this alternative “may result in fewer disturbances.” *Id.* However, Rate Counsel’s comment ignores Ocean Wind’s response to the Board’s Supplemental Question 13 and the detailed explanation in



street and Haven Ave. The onshore cable would then be laid within the railroad ROW that crosses over Crook Horn Creek, Edwards Creek, Lots Creek, and continue along until intersecting with the current railroad that serviced the BL England generating station. However, as noted in **Table 1-2** above, this route was not determined to be a practicable alternative as the railroad's ROW includes several historic properties and designated historic districts, and impacting these resources would be inconsistent with the project siting criteria listed in **Table 1-1**, above. Therefore, this route was dropped from consideration. For more details refer to **Table 1-2**, above.<sup>2</sup>

In addition, as Ms. Patterson explained in her rebuttal testimony:

**Q. Mr. Chang also refers to an alternative route that would have used an abandoned railroad right of way and recommends that “the Board should investigate the Railroad Route more thoroughly before it determines that it is not preferable to the preferred route.” (Chang Testimony, p. 14, lines 14-15). Please respond.**

A. In the first instance, this matter does not call for the Board to determine whether some alternative route is “preferable” to the Preferred Route. Rather, as I discussed above in response to one of Mr. Chang's other statements, the purpose of this proceeding is for the Board to determine whether the requested easements are “reasonably necessary” under the statutory criteria.

Second, even if that were the purpose of this proceeding, as explained in response to the Board's Supplemental Question 13, there were many reasons Ocean Wind eliminated this alternative from consideration. Assuming Mr. Chang is referring to the historic railroad ROW area depicted in the graphic below, there are many reasons why it was not advanced:

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<sup>2</sup> *Response to BPU Supplemental Qu. 13*, dated 3/31/2022; *see also, responses to BPU Supplemental Qu. 1, 6 and 7.*

- This route would not eliminate the need to obtain a Green Acres division. The associated beach landfall parcels at 51st and 52nd Street are all owned by Ocean City and thus are encumbered; and a portion of the old railroad ROW may be owned by Ocean City and would also be Green Acres encumbered.
- This route would result in a much longer cable route with greater overall impact – especially in the impacts to wetlands and waterways surrounding the ROW and on Route 9 in Upper Township. A significant amount of wetlands would be impacted.
- It is more difficult to construct underground electric lines in wetlands
- This alternative would impact a NJ State Historic Property Office registered/eligible historic district and historic property (Atlantic City Railroad Cape May Division Historic District)<sup>3</sup>

Thus, contrary to Rate Counsel’s assertion that there is not “adequate explanation provided in the record currently before the Board” (Rate Counsel Comments, p. 3) as to the reason this alternative was not pursued, there is, in fact, *detailed* record evidence that provides the exact reasons for Ocean Wind’s decision to not use this alternative.

Rate Counsel’s reference to the fact that Ocean City and members of the public asserted that Ocean Wind should “go around Ocean City” (presumably by using an alternative route through Great Egg Harbor) is similarly misplaced. Again, Rate Counsel’s comments completely ignore the detailed evidence in the record in this matter that explains the problems with the so-called “Great Egg Harbor” alternative. As Ms. Patterson explained in her rebuttal testimony:

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<sup>3</sup> Exhibit OW-2 Rebuttal, pp. 5-6.

**Q. In the Ocean City Solicitor’s letter dated April 27, 2022, Ocean City contends that the “Great Egg Harbor” route may be a better alternative than the Preferred Route. Please respond.**

A. The Great Egg Harbor Route was extensively evaluated and eliminated for the following reasons:

- Cable burial depths within the inlet are a concern due to annual changes in bathymetry and shifting sediments;
- Increased risk for cable damage, operation and concerns, and feasibility of laying cable within the shifting inlet shallow waters;
- Design and cable protection challenges associated with shifting sands at mouth of inlet;
- Access to the inlet by other vessels would be restricted during construction, which would result in additional impacts to other marine uses and navigation. Due to low water depth within the Great Egg Harbor, the cable would need to be buried within the limits of the authorized federal and state channel. If the cable were installed into the Great Egg Harbor Inlet there would be a safety zone around the cable laying vessel while within the inlet and channel and could result in disruptions to typical vessel traffic.
- Once in the estuary, shallow water limits which barges can be utilized for cable burial, presenting installation challenges including potential requirements for specialized equipment or a reducing in the number of spools of cable;

