

LAW OFFICES  
**PAUL J. BALDINI, P.A.**

A PROFESSIONAL CORPORATION

PAUL J. BALDINI, ESQUIRE

E-Mail Address: paul@paulbaldinilaw.com

4413 New Jersey Avenue  
Wildwood, NJ 08260  
(609) 729-2600  
(609) 729-8627 - Fax  
File No.: 1861.32

August 19, 2022

*Via email only*

Hon. Joseph L. Fiordaliso, President  
New Jersey Board of Public Utilities  
c/o Acting Secretary Carmen Dias  
44 South Clinton Avenue, 9th Floor P.O. Box 350  
Trenton, NJ 08625-0350  
via email to: board.secretary@bpu.nj.gov

**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 Docket No. QO22050347**

**RECONSIDERATION ON MOTION FOR INTERVENER STATUS**

Dear President Fiordaliso:

Please accept this letter as a formal request by the municipalities seeking intervener status to be afforded due process. The inability to have responded to Ocean Wind LLC's objection to motions to intervene has severely prejudiced the municipalities. The Administrative Procedures Act affords opportunities to respond. Accordingly, attached is the response sought to be considered.

It is respectfully submitted the decision be reconsidered in light of the reply attached hereto. I will await your response.

Thank you for your time and consideration.

Respectfully submitted,

/s/Paul J. Baldini

Paul J. Baldini, Esquire

PJB/hkb

Enclosure

cc: All Parties on the Service List (via email)

**PAUL J. BALDINI, P.A.**

**#018181983**

A PROFESSIONAL CORPORATION

4413 NEW JERSEY AVENUE

WILDWOOD, NEW JERSEY 08260

(609) 729-2600

Paul@paulbaldinilaw.com

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N.J.S.A. 48:3-87.1(f) FOR A  
DETERMINATION THAT CERTAIN  
EASEMENTS AND CONSENTS NEEDED  
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THE OCEAN WIND 1 QUALIFIED  
OFFSHORE WIND PROJECT

) STATE OF NEW JERSEY BOARD OF  
) PUBLIC UTILITIES

) DIVISION OF CLEAN ENERGY

) DOCKET NO.:QO22050347

) **RESPONSE TO OCEAN WIND, LLC'S**  
) **OPPOSITION TO MOTIONS TO**  
) **INTERVENE**

This office has been designated lead counsel for nine (9) municipalities seeking intervention before the Board. This firm and this response to Ocean Wind LLC's opposition to the motions to intervene is 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 (hereinafter referred to as "the municipalities"). The above-referenced motions are pending before the New Jersey Board of

**Paul J. Baldini, PA**

4413 New Jersey Ave.  
Wildwood, NJ 08260  
paul@paulbaldinilaw.com  
PJB/hkb  
1861-32

County-Lead Counsel for  
Municipalities to Intervene -  
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Public utilities (hereinafter "the Board").

### **LEGAL STANDARD OF REVIEW FOR MOTIONS TO INTERVENE**

The actions of the Board are generally controlled by the "Administrative Procedure Act" N.J.S.A. 52:14 B – 1, et seq. Under the Act "...all interested parties are afforded reasonable opportunity to submit data, views or arguments, orally or in writing, during any proceedings involving a permit decision" N.J.S.A. 52:14 B – 3.1 (a). Due process also requires "notice and opportunity to be heard.", In re Proposed Quest Acad. Charter Sch. of Montclair Founders Grp., 216 N.J. 370, 384 (2013).

This is the starting point for any analysis of the motions to intervene before looking at the more specific administrative regulations allowing such intervention. It is clear from the plain language the Act contemplates a liberal standard affording all interested persons a reasonable opportunity to submit information and be a part of any proceedings prior to decision. Using this standard as the guiding light a motion to intervene in an administrative proceeding is governed by N.J.A.C. 1:1 – 16.1 (a) and the alternative relief sought by the moving parties is found under N.J.A.C. 1:1 – 16.6 (a) wherein participation is sought as the alternative if intervention is denied.

In reviewing a motion to intervene the regulation provides "in ruling upon a motion to intervene, the (agency) shall take into consideration the 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 inconclusion, and other appropriate matters".

The standard is different for a motion to participate. A motion to participate is controlled by whether "a significant interest in the outcome of a case" is present. N.J.A.C. 1:1 – 16.6 (a).

