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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 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	CERTIFICATION OF CAPE MAY COUNTY ADMINISTRATOR KEVIN L. LARE IN SUPPORT OF THE COUNTY'S MOTION TO DECLINE JURISDICTION AND DISMISS THE PETITION WITHOUT PREJUDICE UNDER N.J.S.A. 48:3-87.1(f) and N.J.S.A. 20:3-1 <i>Et Seq.</i>
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I, Kevin L. Lare, do hereby certify as follows:

1. On or about January 1, 2021, I was appointed Acting County Administrator for the County of Cape May, New Jersey ("the County").
2. On or about January 1, 2022, I was appointed as the permanent County Administrator for the County.
3. At the conclusion of the year 2020, in preparation for taking over the role of Acting County Administrator, I recommended to the Board of County Commissioners that former New Jersey Superior Court Judge Michael J. Donohue be engaged to to serve as legal counsel and liaison for the County on all issues involving wind farms off the beaches of Cape May County. A recommendation the Board accepted.

4. Since that time, I have worked closely with Mr. Donohue on issues surrounding what has been variously referred to as “the Orsted project” or “Ocean Wind 1.”
5. Reserving all confidentiality and privileges, I respectfully make this certification in support of the Motion of the County of Cape May to have the New Jersey Board of Public Utilities decline jurisdiction and dismiss the above captioned petition without prejudice.
6. Much has been made of the September 28, 2022, letter from Ocean Wind 1 addressed to me as County Administrator.
7. My initial review of the letter left me wondering what, specifically, Ocean Wind 1 was asking for. While the letter contained a list of various items, it was unclear with regard to essentially all of them whether Ocean Wind 1 required them or not. Each item was followed by the words “if required” in parentheses.
8. I did not see it as the duty of the County of Cape May to determine what might actually be required and not having an unconditional request from Ocean Wind 1, it was impossible to determine specifically what was being requested.
9. The balance of the letter demanded approvals from other agencies that the County of Cape May could not possibly grant.
10. One was left to wonder what consents Ocean Wind 1 actually needed, or if it was even clear to them what they needed.
11. It was impossible to provide any type of consent to the items in the September 28, 2021, letter, given how vague, ambiguous and conditional all of the items were or based upon the fact that the County was not legally able to offer consent that would by-pass autonomous or semi-autonomous agencies.

12. A subsequent letter dated December 20, 2021, was no more helpful inasmuch as it referred the reader to the September 28, 2021, letter for “details.” As stated, the September 28, 2021, letter did not supply “details” but only nebulous reference to items that may or may not be require for the project.
13. During 2021 and 2022, mostly through contacts between Michael J. Donohue, Esquire and Keith Davis, Esquire, an Ocean Wind 1 representative, the County and Ocean Wind 1 kept lines of communication open and had various discussions and meetings.
14. On information and belief, County and local elected officials and representatives of the commercial fishing industry in Cape May County were uneasy at best near the beginning of 2021 about the prospects of the construction of the Ocean Wind 1 project. All parties expressed discomfort with the often repeated admonition from various representatives of Ocean Wind 1 that the project was “inevitable” and “going to happen.”
15. In an effort to, sort of, reset the conversation, Mr. Donohue worked with representatives of Ocean Wind 1 to set up a meeting of local and County officials, which took place on May 24, 2021, so that Ocean Wind 1 could present the project, answer questions and begin to establish a more productive rapport with County and local officials.
16. Contrary to the representation in the Direct Testimony of Madeline Urbish P5:18-19, wherein she states that “We also hosted an information session for local and municipal elected officials to discuss the Project broadly,” the meeting referenced in paragraph 15 above was not “hosted” by Ocean Wind 1. It was, in fact, hosted by the County of Cape May. Mr. Donohue, myself and other County representatives reached out to local elected officials, encouraged their attendance, coordinated a meeting date that provide the opportunity for the greatest participation, reserved the County’s public meeting room,

provided audio-visual equipment and set the room up to be most conducive to the presentation format Ocean Wind 1 preferred.

17. Ms. Urbish's representation at P5:15 of her testimony is in error, inasmuch as I was the Acting County Administrator on May 24, 2021, not Mr. Donohue.
18. Additionally, we arranged for meetings with all County Commissioners prior to the broader meeting, in shifts so as not to violate the Open Public Meetings Act, so that Ocean Wind 1 would have the benefit of talking directly to each Commissioner about the project.
19. On information and belief, everyone who attended the meetings of May 24, 2021, found them helpful and found the tone of the meetings to be more conducive to productive discussions. There was some follow-up from Ocean Wind 1 over the course of the following couple of weeks with regard to questions that had been raised by various stakeholders at the May 24, 2021, meeting.
20. Then on or about June 10, 2021, the New Jersey State Senate introduced a bill that would transfer the authority of the elected officials of municipalities and counties to the New Jersey Board of Public Utilities on questions of consent to permit applications and taking of real property for offshore wind projects.
21. On information and belief, multiple local and county elected officials were very upset that they had sat through a meeting of nearly two-hours duration with Ocean Wind 1 representatives on May 24, 2021, and not a single one of those representatives had indicated that such a bill was in the offing. This fact appeared to severely undermine the trust of these officials in the representations of Ocean Wind 1.
22. In spite of this challenging situation, after the County had worked so hard to help Ocean Wind 1 improve its standing with the elected officials of the sixteen Cape May County

municipalities as well as the County Commissioners, only to have this hard work undone by the introduction and passage of the bill erasing Home Rule, the County continued to communicate with Ocean Wind 1 and indicated its willingness to meet again.

