

**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 COUNTY ARE REASONABLY  
NECESSARY FOR THE CONSTRUCTION OR OPERATION OF  
THE OCEAN WIND 1 QUALIFIED OFFSHORE WIND PROJECT  
BPU Dkt. No. QO22050347**

**Rebuttal Testimony**

**of**

**Madeline Urbish**

**Re: Rebuttal to the Testimony of Kevin Lare regarding Community  
Outreach, Including Ocean Wind LLC's Attempts to Obtain the  
Necessary Easements and Consents Needed for NJDEP Permit  
Applications from the County of Cape May County, New Jersey**

**Dated: September 16, 2022**

1           **I.       INTRODUCTION AND BACKGROUND**

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

3       A.     My name is Madeline Urbish. My business address is 399 Boylston St., 12<sup>th</sup> Floor,  
4             Boston, MA 02116.

5       **Q.     Are you the same Madeline Urbish who submitted pre-filed direct**  
6             **testimony in this matter?**

7       A.     Yes. I submitted pre-filed direct testimony in this matter on May 20, 2022, Exhibit  
8             OW-3 to the petition.

9       **Q.     Would you describe the purpose of your rebuttal testimony?**

10      A.     I am testifying on behalf of petitioner Ocean Wind, LLC (“Ocean Wind”) in  
11             response to certain issues raised in the pre-filed testimony of Kevin Lare, County  
12             Administrator/Clerk of the Board of County Commissioners on behalf of  
13             respondent, the County of Cape May (“Cape May County” or the “County”).

14           **II.       RESPONSE TO KEVIN LARE’S TESTIMONY**

15      **Q.     What is your response in general to Mr. Lare’s testimony concerning the level**  
16             **of cooperation by Ocean Wind in obtaining the necessary consents and**  
17             **easements from Cape May County?**

18      A.     Despite a lengthy period of time involving multiple discussions, meetings, and  
19             exchanges of letters, there was never any indication that Cape May County would  
20             voluntarily provide Ocean Wind with the necessary approvals or consents for  
21             environmental permitting, or the required easements. Mr. Lare’s testimony  
22             confirms this, offering various explanations for the County’s delays in responding  
23             to Ocean Wind’s requests and for the County’s ultimate refusal to engage further

1 with Ocean Wind. Ocean Wind ultimately sought recourse before the Board of  
2 Public Utilities (“Board” or “BPU”), as authorized by New Jersey law, in order to  
3 ensure it meets upcoming deadlines for the Ocean Wind 1 Qualified Offshore Wind  
4 Project (“Project”). Mr. Lare takes issue with certain characterizations made in my  
5 direct testimony concerning Ocean Wind’s community engagement prior to filing  
6 the petition, but his testimony reveals an overall lack of cooperation exhibited by  
7 Cape May County and he repeats arguments made by the County in other BPU  
8 filings, primarily the County’s earlier motion to dismiss the petition. For the  
9 Board’s consideration of Ocean Wind’s petition, it is important to correct Mr.  
10 Lare’s testimony, that in fact: (1) Ocean Wind engaged in extensive outreach and  
11 discussions with the County over an extended period of time; (2) Cape May County  
12 knew exactly what Ocean Wind needed in terms of approvals and consents for  
13 environmental permitting, and easements; and (3) Cape May County was  
14 consistently unwilling to cooperate with Ocean Wind by refusing to provide the  
15 requisite consents or easements and refusing to engage with Ocean Wind to provide  
16 the terms or a pathway toward such approvals.

17 **Q. What is your response to Mr. Lare’s comments regarding the clarity of Ocean**  
18 **Wind’s requests in the September 28, 2021 letter and in subsequent**  
19 **correspondence from Ocean Wind to Cape May County?**

20 A. Mr. Lare’s testimony repeats arguments made in Cape May County’s earlier motion  
21 to dismiss, which remains pending before the Board. Ocean Wind filed a response  
22 and opposition to the motion to dismiss on June 20, 2022. With respect to  
23 permitting consents, the September 28, 2021 letter and other meetings and