The agency is bound to consider whether the participant's interest is likely to add constructively to the case without causing undue delay or confusion. N.J.A.C. 1:1 – 16.6 (b).

A threshold determination needs to be made in deciding a motion for intervention as to whether the matter is classified as a contested case within the intent of the Administrative Procedure Act.

A contested case is defined under the Administrative Act as follows:

"a proceeding, including any licensing proceeding, in which the legal rights, duties, obligations, privileges, benefits or other legal relations of specific parties are required by constitutional right or by statute to be determined by an agency by decisions, determinations, or orders, addressed to them or disposing of their interests, after opportunity for the agency hearing ..." N.J.S.A. 52:14 B – 2.

This definition is mirrored in N.J.A.C. 1:1 – 2.1 which also adds that a contested case means "an adversary proceeding". N.J.A.C. 1:1 – 2.1.

It is respectfully submitted that pursuant to the terms of the enabling legislation for the Board to review this matter this case is a contested case. The pertinent statute provides "in considering a petition submitted pursuant to this paragraph, the Board shall conduct, or cause to be conducted, a public hearing in order to provide an opportunity for public input on the petition." N.J.S.A. 48:3 – 87.1 f (2).

It is respectfully submitted taking into consideration the liberal standard for intervention, the vested interest of these nine (9) municipalities, and the independent and identified issues of each municipality to be heard intervention is appropriate for all nine (9) municipalities in this matter.

The opposition to the motions to intervene seems to be focused by Ocean Wind, LLC on two concerns, though often repeated, commonality of issues and narrow focus of the proceeding.

It is respectfully submitted these issues in opposition are not of sufficient weight to prevent intervention. Each will be dealt with separately herein.

**Paul J. Baldini, PA**  
4413 New Jersey Ave.  
Wildwood, NJ 08260  
paul@paulbaldinilaw.com  
PJB/hkb  
1861-32  
County-Lead Counsel for  
Municipalities to Intervene -  
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**IT IS ALLEGED THAT ALL NINE (9) MUNICIPALITIES HAVE A COMMONALITY  
OF ISSUES PRECLUDING INTERVENTION AND SUCH ISSUES CAN BE  
PROTECTED BY THE COUNTY**

A review of the commonality of issues starts with a review of the timing for submission of the motions to intervene. One of the issues raised by Ocean Wind, LLC is that the parties utilized a template or pro forma motion to intervene and somehow or another that means they do not have independent interest that need to be heard.

The original scheduling order is dated June 29, 2022 and sets July 15, 2022 as the date to file motions to intervene. A second order was entered on July 5, 2022 which did not change the set time to file motions to intervene which remained July 15, 2022. The municipalities seeking intervention requested additional time to allow for the governing bodies to appropriately review the petition and have appropriate meetings to formulate a response. This request was granted and by order dated July 14, 2022 the time for filing motions was adjusted to July 29, 2022. Clearly, these are very tight time deadlines for municipalities to take action. As the Board is well aware municipalities take action through governing bodies which must meet in compliance with the Sunshine Law and conduct all business at scheduled meetings transparent to the public. Therefore, municipalities as a general matter cannot move with the speed that private companies or individual persons can move. However, in this particular instance the municipalities, the nine (9) municipalities in this case, moved with expeditious speed in order to accommodate the deadline established in the orders setting the scheduling of this matter.

Given the relatively short time deadline to file these motions to intervene it is entirely feasible that the different municipalities utilized common forms and piggy back off of each other. The use of common forms does not change the fact that each of these municipalities has a unique perspective and unique interest at stake in the present case. Some of the municipalities run along

**Paul J. Baldini, PA**  
4413 New Jersey Ave.  
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1861-32  
County-Lead Counsel for  
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the eastern seaboard directly on the ocean, some are directly in line with the proposed facilities and some are further down the coast, some municipalities are inland and have unique inland issues that they must contend with, and there may be commonality on some issues to all municipalities. However, all municipalities have unique issues directly affected by this proceeding for their community.

Just as municipalities operate in an open transparent environment the Board of Public Utilities is committed to do the same. In fact, the scheduling order of July 5, 2022 specifically notes "I note that P. L. 2021, c. 178 envisions a transparent and public process for the evaluation. In accordance with N.J.S.A. 48:3 – 87.1 (f) (2), the Board is required to hold a public hearing and to provide the opportunity for public comments on the petition. The public will have an opportunity to file comments and attend a public hearing."

