

**BEFORE THE
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
Docket No.**

Direct Testimony

of

Kevin Lare

on behalf of the County of Cape May

Re: County Communications with Ocean Wind One

Dated: August 29, 2022

1 **Q. Please state your name and business address.**

2
3 A. Kevin Lare

4 4 Moore Road

5 Cape May Court House, NJ 08210

6
7 **Q. By whom are you employed and in what capacity?**

8
9 A. County of Cape May

10 County Administrator /Clerk of the Board

11 **Q. Please describe your professional experience and educational background.**

12
13 A. BS Business, QPA, Director of Finance & Purchasing prior to current position.

14
15 Over 22 years of experience in municipal and County government as both an
16 elected official and employee; responsible for an annual budget of \$200 million
17 and a workforce of approximately 1100 employees.

18 **Q. Have you previously testified before the New Jersey Board of Public Utilities**
19 **or other Administrative Agency?**

20
21 A. No

22
23 **Q. Have you had involvement on behalf of Cape May County in matters related**
24 **to the Ocean Wind One offshore wind project?**

25 A. Yes. At the conclusion of the year 2020, in preparation for taking over the role of
26 Acting County Administrator, I recommended to the Board of County Commissioners that
27 former New Jersey Superior Court Judge Michael J. Donohue be engaged to to serve as

1 legal counsel and liaison for the County on all issues involving wind farms off the beaches
2 of Cape May County. A recommendation the Board accepted.

3 Since that time, I have worked closely with Mr. Donohue on issues surrounding what has
4 been variously referred to as “the Orsted project” or “Ocean Wind 1.”

5 **Q. Did you have occasion to receive and/or review communications from**
6 **representatives of the Ocean Wind One Project?**

7 A. Yes. Much has been made of the September 28, 2022, letter from Ocean Wind 1
8 addressed to me as County Administrator. My initial review of the letter left me wondering
9 what, specifically, Ocean Wind 1 was asking for. While the letter contained a list of various
10 items, it was unclear with regard to essentially all of them whether Ocean Wind 1 required
11 them or not. Each item was followed by the words “if required” in parentheses. I did not
12 see it as the duty of the County of Cape May to determine what might actually be required
13 and not having an unconditional request from Ocean Wind 1, it was impossible to
14 determine specifically what was being requested. The balance of the letter demanded
15 approvals from other agencies that the County of Cape May could not possibly grant. One
16 was left to wonder what consents Ocean Wind 1 actually needed, or if it was even clear to
17 them what they needed.

18 It was impossible to provide any type of consent to the items in the September 28, 2021,
19 letter, given how vague, ambiguous and conditional all of the items were or based upon the
20 fact that the County was not legally able to offer consent that would by-pass autonomous
21 or semi-autonomous agencies.

22 A subsequent letter dated December 20, 2021, was no more helpful inasmuch as it
23 referred the reader to the September 28, 2021, letter for “details.” As stated, the September

1 28, 2021, letter did not supply “details” but only nebulous reference to items that may or
2 may not be require for the project.

3 **Q. Did the County of Cape May Attempt to Have Productive Discussions with**
4 **Representative of the Ocean Wind One Project?**

5 A. Yes. During 2021 and 2022, mostly through contacts between Michael J. Donohue,
6 Esquire and Keith Davis, Esquire, an Ocean Wind 1 representative, the County and Ocean
7 Wind 1 kept lines of communication open and had various discussions and meetings. As
8 County Administrator, I was regularly apprised and responsible for taking issues to the
9 Board of County Commissioners.

10 On information and belief, County and local elected officials and representatives of
11 the commercial fishing industry in Cape May County were uneasy at best near the
12 beginning of 2021 about the prospects of the construction of the Ocean Wind 1 project.
13 All parties expressed discomfort with the often repeated admonition from various
14 representatives of Ocean Wind 1 that the project was “inevitable” and “going to happen.”

15 In an effort to, sort of, reset the conversation, Mr. Donohue worked with
16 representatives of Ocean Wind 1 to set up a meeting of local and County officials, which
17 took place on May 24, 2021, so that Ocean Wind 1 could present the project, answer
18 questions and begin to establish a more productive rapport with County and local officials.

