

**STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES**

IN THE MATTER OF THE PETITION OF	:
OCEAN WIND LLC PURSUANT TO	:
N.J.S.A. 48:3-87.1(f) FOR A	:
DETERMINATION THAT CERTAIN	:
EASEMENTS AND CONSENTS NEEDED	:
FOR CERTAIN ENVIRONMENTAL	:
PERMITS IN, AND WITH RESPECT TO,	:
THE COUNTY OF CAPE MAY ARE	:
REASONABLY NECESSARY FOR THE	:
CONSTRUCTION OR OPERATION OF	:
THE OCEAN WIND 1 QUALIFIED	:
OFFSHORE WIND PROJECT	:

BPU Docket No. QO22050347

**OCEAN WIND LLC’ RESPONSE TO
MOTIONS TO INTERVENE AND
MOTION TO PARTICIPATE**

Petitioner Ocean Wind LLC (“Ocean Wind”), by and through its undersigned counsel, hereby submits this opposition (“Opposition”) to the motions to intervene of Sea Isle City, Dennis Township, Lower Township, the Borough of Avalon, Middle Township, the Borough of Wildwood Crest, the Borough of Stone Harbor, the City of Wildwood, and the City of North Wildwood (referred to herein as the “nine municipalities”), and the motion to participate of the New Jersey League of Municipalities (“NJLM”) (collectively with the aforementioned motions to intervene and the motion to participate, the “Motions”), in the above-referenced proceeding before the New Jersey Board of Public Utilities (the “Board” or “BPU”).¹

I. Introduction

Twelve separate entities filed motions to intervene or to participate in this proceeding, many on the same exact motion template with the same language, containing inaccurate information concerning the Ocean Wind 1 Qualified Offshore Wind Project (the “Project” or “Ocean Wind 1”), and, importantly, without a sufficient basis to intervene or participate in this

¹ As discussed herein, Ocean Wind does not oppose the motions to intervene of Upper Township or Ocean City, in an acknowledgment that only these two motions satisfy the intervention standard under New Jersey law.

proceeding. Many of these entities have the same or duplicative interests as the County of Cape May (“Cape May County” or “County”), or to Ocean City and Upper Township—who satisfy the intervention standard because the onshore cable route runs through these two municipalities. The duplicative nature of these motions is evidenced by the same template used by most of these proposed intervenors.

This matter concerns Ocean Wind’s Petition under *N.J.S.A.* 48:3-87.1(f) for approval to acquire certain easements over properties owned by the County and for authority to receive certain New Jersey Department of Environmental Protection (“NJDEP”) permits without the County’s consent. That is all. This matter is not an opportunity to contest or challenge the underlying award as the first offshore wind project approved by the Board and the first to be approved to receive Offshore Wind Renewable Energy Certificates (“ORECs”).² Nor does this matter concern challenges or objections to the statutory scheme. Similarly, issues related to alleged view obstruction or tourism impacts are simply outside of the scope of this proceeding. For the reasons discussed herein, the Board should deny the motions to intervene of Sea Isle City, Dennis Township, Lower Township, the Borough of Avalon, Middle Township, the Borough of Wildwood Crest, the Borough of Stone Harbor, the City of Wildwood, and the City of North Wildwood, and the motion to participate of the NJLM.

II. Background

On May 20, 2022, Ocean Wind filed a Petition before the Board pursuant to *N.J.S.A.* 48:3-87.1 *et seq.*, seeking a determination that certain easements across properties owned by Cape May County and certain consents needed from the County for environmental permits in, and with

² The Board approved Ocean Wind 1 as the first New Jersey Qualified Offshore Wind Project more than three years ago, in June 2019. Order, IN THE MATTER OF THE BOARD OF PUBLIC UTILITIES OFFSHORE WIND SOLICITATION FOR 1,100 MW – EVALUATION OF THE OFFSHORE WIND APPLICATIONS, BPU Docket No. QO18121289 (June 21, 2019).

respect to the County, are reasonably necessary for the construction or operation of the Project. The Petition for this proceeding exclusively concerns the onshore cable route and onshore portion of the Project, and does not implicate or revisit anything related to the offshore wind generation, or the construction, installation, and maintenance of the offshore portion of the Project. Cape May County is already a party and acknowledged as Respondent in this proceeding.

