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STATE OF NEW JERSEY  
BOARD OF PUBLIC UTILITIES  
DOCKET NO, QO22020041

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PUBLIC HEARING:

ORAL ARGUMENT IN THE MATTER OF  
THE PETITION OF OCEAN WIND, LLC,  
PURSUANT TO N.J.S.A. 48:3-87.1(f)  
FOR A DETERMINATION THAT  
EASEMENTS ACROSS GREEN ACRES  
RESTRICTED PROPERTIES AND  
CONSENTS NEEDED FOR CERTAIN  
ENVIRONMENTAL PERMITS IN, AND  
WITH RESPECT TO, THE CITY OF  
OCEAN CITY, ARE REASONABLY  
NECESSARY FOR THE CONSTRUCTION OR  
OPERATION OF THE OCEAN WIND 1  
QUALIFIED OFFSHORE WIND PROJECT  
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DATE: FRIDAY, JUNE 24, 2022  
TIME: 10:00 a.m.

BEFORE:  
PRESIDENT JOSEPH L. FIORDALISO  
COMMISSIONER MARY-ANNA HOLDEN  
COMMISSIONER DIANNE SOLOMON  
COMMISSIONER UPENDRA J. CHIVUKULA  
COMMISSIONER BOB GORDON

J.H. BUEHRER & ASSOCIATES  
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TRANSCRIPT of the hearing in the  
above-entitled matter, said hearing being taken  
pursuant to Superior Court Rules of Civil  
Practice and Procedure, by and before MARIBEL  
SYPNIEWSKI, a Certified Court Reporter and  
Notary Public of the State of New Jersey, held  
VIA MICROSOFT TEAMS, on Friday, June 24, 2022  
commencing at 10:03 in the morning.

## 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  
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13                    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

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

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

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

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



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

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

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

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

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

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.

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

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.



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

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

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.

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

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

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,

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

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



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 respectfully 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

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

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

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

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

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

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

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



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 landfill 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

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

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

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

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

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

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.

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



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 --

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

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

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

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

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

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.

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 theses 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 incerpt  
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.



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

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

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

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

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

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

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,

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



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

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

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

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.

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

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?

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

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



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

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.

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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C E R T I F I C A T E

I, MARIBEL SYPNIEWSKI, a Certified Court Reporter and Notary Public of the State of New Jersey, do hereby certify that prior to the commencement of the examination, the witness was duly sworn by me to testify the truth, the whole truth and nothing but the truth.

I DO FURTHER CERTIFY that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth, to the best of my ability.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.

MARIBEL SYPNIEWSKI, C.C.R.  
LICENSE NO. 30XI00203200

DATE

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