1 correspondence described in my direct testimony satisfy the statutory consultation  
2 requirement. Over an extensive time period involving multiple meetings,  
3 correspondence, and discussions with County officials, Ocean Wind provided  
4 sufficient and clear direction regarding the necessary consents for environmental  
5 permitting, including but not limited to the specific consents needed for permitting  
6 and the methods by which the County's consent could be confirmed. The  
7 September 28, 2021 letter in particular identified the New Jersey Department of  
8 Environmental Protection ("NJDEP") permit applications that the Project would  
9 need relevant to the County. These include NJDEP Division of Land Resource  
10 Protection ("DLRP") permits and other identified permits. The September 28, 2021  
11 letter also identified other approvals and consents needed from the County that  
12 would be required by other governmental entities, including the Cape Atlantic  
13 Conservation District and County Planning Board. The September 28, 2021 letter  
14 identified the specific County property on which Ocean Wind seeks easements by  
15 lot and block number. Ocean Wind then followed-up with Cape May County by  
16 submitting another letter on December 20, 2021, providing additional clarity as to  
17 Ocean Wind's requests. In this letter, Ocean Wind specifically offered that the  
18 "project team is ready and able to meet with you and appropriate County leadership  
19 and staff to discuss this renewed request for consent." Ocean Wind then engaged  
20 in meetings with the County to discuss the Project and necessary consents or actions  
21 from the County, as discussed in more detail in my direct testimony. Ocean Wind  
22 submitted additional correspondence on February 18, 2022 after learning of the  
23 County's disappointment with the separate Board filing concerning the City of

1 Ocean City, New Jersey. In the February 18, 2022 letter, Ocean Wind requested  
2 an opportunity to meet with the County to discuss Project needs and explained that  
3 with respect to Ocean City, “Ocean Wind would have much rather had successful  
4 dialogue with the City of Ocean City that resulted in a voluntary agreement  
5 allowing Ocean Wind to acquire the property rights and municipal consents  
6 necessary for the Project to proceed.” Ocean Wind then provided additional clarity  
7 concerning its requests to the County in an April 12, 2022 letter, in which it  
8 reiterated that “at various times over the past several months, Ocean Wind has  
9 requested to meet with County representatives to discuss the Project” and again  
10 stated that “Ocean Wind is ready and willing to discuss this offer and other matters  
11 related to the Project at the County’s earlier convenience.” The September 28, 2021  
12 letter, as supplemented by subsequent correspondence and discussions, provide  
13 clear and specific information regarding Ocean Wind’s requests for easements and  
14 consents that satisfy the statute. Ocean Wind consistently and repeatedly made  
15 itself available and requested to meet with County leadership and staff to address  
16 any questions concerning Project needs.

17 **Q. What is your response to Mr. Lare’s criticism of Ocean Wind’s use of**  
18 **qualifying phrases such as “if required” in connection to various requests**  
19 **made in the September 28, 2021 letter?**

20 A. As explained above, in my direct testimony, and in Ocean Wind’s response and  
21 opposition to the County’s motion to dismiss—the September 28, 2021 letter  
22 clearly and specifically provided the County with exactly what Ocean Wind needed  
23 by way of approvals and consents for permitting and easements. The use of

1 qualifying phrases in Ocean Wind's requests were necessary based on changing  
2 needs and proposed alternatives for the Project design. Moreover, Ocean Wind was  
3 at an information deficit and needed to confirm County ownership of certain  
4 property, as acknowledged by Mr. Lare in his testimony. Ocean Wind's approach  
5 was to be all-encompassing with its requests so that it would not require piecemeal  
6 approvals and repeated back-and-forth with County officials, particularly where  
7 approval was needed by the County Board of Commissioners. It is not the case that  
8 Ocean Wind attempted to shift the burden of these requests to the County; rather,  
9 Ocean Wind's communications regarding its anticipated needs from the County  
10 were over-inclusive as opposed to under-inclusive. The County knew exactly what  
11 Ocean Wind requested, even if Ocean Wind later could potentially determine that  
12 certain requests may be unnecessary. However, the County refused to engage  
13 meaningfully with Ocean Wind to discuss the Project's needs and its refusal to  
14 provide *any* consent or approval for environmental permit applications reveals its  
15 overall lack of cooperation.

16 **Q. What is your response to Mr. Lare's explanation of why the County refused**  
17 **to execute the NJDEP Land Use Management Program Division of Land Use**  
18 **Regulation Property Owner Certification form?**

19 A. Mr. Lare expresses concern that the County lacked sufficient information in order  
20 to submit the DLRP Property Owner Certification form. Mr. Lare's testimony  
21 continues that representatives of Ocean Wind never offered to sit down to discuss  
22 the NJDEP application in order to explain the form. This is not true. As explained  
23 above, Ocean Wind repeatedly requested to meet with County leadership and staff

