

In The Matter Of:
OCEAN WIND, LLC

June 24, 2022

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1 STATE OF NEW JERSEY
 2 BOARD OF PUBLIC UTILITIES
 3 DOCKET NO, QO22020041
 4
 5 -----
 6 PUBLIC HEARING:
 7 ORAL ARGUMENT IN THE MATER OF
 8 THE PETITION OF OCEAN WIND, LLC,
 9 PURSUANT TO N.J.S.A. 48:3-87.1(f)
 10 FOR A DETERMINATION THAT
 11 EASEMENTS ACROSS GREEN ACRES
 12 RESTRICTED PROPERTIES AND
 13 CONSENTS NEEDED FOR CERTAIN
 14 ENVIRONMENTAL PERMITS IN, AND
 15 WITH RESPECT TO, THE CITY OF
 16 OCEAN CITY, ARE REASONABLY
 17 NECESSARY FOR THE CONSTRUCTION OR
 18 OPERATION OF THE OCEAN WIND 1
 19 QUALIFIED OFFSHORE WIND PROJECT
 20 -----
 21 DATE: FRIDAY, JUNE 24, 2022
 22 TIME: 10:00 a.m.
 23
 24 BEFORE:
 25 PRESIDENT JOSEPH L. FIORDALISO
 COMMISSIONER MARY-ANNA HOLDEN
 COMMISSIONER DIANNE SOLOMON
 COMMISSIONER UPENDRA J. CHIVUKULA
 COMMISSIONER BOB GORDON
 J.H. BUEHRER & ASSOCIATES
 884 Breezy Oaks Drive
 Toms River, New Jersey 08753
 (732) 295-1975

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 4
 5 TRANSCRIPT of the hearing in the
 6 above-entitled matter, said hearing being taken
 7 pursuant to Superior Court Rules of Civil
 8 Practice and Procedure, by and before MARIBEL
 9 SYPNIEWSKI, a Certified Court Reporter and
 10 Notary Public of the State of New Jersey, held
 11 VIA MICROSOFT TEAMS, on Friday, June 24, 2022
 12 commencing at 10:03 in the morning.
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1 A L S O P R E S E N T :
 2 COZEN O'CONNOR
 3 BY: GREGORY EISENSTARK, ESQ.
 4 ONE GATEWAY CENTER
 Suite 910
 Newark, New Jersey 07102
 5 STATE OF NEW JERSEY
 6 DIVISION OF RATE COUNSEL
 7 BY: BRIAN LIPMAN, ESQ., Director
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 Trenton, New Jersey 08625
 8 BOARD OF PUBLIC UTILITIES
 9 BY: ANDREA HART, Board Staff
 44 South Clinton Avenue
 Trenton, New Jersey 08625
 10 McCROSSON & STANTON, P.C.
 11 BY: DOROTHY F. McCROSSON, ESQ.
 200 Asbury Avenue
 Ocean City, New Jersey 08226
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1 PRESIDENT FIORDALISO: Before I say
 2 anything, I just want to make everyone aware of
 3 the fact that meeting is being recorded. We do
 4 have a recording -- a court reporter at her site
 5 taking everything down so that the record is
 6 complete and will be available for people to
 7 view.
 8 And, again, good morning to all of
 9 you. My name is Joe Fiordaliso and I am the
 10 President of the New Jersey Board of Public
 11 Utilities and the presiding Commissioner for
 12 today's proceeding. Today we are here for the
 13 Oral Argument regarding the petition filed by
 14 Ocean Wind, LLC, for authorization to obtain
 15 easement -- easements across Green Acres
 16 restricted properties and consents needed for
 17 certain environmental permits in and with
 18 respect to the City of Ocean City, are
 19 reasonably necessary for the construction or
 20 operation of Ocean Wind 1, Qualified Offshore
 21 Wind Project. Docket Number QO22020041,
 22 N.J.S.A. 48:3-87, grants the Board the authority
 23 to make a determination on this petition.
 24 Since we have all of the
 25 Commissioners of the Board of Public Utilities

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1 on hand today, this proceeding is a Public
 2 Meeting of the New Jersey Board of Public
 3 Utilities.
 4 Adequate notice of this meeting has
 5 been provided as required by the Open Public
 6 Meetings Act set forth in N.J.S.A. 10:4-6. To
 7 date, we have the following on the docket. On
 8 February 3, 2022, Ocean Wind, LLC, filed a
 9 petition seeking determination that certain
 10 easements and consents are reasonable --
 11 reasonably necessary for the construction of
 12 Ocean Wind Project. This Petition was
 13 accompanied by testimony from Pilar Patterson,
 14 Jason Kalwa and Madeline Urbish.
 15 The Board issued an Order retaining
 16 the petition and assigning myself as presiding
 17 officer on February 23. I set the initial
 18 procedural schedule and requested supplemental
 19 information from the petitioner in an Order on
 20 March 1st. On March 15th, Ocean Wind submitted
 21 answers to the request for supplemental
 22 information. On March 22nd, I issued an Order
 23 naming Ocean City as a necessary party and
 24 updating the procedural schedule.
 25 On April 27, Ocean City filed a

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1 response to Ocean Wind's March 15 response.
 2 Also, on April 27, Rate Counsel filed testimony
 3 for Maximilian Chang. On April 29, Ocean Wind
 4 filed an Amended Petition revising the acreage
 5 impact upon or under the proposed Green and
 6 Energy diversion down work. On May 11, Ocean
 7 Wind filed a rebuttal testimony to the April 29
 8 response from Ocean City.
 9 Public hearing was held on May 19,
 10 and the Board received written comments before
 11 the deadline of June 2nd. On June 16th, Ocean
 12 Wind filed a reply to Rate Counsel's comments.
 13 This petition represents the first request for
 14 authorization under N.J.S.A. 48:3-87.1, because
 15 the petition has the potential to affect the
 16 property interests of Ocean City. The Board
 17 takes this responsibility very seriously and is
 18 committed to providing a fair and transparent
 19 process.
 20 With us today are representatives
 21 from the parties, Ocean Wind, Ocean City and the
 22 Division of Rate Counsel. Each of the parties
 23 will have the opportunity to present their
 24 argument starting with the Petitioner, Ocean
 25 Wind, followed by Ocean City and then Rate

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1 Counsel. The parties have indicated that each
 2 argument will take, approximately, 15 minutes.
 3 After the initial argument, all parties will
 4 have the opportunity for a short rebuttal. As
 5 noted, the Commissioners are present today and
 6 may ask questions at the end of the
 7 presentations.
 8 I want to remind the parties and the
 9 public that arguments in this proceeding should
 10 be limited to the matter at hand, whether the
 11 easements and consents sought by Ocean Wind,
 12 LLC, are reasonably necessary for the
 13 construction or operation of the project. Not
 14 at issue today, let me underline that, not at
 15 issue today are the desirability of Offshore
 16 Wind, the location of the project in the ocean,
 17 or any environmental aspects positive or
 18 negative of the Ocean Wind project as a whole,
 19 except as they relate to the easements and
 20 consents sought under the petition.
 21 I will ask that when a party is
 22 speaking, please ensure your camera is on you
 23 and you are un-muted. When not speaking, please
 24 turn your video and microphone off. On a
 25 personal note, I had hoped that we would be

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1 doing this procedure in person, but at the
 2 request of one of the parties, we are doing it,
 3 as you can see, virtually. And it -- I am sure
 4 we will get all of the information that we need
 5 in order to make a fair determination as we go
 6 along.
 7 With that, I will invite Ocean Wind
 8 to make their statement. Ocean Wind.
 9 MR. EISENSTARK: Thank you,
 10 President Fiordaliso. And I just want to check,
 11 can everyone hear me okay? I always like --
 12 PRESIDENT FIORDALISO: Very well,
 13 yes.
 14 MR. EISENSTARK: Thank you. And,
 15 thank you President Fiordaliso, Commissioners
 16 Holden, Solomon, Chivukula and Gordon. My name
 17 is Gregory Eisenstark. I'm with the law firm of
 18 Cozen O'Connor and we represent the petitioner,
 19 Ocean Wind, LLC, in this filing.
 20 I'd just like to start briefly by,
 21 you know, thanking the Board for this
 22 opportunity to present some additional detail
 23 about the filing, put some issues into context
 24 and explain, you know, in some more detail what
 25 exactly it is that Ocean Wind is asking the

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1 Board to do here.
 2 I think everyone here is aware, this
 3 filing concerns the Ocean Wind 1, Qualified
 4 Offshore Wind Project. That would be the first
 5 Offshore Wind Project constructed off the coast
 6 of New Jersey. It's an 1100 megawatt Offshore
 7 Wind Project. And why are we here today before
 8 the Board? Why did Ocean Wind make -- file this
 9 petition back in February of this year?
 10 Well, because everyone knows, you
 11 have to get the generation that's being
 12 generated 15 miles or more out in the Atlantic
 13 Ocean to the shore and to interconnect with the
 14 existing electric bulk power system. All the
 15 load the customers that are going to use the
 16 electricity are located on land or, of course,
 17 not located out in the ocean. So any Offshore
 18 Wind Project, including this one, Ocean Wind 1,
 19 needs to construct cables from the ocean and
 20 make landfall on the land and then across
 21 portion of the land and interconnect with the
 22 existing bulk power system.
 23 For this particular project, for
 24 Ocean Wind 1, the project examined a number of
 25 what we call points of interconnection, that's a