23. However, given the amount of frustration with the introduction and passage of the bill taking away the decision making authority of elected County and local officials, it was necessary to allow some passage of time for “the dust to settle” so-to-speak before once again putting County elected officials back in direct contact with Ocean Wind 1 representatives.
24. Nevertheless, under my direction as authorized by the Board of County Commissioners, Michael J. Donohue, Esquire, continued to communicate with Keith Davis, Esquire, regarding the scheduling of a meeting.
25. Given the continuing relationship challenges and the challenges of scheduling during the Holiday Season of 2021, the date of January 7, 2022, was settled upon for a meeting with Ocean Wind 1 representatives, myself, Mr. Donohue, the Director of the Board of Commissioners, Gerald M. Thornton and representatives of Cultural Heritage Partners (“CHP”), a law firm engaged by the County of Cape May to advise the County on the federal regulatory process related to the Ocean Wind 1 project.
26. Unfortunately, severe weather was predicted to come into the Cape May County area on January 7, 2022. As one might imagine, a severe weather event requires the rapt attention of County officials, especially the Administrator and the Director, who is the Commissioner-in-Charge of the Office of Emergency Management. The County did not want to have this large group of people traveling in bad weather and/or arriving at a meeting where the Administrator and Director were unavailable to attend. Consequently, Mr.

Donohue arranged through Mr. Davis to conduct a preliminary meeting via Zoom on January 7, 2022, and the broader meeting was rescheduled to January 12, 2022.

27. The County reserved a banquet room at a local restaurant in Cape May Court House, New Jersey, to host the meeting of January 12, 2022, and the County coordinated all the participants in order to effectuate the meeting.
28. The meeting was a working lunch where CHP and Mr. Donohue presented many items of concern to the County. The meeting was, for the most part, productive as an informational exercise.
29. It has been made clear to the County that Ocean Wind 1 has certain parameters for discussion. In terms of suggestions by the County made on various occasions of modifications to the project design in order to make the project invisible from shore or other ways to lessen the permanent cluttering of the viewshed with industrial energy-generating facilities, Ocean Wind 1 consistently took the position that the project could not be modified to accommodate the County's concerns because of the megawatt delivery obligations of the project.
30. The County has also indicated on various occasions that it would like to include the impacts of the Ocean Wind 2 project on Cape May County in any discussions, but Ocean Wind 1 has refused to agree to do so.
31. It was about this same time that Ocean Wind representatives requested from the County that the County execute the NJDEP Land Use Management Program, Division of Land Use Regulation Property Owner Certification form.

32. Ocean Wind representatives indicated verbally and in writing that they simply needed the form signed so that they could advance their project planning and permit applications, and that the County did not need to consent to the project.

33. The contents of the form did not comport with what Ocean Wind 1 was representing. The form contains a certification that I or the Director of the Board of Commissioners would have had to have made on behalf of the County. The certification states:

**I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining and preparing the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for knowingly submitting false information, including the possibility of fine and imprisonment. I hereby grant permission for the conduct of the proposed activities and consent to allow access to the site by representatives or agents of the Department for the purpose of conducting a site inspection(s) of the property in question.**

34. The County was never supplied with “the information submitted in this document and all attachments” as mentioned in the certification. It is impossible for a County official to sign such a certification without having the opportunity to review those items and perhaps have expert assistance in doing so.

35. The certification requires a County official to certify, under penalty of law, that all information submitted to NJDEP by Ocean Wind 1 “is true, accurate, and complete.” Again, none of the information was supplied to the County for the type of substantive review that would be required for a County official to make such a certification. In order to do so, the County would need everything that was submitted by Ocean Wind 1 to NJDEP as part of its multi-part permit application. This information has not been supplied.

36. It is clear that Ocean Wind 1 has a large number of apparently experienced attorneys and other representatives. I never concluded that it should be the obligation of the County to point out the deficiencies in Ocean Wind 1’s requests. Quite the contrary. It is only reasonable to require a private entity that wishes to utilize the Constitutional takings

process of Eminent Domain to carry the burden of meeting all of the prerequisites required to do so.

