

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

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

Petitioner Ocean Wind LLC (“Ocean Wind”), by and through its undersigned counsel, hereby submits this opposition to the motion for reconsideration (the “Motion”) filed on behalf 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”). The Motion seeks reconsideration of the New Jersey Board of Public Utilities (the “Board” or “BPU”) Order, dated August 16, 2022 (the “August 16 Order”). The Board’s August 16 Order denied the motions to intervene of the Nine Municipalities in the above-referenced proceeding.

I. Introduction

The Nine Municipalities now request that the BPU reconsider its August 16 Order in which the Board granted them participant status but denied them intervenor status in the above-captioned proceeding. In the single Motion, Counsel purports to speak for all Nine Municipalities, and argues that the BPU should have granted the Nine Municipalities intervenor status because they represent issues that are unique and distinct from those represented by Cape May County, Upper Township, and Ocean City (which three are either a party, or have been granted intervenor status in this

proceeding). In making this argument, the Nine Municipalities fail to identify their “unique” interests and continue to argue the same issues argued in their initial motions, which were then, and are now, irrelevant to the instant matter because they are outside the scope of this proceeding. The Nine Municipalities continue to fail to satisfy the standard for intervention, and, importantly, they, additionally, fail to satisfy the legal standard to warrant the Board’s reconsideration of its August 16 Order. Accordingly, the BPU should deny the Motion leaving the Nine Municipalities to remain as participants in this proceeding.

II. Background

Ocean Wind filed a petition before the Board on May 20, 2022 (the “Petition”) pursuant to N.J.S.A. 48:3-87.1 et seq., seeking a determination that certain easements owned by Cape May County and certain consents needed from the County for environmental permits in, and with respect to, the County, are reasonably necessary for the construction or operation of Ocean Wind 1’s Qualified Offshore Wind Project (the “Project”). Between July 12, 2022 and July 29, 2022, the Nine Municipalities (individually), Upper Township and Ocean City filed motions to intervene. On August 5, 2022, Ocean Wind filed a response to the motions to intervene, in which Ocean Wind did not oppose the motions filed by Upper Township and Ocean City because the proposed onshore cable route, described in the Petition as the “Preferred Route,” traverses through Ocean City and Upper Township, which provides these two municipalities *only* a specific and direct interest in the outcome of this proceeding. (Petition ¶¶ 13, 26). Ocean Wind opposed intervention by the remaining Nine Municipalities because their respective interests were, at best, duplicative to the interests of Cape May County, Upper Township, and Ocean City and because the Nine Municipalities raised issues that are clearly irrelevant to the precise focus of this proceeding,

namely, they raised impacts on viewsheds and tourism as a result of the Project, which are interests and issues outside the scope of this proceeding.

In the August 16 Order denying the Nine Municipalities intervenor status and, instead, granting them participant status, the Board found:

The issue the Board is being asked to consider in this proceeding is whether certain easements across properties the County owns, as well as certain consents needed from the County for particular environmental permits in or with respect to the County, are reasonably necessary for the construction or operation of Project. The Motions the [Nine Municipalities] submitted do not show an interest in this specific determination. Rather, these Motions state concerns that would cause the prospect of confusion of the issue before the Board, which concerns include but are not limited to the Project's impact on viewshed, tourism, property values, wildlife, or the fishing industry. In addition, the [Nine Municipalities'] Motions are not sufficiently different from each other, and, in fact, use identical language in many cases.

August 16 Order at 4.¹ On August 19, 2022, the Nine Municipalities filed the instant Motion.

III. Argument

A. Legal Standard Applicable to a Motion for Reconsideration

A motion for reconsideration requires the moving party to state “the alleged errors of law or fact” that were relied upon by the judge or agency in rendering its decision. *I/M/O the Petition of Fiber Technologies Networks, L.L.C., For an Order Finding Unreasonable the Make-Ready Costs Imposed by Verizon New Jersey Inc. on Fiber Technologies, L.L.C., Requiring Refunds, and Establishing Reasonable Make-Ready Rates, Terms, and Conditions*, BPU Docket No. TO12080722, 2012 N.J. PUC LEXIS 297, at *12, Opinion and Order (October 23, 2012) (citing N.J.A.C. 14:1-8.6(a)(1)). For example, the New Jersey Court Rules provide, in pertinent part, that:

¹ Ocean Wind notes that the New Jersey League of Municipalities also filed a motion to participate in this proceeding, which was granted in the Board's August 16 Order.