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1 POI or where the -- where the project will
 2 interconnect with the existing electric grid.
 3 Ultimately, after a fair amount of evaluation,
 4 it was determined that there's essentially two
 5 viable points of interconnection for Ocean Wind
 6 1. One is in Lacey Township in Ocean County,
 7 and the other is in Upper Township in Cape May
 8 County. Both will be used for this project.
 9 The one -- the point of interconnection we're
 10 about talking here, of course, today is the
 11 southern one, the one in Cape May County in
 12 Upper Township. And what this matter is about
 13 is Ocean Wind's attempts to site the onshore
 14 cable from where it makes landfall, where the
 15 under ocean cable meets land to the point of
 16 interconnection in Upper Township.
 17 You know, basically, as the Board is
 18 aware, the Board approved Ocean Wind 1, just a
 19 little over three years ago. It was in June
 20 2019. Hard to believe that three years have now
 21 passed since that initial approval was granted.
 22 Shortly after that initial approval was granted
 23 by the Board, Ocean Wind began discussions with
 24 Ocean City and its representatives. The
 25 discussions were extensive. The project

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1 explains -- explained what it needed as far as
 2 locating the cable, property rights,
 3 environmental permitting consents. And those
 4 discussions went on for some time.
 5 Unfortunately, as we sit here today, we could --
 6 the project was unable to get the necessary
 7 property rights or the necessary municipal
 8 consents from Ocean City, which necessitated
 9 this filing. Because I think all the members of
 10 the Board gathered here today are all aware, in
 11 2021 the legislature sought fit to amend the
 12 Offshore Wind Economic Development Act, OWEDA,
 13 to allow the Board, to give the Board some
 14 additional jurisdiction to address situations
 15 like the one that we're faced with here today.
 16 And that is the siting of the onshore portion of
 17 a qualified Offshore Wind Project.
 18 I think the legislature acted
 19 because, while OWEDA was a progressive and
 20 forward-thinking piece of legislation back in
 21 2010 when it was enacted, it didn't address the
 22 onshore portion of what needs to be constructed
 23 for a qualified Offshore Wind Project. And,
 24 unlike public utilities, electric utilities, gas
 25 utilities, water and sewer utilities, which have

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1 some statutory rights to occupy public
 2 rights-of-way, to seek condemnation for property
 3 rights and to override some municipal approvals,
 4 Offshore Wind Projects didn't have any of that
 5 before these recent amendments, the 2021
 6 amendments. So those amendments, I believe, and
 7 Ocean Wind believes, were necessary to address
 8 the type of situation we have here and to allow
 9 the siting of Offshore Wind Projects, the
 10 onshore portion of it.
 11 So, basically, as President
 12 Fiordaliso discussed briefly earlier, this
 13 petition was filed under those recent
 14 amendments. They're N.J.S.A. 48:3-87.1(f)
 15 Subsections 2 and 3. And, essentially, what the
 16 filing seeks is -- it's actually -- there's a
 17 lot of paper in the record in this thing.
 18 There's extensive testimony, rebuttal testimony
 19 and exhibits. But the relief that Ocean Wind is
 20 seeking is actually fairly simple. There are
 21 really just two or three issues that we're
 22 asking the Board to get involved with and
 23 approve here.
 24 The first issue is the approval of
 25 the acquisition of two easements for the

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1 underground construction of the electric cable.
 2 One of those easements is at the beach fall at
 3 35th Street in Ocean City. The second of those
 4 easements is at the point where the underground
 5 line will cross -- a bay crossing at what's
 6 known as Peck's Bay at Crooks Horn Creek at the
 7 border of where Ocean City meets, you know, on
 8 the other side of the bay, it becomes Upper
 9 Township. Those are the two easements the
 10 project is asking the Board to approve. The
 11 total acreage of those easements in total is
 12 0.647 acres. So just a little bit more than
 13 half an acre. Each of the easements is,
 14 approximately, 30 feet wide. So they're not
 15 very wide. And the easements are simply
 16 necessary for the installation of the
 17 underground cables.
 18 In conjunction with that, both of
 19 the parcels over which Ocean Wind is seeking
 20 easements are encumbered by Green Acres -- Green
 21 Acres restrictions. Green Acres restrictions --
 22 and I won't go into a great deal of detail about
 23 what the Green Acres Program is. But suffice it
 24 to say, that the state's Green Acres Program
 25 provides fund -- provided funding and -- for the

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1 acquisition of certain property. And that
 2 property is generally preserved as parkland,
 3 unless an application is approved by the NJDEP
 4 to divert that. And then if they do approve a
 5 diversion, there are various things that the
 6 entity that seeks the diversion has to do in
 7 order for the DEP to approve the diversion of
 8 Green Acres, one of which is obviously to
 9 acquire an easement and to pay the property
 10 owner the fair value of the easement. The
 11 second is to pay into a state Green Acres fund,
 12 a sufficient fund that would allow the
 13 acquisition three times the acreage to be
 14 diverted to be set aside for new Green Acres
 15 property. So that's the first thing. The
 16 acquisition of these two easements.
 17 The second thing that the project
 18 Ocean Wind is asking the Board to approve is to
 19 essentially override or preempt the municipal
 20 consents that are required -- would otherwise be
 21 required from Ocean City for the NJDEP permits.
 22 As -- and it's in the record of our filing here.
 23 We discuss in our pre-file testimony, we list
 24 all of the DEP permits that the project will
 25 require before it can begin construction.

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1 The way DEP -- the DEP permitting
 2 process works, the property owner must consent
 3 to the applicant -- to the application and the
 4 issuance of -- for the DEP to go through the
 5 permitting process. In this case, Ocean City is
 6 the property owner for the two easement areas
 7 and the rest of the underground cable route for
 8 the project. So absent the recent amendments to
 9 OWEDA, Ocean City would have had to consent to
 10 the DEP permit application. As I alluded to
 11 earlier, as of now, Ocean City has not consented
 12 to those DEP permit applications. So we are
 13 asking the Board to step into the municipality's
 14 place and allow the DEP permit applications to
 15 be processed and go forward, which hopefully at
 16 the end of the day will result in the DEP
 17 issuing the permits that are required for the
 18 project.
 19 I just want to touch on a couple of
 20 other things, just in detail. And most of
 21 this -- I'm not going to obviously cover
 22 everything that's in the petition and direct and
 23 rebuttal testimony we filed, because we'll be
 24 here all day if I tried to do that. I just want
 25 to make it clear, that Ocean Wind complied with

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1 the statutory requirements. As I mentioned
 2 earlier, we've been discussing the needs that we
 3 have within Ocean City for, you know, literally
 4 close to three years now. On August 11th of
 5 last year, the project sent a formal letter to
 6 Ocean City, which sometimes is referred to as
 7 the 90-day letter, specifically, outlining in
 8 writing what we needed as far as easements,
 9 property rights and permit consents. At some
 10 point after that, Ocean Wind also had an
 11 appraisal done for the two easements that it
 12 needs. It sent a formal offer letter to Ocean
 13 City offering to acquire those easements on a
 14 10-times the appraised value. That offer has
 15 not been accepted and even formally responded
 16 to. And that resulted in the petition being
 17 filed.
 18 I just want to highlight a couple of
 19 other things. As I said earlier, this briefly
 20 describes the route of the underground cable.
 21 And let me pause for a second here, because I
 22 want to emphasize, all of the electric cable at
 23 issue in this filing will be constructed
 24 underground. None of it will be overhead. It
 25 will come ashore at 35th Street at the beach.

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1 And where it passes under the beach will be
 2 installed by what's known as horizontal
 3 directional drilling, which is an underground
 4 drilling process. The line as it passes under
 5 the beach will be very deep. In parts, a line
 6 would be 60 feet below the surface of the beach
 7 to give you an idea of how deep this line would
 8 be. It will then go up and it will then pass
 9 under the beach and come up in the public road
 10 right-of-way on 35th Street. From that portion
 11 within Ocean City, the entire line would be --
 12 most of the rest of the line will be conducted
 13 in -- essentially in conduit, in duct vacs, much
 14 like any other existing utility underground
 15 line, gas line, waterline, telecommunication
 16 lines that are already in place in Ocean City
 17 and in most other municipalities in the state.
 18 The construction will be no different. It will
 19 be constructed underground within -- within
 20 volts and it will be constructed much the way
 21 any other facility would be constructed. The
 22 only other place that it won't be constructed
 23 within the public road right-of-way, as I
 24 mentioned earlier, is at the Bay Crossing on
 25 Roosevelt Boulevard where it crosses at Crook