- Installing the cable to the required burial requirements within the inlet may not be practicable. There is an existing United States Army Corps of Engineers (“USACE”) borrow area at the mouth of the inlet. USACE typically does not authorize crossing of borrow areas, and where it does allow crossing would require a cable burial depth of 80 feet, which is not technically feasible for the Project; and
- In-water route through the Great Egg Harbor Bay and Shipping Channel would result in 5.8 miles of cable burial within designated shellfish habitat.
- Please note, my direct testimony referred to the crossing of two historic bridges. While these bridges have been replaced, the designation as individually eligible for the State or National Register of Historic Places remains in place and will continue to be until an official finding is made that they are no longer eligible.<sup>4</sup>

Again, Rate Counsel is clearly incorrect in contending that there is not sufficient evidence in the record regarding the reasons the Great Egg Harbor route was removed from consideration. In fact, there is extensive, unrebutted evidence in the record on this issue.

In sum, Rate Counsel’s comments are plainly wrong. As explained above, the matter does not require the Board to approve the “best route” for the onshore cable. Under *N.J.S.A.* 48:3-87.1(f), the Board is only required to determine whether the requested easements and environmental permit consents are “reasonably necessary.” Moreover, there is ample evidence in

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<sup>4</sup> Exhibit OW-2 Rebuttal, pp. 7-8. *See also*, Response to BPU Supplemental Qu. 6 dated 3/31/2022.



this proceeding that explains and justifies Ocean Wind’s selection of the Preferred Route and the need for the easements.

Similarly, Rate Counsel’s argument (at p. 4 of its comments) that the Board should require Ocean Wind to provide cost estimates of alternative routes considered “to ensure that the Board-approved [ ] OREC price . . . was not set at an unreasonably high level” is misplaced. First, as discussed above (and as Rate Counsel appears to acknowledge in its footnote 8 at p. 4), the OREC prices were established in 2019 and cannot be revisited now as part of this proceeding. Moreover, Rate Counsel’s suggestion that requiring Ocean Wind to provide cost estimates for alternatives considers “will provide valuable insight for ongoing and future solicitations” is equally unavailing for many reasons. Offshore wind solicitations in New Jersey are competitively bid; OREC price is only one of many elements the Board considers when evaluating bids; and future bids may be based on other offshore locations and consider other onshore routes. Aside from these issues, it is not an appropriate use of either the Board’s or Ocean Wind’s resources to engage in speculative calculations to provide “insight” for future proceedings that are not before the Board now, as Rate Counsel suggests.

On page 5 of Rate Counsel’s Comments, it argues that the Board’s decision will “impact the transmission upgrade cost sharing mechanism approved by the Board,” referencing the Chang Testimony. What Rate Counsel again fails to acknowledge is that Ocean Wind’s Rebuttal Testimony of Matthew Kaplan completely refuted this point. In responding to the exact same issue when Mr. Chang first raised it, Mr. Kaplan explained:

**Q. Throughout his testimony, Mr. Chang raises “concerns” about transmission system upgrade costs (“TSUC”) and argues that Ocean**

**Wind has not documented them sufficiently in its Petition or testimony in this matter. Please respond.**

- A. The TSUC sharing mechanism for the Project is not applicable to this petition. The scope of the TSUC sharing mechanism is limited to the costs associated with interconnection upgrades, inclusive of PJM network upgrades and Capacity Interconnection Rights (CIRs). The Project bears 100% of the costs associated with the offshore and onshore transmission system to the onshore substation. In the context of this petition, the scope of the Project within Ocean City, including the easements and Green Acres diversion costs, are entirely outside of the scope of the TSUC sharing mechanism with New Jersey ratepayers.<sup>5</sup>

Thus, it is clear that this matter will not impact the TSUC mechanism at all. Accordingly, Rate Counsel's statement on page 5 of its Comments that the Board should require Ocean Wind to demonstrate that "its Preferred Route is also the least-cost plan when including the transmission cost upgrades" is entirely off-base. As discussed above, there is no requirement that the Board approve any particular route; or find that the route is "least cost"; and the TSUC mechanism is simply not involved here. Rate Counsel's repeated reliance on Mr. Chang's erroneous statements, which have been thoroughly rebutted, is both logically quizzical and contrary to the record evidence in this matter.