As it relates to this Opposition, on July 12, 2022 Upper Township filed a motion to intervene. On July 25, 2022, Sea Isle City filed a motion to intervene. On July 26, 2022, Ocean City filed a motion to intervene. On July 27, 2022, Dennis Township filed a motion to intervene. On July 28, 2022, Lower Township, the Borough of Avalon, Middle Township, and the Borough of Wildwood Crest filed motions to intervene. On July 29, 2022, the Borough of Stone Harbor, City of Wildwood, and City of North Wildwood filed motions to intervene and the NJLM filed a motion to participate. Of the twelve motions, three were submitted by the same law firm Blaney, Donahue & Weinberg, P.C. (Dennis Township, Borough of Avalon, and City of North Wildwood), which already represents Cape May County as Respondent in this proceeding, and another two motions were submitted by the same law firm Karavan & Morris (Middle Township and Borough of Stone Harbor).

More importantly, nearly all of the Motions contain the exact same language and are plainly based on the same motion template, asserting the same arguments and grounds for intervention, with the exception of Upper Township and NJLM. The Motions largely assert the same arguments as particularized reasons to support intervention for each separate municipality, borrowing nearly identical language based on a template.³

³ Each motion based on the same template also inaccurately stated that: “Ocean Wind has publicly announced that it plans to install upwards of 200 wind turbines on towers as high as 900’ or more tall as close to 10 to 15 miles to the beaches of Cape May County for the generation of electricity.” While this proceeding does not involve the offshore portion of the Project, Ocean Wind nonetheless corrects this inaccuracy. In fact, the Project will consist of no more

III. Argument

With the exception of Upper Township and Ocean City, the Motions should be denied and the movants should be denied intervenor or participant status, because: (1) the onshore cable routes do not cross through any of these nine municipalities; (2) issues concerning the validity of the statute or the offshore portion of the Project are outside of the scope of this proceeding; and (3) the interests of these nine municipalities will be well-represented by Cape May County, Upper Township, and Ocean City.

A. Standard

The criteria for intervention are set forth in *N.J.A.C. 1:1-16.1*: “[A]ny person or entity not initially a party, who has a statutory right to intervene or who will be substantially, specifically and directly affected by the outcome of a contested case, may on motion, seek leave to intervene.”

A motion to intervene requires consideration of the following factors:

[T]he nature and extent of the movant’s interest in the outcome of the case, whether or not the movant’s interest is sufficiently different from that of any party so as to add measurably and constructively to the scope of the case, the prospect of confusion or undue delay arising from the movant’s inclusion, and other appropriate matters.

N.J.A.C. 1:1-16.3. Where the standard for intervention is not satisfied, *N.J.A.C. 1:1-16.6(c)* provides for a more limited form of involvement as a “participant” if “the participant’s interest is likely to add constructively to the [proceeding] without causing undue delay or confusion.”

Determining whether intervention is appropriate entails a balancing of having a diversity of interests contribute meaningfully to a proceeding against the need for prompt and expeditious

than 98 wind turbines. Each turbine will consist of a tower affixed to a foundation, which together will stand approximately 512 feet above the water. Including the foundation, tower, and rotor blade, the total height from the water to the tip of the rotor blade is approximately 906 feet. In addition, the Project’s wind turbines will be located at least 15 miles from the nearest point of the shoreline.

administrative proceedings.⁴ Such an evaluation requires an intervenor's stake in the outcome of the proceeding to be specific, direct, and unique from the other parties to the proceeding.⁵

B. The Motions Lack a Sufficient Interest to Support Intervention

The Petition seeks Board approval pertaining to a portion of the onshore cable route, which is necessary to bring the renewable energy from the wind turbines in the Atlantic Ocean to interconnect with the existing grid onshore. (Petition, ¶ 5). This proceeding necessarily involves Cape May County because Ocean Wind would otherwise require the County's consent to move forward with certain environmental permitting and Ocean Wind requires certain property rights and easements on County-owned property. (Petition ¶¶ 1, 8). The proposed onshore cable route, described in the Petition as the "Preferred Route," traverses through Ocean City and Upper Township, which gives these two municipalities *only* a specific and direct interest in the outcome of this proceeding. (Petition ¶¶ 13, 26). Accordingly, Ocean Wind does not oppose the requests by Upper Township and Ocean City to intervene in this proceeding. However, Ocean Wind emphasizes that it does not agree with the arguments and bases made to justify intervention contained within the Ocean City or Upper Township motions. Nonetheless, because the onshore cable route that is the subject of this proceeding crosses through Upper Township and Ocean City, intervention by these two municipalities is proper because they have a specific and direct interest in the outcome of this proceeding.