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1 Horn Creek. At that crossing, again, there's
 2 the second easement that's required. And at
 3 that point, because we have to cross underneath
 4 the land and underneath, essentially, the bay or
 5 the creek, horizontal directional drilling will
 6 be used again. And that takes us -- that's the
 7 end of the portion of the line that's at issue
 8 here in Ocean City. The line will then come up
 9 on the other side of the bay. It will, again,
 10 be constructed in public road right-of-way
 11 through up the rest of the way to Upper Township
 12 and it will interconnect with a new substation
 13 that will be built in Upper Township at the --
 14 basically, at the location of Atlantic City
 15 Electric's B.L. England substation. It will be
 16 constructed on a nearby parcel and it will
 17 interconnect with the Atlantic City Electric
 18 grid at that point.
 19 So, again, all of the portions
 20 within Ocean City will be underground. Once
 21 construction is completed, the lines wouldn't be
 22 visible, you won't see them, you won't hear
 23 them, you really won't know that they're there.
 24 Let me pause for a second and just
 25 check my notes. Let me just speak for a few

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1 moments on the statutory standard of review.
 2 And I think President Fiordaliso mentioned this
 3 in this opening remarks. The standard is for
 4 the easements, whether the requested easement
 5 right-of-way or other property -- real property
 6 interests are reasonably necessary for the
 7 construction or operation of the qualified
 8 Offshore Wind Project. And I just want to take
 9 a second. And it's the same standard that
 10 applies to the environmental permit consents as
 11 well.
 12 In other context, when the Board has
 13 -- had applications or petitions from public
 14 utilities to override municipal zoning
 15 authority, the Board has had a chance to comment
 16 on what the reasonable -- reasonably necessary
 17 standard is. And I just want to make it clear
 18 here. The reasonable necessity standard doesn't
 19 mean it's absolutely necessary. It doesn't mean
 20 it's the only alternative. It doesn't even mean
 21 it's the best alternative. It just means that
 22 the project evaluated different alternatives.
 23 And the alternative that is proposed is a
 24 reasonable one. It doesn't have to be the best
 25 one. It doesn't have to be the lowest cost one.

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1 One other point that I'd like to
 2 make is, you know, what this project -- what
 3 this filing is not about. And I think it's
 4 important to emphasize this, and I may get into
 5 this a bit in rebuttal, you know, quite frankly,
 6 depending on what comments Rate Counsel makes.
 7 But based on their testimony, which we responded
 8 to in rebuttal testimony, there's -- Rate
 9 Counsel raised some alleged concerns about cost
 10 of the project. And I just want to make it
 11 clear, this filing really isn't about what this
 12 underground portion of the project will cost.
 13 And that's because this isn't a public utility
 14 project. This is a qualified Offshore Wind
 15 Project.
 16 The project, as the Board is well
 17 aware, was competitively bid. Ocean Wind
 18 submitted proposed OREC prices. Those OREC
 19 prices were determined three years ago in the
 20 Board's 2019 Order, and they won't be modified
 21 based on anything that happens with -- in this
 22 filing or with this portion of the project. The
 23 risk of cost overruns or, conversely, the
 24 benefit of cost underruns from this portion of
 25 the project is entirely on Ocean Wind. It will

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1 not impact the cost that ratepayers pay through
 2 OREC prices one-way or another. There was some
 3 confusion in some of the comments that were
 4 filed about the transmission system upgrade
 5 called sharing mechanism. That is one of the
 6 limited instances in which OREC prices can be
 7 adjusted. I just want to make it clear here
 8 today, and we have testimony in the record,
 9 Matthew Kaplan's rebuttal testimony explains
 10 this in some detail. But the transmission
 11 system upgrade called sharing mechanism does not
 12 apply to the facilities we're talking about
 13 here. The TSUC only applies to essentially PJM
 14 directed transmission system, bulk system
 15 upgrade cost. So when the project has to apply
 16 to interconnect and enter into interconnection
 17 agreements with, in this instance, Atlantic City
 18 Electric for this interconnection, JCP&L for the
 19 one in Lacey Township, PJM identifies cost that
 20 would be necessary to essentially upgrade the
 21 bulk power system to allow the interconnection
 22 and the interjection of this amount of electric
 23 generation capacity into the system. Those are
 24 the costs that are subject to the TSUC sharing
 25 mechanism. The cost to run the lines from the

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1 turbines out in the ocean to the beach, or to
 2 landfall. And the underground portion from the
 3 landfall to the new substation is not within the
 4 TSUC. So, that is why this is a little bit
 5 different than a utility project.
 6 You know, often in utility
 7 infrastructure projects, when a utility comes
 8 in, the Board is interested in how much it's
 9 going to cost because the Board knows that
 10 eventually utility is going to file a base rate
 11 case and seek to include all of the capital
 12 costs in its base rate. Here, that's not the
 13 case. Ocean Wind isn't a utility. It's not
 14 regulate -- its rates are not regulated by the
 15 Board. And at least for the facilities we're
 16 talking about here in this filing, they will
 17 have no impact on the amount that customers pay.
 18 That's already been determined in the Board's
 19 2019 Order. It's not up for reconsideration
 20 here or really anywhere else. So I just wanted
 21 to make that point clear.
 22 One last point, and I know I've been
 23 talking for a while, and I don't want to
 24 overstay my welcome here and leave time for
 25 others' comments. I just want to make it clear,

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1 that from Ocean Wind's perspective, we've
 2 clearly satisfied the statutory standard. We
 3 filed the Verified Petition. We filed three
 4 pieces of direct testimony with supporting
 5 exhibits explaining exactly what we need,
 6 explaining the outreach we've done to Ocean City
 7 prior to filing the petition, explaining what
 8 the construction will be like, explaining the --
 9 what environmental permits we need and
 10 explaining in detail what the two easements are.
 11 From our perspective, our filing meets the
 12 statutory standard and is un-rebutted. The only
 13 party to file testimony in response to the --
 14 the direct testimony of the petitioner was Rate
 15 Counsel. Rate Counsel raised a number of
 16 issues. You know, I'm not going to put words in
 17 Rate Counsel's mouth. I don't think Rate
 18 Counsel is opposing the project. They raised
 19 what I say a number of concerns. I think we
 20 clearly addressed them all in rebuttal testimony
 21 and have adequately explained why those concerns
 22 are not valid and do not deter from the filing
 23 the company has made and the relief that we're
 24 requesting.
 25 So, again, with that, I'm going to

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1 stop at this point and reserve, you know, a few
 2 minutes in case I do need rebuttal. I'd be
 3 happy to answer any questions that President
 4 Fiordaliso or any of the Commissioners may have.
 5 And at this point, that would conclude my direct
 6 presentation. Thank you.
 7 PRESIDENT FIORDALISO: Very good.
 8 Thank you very much. We're going to save
 9 questions until the end of the presentations and
 10 so on, and if anyone has them at that point. I
 11 thank you for your statement. I now invite
 12 Ocean City to make their statement.
 13 MS. McCROSSON: Thank you, President
 14 Fiordaliso. Good morning to you and to the
 15 Commissioners. I'm here --
 16 PRESIDENT FIORDALISO: Good morning.
 17 MS. McCROSSON: I'm here on behalf
 18 of Ocean City and Mayor Jay Gillian and business
 19 administrator George Savastano are with me this
 20 morning. Thank you for the opportunity to
 21 provide closing argument in this matter. Ocean
 22 City will address five points.
 23 Ocean City questions the authority
 24 of the BPU to grant the Petition that Ocean Wind
 25 has filed in this matter. Ocean City urges the

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1 BPU to refer this matter to the Office of
 2 Administrative Law. Ocean City believes that
 3 the Board should require Ocean Wind to disclose
 4 costs of alternative routes prior to making a
 5 decision in this matter. And Ocean City
 6 believes that the Board should wait for the
 7 issuance of a final environmental impact
 8 statement prior to making a decision on the
 9 petition.

10 The City respectively questions the
 11 authority of the BPU to consider Ocean Wind's
 12 petition seeking authority to obtain an easement
 13 over the City's fragile beach and wetlands and
 14 its environmental permit consents. The New
 15 Jersey Administrative Code Section 7:36-26.8
 16 permits local government units to initiate an
 17 application for diversion of lands on its
 18 recreation and open space inventory. Hastily
 19 adopted N.J.S.A. 48:3-87.1(f) upon which Ocean
 20 Wind relies and pursuant to which the BPU is now
 21 proceeding purports to broadly preempt and
 22 supercede all other state laws, rules and
 23 regulations. It strips elected municipal
 24 officials of the power to decide whether Ocean
 25 Wind, a private corporation, may take municipal

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1 property rights within Ocean City in complete
 2 disregard of the will of the governing body and
 3 its constituents. N.J.S.A. 48:3-87.1 has not
 4 yet been tested in the courts. There remains to
 5 be seen whether it will survive judicial
 6 scrutiny.

7 The Board is likely familiar with
 8 the admonition in the New Jersey State
 9 Constitution of 1947 that, quote, "Any law
 10 concerning municipal corporations formed for
 11 local government or concerning counties, shall
 12 be liberally construed in their favor." Article
 13 4, Section 7, paragraph 11. The novelty of
 14 N.J.S.A. 48:3-87.1(f) coupled with the cited
 15 language from New Jersey Constitution should be
 16 reason enough for the Board to refer Ocean
 17 Wind's petition to the Office of Administrative
 18 Law as a contested case under N.J.S.A.
 19 52:14(f)-1 et seq., for hearing and disposition.
 20 Additionally, there can be no doubt that this is
 21 a contested case under the Administrative
 22 Procedure Act and under N.J.A.C. 1:1-2.1. The
 23 case law confirms this.