At pages 6-7 of its Comments, Rate Counsel argues that the process the Board has used for this matter is not sufficient, again relying on procedures under a different statutory scheme. As a threshold matter, it is worth emphasizing that President Fiordaliso, the Presiding Officer, first

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<sup>5</sup> Exhibit OW-4 Rebuttal, at p. 3.

issued an Order and Procedural Schedule for this matter on March 1, 2022 (amended on March 22, 2022). If Rate Counsel had issues with the process the Board planned to use, it should have contested the procedural schedule shortly after it was issued. Instead, Rate Counsel went along with the schedule (filing testimony and serving discovery) and, only near the end of the procedural schedule, now argues that the process is somehow deficient. The Board should give short-shrift to Rate Counsel's untimely and unavailing arguments.

Moreover, as discussed above, this matter is not equivalent to a public utility filing under *N.J.S.A. 40:55D-19*, so Rate Counsel's reliance on procedures followed for matters filed under that statute are not relevant. It is clear that Rate Counsel has been afforded extensive "process" in this matter. Rate Counsel has served discovery on the Petitioner (which Ocean Wind responded to); Rate Counsel has filed testimony responding to the Ocean Wind Petition and pre-filed testimony; Rate Counsel has participated in a public hearing; and Rate Counsel has filed written comments. As the matter proceeds, Rate Counsel will have the opportunity to participate in oral argument before the Board. It is clear that Rate Counsel has been afforded an ample opportunity to participate in this matter, consistent with all the process that it is due.

In this regard, the only example Rate Counsel cites to as allegedly deriving it of some "due process" is its reference to the acreage calculation of the parcels over which Ocean Wind is seeking easements. Ocean Wind has now corrected the acreage for the required easements three separate times: first, in its response to Rate Counsel's discovery requests on April 4, 2022; then, in its filing of an amendment to the Petition and Testimony of Pilar Patterson on April 29, 2022; and again in Ms. Patterson's Rebuttal Testimony dated May 12, 2022. *See, e.g.*, Exhibit OW-2 Rebuttal, p. 2, line 11 to p. 3, line 2. Contrary to Rate Counsel's complaint that it should have been afforded the opportunity to propound discovery to verify this amount, there is nothing more to discover. The

earlier acreage figure was determined to be incorrect and the correct amount (0.647 acres) is in the record of this matter. *Id.* There is no issue in dispute that requires additional discovery.

Finally, Rate Counsel's comments suggesting that the Board should delay its review of this Petition based on future "overhead construction" or to consolidate it with the Ocean Wind/Cape May County Petition<sup>6</sup> are completely misplaced. First, Rate Counsel has taken a reference to the Project's use of overhead lines for the substation connection out of context and misconstrued it. Ocean Wind has no reason to seek Board approval of the overhead construction for the substation interconnection, because the Project has secured the property rights needed. So, there will be no future BPU proceeding regarding that aspect of the Project.

In regard to the Ocean Wind/Cape May County Petition, there is no basis or reason for the Board to consolidate that matter, which was just filed on May 20, 2022, with the instant matter that has been pending since February 2, 2022. The Ocean Wind/Cape May County Petition involves different easement(s), a different governmental entity, and different consents for certain environmental permits. The fact that it was filed pursuant to the same statute does not mean that it should be consolidated with the instant proceeding. Moreover, the instant matter is nearly concluded, having progressed through the filing of testimony, discovery, and with oral argument scheduled for June 24, 2022. To consolidate this matter with the newly-filed Ocean Wind/Cape May County Petition would cause unreasonable delays in the resolution of both matters.