The Board's commitment to an open and transparent and inclusive process was reaffirmed by the order entered on July 14, 2022 where the exact same language is contained in the order.

The municipalities take the Board at its word and seek to be included in the process in a meaningful fashion. By the designation of a lead counsel the municipalities are demonstrating their good faith in proceeding expeditiously and committing to working with the Board to move to a final hearing in a reasonable period of time. The request by the municipalities for intervention is reasonable, carefully considered, and appropriate under the circumstances. These municipalities have a real interest in the outcome of this matter. There is no basis for the assertion that the County of Cape May is in a position to represent the interests of the municipalities. The County has broader interest well beyond the nine (9) municipalities that are seeking intervention in this matter. Again, although there may be some commonality in issues the reality is that these parties have different issues amongst themselves and different issues from the County of Cape May. Those different issues must be recognized by the Board and a fair opportunity provided to

the municipalities to intervene and be a part of the process protecting their own stated interest.

There seems to be an argument made by Ocean Wind, LLC that one law firm may represent certain municipalities and another law firm may represent other municipalities. These arguments are clearly arguments of form over substance. Attorneys have a job to do and they do it in good faith and on behalf of their clients. Whether there are overlapping municipal attorneys has no bearing on substantive issues before this Board.

The State of New Jersey has a long history of viewing matters of substance over form. New Jersey jurisprudence has a long history of maintaining substantive decisions, in getting through the form to rendering substantive decisions on the merits of a case. Applestein v. United Bd. & Carton Corp., 60 N.J. Super. 333, 348 (Ch. Div. 1960). Further, a court is always concerned with substance, and not merely form when reviewing and deciding matters. Fortugno v. Hudson Manure Co., 51 N.J. Super. 482, 500 (App. Div. 1958).

In conclusion, the issues raised by each of the municipalities are valid legitimate concerns. Each of the residents of those municipalities have differing concerns than the residents of their neighboring municipalities. Even though there may be some overlap of issues does not mean that each of the municipalities do not have their own concerns and need to have their own voice heard at the table. The municipalities are committed to expediting this matter and procedurally working together to move this matter forward to hearing however, at that hearing each of the municipalities will present the unique issues and concerns of the constituents and residents of those municipalities as they may be distinct and separate from any other municipality and from the county.

**Paul J. Baldini, PA**  
4413 New Jersey Ave.  
Wildwood, NJ 08260  
paul@paulbaldinilaw.com  
PJB/hkb  
1861-32  
County-Lead Counsel for  
Municipalities to Intervene -  
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**OCEAN WIND, LLC SEEKS TO CONSTRAIN OR NARROW THE FOCUS OF THE  
BOARD HOWEVER FAIRNESS AND OPENNESS DICTATE THAT THE BOARD  
LOOK AT ALL ISSUES PRESENTED BEFORE IT BEFORE DECIDING THIS  
MATTER**

Ocean Wind, LLC makes the broad statement "these municipalities have no legitimate interest in this proceeding." This statement could not be further from the truth. Each of these municipalities have clear distinct and legitimate interest in this proceeding. These facilities 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. They are stakeholders. They have every right to be present, participate and be involved in the commitment that the Board has made to open and transparent proceedings.

The bold assertion by Ocean Wind, LLC that "their inclusion could likely delay resolution of this proceeding and confuse the issues before the Board ..." is inappropriate and without factual basis. There is no reason to believe the inclusion of the municipalities will delay resolution of this proceeding beyond any reasonable expectation. In fact, inclusion of the municipalities is likely to bring a conclusion to the proceedings sooner than later. Including these municipalities insures appropriate and proper due process which is a requirement of the Board as noted earlier in this brief. Including the municipalities will obviate the need for an appeal on the procedural issues of inclusion which will resolve this matter sooner than later.

Further, it is highly unlikely that anything a municipality may say will cause confusion for the Board. This Board is well esteemed and well respected here in the State of New Jersey and there is little reason to believe that members of the Board will be easily confused because municipalities are given their appropriate due process and opportunity to be heard. Quite frankly, this argument begs the question of what exactly is Ocean Wind, LLC looking to hide and keep from public view. It seems, Ocean Wind, LLC should welcome full participation of all the parties

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1861-32  
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and stakeholders rather than trying to limit participation and limit comment and voices of the stakeholders. They have an obligation under the statute to be open, transparent, and cooperative. The fact that Ocean Wind, LLC has run to the Board rather than engaging in good faith negotiations with the County is an example of a concern that Ocean Wind, LLC is not acting in the best interests of the stakeholders and there is need for the Board to hear from these municipalities and allow open and transparent proceedings.