24 First, this hearing is required by
 25 statute. Second, the hearing will result in an

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1 adjudication concerning rights, duties,
 2 obligations, privileges, benefits or other legal
 3 relations. And third, the hearing involves
 4 specific parties rather than a large segment of
 5 the public. These three factors are enunciated
 6 in Board of Education of the Upper Freehold
 7 Regional School District versus State Health
 8 Benefits Commission 3:14 NJ Super 486 Appellate
 9 Division 1998.

10 Further, in this matter there is a
 11 disputed issue of fact. Ocean Wind argues that
 12 the Great Egg Harbor route would cross under two
 13 historic bridges with low clearance making
 14 construction of this project using that route
 15 significantly challenging. Ocean city has taken
 16 the position that neither of the bridges
 17 spanning Great Egg Harbor route is historic, nor
 18 has low clearance. This issue of fact alone is
 19 reason for the Board to refer this matter to the
 20 Office of Administrative Law, and Ocean City
 21 urges the Board to make that referral.

22 N.J.S.A. 48:3-87.1(f) treats Ocean
 23 Wind as if it were a public utility by giving it
 24 the power of eminent domain modified by the
 25 requirement of the BPU, an agency charges the

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1 oversight of regulated utilities. Find its
 2 seizure of property rights from the City of
 3 Ocean City and soon to come County of Cape May
 4 to be reasonably necessary. Yet according to
 5 Ocean Wind, the statute excuses Ocean Wind from
 6 the obligations of a public utility to disclose
 7 the costs of its preferred route or chosen path,
 8 extensively because the cost of construction
 9 would be borne by Ocean Wind.

10 The cost of construction is
 11 absolutely relevant to the question of whether
 12 Ocean Wind's preferred route is reasonably
 13 necessary. Realistically, each and every
 14 criterion constraint considered in the
 15 evaluation of the point of interconnection and
 16 preferred route could be mitigated if cost were
 17 of no issue. It appears that Ocean Wind is
 18 promoting the most economically expedient route.
 19 This is a self-serving approach at the cost of
 20 Ocean City. Until and unless Ocean Wind
 21 discloses the cost of each of the alternate
 22 routes, the Board cannot find that the easements
 23 and consents which Ocean Wind seeks are
 24 reasonably necessary. As Ocean City has
 25 previously argued, Ocean Wind could dispense

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1 with its efforts to rest property rights from
 2 Ocean City against the will of its governing
 3 body by pursuing the Great Egg Harbor route.
 4 The Great Egg Harbor Inlet is sufficiently wide
 5 to accommodate this route without impacting the
 6 U.S. Army Corps of Engineers borrow area, which
 7 is solely on the Ocean City shoreline.
 8 Restriction of other vessels during construction
 9 in this wide inlet does not equate to a closure
 10 of the inlet. Navigation would continue during
 11 the temporary period of construction as it did
 12 during the construction of the Ocean City-Long
 13 Port Bridge in and around 2002.
 14 By contrast, the preferred route
 15 would traverse a much, much narrower, but
 16 equally heavy traveled Peck's Bay at Crook Horn
 17 Creek. The reduced distance of the preferred
 18 route likely translates into lower costs for
 19 Ocean Wind. However, it requires disturbance of
 20 the barrier islands beach and wetlands. This
 21 disturbance would be eliminated by using the
 22 Great Egg Harbor route. Going through Ocean
 23 City is not reasonably necessary. Disturbance
 24 of shellfish habitat Great Egg Harbor Inlet,
 25 another factor which disqualified the Great Egg

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1 Harbor route can be mitigated with a monetary
 2 contribution to the NJDEP's fund for help --
 3 shellfish habitate (Phonetic) -- habitat
 4 mitigation and restoration pursuant to N.J.A.C.
 5 7:7-17.1 et seq. This is another strictly
 6 monetary issue.
 7 It is surprising to Ocean City that
 8 Ocean Wind argued that the Great Egg Harbor
 9 route would cross under two historic bridges
 10 with low clearance. Both have high clearances
 11 65 and 55 feet respectively. Neither bridge
 12 would be an actual obstacle to construction.
 13 The overwhelming benefit of
 14 utilizing the Great Egg Harbor route is the
 15 utter lack of disturbance to the citizenry of
 16 Ocean City. The City's pristine beach and
 17 wetlands would not be disturbed. The streets
 18 would not be excavated. Ocean City would still
 19 bear the aesthetic effects of this project and
 20 whatever consequences they may bring. However,
 21 the island would not be defaced and the
 22 activities of the people on the island would not
 23 be interrupted. It seems clear that the Great
 24 Egg Harbor route was eliminated due to economic
 25 reasons. It is a more difficult route, perhaps

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1 a more extensive route, but surely not
 2 impossible to implement.
 3 In its June 16th, 2022 response to
 4 written comments, Ocean Wind explains that it
 5 eliminated the Great Egg Harbor route for a
 6 myriad of reasons, many of which were related to
 7 the characteristics of the inlet, which I
 8 already addressed. Ocean Wind appears to have
 9 overcome similar obstacles in its Oyster Creek
 10 proposals to install cable crossing Barnegat
 11 Inlet and/or Barnegat Bay. For that project,
 12 shallow areas will be dealt with through
 13 dredging. Target burial depths would be
 14 determined based on an assessment of the seabed
 15 conditions, seabed mobility and the risk of
 16 interaction with external hazards, such as
 17 fishing gear and vessel anchors, while also
 18 considering other factors such as maintain
 19 navigational channels and thermal connectivity.
 20 Many of those issues were cited in the decision
 21 to eliminate the Great Egg Harbor route as a
 22 possible route.
 23 Ocean Wind will develop a cable
 24 burial risk assessment for the Oyster Creek
 25 project. And in the event cables cannot achieve

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1 proper burial depths, or if cables would cross
 2 existing infrastructure -- infrastructure, Ocean
 3 Wind has options, including rock placement,
 4 concrete mattress placement, fraud (Phonetic)
 5 mattress placement, rock bags for five, number
 6 five, seabed spacers. These solutions are
 7 proposed for the Ocean -- the Oyster Creek site
 8 according to BOEM's Draft Environment Impact
 9 Statement, Pages 2-13 to 14. They have not been
 10 cited as reasons to reject Ocean City's
 11 preferred route in the Oyster Creek substation.
 12 Ocean Wind claims that the Great Egg
 13 Harbor route would be 5.8 miles within a
 14 designated shellfish habitat. It appears that
 15 the distance from the edge of Island Beach State
 16 Park to Oyster Creek is longer than 5.8 miles.
 17 And as for the environmental characteristics of
 18 the seabed to be traversed to reach the Oyster
 19 Bay substation, according to the BOEM Draft
 20 Environmental Impact Statement, Barnegat Bay is
 21 an estuary of national importance and part of
 22 the national estuarine research reserve system.
 23 Four artificial reefs are mapped offshore
 24 adjacent to the Oyster Creek Offshore export
 25 cable corridor. Four shellfish leases, 37

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1 acres, and one research lease occur in the
 2 vicinity of Oyster Creek with the primary
 3 shellfish grow-out of oysters and hard clams.
 4 The proposed offshore export cable to the
 5 southern most landfill options for Oyster Creek
 6 traverses an aquacultured lease area on the west
 7 side of Barnegat Bay. Barnegat Bay supports
 8 invertebrate species such as hard clams, soft
 9 clams, blue mussels, bay scallops and eastern
 10 oyster.
 11 Ocean Wind evidently believes it can
 12 address all of the challenges these conditions
 13 present in the Oyster Creek landfall proposals,
 14 but would have you believe that the similar
 15 challenges in the Great Egg Harbor route are
 16 insurmountable. And in its evaluation of the
 17 Great Egg Harbor route, Ocean Wind completely
 18 disregards the consideration most important to
 19 the most impacted community, the opinions of the
 20 elected officials of Ocean City and their
 21 constituents. That is not even listed as a
 22 relevant factor. The failure of Ocean Wind to
 23 even consider the opinion of the elected
 24 officials of Ocean City, the affected community,
 25 as the preferred route should be startling to

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1 this Board when Ocean Wind has other options.
 2 The environmental impact statements
 3 which would be required for the project have not
 4 been finalized. BOEM has not issued a final
 5 EIS. The National Marine Fisheries Service has
 6 not adopted an EIS. And the U.S. Army Corps of
 7 Engineers has not adopted the EIS. Any one of
 8 these agencies might determine that the
 9 environmental impact of the proposed route
 10 through Ocean City is unacceptable, in which
 11 case, the easements would not be reasonably
 12 necessary. Waiting until the environmental
 13 impacts can be addressed and understood would be
 14 prudent. And Ocean City asks the Board to defer
 15 any decision in this matter until it can review
 16 BOEM's EIS and the response thereto of the NMFS
 17 and the U.S. Army Corps of Engineers.
 18 In conclusion, if N.J.S.A. 48:3 --
 19 I'm sorry. In conclusion, if N.J.S.A.
 20 48:3-87.1(f) were ultimately found to be
 21 enforceable in this matter, the BPU would be
 22 required to find sufficient evidence in the
 23 record to support a finding that the easements
 24 and consents which Ocean Wind seeks to take from
 25 Ocean City without Ocean City's consent are