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<sup>6</sup> *I/M/O the Petition of Ocean Wind LLC Pursuant to N.J.S.A. 48:3-87.1(f) for a Determination that Certain Easements and Consents Needed for Certain Environmental Permits in, and with Respect to, the County of Cape May are Reasonably Necessary for the Construction or Operation of the Ocean Wind 1 Qualified Offshore Wind Project*, BPU Dkt. No. QO22050347 ("Ocean Wind/Cape May County Petition").

## **Response to Other Filed Public Comments**

A few members of the public filed written comments with the Board. Some of these comments were related to issues before the Board in this matter; others were comments about the Project or offshore wind in general. Ocean Wind has summarized the comments relevant to this matter in question form and responds to them below.

*1) Has Ocean Wind conducted an environmental review? How will the Project impact wildlife?*

Response: Ocean Wind is conducting many site-specific environmental surveys to characterize the existing conditions of the Project area and understand potential impacts on wildlife. These environmental surveys include wetlands and waterbody delineations, threatened and endangered species surveys, tree surveys, submerged aquatic vegetation (“SAV”) surveys, fisheries monitoring, and seal haul-out and feeding surveys. Ocean Wind’s Construction and Operations Plan (“COP”) also identifies other surveys that were performed in connection with the Project and includes the results of these surveys as appendices. The COP and appendices can be found at <https://www.boem.gov/ocean-wind>.

Ocean Wind is committed to minimizing potential impacts to environmental resources to the maximum extent practicable and is working closely with regulatory agencies (including the Bureau of Ocean Energy Management (“BOEM”), New Jersey Department of Environmental Protection (“NJDEP”), United States Army Corps of Engineers (“USACE”), and National Oceanic and Atmospheric Administration (“NOAA”), National Marine Fisheries Service (“NMFS”)) to determine the appropriate avoidance, minimization, and mitigation efforts to implement. BOEM is expected to issue a draft Environmental Impact Statement (“EIS”) in June 2022 and a final EIS

in March 2023 that will analyze the environmental impacts of the Project (including potential impacts on wildlife) as required by the National Environmental Policy Act (“NEPA”).

2) *Who is responsible for maintaining the buried cables and ensuring they operate safely?*

Response: Ocean Wind will be responsible for safely operating and maintaining the installed facilities throughout their life expectancy. As part of the process to ensure this safe operation, routine inspections will be performed as described in Section V of Jason Kalwa’s testimony (Exhibit OW-1).

3) *How will tourism and property values be impacted by the Project?*

Response: The facilities at issue in this matter will be located underground, just like other electric, gas, water, sewer and telecommunications facilities that are common in Ocean City and all other municipalities in the State of New Jersey. After installation, there is no reason to believe that property values or tourism will be impacted, as there will be no visual or other impact from these facilities. Please refer to Ocean Wind’s Testimony of Jason Kalwa (Exhibit OW-1), which describes in detail the installation of the cables and associated underground facilities.

4) *Is the Great Egg Harbor route less environmentally impactful than running the cable underground through Ocean City?*

Response: The underground cable route proposed in Ocean City is sited largely within existing paved areas and road right-of-way (“ROWS”), minimizing impacts on wetlands and wildlife. Horizontal directional drilling (“HDD”) is proposed to drill under wetlands and water at the Crook Horn Creek/Peck Bay crossing to minimize impacts to wetland and water environments and associated wildlife. HDD will also be utilized at the 35th Street landfall so as to minimize impacts to the ecological communities of the beaches and dunes.

The environmental impacts associated with the Great Egg Harbor route are notably more extensive, as previously stated in Pilar Patterson's rebuttal testimony (Exhibit OW-2 Rebuttal). In addition, if the cable were to be sited within Great Egg Harbor, the in-water route through the Great Egg Harbor Bay and Shipping Channel would result in 5.8 miles of cable burial within designated shellfish habitat.

Finally, several of the public's comments were outside of the scope of this Petition and are not directly relevant to the cable routing through Ocean City. The Project addresses most of these comments on the Project's website: [oceanwindone.com](http://oceanwindone.com) under the [Resources @ FAQ](#)'s tab. The Project can be reached by email at [info@oceanwind.com](mailto:info@oceanwind.com) for additional information.

Respectfully submitted,  
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Dated: June 16, 2022

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