37. After the meeting of January 12, 2022, the Cape May County Board of Commissioner placed the matter on an Executive Session agenda for February 8, 2022.
38. Prior to the February 8, 2022, meeting of the Board of Commissioners, on February 2, 2022, Ocean Wind 1 filed a Verified Petition with the Board of Public Utilities seeking to have the BPU stand in the shoes of the elected officials of Ocean City, New Jersey and take certain property rights of the City of Ocean City in Cape May County.
39. On information and belief, and reserving and not waiving any privileges or confidentialities, the elected officials of the County of Cape May found the filing to be disruptive to the County's ongoing discussions with Ocean Wind 1.
40. Mr. Donohue was authorized and directed to send a letter to Ocean Wind 1 indicating that the County would not be supplying consent to Ocean Wind 1's multi-part NJDEP permit application. The letter was transmitted on February 11, 2022. (See, Ocean Wind 1 Appendix H).
41. Mr. Donohue alluded to the vague, ambiguous and conditional requests of Ocean Wind 1, stating, "OW1 has requested that the County provide its consent to the submission by OW1 of a multi-part permit application to the New Jersey Department of Environmental Protection, presumably under NJAC 7:7-23.2(g), at minimum, inasmuch as the County rights-of-way are proposed for placement of OW1 facilities.
42. Without doubt, even at this stage of discussions, it was unclear precisely what Ocean Wind 1 wanted the County to consent to.



43. There has been very limited information supplied by Ocean Wind 1 with regard to the specific need for county property, the extent of the property interests required or the valuation of the property in question.
44. In that vein, it is important to point out that Ocean Wind 1 has never supplied to the County an appraisal of the real property owned by the County that Ocean Wind 1 may or may not wish the BPU to take for them.
45. Reserving and not waiving any privileges or confidentialities, while in an executive session meeting on April 12, 2022, which I attended, part of the agenda of which was to discuss the ongoing issues surrounding the Ocean Wind 1 project, a meeting of which Ocean Wind 1 representatives were made aware, Mr. Donohue received an emailed letter from Ocean Wind 1 which indicated that Ocean Wind 1 “may” need property interests in real property of the County of Cape May.
46. But even the April 12, 2022, letter was equivocal, stating, “the Project **may** include the proposed construction of an underground onshore export cable under Cape May County’s (County) road right of way (Roosevelt Boulevard), identified on the Official Tax Map of Ocean City as Block 3350.01, Lot 17.01 (Property)”. (Emphasis added).
47. My first thought upon reviewing this letter was, “well, will it or won’t it include the need to use County lands.” This was left unclear by the letter.
48. Again, as stated above, I did not believe it was the County’s obligation to try and answer these questions for Ocean Wind 1. If Ocean Wind 1, with all of its experts, attorneys and consultants were not sure whether they would need County lands or not, it would certainly not be possible for any County official to make such a determination.

49. I believe the above demonstrates that the County of Cape May has acted in good faith and has, in fact, gone to great lengths to assist Ocean Wind 1 in navigating the challenging landscape of multiple municipal governing bodies with scores of elected officials in addition to the five duly elected County Commissioners.
50. Ms. Urbish is accurate in her testimony that the County, as all New Jersey governmental agencies typically do, directed Ocean Wind 1 to utilize the Open Public Records Act process to obtain documents from the County.
51. This was in no way an obstructionist act, but instead the regular course of action and direction that is given by Cape May county and hundred of other governmental entities in New Jersey to persons or entities seeking government documents.
52. The County did receive multiple OPRA requests that are believed to be from Ocean Wind 1 representatives and the County supplied all documents responsive to those requests.
53. Even in spite of the provision of many County records to Ocean Wind 1 through the OPRA process, Ocean Wind 1 has never clarified its ambiguous and conditional demands.
54. I am not an attorney, but I am at a loss to understand how the submission of a list of demands with the words "if required" repeated throughout or the words "may require" can form the basis of claims that the County of Cape May is not being cooperative and the basis for a Petition that seeks to transfer the authority of the duly elected representatives of the people of Cape May County to, respectfully, an unelected state government Board.
55. We would like to see a list of unequivocal, unconditioned and specific demands from Ocean Wind 1 before they are allowed to force this litigation before the BPU upon the people of Cape May County.

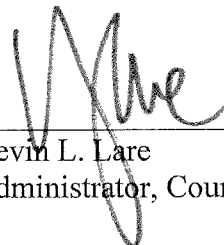
56. We would also like Ocean Wind 1 to be compelled to follow the law of condemnation that requires an appraisal of the specific property they wish to take from the County of Cape May. I understand this is a prerequisite to litigation and Ocean Wind 1 has not complied with it. So far, the County of Cape May has been presented with a letter that says Ocean Wind 1 “may” need certain property and Ocean Wind 1 unilaterally decided to value that property by comparing it to an appraisal of other land.

57. The letter demanding certain undefined property interests from the County was supplied to the County on April 12, 2022. I understand the statute that allows Ocean Wind 1 to litigate these matters before BPU requires them to wait a period of 90 days before they institute this action. Assuming that an unequivocal demand for property interests had been made, which it hasn't, Ocean Wind 1 would not legally be allowed to file this Petition until after July 11, 2022.

58. The County of Cape May respectfully urges BPU to decline jurisdiction and dismiss the Petition. In the event that specific demands are then made by Ocean Wind 1 and the County has a real opportunity to review the complete NJDEP permit application and consider the specific demands, Ocean Wind 1 should not be at liberty to bring the County before the Board of Public Utilities.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'K. Lare', is written over a horizontal line.

Kevin L. Lare  
Administrator, County of Cape May, New Jersey

June 7, 2022