19 Contrary to the representation in the Direct Testimony of Madeline Urbish P5:18-
20 19, wherein she states that “We also hosted an information session for local and municipal
21 elected officials to discuss the Project broadly,” the meeting referenced in paragraph 15
22 above was not “hosted” by Ocean Wind 1. It was, in fact, hosted by the County of Cape
23 May. Mr. Donohue, myself and other County representatives reached out to local elected

1 officials, encouraged their attendance, coordinated a meeting date that provide the
2 opportunity for the greatest participation, reserved the County's public meeting room,
3 provided audio-visual equipment and set the room up to be most conducive to the
4 presentation format Ocean Wind 1 preferred. Ms. Urbish's representation at P5:15 of her
5 testimony is in error, inasmuch as I was the Acting County Administrator on May 24, 2021,
6 not Mr. Donohue.

7 Additionally, we arranged for meetings with all County Commissioners prior to the
8 broader meeting, in shifts so as not to violate the Open Public Meetings Act, so that Ocean
9 Wind 1 would have the benefit of talking directly to each Commissioner about the project.
10 On information and belief, everyone who attended the meetings of May 24, 2021, found
11 them helpful and found the tone of the meetings to be more conducive to productive
12 discussions. There was some follow-up from Ocean Wind 1 over the course of the
13 following couple of weeks with regard to questions that had been raised by various
14 stakeholders at the May 24, 2021, meeting.

15 Then on or about June 10, 2021, the New Jersey State Senate introduced a bill that
16 would transfer the authority of the elected officials of municipalities and counties to the
17 New Jersey Board of Public Utilities on questions of consent to permit applications and
18 taking of real property for offshore wind projects. On information and belief, multiple
19 local and county elected officials were very upset that they had sat through a meeting of
20 nearly two-hours duration with Ocean Wind 1 representatives on May 24, 2021, and not a
21 single one of those representatives had indicated that such a bill was in the offing. This
22 fact appeared to severely undermine the trust of these officials in the representations of
23 Ocean Wind 1.

1 In spite of this challenging situation, after the County had worked so hard to help
2 Ocean Wind 1 improve its standing with the elected officials of the sixteen Cape May
3 County municipalities as well as the County Commissioners, only to have this hard work
4 undone by the introduction and passage of the bill erasing Home Rule, the County
5 continued to communicate with Ocean Wind 1 and indicated its willingness to meet again.

6 However, given the amount of frustration with the introduction and passage of the
7 bill taking away the decision making authority of elected County and local officials, it was
8 necessary to allow some passage of time for “the dust to settle” so-to-speak before once
9 again putting County elected officials back in direct contact with Ocean Wind 1
10 representatives.

11 Nevertheless, under my direction as authorized by the Board of County Commissioners,
12 Michael J. Donohue, Esquire, continued to communicate with Keith Davis, Esquire,
13 regarding the scheduling of a meeting.

14 Given the continuing relationship challenges and the challenges of scheduling
15 during the Holiday Season of 2021, the date of January 7, 2022, was settled upon for a
16 meeting with Ocean Wind 1 representatives, myself, Mr. Donohue, the Director of the
17 Board of Commissioners, Gerald M. Thornton and representatives of Cultural Heritage
18 Partners (“CHP”), a law firm engaged by the County of Cape May to advise the County on
19 the federal regulatory process related to the Ocean Wind 1 project.

20 Unfortunately, severe weather was predicted to come into the Cape May County
21 area on January 7, 2022. As one might imagine, a severe weather event requires the rapt
22 attention of County officials, especially the Administrator and the Director, who is the
23 Commissioner-in-Charge of the Office of Emergency Management. The County did not

1 want to have this large group of people traveling in bad weather and/or arriving at a meeting
2 where the Administrator and Director were unavailable to attend. Consequently, Mr.
3 Donohue arranged though Mr. Davis to conduct a preliminary meeting via Zoom on
4 January 7, 2022, and the broader meeting was rescheduled to January 12, 2022.

5 The County reserved a banquet room at a local restaurant in Cape May Court
6 House, New Jersey, to host the meeting of January 12, 2022, and the County coordinated
7 all the participants in order to effectuate the meeting. The meeting was a working lunch
8 where CHP and Mr. Donohue presented many items of concern to the County. The meeting
9 was, for the most part, productive as an informational exercise.