1 to discuss Ocean Wind's Project needs. For the DLRP Property Owner  
2 Certification form specifically, Ocean Wind sent the form on January 7, 2022—the  
3 same day that Ocean Wind and Cape May County representatives convened  
4 virtually to discuss the Project. The form was sent to Cape May County that day  
5 based on discussions during the virtual meeting. In sending the certification form,  
6 Ocean Wind referenced the upcoming meeting the following week on January 12,  
7 2022, as an opportunity to discuss this further. Ocean Wind submitted the form for  
8 Cape May County to execute after discussing it with County officials, and if Cape  
9 May County had concerns or questions regarding the Property Owner Certification  
10 form, the County had ample opportunity to raise these concerns at the January 12,  
11 2022 meeting or in response to Ocean Wind's subsequent offers to meet and discuss  
12 with Cape May County, including in Ocean Wind's February 18, 2022 letter and  
13 April 12, 2022 letter. Mr. Lare concedes that the County did not take it upon itself  
14 to determine the consents Ocean Wind needed from the County, but contrary to Mr.  
15 Lare's testimony, Ocean Wind consistently offered to meet to discuss the Project  
16 further with Cape May County.

17 **Q. What is your response to Mr. Lare's testimony regarding the Project?**

18 A. Mr. Lare's testimony reveals that Cape May County wants to dispute the Board's  
19 award of Offshore Wind Renewable Energy Credits ("ORECs") to Ocean Wind  
20 and the Project approval as opposed to the County's role with respect to  
21 environmental permitting and easements. Mr. Lare states that Ocean Wind  
22 described the Project as "inevitable" and that Ocean Wind said that Project design  
23 was off limits in terms of what Ocean Wind would discuss with the County.

1 Without conceding the accuracy of Mr. Lare's characterizations of these  
2 discussions, this proceeding before the Board is not an opportunity to contest or  
3 revisit the Board's underlying award of ORECs to Ocean Wind. Cape May County  
4 has attempted to broaden the scope of this proceeding by raising concerns with the  
5 viewshed as a result of the Project. The offshore portion of the Project is not at  
6 stake in this proceeding. The County's attempt to renegotiate Project design in  
7 discussions concerning the underground onshore export cable route and related  
8 environmental permitting are not made in good faith as it was never apparent that  
9 the County would agree to Ocean Wind's requests notwithstanding the County's  
10 objections to the Project design. Ocean Wind provided information regarding the  
11 benefits of the Project for the County and a formal offer with a monetary value to  
12 acquire the necessary easements; however, the County did not appear to seriously  
13 consider the offer or expected benefits of the Project.

14 **Q. What is your response to Mr. Lare's reasons for the County's delays in**  
15 **responding to Ocean Wind's requests and correspondence?**

16 A. Mr. Lare offers various explanations for the County's delay in responding to Ocean  
17 Wind's requests and correspondence. First, Mr. Lare states that the County needed  
18 time for "the dust to settle" after the New Jersey Legislature passed a bill during  
19 the summer of 2021 that enabled Ocean Wind to file the instant petition in this  
20 proceeding. Second, Mr. Lare states that Ocean Wind filing a related petition  
21 before the Board regarding approvals and easements involving Ocean City, New  
22 Jersey "was disruptive to the County's ongoing discussions with Ocean Wind."  
23 These explanations reveal that the County's objection to the Project and its

1 objection to the legally authorized manner for Ocean Wind to move forward with  
2 the Project prevented the County from cooperating with Ocean Wind. Mr. Lare's  
3 commentary concerning the New Jersey Legislature and the Ocean City filing is  
4 irrelevant to this proceeding. This proceeding concerns Ocean Wind's requests for  
5 the County to consent to environmental permitting and authorize easements for the  
6 onshore cable route. Mr. Lare's testimony reveals that other issues that are outside  
7 of the scope of this proceeding and are unrelated to the onshore cable route  
8 interfered with the County's cooperation and ultimately necessitated Ocean Wind  
9 filing the petition for this proceeding. The County's objections to the statute that  
10 gives rise to this proceeding and Ocean Wind's legally authorized use of this statute  
11 in connection to requests from Ocean City prevented any cooperation or  
12 negotiations from the County. For the sake of argument, if Ocean Wind entertained  
13 the County's objections to viewshed or Project design, it is nonetheless difficult if  
14 not impossible to imagine a set of circumstances that would have satisfied the  
15 County's concerns and enabled the Project to move forward absent the filing of the  
16 petition in this matter.

