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July 7, 2022

**Via Electronic Mail**

Carmen D. Diaz, Acting Secretary  
NJ Board of Public Utilities  
44 South Clinton Avenue, First Floor  
P.O. Box 350  
Trenton, NJ 08625-0350

**Re: 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  
BPU Docket No. QO22050347**

Dear Ms. Diaz:

Please accept for filing this letter on behalf of the New Jersey Division of Rate Counsel (“Rate Counsel”) objecting to the July 5, 2022 Order Setting Procedural Schedule (“July 5 Order”) issued by President Fiordaliso in the above-referenced matter. Consistent with the March 19, 2020 Order of the New Jersey Board of Public Utilities (“Board”) in I/M/O the New Jersey Board of Public Utilities’ Response to the COVID-19 Pandemic for a Temporary Waiver of Requirements for Certain Non-Essential Obligations, BPU Docket No. EO20030254, and the July 5 Order, these comments are being filed electronically and are being provided to each person on the service list electronically only. No paper copies will follow. **Please acknowledge receipt of this letter.** Thank you for your consideration and attention to this matter.

On July 5, 2022, President Fiordaliso issued the July 5 Order that established a procedural schedule in this matter, providing for the filing of opposition and testimony from the parties on July 29,

2022, a public hearing on August 23, 2022, and oral argument during the week of October 3, 2022, amongst other items. Absent from the procedural schedule are opportunities for written discovery and evidentiary hearings. July 5 Order at Exhibit A.

The petition in this matter requires a determination by the Board that temporary and permanent easements on property owned by the County are reasonably necessary for the construction or operation of the Project. “Administrative due process is generally satisfied if the parties had adequate notice, a chance to know opposing evidence, and the opportunity to present evidence and argument in response...”<sup>1</sup> In this matter, the Board will need to make findings, and requires a full record to support those findings. The compressed procedural schedule, however, does not afford the parties the opportunity for the complete development of the record upon which the Board can base its decision since there is no opportunity for discovery.

Moreover, the parties are only afforded about two weeks between each date for items that are due in accordance with the procedural schedule. Likewise, the date for filing motions to intervene is July 15, 2022—a mere 10 days after the issuance of the July 5 Order. This shortened timeframe does not provide adequate opportunity for parties wishing to intervene because there is a lack of sufficient notice to review the pleadings and prepare the requisite filings.<sup>2</sup>

In this matter there are very likely facts in dispute concerning the issue of whether the easements across properties owned by the County and the consents needed from the County for the required environmental permits are reasonably necessary for the construction or operation of the Project. These potential factual disputes have a greater likelihood of resolution if the parties engage in discovery and gain a better understanding of the facts. The purpose of discovery is to provide litigants access to “facts

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<sup>1</sup> Moore v. Dep't of Corr., 335 N.J. Super. 103, 108 (App. Div. 2000)(emphasis added)(internal quotation marks omitted)(quoting In re Dep't of Ins.'s Order Nos. A-89-119 & A-90-125, 129 N.J. 365, 382 (1992)).

<sup>2</sup> Rate Counsel notes there is also a pending Motion to Dismiss. The Order does not address this motion, but requires the parties to proceed on an expedited basis while the Board considers the motion. To the extent the motion is granted, the parties will have unnecessarily expended significant resources. A decision on the motion prior to the parties putting in significant work would result in a more efficient use of the parties' resources.

which tend to support or undermine their position or that of their adversary."<sup>3</sup> Similarly, discovery is appropriate "if the information sought appears reasonably calculated to lead to the discovery of admissible evidence."<sup>4</sup> The parties should be permitted to pursue an initial and second round of discovery on these factual matters to fully develop the record, which would allow the Board a record on which to base its decision. Rate Counsel requests additional time in the procedural schedule to serve discovery.

Furthermore, the procedural schedule provides for oral argument the week of October 3, 2022. Yom Kippur commences on the evening on October 4, 2022 and ends on the evening of October 5, 2022, which presents a conflict. Rate Counsel respectfully requests that the oral argument be adjourned to a later date to accommodate the Jewish holiday.

Under the present schedule, Rate Counsel will not be afforded any opportunity to propound discovery or to develop the facts and the record in this case. As a result, it is unclear on what basis the Board will make its determination to find that the easements are reasonably necessary. Accordingly, Rate Counsel respectfully requests that the procedural schedule in this matter be modified in order to permit the parties to conduct discovery on the petition and testimony and/or responses filed by the other parties in this matter to ensure each party is afforded sufficient procedural due process.

Respectfully submitted,

Brian O. Lipman, Esq.  
Director, Division of Rate Counsel

By: Brian O. Lipman

BOL

cc: Service List

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<sup>3</sup> N.J.A.C. 1:1-10.1.

<sup>4</sup> N.J.A.C. 1:1-10.1(b).

**In the Matter of the Petition of Ocean Wind LLC Pursuant to N.J.S.A. 48:37.1(f) for a Determination that 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 Docket No. QO22050347  
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