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1 reasonably necessary. The factual issue
 2 regarding the impact of the two bridges which
 3 Ocean Wind claims to be impediments to the use
 4 of the Great Egg Harbor route suggests that the
 5 petition should be referred to the Office of
 6 Administrative Law at this juncture. In the
 7 absence of a cost analysis as to the various
 8 alternate routes, the record is fatally
 9 deficient. In light of the apparent
 10 inconsistencies between what is possible and
 11 proposed for Oyster Creek, and what is deemed to
 12 be impracticable and fatal to the Ocean City
 13 situation, and Great Egg Harbor, Ocean Wind's
 14 presentation is incomplete or not credible.
 15 Thank you.
 16 PRESIDENT FIORDALISO: Thank you for
 17 your comments. I now invite Rate Counsel to
 18 make their statements.
 19 MR. LIPMAN. Thank your, President
 20 Fiordaliso. Hello to all the Commissioners.
 21 Good to see everybody. I, too, actually am glad
 22 that this is virtual because I'm actually in
 23 Orlando right now. So it makes it a lot easier
 24 to argue from Orlando than from Trenton.
 25 I'm glad that we've stayed focused on what this

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1 is about, because that's very important, the
 2 issue before the Board today is whether this
 3 easement is reasonably necessary for Ocean Wind
 4 to conduct for its line. In order for the BPU
 5 to make that finding, it needs evidence before
 6 that the line -- that the easement is reasonably
 7 necessary and the line is reasonably necessary,
 8 because if there's no easement, there's no line,
 9 if there's no line, there's no need for an
 10 easement. So the goal of the BPU here is to
 11 find that this is reasonably necessary.
 12 Rate Counsel, unfortunately, can't
 13 really take a position on that because we have
 14 not had the opportunity to fully probe that
 15 issue. Rebuttal testimony was filed answering
 16 some of our concerns. We were not allowed to
 17 ask discovery about that rebuttal testimony. In
 18 fact, there was no discovery in this matter.
 19 Ocean Wind -- we were -- asked Ocean Wind if
 20 they would answer some questions, and they did
 21 answer some of our questions, but not all of our
 22 questions. And they didn't have to, because
 23 there was no discovery in this process.
 24 Interestingly, Ocean City raises a
 25 number of issues that, quite frankly, we would

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1 have liked to have resolved if we had known
 2 about them through discovery. And would I have
 3 -- Rate Counsel would have very much liked to
 4 have taken a position. And I want to be very
 5 clear on this, we are not opposed Offshore Wind
 6 and we are not opposed to any of the projects
 7 that are going on. Our only issue is that we
 8 want to make sure that this line is reasonably
 9 necessary. And in order for us to do that, we
 10 need to get certain information which we were
 11 unable to obtain during the process of this
 12 matter.
 13 Also, as far as the cost goes, I'm
 14 being told that cost doesn't matter in this
 15 case. Again, we weren't able to probe that
 16 issue. I know that PJM is meeting today and my
 17 understanding is that the transmission portion
 18 of this cost -- of this line is going to triple.
 19 PJM is going to increase interconnection costs
 20 significantly. For that reason, Rate Counsel
 21 wanted to probe where the line was
 22 interconnecting, whether it made sense that this
 23 interconnection made sense given the cost that
 24 will be involved. We're taking Ocean Wind's
 25 word that any cost with this project would be

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1 borne by Ocean Wind. Obviously, Rate Counsel is
 2 going to be paying very close attention, as I
 3 know will the Board, to that issue to hold Ocean
 4 Wind to the fire -- feet to the fire, and make
 5 sure that ratepayers are not being charged
 6 anything that they're not suppose to be charged.
 7 And we're going to hold Ocean Wind to their word
 8 in this case. But, again, it's very
 9 dis-concerning. There was rebuttal testimony
 10 filed. Mr. Eisenstark started off his arguments
 11 by thanking the Board for allowing the
 12 opportunity to provide additional information.
 13 Any additional information that was provided
 14 today, Rate Counsel will not be able to probe,
 15 nor will the Board. And then Ocean City
 16 provided significant new information today that
 17 Rate Counsel cannot probe, and nor can the
 18 Board, because there's no opportunity to do so.
 19 The process here was different than any other
 20 process. And I understand, this is the first
 21 case of its type. And so the process was going
 22 to be somewhat different. But the lack of
 23 ability to probe the petition, to probe the
 24 answers that we got from Ocean -- from Ocean
 25 Wind and then to probe what Ocean City just said

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1 today, makes it extremely difficult for Rate
 2 Counsel to take a position on this issue. And,
 3 again, I want to emphasize, on this issue.
 4 Because there's been some comments that Rate
 5 Counsel is opposed to Offshore Wind and we are
 6 not. The issue before the Board today is
 7 whether this easement is reasonably necessary.
 8 And our position at this time is, we don't know
 9 because we don't believe there's sufficient
 10 evidence in the record for that decision to be
 11 made.
 12 With that said, that's really all we
 13 have to say. We're not going to take a position
 14 on Ocean City's factual arguments or, quite
 15 frankly, Ocean Wind's factual assertions,
 16 because we haven't had the opportunity to probe
 17 them and we don't feel we're qualified to make
 18 those types of assertions at this time. Thank
 19 you.
 20 PRESIDENT FIORDALISO: Thank you.
 21 MR. LIPMAN: I kept it short for you
 22 too, President Fiordaliso.
 23 PRESIDENT FIORDALISO: I'm sorry?
 24 MR. LIPMAN: I kept it short for
 25 you.

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1 PRESIDENT FIORDALISO: Thank you. I
 2 appreciate it. I will now invite the parties to
 3 make any rebuttal statements should they wish.
 4 First, Ocean Wind, do you want to make any
 5 rebuttal?
 6 MR. EISENSTARK: Yes, President
 7 Fiordaliso, I do. Thank you. Let me -- let me
 8 make -- I'm going to respond both -- first to
 9 Ocean City and then briefly to Rate Counsel's
 10 remarks.
 11 With respect to Ocean City, I'm
 12 going to lodge a formal objection to the
 13 statement that Ms. McCrosson appeared to be
 14 reading into the record. It's entirely
 15 inappropriate. It's a closing stage of this
 16 proceeding. We're at the very last stage here
 17 today. This is oral argument of counsel. And
 18 the purpose of oral argument of counsel, as we
 19 understood it, and it is most often understood,
 20 is to sum up the record evidence that has been
 21 presented before. The problem is, Ocean City
 22 has not really participated in this proceeding
 23 until today. So for Ocean City -- for Ocean
 24 City to have its city solicitor appear and be
 25 reading from a statement, which she is not an

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1 expert on any of those issues, she's just an
 2 attorney, to attempt to read stuff in the record
 3 that someone else has prepared for her, much of
 4 which we've never heard before, is entirely
 5 inappropriate. So, we can do this by writing
 6 afterwards, but we're going to make a formal
 7 motion to have the Board strike most of what Ms.
 8 McCrosson said. She made some arguments that
 9 are legal arguments. I think those are fine.
 10 But she appeared to be reading factual stuff
 11 that was prepared by someone else. She is not a
 12 witness. She did not file testimony. And this
 13 also goes to Ocean City's complaints about the
 14 process that the Board has filed here.
 15 Ocean City had every right to fully
 16 participate in this proceeding. They had the
 17 right to file testimony and have sworn testimony
 18 of a witness, have a witness testimony
 19 considered, exhibits. They chose not to do
 20 that. And that's to their own peril. And to
 21 appear at the very last stage of this in
 22 arguments of counsel and attempt to interject
 23 facts that really aren't evidence at all because
 24 they're not supported by a witness is entirely
 25 inappropriate. And I do not express that --

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1 that comment in a more strong manner than I just
 2 have. It is entirely inappropriate.
 3 Secondly, just I want to briefly
 4 touch on a couple of the factual allegations
 5 that Ocean City did make which were subject of
 6 Ocean Wind's rebuttal testimony. And that,
 7 basically, concerns the so-called Great Egg
 8 Harbor route. In both Ocean Wind's direct
 9 testimony of Pilar Patterson and in her rebuttal
 10 testimony, we provided extensive record evidence
 11 of why the Great Egg Harbor route was not
 12 ultimately pursued. It has much more to do than
 13 the fact whether or not the two bridges that it
 14 would have to cross under are historic or not.
 15 And as we've -- as we've said in our rebuttal
 16 testimony, those two bridges still are listed on
 17 the register of historic places. Whether they
 18 should be or not is a different question. But
 19 there are many, many other reasons why the Great
 20 Egg Harbor route was not desirable. I'm not
 21 going to sit here and read from our testimony.
 22 Our testimony is part of the record. But it's
 23 clear that the Great Egg Harbor alternative is
 24 not preferable for a host of reasons;
 25 environmental reasons, construct-ability