[A] motion for rehearing or reconsideration ... shall state with specificity the basis on which it is made, including a statement of the matters or controlling decisions which counsel believes the court has overlooked or as to which it has erred, and shall have annexed thereto a copy of the judgment or order sought to be reconsidered and a copy of the court's corresponding written opinion, if any.

N.J. Court R. 4:49-2.

Reconsideration is specifically reserved for those cases where “(1) the decision is based upon a ‘palpably incorrect or irrational basis’ or (2) it is obvious that the finder of fact did not consider, or failed to appreciate, the significance of probative, competent evidence.” *I/M/O the Petition of Fiber Technologies Networks*, 2012 N.J. PUC LEXIS 297, at *12-13 (citing *Cummings v. Bahr*, 295 N.J. Super. 374, 384 (App. Div. 1996)). The burden is on the moving party to show that the Board's action was arbitrary, capricious, or unreasonable. *Id.* However, reconsideration is not warranted based merely on a party's dissatisfaction with a decision. *Id.* at *17 (citing *D'Atria v. D'Atria*, 242 N.J. Super. 392, 401 (App. Div. 1996)). Indeed, a prior order should not be disturbed merely because the non-prevailing party is unhappy with the outcome. *See Michel v. Michel*, 210 N.J. Super. 218, 224-25 (Ch. Div. 1985) (stating that “the practice of moving before the trial court for reconsideration of a prior order, when dissatisfied with the substantive result reached by the Court, is improper and without basis in the New Jersey Court Rules”). In other words, “a litigant's dissatisfaction with the substantive result reached is not reason for a reconsideration motion.” *Id.* at 225.

Likewise, a reconsideration motion should not be used as an attempt to repeat the same arguments previously made, but rejected by the court. *Palombi v. Palmobi*, 414 N.J. Super. 274, 288 (App. Div. 2010) (stating that reconsideration “is not appropriate merely because a litigant ... wishes to reargue a motion” (citing *D'Atria*, 242 N.J. Super. at 401)). “[M]otion practice must come to an end at some point, and ... the Court must be sensitive and scrupulous in its analysis of

the issues in a motion for reconsideration.” *Cummings*, 295 N.J. Super. at 384 (quoting *D’Atria*, 242 N.J. Super. at 401-02). Accordingly, the Appellate Division has noted that “[m]otions for reconsideration are granted only under very narrow circumstances.” *Fusco v. Board of Educ. of City of Newark*, 349 N.J. Super. 455, 462 (App. Div. 2002).

B. The Nine Municipalities Fail to Identify Unique Interests to Support Intervention

The Nine Municipalities fail to satisfy the standard for reconsideration because the Motion does not identify or allege the errors of law or fact found in the Board’s August 16 Order. The Nine Municipalities continue to present only duplicative interests, amongst themselves, and to those represented by Cape May County, Upper Township, and Ocean City. The Nine Municipalities (together) assert that “all municipalities have unique issues directly affected by this proceeding for their communities,” Motion at 5, however, these “unique” issues are not identified in the Motion. The Nine Municipalities fail to establish different and distinct issues particular to each municipality that might rise to the level of supporting the grant of intervenor status in this proceeding. *See N.J.A.C. 1:1-16.3* (requiring “the movant’s interest [be] sufficiently different from that of any party” to satisfy standard for intervention). Merely repackaging their shared but irrelevant views (to the extent not already represented by Cape May County, Upper Township and Ocean City) into a single Motion changes nothing in the conclusion that the Board did not err as a matter of fact or law in the August 16 Order. As Ocean Wind identified in its opposition to the initial motions to intervene and as the Board found in its August 16 Order, only Upper Township and Ocean City have a particularized and unique interest in the outcome of this proceeding because the proposed onshore cable route that is the subject of this proceeding physically travels through only those two municipalities. August 16 Order at 4.