With respect to the remaining nine municipalities (Sea Isle City, Dennis Township, Lower Township, the Borough of Avalon, Middle Township, the Borough of Wildwood Crest, the Borough of Stone Harbor, the City of Wildwood, and the City of North Wildwood), these

⁴ See Order, IN RE THE JOINT PETITION OF PUBLIC SERVICE ELECTRIC AND GAS COMPANY AND EXELON CORPORATION FOR APPROVAL OF A CHANGE IN CONTROL, BPU Docket No. EM05020106 (June 8, 2005).

⁵ *Id.*

municipalities have no interest in the outcome of the proceeding because the onshore cable route does not traverse through any of these municipalities. (*See generally* Petition ¶ 13; Testimony of Jason Kalwa, Ex. OW-1 to the Petition; Testimony of Pilar Patterson, Ex. OW-2 to the Petition). Because the onshore cable route that is the subject of this proceeding does not pass through any of these municipalities and the property rights, easements, and consents sought by Ocean Wind in the Petition are not on property owned by or located within these municipalities, these nine municipalities will not be substantially, specifically, or directly affected by the outcome of this proceeding. *N.J.A.C.* 1:1-16.3. These municipalities have no legitimate interest in this proceeding.

The Board should also refrain from allowing these entities to join this proceeding as participants, in the alternative to their requests to intervene, as their interests will be well-represented by Cape May County, Upper Township, and Ocean City, and their inclusion could likely delay resolution of this proceeding and confuse the issues before the Board with matters irrelevant to this proceeding, as discussed below. *N.J.A.C.* 1:1-16.6(c). The participation and consideration of nine additional parties, who otherwise have no interest in this proceeding, would necessarily create delays in the Board’s resolution of this matter. Ocean Wind has explained that it filed this proceeding involving Cape May County while continuing to engage in discussions with the County because of the scheduling needs for the Project and the need to meet upcoming construction and operational deadlines. (Petition ¶ 51; *see also* Testimony of Madeline Urbish, Ex. OW-3 to the Petition.). Thus, it is clear that none of the nine municipalities would “add constructively to the [proceeding] without causing undue delay or confusion” as required for participant status. *N.J.A.C.* 1:1-16.6(c). Given these time constraints and the lack of specific interest in this proceeding, the nine municipalities should be denied participant status.

C. The Motions Assert Issues Outside the Scope of this Proceeding to Support Intervention or Participation in this Proceeding

In seemingly an acknowledgement of their lack of interest in this proceeding by virtue of their geographical distance from the onshore cable route, the Motions resort to arguments to support intervention that are outside the scope of this proceeding and the Board's consideration of the Petition.

First, the Motions all contain language regarding “the permanent placement of wind facilities that will dramatically alter the viewshed of the Atlantic Ocean” and concerns regarding the impacts to tourism or the natural environment as a result of the offshore wind generation.⁶ This is not a legitimate or valid ground to justify intervention because this proceeding does not involve the offshore portion of the Project and this proceeding does not revisit the Board's offshore wind award of ORECs to Ocean Wind. This is not a proper forum in which to assert complaints or concerns concerning the view of the Atlantic Ocean, impacts on local economies, or effects on associated tourism. The statute that authorizes Ocean Wind's Petition is limited for the Board to “determine whether the requested easement, right-of-way, or other real property interest are necessary for the construction or operation of the qualified offshore wind project.” *N.J.S.A.* 48:3-87.1(f). Therefore, the potential requested relief by the municipalities and alleged interest in the outcome of this proceeding pertaining to the view of the Atlantic Ocean or the local tourism and economies are simply not at stake in this proceeding and granting intervention or participant status on this basis would be improper and outside the scope of this proceeding.

⁶ See Sea Isle City Mot. ¶¶ 7-8; Dennis Township Mot. ¶¶ 7-8; Lower Township Mot. ¶¶ 7-8; Borough of Avalon Mot. ¶¶ 7-8; Middle Township Mot. ¶¶ 7-8; Borough of Wildwood Crest Mot. ¶¶ 7-8; Borough of Stone Harbor Mot. ¶¶ 7-9; City of Wildwood Mot. ¶¶ 7-8; City of North Wildwood Mot. ¶¶ 7-8. Ocean Wind notes that the language in the Dennis Township and Middle Township motions differ slightly because these two municipalities are more inland and already do not have an unobstructed view of the Atlantic Ocean, although again this issue is irrelevant to the present proceeding.