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1 reasons, interference with marine traffic
 2 through the inlet. There is a better
 3 alternative. The alternative is the one that
 4 we've substantiated through our testimony as the
 5 preferred route here. The impacts to Ocean City
 6 and its residence will be minimal. The line
 7 will be underground. Once the construction is
 8 completed, you won't see it and you won't hear
 9 it. And, quite frankly, it will be no different
 10 than the underground facilities that are already
 11 in Ocean City. I suggest to you that Ocean
 12 City's famed objection to the route that we have
 13 selected has nothing to do with the actual
 14 onshore route, but it has to do with Ocean
 15 City's overall objection to Offshore Wind. I'll
 16 leave it at that.
 17 Let me respond briefly to Rate
 18 Counsel's comments. And, again, you know, I
 19 don't want to get into a back and forth too much
 20 here with Mr. Lipman. I respect Mr. Lipman.
 21 Rate Counsel did have an opportunity to fully
 22 participate in this process. Rate Counsel
 23 served discovery on the Company's direct
 24 testimony. We responded to all of the questions
 25 that Rate Counsel asked. Rate Counsel had the

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1 opportunity to file its own testimony of a -- of
 2 an expert witness, which it did. It raised a
 3 number of issues that it felt were important to
 4 it. And then Ocean Wind had the opportunity to
 5 respond to it. We believe we've adequately
 6 addressed all of Rate Counsel's concerns. You
 7 know, and I will note, again, you know, Mr.
 8 Lipman did refer -- and, again, this is not
 9 evidence, it's just a reference. He referred to
 10 something about a PJM meeting and his belief
 11 that interconnection costs will go up. I don't
 12 know whether that's true. I don't know what the
 13 basis for that statement is. But I do know one
 14 thing for sure, whether it's true or not, it has
 15 nothing to do with this filing. Because this
 16 filing isn't about PJM interconnection costs.
 17 It's about the -- it's about the onshore cable
 18 route from where the project will make landfall
 19 to the substation. There are a limited number
 20 of places where Offshore Wind can interconnect
 21 to the existing grid in New Jersey. There are
 22 very, very few. And there's going to be, not
 23 only Ocean Wind 1, but Ocean Wind 2, the
 24 Atlantic Shore's project that's been approved
 25 and a large number of other projects that will

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1 likely be approved in the future.
 2 So, again, if we're going to stay on
 3 what is an issue in here, PJM interconnection
 4 costs are not an issue here. They may be an
 5 issue for PJM in other context, but they are
 6 simply not an issue here.
 7 Finally, one last point, and I don't
 8 mean to speak too long, I just want to respond
 9 again to one other issue that Ocean City did
 10 raise. And that is this suggestion that the
 11 Board should wait until the final environmental
 12 impact statement is approved by the BOEM. Well,
 13 there are a lot of things that have to go on
 14 contemporaneous for an Offshore Wind project to
 15 be constructed. There are state permits. The
 16 state permitting process is tied in some part to
 17 the federal process. But you can't -- you know,
 18 you have to do everything at the same time in
 19 order for this project to be constructed --
 20 permitted and constructed. We're already three
 21 years into -- into the process since the Board
 22 approved the project. The first commercial
 23 operation date that is planned is quickly
 24 approaching in early 2024. You simply --
 25 everything can't wait for everything else to be

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1 done first. It has to be done simultaneously.
 2 There's no reason and no requirement under New
 3 Jersey State Law or otherwise for the Board to
 4 wait for the federal government's environmental
 5 impact statement to be finalized in order to act
 6 on Ocean Wind's filing here. Thank you very
 7 much, President Fiordaliso.
 8 PRESIDENT FIORDALISO: Thank you.
 9 Rate Counsel, would you like to make a rebuttal
 10 statement.
 11 MR. LIPMAN: You want me to go first
 12 or you want Ocean City to go first, Mr.
 13 President?
 14 PRESIDENT FIORDALISO: Oh, I'm
 15 sorry. You're absolutely correct. My bad, as
 16 they say. Ocean City, would like to make a
 17 rebuttal statement?
 18 MS. McCROSSON: Just briefly,
 19 President. Thank you.
 20 PRESIDENT FIORDALISO: Sure.
 21 MS. McCROSSON: The points that
 22 Ocean City made today were simply an expansion
 23 of the points in the letter previously filed
 24 prior to the hearing in this matter.
 25 Questioning the authority of the Board -- with

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1 all do respect to the Board, but questioning the
 2 propriety of the statute under which the Board
 3 is proceeding today. Ocean City also questioned
 4 whether the Great Egg Harbor route was the
 5 better route. I was not reading a statement
 6 prepared by someone else. I was making
 7 reference to the Draft Environmental Impact
 8 Statement prepared by BOEM which came out very
 9 recently, which summarizes Ocean Wind's proposed
 10 course of action with respect to the Oyster Bay
 11 -- the Oyster Creek project, in order to explain
 12 to the Board and highlight the inconsistency in
 13 Ocean Wind's approach to these two projects.
 14 What is possible for Oyster Creek is impossible
 15 in the Great Egg Harbor -- in the Great Egg
 16 Harbor Bay.
 17 I think that's the only thing that
 18 Mr. Eisenstark was complaining about. The fact
 19 that I was referring to the BOEM draft, EIS,
 20 which has just recently come out. But I can
 21 assure you that all of those facts are taken
 22 directly from Ocean Wind's arguments and the
 23 public filings that Ocean Wind has made,
 24 otherwise, I would not have had access to them.
 25 They're absolutely properly before this Board.

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1 And in this unusual process that is being
 2 conducted under what, you know, I'll again
 3 called a hastily enacted statute, I submit that
 4 the Board should give leeway to the City and
 5 allow it to present all of the facts that were
 6 argued today. This -- Ocean Wind makes it sound
 7 like it's of no moment to take these easements
 8 and property consents, because no one will see
 9 these cables, no one will hear these cables and
 10 no one will smell these cables. No one will
 11 know they're there. Ocean City will know
 12 they're there. The Ocean -- the power of the
 13 Ocean City elected officials has been incertp
 14 (Phonetic) by the state legislature and turned
 15 over to the BPU for the benefit of Ocean Wind.
 16 This is not a commentary on Offshore Wind
 17 projects. This is a statement and an argument
 18 focused entirely on the statute under which the
 19 Board is pursuing. And Ocean City objects to
 20 property rights being taken away from it against
 21 its will, particularly when there is another
 22 viable alternative, the objections to which have
 23 been overcome by the petitioner in another
 24 location. Thank you, sir.
 25 PRESIDENT FIORDALISO: Thank you.

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1 Now, Rate Counsel, do you wish to make a
 2 rebuttal?
 3 MR. LIPMAN: Very quickly, Mr.
 4 President. Just a couple of things. One, I'll
 5 agree with some of the things that Mr.
 6 Eisenstark said. And I also -- you know, I have
 7 a lot of respect for Mr. Eisenstark, but a
 8 couple of things I just wanted to point out.
 9 One -- well, Ocean Wind did respond to all
 10 questions. Some of those responses were
 11 objections and refusal to respond -- to provide
 12 an answer. So, we did not get answers to every
 13 question we asked. But I agree with him that
 14 the issues that Ocean City raises today, they're
 15 important issues that I wish they had been
 16 raised earlier, because these are issues that we
 17 would have probed and we would have liked to
 18 have gotten some more information on. I think
 19 would have made a more robust record before the
 20 Board so the Board have everything in front of
 21 it that it needs to make a finding that's
 22 reasonably necessary.
 23 And, again, I'm not taking a
 24 position as to who's right and who's wrong. To
 25 me, what's most important is the Board has a

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1 full record in front of it so they could make a
 2 good decision on what is reasonably necessary.
 3 PRESIDENT FIORDALISO: Thank you,
 4 Mr. Lipman.
 5 MR. LIPMAN: Thank you.
 6 PRESIDENT FIORDALISO: And I thank
 7 all of the attorneys who have made their
 8 presentations and their rebuttals.
 9 Do any of my colleagues have any
 10 questions or comments they wish to make at this
 11 time?
 12 COMMISSIONER SOLOMON: I have a
 13 question.
 14 PRESIDENT FIORDALISO: Yes.
 15 COMMISSIONER SOLOMON: Yes. With
 16 respect to discussion on cost, is it the
 17 position of counsel that the only time that the
 18 BPU should be interested or explore issues of
 19 cost is when the OREC is being determined?
 20 PRESIDENT FIORDALISO: Is that
 21 directed to someone specifically, Commissioner?
 22 COMMISSIONER SOLOMON: I think
 23 they've both spoken about cost.
 24 PRESIDENT FIORDALISO: Right.
 25 COMMISSIONER SOLOMON: And the cost