Ocean Wind, LLC spends a full two pages arguing that allowing intervention and participation by the municipalities is outside the scope of the proceedings for the Board. In the entire two pages not one case is cited to support that proposition. In fact, no legal precedent whatsoever is cited as to why the municipalities should not be permitted an opportunity to participate in the process. This is a new statute which all the more reason means the municipalities should be granted the opportunity to participate. The only way to find all of the nuances and significant implications of a new statute is by open and transparent application of the statute.

Some years ago the State of New Jersey passed the Open Public Meetings Act. N.J.S.A. 10:4 – 6. The statute was passed in 1973 and has been a guiding light for governmental entities ever since. That same spirit is applicable in the present case, rather than trying to limit participation Ocean Wind, LLC should be welcoming participation by all the stakeholders and addressing legitimate concerns in open and transparent fashion. The failure of Ocean Wind, LLC to come to the table and sit down with stakeholders in order to discuss extremely important issues of first impression in the State of New Jersey is troubling at best. The Board is the bastion of due process and the protector of the public. The challenge the Board faces is ensuring these high goals are met at the same time meeting the challenges of the new statute. It is respectfully submitted the Board in meeting all of these challenges, can allow the municipalities voices to be heard, and still manage the case so that the matter proceeds in a reasonable manner and at utmost speed.

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**THE OPPOSITION TO THE MOTION TO INTERVENE PROVIDES FACTS  
THAT ARE NOT CERTIFIED AND REQUIRES A HEARING BEFORE FINAL  
DETERMINATION ON THE MOTIONS**

On page 6 of the opposing document Ocean Wind, LLC specifically asserts "these nine municipalities will not be substantially, specifically, or directly affected by the outcome of this proceeding." This is clearly a statement of fact and is not supported by certification before the Board. More importantly, the statement of fact it is argued by the municipalities is factually not true. The municipalities will be substantially, specifically and directly affected by the outcome of the proceeding. All intervention does is give the municipalities an opportunity to be heard.

In the same paragraph the letter states "these municipalities have no legitimate interest in this proceeding." Again, this is a factual assertion not under oath and is specifically disputed by the municipalities. Parenthetically, all municipalities' motions to intervene are supported by verification of the representative of the municipality.

As an example, the verification of the City of Sea Isle City's verification is quoted herein. "I, George Savastano, hereby state that I am the Administrator for the City of Sea Isle City, the petitioner in the foregoing motion; that I am authorized to make this verification on behalf of the City, that the foregoing motion was prepared under my direction and supervision, and that the statements in the foregoing motion are true and correct to the best of my knowledge, information, and belief." Page 5 of 5 of the motion for the City of Sea Isle City.

By way of further example quoted herein is the verification from the City of Wildwood. "I, Pete Byron (mayor/administrator), hereby state that I am the Mayor of the City of Wildwood, petitioner, in the foregoing petition; that I am authorized to make this verification on behalf of the City of Wildwood, that the foregoing petition was prepared under my direction and supervision; and that the statements in the foregoing petition are true and correct to the best of my knowledge,

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information, and belief."

It is abundantly clear that the municipalities are serious about being heard, have spent considerable amount of effort to meet the deadlines imposed by the Board in an honest and straightforward fashion and have certified the facts contained within each of their motions to intervene. This is more effort than Ocean Wind, LLC has put into the response and the only legitimate facts before the Board under certification are those contained in the motions filed by the municipalities. There are no certified facts before the Board in the opposition to the motion.

The concerns of the municipalities are legitimate, real, and appropriately before this Board. The attempt to narrow the focus before the Board only serves to obfuscate issues causing consternation amongst the public and concern about the legitimacy of the process.

### **CONCLUSION**

For the foregoing reasons, it is respectfully submitted to the Board that the motions to intervene filed by the City 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 should be granted allowing intervention status. At the very least, should the Board determine that intervention status is not appropriate then these motions should be granted to allow participation by the municipalities.

Respectfully submitted,

PAUL J. BALDINI, P.A.

Dated: August 19, 2022

/s/Paul J. Baldini

Paul J. Baldini, Esquire

Lead Attorney for Nine (9) Municipalities

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