Second, the Motions all contain the same language concerning the statute's effect on the New Jersey Eminent Domain Act and each municipalities' due process rights in future proceedings.⁷ This ground for intervention concerning due process rights and the New Jersey Eminent Domain Act is seemingly an attempt to challenge the validity of the statute that gives rise to this proceeding, *N.J.S.A. 48:3-87.1 et seq.* Again, the scope of this proceeding is limited to a determination by the Board concerning whether certain property rights pertaining to the onshore cable route are reasonably necessary for the construction of the Project. Challenges to the validity of the statute are not at stake in this proceeding and that issue is outside of the Board's jurisdiction. The supposed connection to the New Jersey Eminent Domain Act and prospective due process rights is outside of the scope of this proceeding and not a legitimate or valid basis to warrant intervention or participation in this proceeding. To be clear, these nine municipalities do not have due process rights at stake in this proceeding because the onshore cable route does not traverse through these municipalities and Ocean Wind does not require any property rights or consents from any of these nine municipalities. Upper Township and Ocean City also cite to this as a ground for intervention (Upper Township Mot. ¶¶ 10-11; Ocean City Mot. ¶¶ 10-11), so the interests of the remaining nine municipalities are already well-represented in this proceeding and their intervention—particularly where their due process rights are not implicated—would be duplicative and unnecessary.

Third, the issues raised by the NJLM are also outside the scope of this proceeding and speculative in nature. The NJLM, which acts as an advocate for New Jersey municipalities to promote self-government and strong local governments, claims that the Board's decision under

⁷ See Sea Isle City Mot. ¶¶ 10-11; Dennis Township Mot. ¶¶ 9-10; Lower Township Mot. ¶¶ 10-11; Borough of Avalon Mot. ¶¶ 10-11; Middle Township Mot. ¶¶ 9-10; Borough of Wildwood Crest Mot. ¶¶ 10-11; Borough of Stone Harbor Mot. ¶¶ 11-12; City of Wildwood Mot. ¶¶ 10-11; City of North Wildwood Mot. ¶¶ 9-10.

N.J.S.A. 48:3-87.1(f) will impact New Jersey’s municipal governments, will have an impact on all municipalities, and that the NJLM “has an obligation to ensure that the interests of [its] members are represented in this process.” (NJLM Mot. ¶¶ 2, 6-8). It is unclear the NJLM’s specific connection, interest, or stake in this proceeding. If the NJLM seeks to challenge the statute and its limitations on local governments, again this proceeding is limited by the statutory directive in *N.J.S.A. 48:3-87.1(f)* and this proceeding is not an opportunity to challenge the validity of the statute. Further, the interests of the NJLM in local government are already well-represented by the local governments that are or may become parties to this proceeding, namely, Cape May County, Upper Township, and Ocean City. NJLM would not offer anything constructive to this proceeding and its participation in this matter would only serve to delay the Board’s resolution.

D. The Interests of the Nine Municipalities and the NJLM Are Already Represented in this Proceeding and Are Duplicative in Nature

As to any other purported basis for intervention in the Motions, the interests of the nine municipalities that the onshore cable route does not traverse through (Sea Isle City, Dennis Township, Lower Township, the Borough of Avalon, Middle Township, the Borough of Wildwood Crest, the Borough of Stone Harbor, the City of Wildwood, and the City of North Wildwood), are already sufficiently represented in this proceeding by Cape May County, (and potentially by) Upper Township and Ocean City. These nine municipalities lack a distinct basis that would support their intervention and participation in this proceeding, and their interests as neighboring municipalities are sufficiently represented by parties who have a direct interest in the outcome of this proceeding. To highlight the duplicative interests asserted by these municipalities, the Motions are all based on the same template with nearly identical language and arguments to support intervention, and the same law firm would be poised to represent four different municipalities in this proceeding. In short, there is nothing unique about the interests of these nine

municipalities in this proceeding. They do not meet the standard for intervention or participation under New Jersey law, their interests are duplicative and already represented by the parties in this proceeding, they would not add constructively to this proceeding, they would likely cause delays and confusion with the objective of the Board to review and assess the requested property rights and consents, and the arguments raised in the Motions are largely outside of the scope of this proceeding.

IV. Conclusion

For the foregoing reasons, the Motions to Intervene by Sea Isle City, Dennis Township, Lower Township, the Borough of Avalon, Middle Township, the Borough of Wildwood Crest, the Borough of Stone Harbor, the City of Wildwood, and the City of North Wildwood, and NJLM's Motion to Participate, should be denied. The Board should also not permit any of these entities to join the proceeding as a participant.

Respectfully submitted,

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By: _____

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