10 **Q. At any time have Ocean Wind One representatives placed any limits upon**
11 **what they were willing to discuss?**

12 A. It has been made clear to the County that Ocean Wind 1 has certain parameters for
13 discussion. In terms of suggestions by the County made on various occasions of
14 modifications to the project design in order to make the project invisible from shore or
15 other ways to lessen the permanent cluttering of the viewshed with industrial energy-
16 generating facilities, Ocean Wind 1 consistently took the position that the project could not
17 be modified to accommodate the County's concerns because of the megawatt delivery
18 obligations of the project. The County has also indicated on various occasions that it would
19 like to include the impacts of the Ocean Wind 2 project on Cape May County in any
20 discussions, but Ocean Wind 1 has refused to agree to do so.

21 **Q. Were you ever asked to execute any documents by Ocean Wind One?**

22 A. Yes. It was about this same time that Ocean Wind representatives requested from

1 the County that the County execute the NJDEP Land Use Management Program, Division
2 of Land Use Regulation Property Owner Certification form. Ocean Wind representatives
3 indicated verbally and in writing that they simply needed the form signed so that they could
4 advance their project planning and permit applications, and that the County did not need to
5 consent to the project. The contents of the form did not comport with what Ocean Wind 1
6 was representing. The form contains a certification that I or the Director of the Board of
7 Commissioners would have had to have made on behalf of the County. The certification
8 states:

9 **I certify under penalty of law that I have personally examined and am familiar with the**
10 **information submitted in this document and all attachments and that, based on my inquiry of**
11 **those individuals immediately responsible for obtaining and preparing the information, I**
12 **believe that the information is true, accurate, and complete. I am aware that there are**
13 **significant penalties for knowingly submitting false information, including the possibility of**
14 **fine and imprisonment. I hereby grant permission for the conduct of the proposed activities**
15 **and consent to allow access to the site by representatives or agents of the Department for the**
16 **purpose of conducting a site inspection(s) of the property in question.**
17

18 The County was never supplied with “the information submitted in this document and all
19 attachments” as mentioned in the certification. It is impossible for a County official to sign
20 such a certification without having the opportunity to review those items and perhaps have
21 expert assistance in doing so.

22 The certification requires a County official to certify, under penalty of law, that all
23 information submitted to NJDEP by Ocean Wind 1 “is true, accurate, and complete.”
24 Again, none of the information was supplied to the County for the type of substantive
25 review that would be required for a County official to make such a certification. In order
26 to do so, the County would need everything that was submitted by Ocean Wind 1 to NJDEP
27 as part of its multi-part permit application. This information has not been supplied.

1 **Q. Did representatives of Ocean Wind One every offer to sit down with you and**
2 **go over their NJDEP applications in order for you to make a decision on**
3 **executing the Property Owner Certification?**

4 A. No.

5 **Q. Why didn't the County undertake to determine what consents or other items**
6 **Ocean Wind One needed from the County?**

7 A. It is clear that Ocean Wind 1 has a large number of apparently experienced attorneys
8 and other representatives. I never concluded that it should be the obligation of the County
9 to point out the deficiencies in Ocean Wind 1's requests. Quite the contrary. It is only
10 reasonable to require a private entity that wishes various consents and to utilize the
11 Constitutional takings process of Eminent Domain to carry the burden of meeting all of the
12 prerequisites required to do so.

13 **Q. Did the County remain engaged on issues involving the Ocean Wind One**
14 **project and the request made by the project?**

15 A. Yes. After the meeting of January 12, 2022, the Cape May County Board of
16 Commissioner placed the matter on an Executive Session agenda for February 8, 2022.
17 Prior to the February 8, 2022, meeting of the Board of Commissioners, on February 2,
18 2022, Ocean Wind 1 filed a Verified Petition with the Board of Public Utilities seeking to
19 have the BPU stand in the shoes of the elected officials of Ocean City, New Jersey and take
20 certain property rights of the City of Ocean City in Cape May County.

21 On information and belief, and reserving and not waiving any privileges or
22 confidentialities, the elected officials of the County of Cape May found the filing to be
23 disruptive to the County's ongoing discussions with Ocean Wind 1. Mr. Donohue was

1 authorized and directed to send a letter to Ocean Wind 1 indicating that the County would
2 not be supplying consent to Ocean Wind 1's multi-part NJDEP permit application. The
3 letter was transmitted on February 11, 2022. (See, Ocean Wind 1 Appendix H).