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1 issue. And, you know, perhaps Rate Counsel, you
 2 know, as a follow-up to that may want to
 3 distinguish this proceeding from what is
 4 traditionally we experienced with what is
 5 offered in, you know, let's say, municipal land
 6 use proceeding for a pipeline or a different
 7 type of line and the information that is
 8 garnered for the Board to review in those cases.
 9 MR. EISENSTARK: Commissioner
 10 Solomon, it's Greg Eisenstark. Let me perhaps
 11 go first and others can go after me if they'd
 12 like. Yeah. I mean, you know, your question
 13 was, is the time of the OREC prices are set, is
 14 that the only time the Board should be concerned
 15 with cost. I think that's the primary time the
 16 Board should be concerned with cost or a
 17 Qualified Offshore Wind project, because as I
 18 said earlier, and as everyone is aware, these
 19 are competitive solicitations. A lot of -- you
 20 know, a lot of work goes into the project's
 21 submission of its -- of its proposed OREC
 22 prices. And, you know, there's a lot of
 23 analysis, there's a lot of assumptions made
 24 about inflation, future costs, you know, and
 25 there's a lot of guesswork going in. So I

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1 think, you know -- not guesswork, but a lot of
 2 analytical work going in that's the basis for
 3 that. So, yes, that's the primary time, because
 4 those OREC prices are set over the life of the
 5 project and there's very limited circumstances
 6 where they can be adjusted. And this proceeding
 7 doesn't involve one of the circumstances under
 8 which the OREC price can be adjusted. We --
 9 ocean Wind doesn't have the ability to come to
 10 the Board and say, "Hey, you know what, we
 11 thought it was going to cost us X to build the
 12 onshore portion of the cable from landfall to
 13 the substation. It turns out it's going to cost
 14 us twice as much." The project doesn't have the
 15 ability to do that. That means the project --
 16 if that happens, the project is going to, you
 17 know, ultimately earn less on its investment.
 18 It's unlike a utility. So it's far different
 19 than a utility filing under the other statutory
 20 scheme which is similar in some ways, but
 21 different in other ways, and that is N.J.S.A.
 22 40:55D.19, you know, when an electric or gas
 23 utility comes to the Board and says override
 24 municipal zoning authority. In that instance,
 25 the Board should -- is more properly concerned

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1 with cost in that petition, because it's a
 2 regulated utility and the utility is going to
 3 seek to recover all the costs. Here, Ocean
 4 Wind, you know -- that's not the way OWEDA was
 5 set up and that's not the way the Board did the
 6 solicitation is the best way I could put it.
 7 The price was set in 2019 and it really is not
 8 going to be adjusted here one-way or the other.
 9 So that's about the best way I could answer your
 10 question. Thank you.
 11 PRESIDENT FIORDALISO: Any other
 12 counsel want to make any comments on the
 13 Commissioner's question?
 14 MS. McCROSSON: Yes, sir, I would
 15 like to respond.
 16 PRESIDENT FIORDALISO: Sure.
 17 MS. McCROSSON: An opinion of Ocean
 18 City, the cost is absolutely relevant to whether
 19 going through Ocean City is reasonably
 20 necessary. And going through Ocean City is not
 21 amiss with whether those easements are
 22 reasonably necessary. To take an extreme
 23 hypothetical, if the Great Egg Harbor route, or
 24 any of the other alternate routes that were
 25 identified by Ocean Wind costs less than going

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1 through Ocean City, how could the Board find
 2 that going through Ocean City and taking those
 3 easements would be reasonably necessary? There
 4 would be another viable alternative route.
 5 Therefore, taking the easements could not be
 6 reasonably necessary. So, of course, the costs
 7 are relevant. Even outside consideration of the
 8 -- setting the price of the OREC.
 9 MR. LIPMAN: So -- this is Brian.
 10 And I know this was partially addressed to me,
 11 so I want to respond to what was asked of me.
 12 Under municipal land use law, cost is a factor
 13 that the Board considers when looking at whether
 14 something is reasonably necessary. What's
 15 important to remember, though, is that cost is
 16 not the only factor, and it doesn't mean that
 17 you necessarily have to take the cheapest route.
 18 If there's a better -- or not better. But if --
 19 I think Mr. Eisenstark actually set the standard
 20 earlier. It doesn't have to be the best route,
 21 it has to be the reasonable route. But the
 22 Board does look pursuant to Supreme Court
 23 precedent at how much the cost was for each of
 24 the alternatives, and that is one of the factors
 25 that the Board considers when looking at whether

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1 the route is reasonably necessary. And, we do
 2 believe the Board should have been able to look
 3 at that in this case. I know that Mr.
 4 Eisenstark adamantly disagrees with me on that.
 5 And for that reason, we don't have the cost in
 6 front of the Board in this case. So, I don't
 7 know what else to say. The costs are not
 8 available, so we can't determine whether they
 9 factor in favor or against or find it reasonably
 10 necessary.
 11 PRESIDENT FIORDALISO: Thank you.
 12 Anyone else have questions, comments?
 13 COMMISSIONER CHIVUKULA: Yeah.
 14 Thank you, Mr. President. I just have a
 15 question. I think Ocean City raised a question
 16 about the BOEM's environmental impact statement.
 17 And is that too late to consider? I don't know
 18 what Greg Eisenstark thinks about that. I think
 19 this all should be part of the decision-making
 20 process; is that correct?
 21 MR. EISENSTARK: Commissioner, I
 22 think your question may have been addressed to
 23 me. I'll try to answer it. You know, the Draft
 24 Environmental Impact Statement was issued by
 25 BOEM just a few days ago. From our perspective,

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1 it really has nothing to do with this
 2 proceeding. I mean, this -- the Board --
 3 there's a record in this proceeding that's based
 4 on the testimony filed and the Petitioner's
 5 response to the Board's supplemental questions
 6 and the Board's, you know, response to Rate
 7 Counsel's questions. It's not appropriate for
 8 the Board to consider, you know, the record in
 9 some other proceeding here. I mean, there are
 10 many different issues that BOEM looks at in a
 11 Draft Environmental Impact Statement. It
 12 involves, you know, literally dozens of federal
 13 environmental laws which, quite frankly, have
 14 nothing to do with this filing whatsoever. So,
 15 I'm not sure what the suggestion, you know --
 16 the Draft Environmental Impact Statement is a
 17 public document. It's publicly posted and
 18 anyone can certainly look at it. But, again,
 19 you know, the record in BPU proceedings, the
 20 record is limited normally to the evidence, the
 21 file testimony, the other documentary evidence
 22 that's before the Board. And I'm not sure it
 23 would be appropriate for the Board to allow, you
 24 know, every public document that may be issued
 25 by another state or another federal agency about

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1 this project into the record here. The focus,
 2 as President Fiordaliso said here at the outset
 3 in his opening statement, is very narrow. It's
 4 under the specific relief requested under these
 5 provisions of OWEDA and I think that's what the
 6 Board should focus on.
 7 COMMISSIONER CHIVUKULA: Thank you.
 8 I have a question for Rate Counsel. And my
 9 question is that, you had said that -- Mr.
 10 Lipman repeatedly said that he didn't have
 11 enough information of not -- for him to probe
 12 into. And what was the reason? And that not --
 13 information not being provided? Was that not
 14 enough time to probe into? I'm just curious
 15 about that.
 16 MR. LIPMAN: The way this process
 17 was set up, there was no basis -- no discovery
 18 allowed under the process. We were not
 19 permitted to ask discovery. I reached out to
 20 Mr. Eisenstark. Mr. Eisenstark agreed to accept
 21 our questions and to answer them, but that was
 22 really between the two of us. The procedural
 23 schedule did not allow for discovery after the
 24 filing of rebuttal testimony. There was -- by
 25 the Company. Normally, we would have asked some

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1 questions, some follow-up questions in a
 2 different type of proceeding. And then the
 3 Company would answer them and then we would
 4 proceed. We didn't have that opportunity here.
 5 Once rebuttal testimony was filed, we moved on
 6 to oral argument. So it was just -- it was a
 7 very different process, one that, quite frankly,
 8 we're not used to. And it didn't allow for us
 9 to get -- to ask the kinds of questions we would
 10 normally ask.
 11 COMMISSIONER CHIVUKULA: Thank you
 12 for that. I just have -- I know my question to
 13 Greg Eisenstark is that, I know you're not a
 14 utility, because Ocean Wind is not a utility.
 15 But, typically, it's usually engage in
 16 settlement discussions. Was there any type of
 17 approach to that or it just came for the oral
 18 argument?
 19 MR. EISENSTARK: Yes, Commissioner.
 20 I think that question was addressed to me. And,
 21 you know, I won't go into any details about any
 22 settlement discussions that may have taken
 23 place, because that wouldn't appropriate in this
 24 context. But I will say that there have been
 25 settlement discussions between Ocean Wind and

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1 Ocean City. I won't go into details about what
 2 they were. I will say that Ocean Wind did make
 3 a formal written settlement proposal to Ocean
 4 City as part of that process. But, you know,
 5 obviously because we're here today, there has
 6 been no settlement. So, you know -- and I think
 7 we said this in our file petition, Ocean Wind
 8 would prefer to reach a voluntary agreement with
 9 Ocean City. We would have preferred to have
 10 done that years ago. We tried our best. We
 11 prefer to do it now as we sit here today. But,
 12 unfortunately, we've not been -- the parties
 13 have not been able to reach an agreement and
 14 that's why we're before the Board.
 15 COMMISSIONER CHIVUKULA: Thank you.
 16 PRESIDENT FIORDALISO: Does Ocean
 17 City want to respond to any of Commission
 18 Chivukula's questions?
 19 MS. McCROSSON: No, thank you.
 20 PRESIDENT FIORDALISO: Okay. Just
 21 wanted to give you the opportunity to do so.
 22 MS. McCROSSON: Appreciate it.
 23 PRESIDENT FIORDALISO: Are there any
 24 other questions or comments?
 25 COMMISSIONER SOLOMON: Yes, I have

