

July 26, 2022

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Acting Secretary Carmen Diaz
New Jersey Board of Public Utilities
44 South Clinton Street, 9th Floor
P.O. Box 350
Trenton, New Jersey 08625

**Re: IN THE MATTER OF THE PETITION OF OCEAN WIND LLC PURSUANT TO N.J.S.A. 48:3-87.1(f) FOR A DETERMINATION THAT CERTAIN EASEMENTS AND CONSENTS NEEDED FOR CERTAIN ENVIRONMENTAL PERMITS IN, AND WITH RESPECT TO, THE COUNTY OF CAPE MAY ARE REASONABLY NECESSARY FOR THE CONSTRUCTION OR OPERATION OF THE OCEAN WIND 1 QUALIFIED OFFSHORE WIND PROJECT
BPU Dkt. No. QO22050347**

Dear Acting Secretary Diaz:

This firm represents Ocean Wind LLC ("Ocean Wind"). Please accept this letter reply on behalf of Ocean Wind in response to letters submitted by the Division of Rate Counsel ("Rate Counsel") on July 7, 2022 and the County of Cape May ("County") on July 8, 2022 in the above-referenced matter.

Both letters object to certain aspects of the procedural schedule that President Fiordaliso issued on July 5, 2022 ("Original Procedural Schedule"). Rate Counsel's letter refers to the fact that the Original Procedural Schedule does not allow for intervenors to serve discovery, contains no evidentiary hearings, and that the week that oral argument is scheduled (week of October 3, 2022) may conflict with the Yom Kippur holiday. The County's letter incorporates Rate Counsel's arguments by reference, and also argues that the Board of Public Utilities ("Board") should not have issued a procedural schedule while the County's Motion to Dismiss the Petition ("County's Motion") is pending. Finally, the County suggests that the Original Procedural Schedule does not allow the County sufficient time to file its opposition (County letter, p. 2).

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After Rate Counsel and the County filed their letters, on July 14, 2022 President Fiordaliso issued a modified procedural schedule. The modified procedural schedule delayed the deadline for motions to intervene to July 29, 2022 and made corresponding adjustments to certain of the other dates, but did not otherwise change the procedures the Board plans to use for this matter.¹

In regard to discovery, Ocean Wind notes that President Fiordaliso's July 14, 2022 Order clarified that issue as well, stating: "While there is no formal discovery period established for this proceeding, I further DIRECT the parties to comply with the Modified Schedule's terms and to work cooperatively with each other to the fullest extent possible in the interest of reaching a just determination in this proceeding." July 14, 2022 Order at pp. 2-3.² Although unilateral (i.e., "one-way") discovery is never appropriate, Ocean Wind intends to comply with the directive in the July 14, 2022 Order and expects that other parties will do so as well.

Rate Counsel's concern that the Board has not scheduled evidentiary hearings is misplaced. First, there is no requirement that the Board conduct evidentiary hearings in this matter, which was filed pursuant to *N.J.S.A. 48:3-87.1(f)*. That statute only requires that the Board conduct a public hearing before rendering a decision. *N.J.S.A. 48:3-87.1(f)(2)*. Moreover, the cases Rate Counsel cites do not stand for the proposition that evidentiary hearings are required here. As Rate Counsel states in its letter: "Administrative due process is generally satisfied if the parties had adequate notice, a chance to know opposing evidence, and the opportunity to present evidence and argument in response..." (citing to *Moore v. Dep't of Corr.*, 335 N.J. Super. 103, 108 (App. Div. 2000)(emphasis added)(internal quotation marks omitted)(quoting *In re Dep't of Ins.'s Order Nos. A-89-119 & A-90-125*, 129 N.J. 365, 382 (1992)). Here, under the Board's Procedural Schedule, Rate Counsel (and the County): (1) have had adequate notice of the filing; (2) have had Ocean Wind's Petition and prefiled direct testimony since May 20, 2022; (3) will have the

¹ The modified procedural schedule eliminates Rate Counsel's concern about a conflict with Yom Kippur.