The Nine Municipalities have no cognizable interest in the outcome of this proceeding because they do not own any of the subject property for which Ocean Wind seeks an easement. Ocean Wind also does not require the consent of any of the Nine Municipalities to proceed with requisite Project permitting. The purported interests of the Nine Municipalities continue to be merely duplicative and do not satisfy the legal standard for intervention in this proceeding. Moreover, the Nine Municipalities have failed to establish that the Board's decision was "palpably incorrect" and have failed to provide any probative, competent evidence that the Board "did not consider, or failed to appreciate." *I/M/O the Petition of Fiber Technologies Networks*, 2012 N.J. PUC LEXIS 297, at *12-13. At most, the Nine Municipalities have only established their dissatisfaction with the Board's decision, which is clearly insufficient to warrant reconsideration.

C. The Nine Municipalities Continue to Raise Irrelevant Issues Outside the Scope of this Proceeding

The Nine Municipalities continue to raise irrelevant issues to justify their intervention in this proceeding. The Motion claims that the Project "located immediately off the coast of the Peninsula of Cape May County will have a direct, immediate, and long-lasting impact on the economies and future development of these municipalities." Motion at 7. As Ocean Wind explained in its opposition to the initial motions to intervene, these are not valid or legitimate grounds to justify intervention in this proceeding because this proceeding does not involve the offshore portion of the Project and this proceeding does not provide any opportunity at all to revisit the Board's offshore wind award of Offshore Wind Renewable Energy Certificates to Ocean Wind. The Board agreed with Ocean Wind's argument and even issued the following reminder to all parties, including intervenors and participants:

[T]his proceeding is limited in scope to whether certain easements across properties owned by the County and certain consents needed from the County for certain environmental permits in or with respect to the County are reasonably necessary

for the construction or operation of Project. This proceeding is not addressing any other aspect of the Project, including but not limited to the view shed, impact on tourism or property values, or impact on the wildlife or the fishing industry.

August 16 Order at 5. The claimed interest in the offshore portion of the Project and the potential impacts on the economies of the Nine Municipalities as set forth in the Motion seemingly disregards this straight-forward and clear reminder. Further, in their seeming disregard, the Nine Municipalities insist instead on continuing to raise issues that are outside the scope of this proceeding plainly demonstrating that their involvement would serve only to confuse the issues before the Board in this proceeding. Such demonstration reinforces that the August 16 Order was undoubtedly correct in its finding as to this element of the analysis under N.J.A.C. 1:1-16.3(a). The inclusion of the Nine Municipalities as intervenors intent on raising issues outside the scope of this proceeding would also necessarily delay resolution, which also warrants against intervention.

Contrary to the claim made in the Motion, whether the Nine Municipalities satisfy the standard for intervention is a legal, not a factual, question. Ocean Wind's assertions that the Nine Municipalities will not be directly affected by the outcome of this proceeding and that the Nine Municipalities lack a legitimate interest in this proceeding are accordingly legal arguments based on the scope of this proceeding as dictated by the relevant statute, N.J.S.A. 48:3-87.1(f). Based on the arguments made by the Nine Municipalities in their original motions to intervene, the Nine Municipalities either (1) raised issues that are duplicative of Cape May County and are not particularized or unique as to each municipality, or (2) raised issues that are irrelevant to the present proceeding because they are outside the legal scope of this proceeding. Ocean Wind did not introduce any new arguments or raise any factual concerns; rather, Ocean Wind explained (and

the Board agreed) that the Nine Municipalities failed to satisfy the standard for intervention as a matter of law.

As explained herein, the Nine Municipalities cannot establish that the Board's August 16 Order was arbitrary, capricious, or unreasonable and therefore the Nine Municipalities fail to satisfy the standard needed to prevail on a motion for reconsideration. The Board correctly determined that the Nine Municipalities did not and cannot satisfy the standard for intervention because they did not show an interest in the specific determination at stake in this proceeding. To the extent they have an interest as neighboring municipalities, their interests are already well represented by Cape May County, Upper Township, and Ocean City. To the extent they raise issues with respect to impacts on their local economies or viewsheds, such issues are outside the scope of this proceeding and, therefore, irrelevant.

IV. Conclusion

For the foregoing reasons, the Motion for Reconsideration of the Board's August 16 Order denying intervenor status to 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 should be denied.

Dated: August 26, 2022

Respectfully submitted,



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