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1 one more. To, I guess, Rate Counsel and the
 2 issue that Commissioner Chivukula raised
 3 regarding process. You know, as this is a, you
 4 know, case, basically, first impression to some
 5 extent, you know, is what you're suggesting that
 6 you have concerns about the procedure that were
 7 setting forth for future petitions, is that what
 8 you're raising in your comments? Am I
 9 understanding that properly?
 10 MR. LIPMAN: Yes, Commissioner. I
 11 think going forward -- and I know there's
 12 another one pending already and I'm certain
 13 there will be more. I think building discovery
 14 into the process would be extremely useful and
 15 even perhaps a discovery conference, some type
 16 of ability for Rate Counsel and the Company to
 17 -- the Company respond to Rate Counsel's
 18 questions would be extremely helpful for Rate
 19 Counsel to then formulate some type of position
 20 so that we have the information in front of us
 21 so we would feel comfortable.
 22 And, frankly, a lot of the issues
 23 raised today by Ocean City would have been
 24 flushed out in discovery and not come up today
 25 in front of us had we had that process. I hope.

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1 I can't make any promises, but I would hope that
 2 that would be resolved before we got here.
 3 PRESIDENT FIORDALISO: Okay. Any
 4 over questions or comments?
 5 COMMISSIONER HOLDEN: President
 6 Fiordaliso?
 7 PRESIDENT FIORDALISO: Yes.
 8 COMMISSIONER HOLDEN: I just have
 9 one question for Ms. McCrosson. You mentioned
 10 two historic bridges. Are they listed on the
 11 National Register of Historic Places or the
 12 state register?
 13 MS. McCROSSON: Commissioner, I'm
 14 not sure if they are or not, but neither of them
 15 exists. Both of them have completely demolished
 16 and replaced in the last 20 years. And it's
 17 that kind of criteria or that kind of, I'll call
 18 it an excuse, for discarding the Great Egg
 19 Harbor alternative route. That calls into
 20 question the analysis. Isn't Ocean Wind just
 21 going through Ocean City because it's
 22 economically expedient? Does that economic
 23 expedience translate into being reasonably
 24 necessary? Or if there's another way that it
 25 could be done addressing all of the

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1 environmental challenges that they're evidently
 2 able to address elsewhere, why go through Ocean
 3 City? It's not reasonably necessary. You can
 4 go somewhere else. And that's the basis for
 5 Ocean City's response. And if the Board were
 6 open to an adjournment so that the arguments
 7 which counsel believes were made for the first
 8 time today could be presented, I'd be happy to
 9 present a copy of the BOEM Draft Environmental
 10 Impact Statement issued just a few days ago in
 11 support of Ocean City's arguments. You know, if
 12 we were in court and new evidence came up
 13 shortly prior to a hearing, a court would have
 14 the ability to delay its decision to consider
 15 the additional argument or evidence. And I ask
 16 the Board to consider delaying its opinion --
 17 its decision and to allow perhaps limited
 18 discovery if Rate Counsel still has unanswered
 19 questions and to allow Ocean City to
 20 substantiate the arguments made based on the
 21 Draft Environmental Impact Statement.
 22 COMMISSIONER HOLDEN: Thank you.
 23 PRESIDENT FIORDALISO: Thank you.
 24 Any other counsel want to make any other
 25 comments on that?

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1 MR. EISENSTARK: Yes, President
 2 Fiordaliso, and not to prolong it, but I just
 3 want to briefly respond to the last statement
 4 that Ms. McCrosson made. This isn't new
 5 evidence. The EIS process has been ongoing for
 6 years now. There have been public documents
 7 filed and available on the BOEM website for
 8 years. The problem is, Ocean City is -- did not
 9 follow the procedures that the Board outline for
 10 this process. They had every opportunity to
 11 file testimony of a witness raising all of the
 12 issues that Ms. McCrosson claimed she just
 13 discovered shortly before this oral argument.
 14 They didn't do so. Had they done so, Ocean Wind
 15 could have addressed them in its rebuttal
 16 testimony. So to consider those issues now or
 17 to delay this proceeding because Ocean City
 18 simply didn't play along and is now
 19 interjecting -- attempting to interject new
 20 issues at the end, is unfair to Ocean Wind and
 21 it's unfair to the Board and the process that
 22 the Board has set out. So we oppose the
 23 suggestion that there's new evidence. We were
 24 not sure, because, again, it's a statement read
 25 by counsel, you know, at the very end of oral

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1 argument and, you know, we don't know exactly
 2 what it is or what it's based on. We don't even
 3 know if it's even relevant. So we object to the
 4 attempts that Ocean City is apparently making
 5 here and to prolong this proceeding based on
 6 alleged new evidence. It's just completely
 7 inappropriate. They had the ability to raise
 8 these issues months ago. They failed to do so.
 9 And they shouldn't be given the opportunity to
 10 prolong this proceeding because of their own
 11 inaction.
 12 PRESIDENT FIORDALISO: I'll give
 13 Ocean City an opportunity to respond if they'd
 14 like.
 15 MS. McCROSSON: Thank you, Mr.
 16 President. My final point would be that if the
 17 Commission feels that the lack of discovery in
 18 this process has had an impact on the process
 19 and has affected the ability of any of the
 20 parties, including Rate Counsel, to opine on the
 21 issue at hand, and if that evaluation is going
 22 to result in a change in the process in the
 23 future, so that when Cape May County is dragged
 24 through this process there will be a discovery
 25 opportunity, then there should be a discovery

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1 opportunity in this process as well, so that
 2 there's fairness to the city of Ocean City, the
 3 first municipality to go through this new
 4 process.
 5 PRESIDENT FIORDALISO: Thank you. I
 6 just would like to, and I'm sure I don't have
 7 to, alert counsel and representatives of the
 8 various parties, that the Board does not make
 9 the rules. The Board follows the rules. And
 10 those laws are passed by the legislature and
 11 it's then our obligation and duty to follow
 12 those laws. And we do that in a very prudent,
 13 transparent and fair way. And I think my
 14 colleagues will agree that we make every attempt
 15 to be fair in any deliberation that comes before
 16 us. And it -- and it requires reviewing the
 17 testimony that we have received, taking into
 18 consideration the oral arguments today and
 19 that's why everything is taken by court reporter
 20 so that we have an accurate account of what
 21 happened today. It's important that everyone
 22 understand that. It's important that we try to
 23 come to the best equitable solution as possible.
 24 Since everyone has been given the
 25 opportunity to present their oral arguments and

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1 MR. EISENSTARK: Thank you.
 2 MR. LIPMAN: Thank you, everybody.
 3 PRESIDENT FIORDALISO: Take care.
 4 (Concluded at 11:24.)
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1 make rebuttal statements, no formal action
 2 today -- no formal action will be taken today in
 3 this matter. All arguments made today and all
 4 recorded materials submitted under the docket
 5 will be taken into consideration and the Board
 6 will take formal action on the petition at a
 7 later date to be determined.
 8 I want to certainly thank my fellow
 9 Commissioners, and I also want to thank the
 10 representatives of the parties for your
 11 testimony, for your rebuttal. And it's always,
 12 for me, personally, more clarifying to verbally
 13 hear the arguments. I think I'm a better verbal
 14 learner than -- particularly with the BOEM
 15 report that you referred to, I believe it's only
 16 1400 pages long. And so I assume everyone is
 17 read it from cover to cover, and it's quite a
 18 document. But as Mr. Eisenstark indicated, our
 19 charge is a very narrow one. And so -- but we
 20 take all of this into consideration and, again,
 21 I want to thank you, Ocean Wind. I want to
 22 thank you Ocean City and Rate Counsel, for your
 23 participation today. And with that. I will
 24 close today's meeting. Thank you so much. And
 25 stay safe everyone.

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1 C E R T I F I C A T E
 2
 3 I, MARIBEL SYPNIEWSKI, a Certified
 4 Court Reporter and Notary Public of the State of
 5 New Jersey, do hereby certify that prior to the
 6 commencement of the examination, the witness was
 7 duly sworn by me to testify the truth, the whole
 8 truth and nothing but the truth.
 9 I DO FURTHER CERTIFY that the
 10 foregoing is a true and accurate transcript of
 11 the testimony as taken stenographically by and
 12 before me at the time, place and on the date
 13 hereinbefore set forth, to the best of my
 14 ability.
 15 I DO FURTHER CERTIFY that I am
 16 neither a relative nor employee nor attorney nor
 17 counsel of any of the parties to this action,
 18 and that I am neither a relative nor employee of
 19 such attorney or counsel, and that I am not
 20 financially interested in the action.
 21
 22
 23 MARIBEL SYPNIEWSKI, C.C.R.
 24 LICENSE NO. 30XI00203200
 25

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