² Ocean Wind notes that Rate Counsel served written discovery requests on Ocean Wind on July 14, 2022.

opportunity to present evidence in the form of prefiled responsive testimony; (4) will have the opportunity to examine Ocean Wind's rebuttal testimony; and (5) will have an opportunity to present legal arguments during the oral argument. Therefore, it is clear that the Board's Procedural Schedule affords Rate Counsel and the County all the "process" they are due.

There is no merit to the County's argument that President Fiordaliso's issuance of a Procedural Schedule while the County's Motion is pending is prejudicial. Ocean Wind filed its Petition on May 20, 2022. The timely resolution of this matter is extremely important, because the Ocean Wind 1 Project must satisfy and comply with numerous other state and federal permitting requirements, construction schedules and commercial operation dates. The Board was fully within its right to establish a schedule for the conduct of this matter while it considers the County's Motion, so as to allow for the Ocean Wind 1 project to comply with these other deadlines. Furthermore, while Ocean Wind has explained in its June 20, 2022 reply brief why the County's Motion is meritless and seeks only to delay the Board's ultimate decision on the Petition, even if the Board were to grant the Motion at a later date, the County would not be prejudiced. After all, the County's Motion only contests the timing of the Petition. Even if the Board were to agree with the County, the only result would be a delay in the schedule. Accordingly, the Board was correct in issuing the Procedural Schedule while taking the County's Motion under consideration.

In addition, the County's claim that it only has 24 days "to prepare and file its opposition" is simply not accurate. Ocean Wind filed its Petition on May 20, 2022 and served a copy on the County at the same time. Therefore, under the Original Procedural Schedule, the County would have had ten weeks, or 70 days, to prepare and file its opposition by the July 29, 2022 deadline. Under the modified procedural schedule, the County would have until August 17, 2022, or approximately 89 days to prepare and file its opposition. Moreover, under the proposed revised

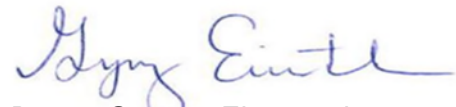
procedural schedule attached to this letter (see discussion below), the County would have until August 29, 2022, more than 100 days, to prepare and file its opposition.

Finally, Ocean Wind respectfully requests that President Fiordaliso make additional modifications to the procedural schedule that was attached to the July 14, 2022 Order. Specifically, that schedule shortened Ocean Wind's time to prepare and file rebuttal testimony to only nine (9) days, which will not be a sufficient length of time. In addition, the due date of August 26, 2022 conflicts with long-established travel plans for certain members of the Ocean Wind team. Furthermore, Ocean Wind's counsel has an unavoidable conflict during the week of October 17, 2022, during which oral argument is now scheduled. Accordingly, Ocean Wind is requesting that the President Fiordaliso change the due dates for both "Opposition and Testimony from Parties" and Ocean Wind's reply testimony. These proposed modifications, along with other changes that follow, are set forth in a proposed procedural schedule that is attached to this letter as "Attachment A."

Ocean Wind appreciates the Board's consideration of this reply letter.

Respectfully submitted,

COZEN O'CONNOR



By: Gregory Eisenstark

GE:lg

C: Service list (via email only)

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 AND CONSENTS NEEDED FOR CERTAIN ENVIRONMENTAL PERMITS IN, AND WITH RESPECT TO, THE COUNTY OF CAPE MAY ARE REASONABLY NECESSARY FOR THE CONSTRUCTION OR OPERATION OF THE OCEAN WIND 1 QUALIFIED OFFSHORE WIND PROJECT

Proposed Modified Procedural Schedule

Item	Date
Motions to Intervene Due	July 29, 2022
Ocean Wind's Responses to Motions	August 5, 2022
Opposition and Written Testimony from Parties	August 29, 2022
Ocean Wind Reply	September 16, 2022
Public Hearing	Week of Sept. 26, 2022
Public Written Comments Deadline	October 12, 2022
Settlement Conference	October 13 or 14, 2022
Parties Respond to Public Comments	October 26, 2022
Oral Argument	Week of November 7, 2022

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WIND 1 QUALIFIED OFFSHORE WIND PROJECT**

BPU DOCKET NO.: QO22050347

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