17 **Q. What is your response to Mr. Lare accusing Ocean Wind of attempting to shift**  
18 **the burden to the County with respect to Ocean Wind's requests?**

19 A. Ocean Wind made repeated requests to the County, both through informal  
20 discussions and formally through the Open Public Records Act ("OPRA") for the  
21 County to confirm whether certain property was public road right-of-way. This is  
22 a key fact, because if it is a public road right-of-way, then Ocean Wind does not  
23 need to acquire an easement from the County for the underground cable route based

1 on the applicable statute. Representatives of Ocean Wind first attempted to learn  
2 this information regarding the County's own property records through several  
3 emails and phone calls with various County officials, only to learn that County  
4 Project liaison, former New Jersey Superior Court Judge Michael J. Donahue,  
5 required Ocean Wind to submit an official OPRA request. The County then stated  
6 that it needed more time to respond to some of the OPRA requests, but it eventually  
7 responded to these requests and provided some information. Even after submitting  
8 several formal OPRA requests, the County's responses did not provide the  
9 necessary certainty and information to confirm the status of its property as public  
10 road right-of-way. For example, Ocean Wind submitted a follow-up email to a  
11 response from Cape May County seeking a better scan of a permit drawing, to  
12 which the County did not respond. Despite Mr. Lare's testimony that requiring  
13 Ocean Wind to submit formal OPRA requests was not an obstructionist act, the  
14 resulting delays and lack of information in response to Ocean Wind's requests  
15 suggests otherwise.

16 **Q. What is your response to the County's continued engagement with Ocean**  
17 **Wind regarding the necessary approvals, consents, and easements?**

18 A. Mr. Lare seemingly criticizes Ocean Wind for not reaching out to Cape May  
19 County in an effort to restart discussions concerning Ocean Wind's requests. At  
20 the same time, Mr. Lare states that Mr. Donahue responded to a representative of  
21 Ocean Wind who had reached out to the County's Tourism Director to explain that  
22 as a result of the petition in this proceeding, Ocean Wind should have no contact  
23 with County employees. As I stated in my direct testimony, Ocean Wind believes

1       there is a lot to be gained by the County through its involvement in the Project and  
2       we would welcome the opportunity to reach an agreement with the County that  
3       addresses the County's concerns while enabling the Project to advance. Mr. Lare's  
4       testimony suggests that the County is unwilling to enable the Project to advance.

5       **Q.   Do you have anything else to add regarding Ocean Wind's community**  
6       **engagement prior to filing a petition before the Board?**

7       A.   As explained in my direct testimony and above, Ocean Wind engaged in extensive  
8       discussions, meetings, and correspondence with Cape May County, but there has  
9       been no indication that Cape May County would voluntarily provide Ocean Wind  
10      with any of the necessary approvals or consents for environmental permitting, or  
11      the required easements. Mr. Lare's testimony confirms the County's lack of  
12      cooperation and meaningful engagement with Ocean Wind. Mr. Lare's testimony  
13      suggests that (i) Cape May County objects to the Board's underlying award of  
14      ORECs to Ocean Wind, (ii) Cape May County objects to the Project and its design  
15      as approved by the Board, (iii) Cape May County objects to the statute that gives  
16      rise to this proceeding, and (iv) Cape May County objects to Ocean Wind seeking  
17      property rights and related approvals and consents from Ocean City. None of these  
18      objections raised by Cape May County are relevant or pertinent to the instant  
19      proceeding. This proceeding concerns the onshore cable route as it traverses  
20      through County property and the County's consents to advance with environmental  
21      permitting. Contrary to Mr. Lare's testimony, Ocean Wind has been abundantly  
22      clear through its September 28, 2021 letter and in subsequent discussions and  
23      correspondence exactly what Ocean Wind requests from the County in order for

1 the Project to proceed. Cape May County instead has utilized its authority in  
2 connection with these requests to raise unrelated and irrelevant concerns with other  
3 aspects of the Project to effectively delay the Project moving forward. Due to the  
4 lack of cooperation from the County, Ocean Wind determined that it must seek  
5 recourse with the Board in order to ensure that Project deadlines are met. At all  
6 times, the Project team has been ready and willing to discuss Ocean Wind's  
7 requests with County officials and clarify any questions from the County, but the  
8 County has consistently thwarted and delayed these discussions. Cape May County  
9 has never given any indication that it would be willing to agree to terms under  
10 which the County would consent to the environmental permits or grant the  
11 necessary easements, and Ocean Wind must ensure that the delay from the County  
12 does not delay the Project from becoming operational and delivering significant  
13 benefits to the State.

14 **Q. Does this conclude your rebuttal testimony at this time?**

15 **A.** Yes, it does.