4 Mr. Donohue alluded to the vague, ambiguous and conditional requests of Ocean
5 Wind 1, stating, "OW1 has requested that the County provide its consent to the submission
6 by OW1 of a multi-part permit application to the New Jersey Department of Environmental
7 Protection, presumably under NJAC 7:7-23.2(g), at minimum, inasmuch as the County
8 rights-of-way are proposed for placement of OW1 facilities." Without doubt, even at this
9 stage of discussions, it was unclear precisely what Ocean Wind 1 wanted the County to
10 consent to.

11 **Q. What is your understanding of Ocean Wind One's need for County property?**

12 A. There has been very limited specific information supplied by Ocean Wind 1 with
13 regard to the specific need for county property, the extent of the property interests required
14 or the valuation of the property in question. In that vein, it is important to point out that
15 Ocean Wind 1 has never supplied to the County an appraisal of the real property owned by
16 the County that Ocean Wind 1 may or may not wish the BPU to take for them.

17 Reserving and not waiving any privileges or confidentialities, while in an executive
18 session meeting on April 12, 2022, which I attended, part of the agenda of was to discuss
19 the ongoing issues surrounding the Ocean Wind 1 project, a meeting of which Ocean Wind
20 1 representatives were made aware. Mr. Donohue received an emailed letter from Ocean
21 Wind 1 which indicated that Ocean Wind 1 "may" need property interests in real property
22 of the County of Cape May. But even the April 12, 2022, letter was equivocal, stating,
23 "the Project **may** include the proposed construction of an underground onshore export

1 cable under Cape May County's (County) road right of way (Roosevelt Boulevard),
2 identified on the Official Tax Map of Ocean City as Block 3350.01, Lot 17.01 (Property)".
3 (Emphasis added).

4 My first thought upon reviewing this letter was, "well, will it or won't it include
5 the need to use County lands." This was left unclear by the letter.

6 **Q. Did the County seek to determine what property Ocean Wind One might**
7 **precisely need?**

8 A. Again, as stated above, I did not believe it was the County's obligation to try and
9 answer these questions for Ocean Wind 1. If Ocean Wind 1, with all of its experts,
10 attorneys and consultants were not sure whether they would need County lands or not, it
11 would certainly not be possible for any County official to make such a determination.

12 I believe the above demonstrates that the County of Cape May has acted in good faith and
13 has, in fact, gone to great lengths to assist Ocean Wind 1 in navigating the challenging
14 landscape of multiple municipal governing bodies with scores of elected officials in
15 addition to the five duly elected County Commissioners.

16 **Q. Did the County make an effort to supply Ocean Wind One with information?**

17 A. Yes. For some time Ocean Wind 1 professionals communicated with the County
18 Engineer. but those communications from Ocean Wind became almost like emailed
19 deposition questions, including asking County officials to explain their thought processes.
20 At that point, after consultation with County professionals, it was determined to indicated
21 to Ocean Wind that they should utilize the Open Public Records Act. Ms. Urbish is
22 accurate in her testimony that the County, as all New Jersey governmental agencies
23 typically do, directed Ocean Wind 1 to utilize the Open Public Records Act process to

1 obtain documents from the County. This was in no way an obstructionist act, but instead
2 the regular course of action and direction that is given by Cape May County and hundreds
3 of other governmental entities in New Jersey to persons or entities seeking government
4 documents.

5 The County did receive multiple OPRA requests that are believed to be from Ocean
6 Wind 1 representatives and the County supplied all documents responsive to those requests.
7 Even in spite of the provision of many County records to Ocean Wind 1 through the OPRA
8 process, Ocean Wind 1 has never clarified requested documents relative to the consents
9 and takings issues and have maintained its ambiguous and conditional demands.

10 **Q. What is the County's perception of the Ocean Wind One demands?**

11 A. I am not an attorney, but I am at a loss to understand how the submission of a list

12 **Q. Since the filing of the Petition in this case, have there been any attempts by**
13 **Ocean Wind One to reach out to the County in an effort to restart discussions?**

14 A. No. The only contact I am aware of is a representative of Ocean Wind Vincent
15 Maione, reaching out, without contact with our attorneys or myself, to our Tourism
16 Director who handles public relations for the County and asking her to participate in a
17 Bureau of Ocean Energy Management public hearing and offer comments in support of the
18 project. That matter was referred to me and I had Mr. Donohue respond to Mr. Maione
19 and explain to him the Ocean Wind 1 had determined to litigate these matters at the BPU
20 and that he should have no contact with County employees.

21 **Q. Does this complete your Direct Testimony?**

22 A. Yes.