

October 26, 2022

VIA E-MAIL (BOARD.SECRETARY@BPU.NJ.GOV)

Gregory Eisenstark

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Ms. Carmen Diaz, Acting Board Secretary
New Jersey Board of Public Utilities
44 South Clinton Street, 9th Floor
P.O. Box 350
Trenton, New Jersey 08625

**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 Dkt. No. QO22050347**

Dear Acting Secretary Diaz:

This firm represents Ocean Wind, LLC ("Ocean Wind") in the above-captioned matter.

Pursuant to the procedural schedule issued by President Fiordaliso, enclosed for filing please find Ocean Wind's reply to written public comments filed with the Board of Public Utilities in this matter.

These reply to written public comments are being filed with the Board Secretary electronically only, consistent with the Board's Order dated March 19, 2020 (Docket No. EO20030254) directing that all submissions to the Board, of any kind, be submitted electronically. I hereby certify that copies of the comments have this day been transmitted to all persons on the attached service list via electronic mail.

No paper copies will follow and we would appreciate if the Board Secretary's office would please acknowledge receipt of these comments.

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Ms. Carmen Diaz, Acting Board Secretary
October 26, 2022
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Thank you for your anticipated courtesy and cooperation.

Sincerely,

COZEN O'CONNOR

A handwritten signature in blue ink, appearing to read "Gregory Eisenstark".

By: Gregory Eisenstark

Attachments

cc: Service List (via electronic mail)

**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
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WIND 1 QUALIFIED OFFSHORE WIND PROJECT**

BPU DOCKET NO.: QO22050347

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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's Response to Written Public Comments

Please accept this reply to written public comments on behalf of Ocean Wind LLC ("Ocean Wind") in the above-referenced matter. In this reply, Ocean Wind responds to the comments filed by the Division of Rate Counsel ("Rate Counsel") on October 12, 2022 ("Rate Counsel Comments") and the Nine (9) Cape May County municipalities on October 12, 2022 ("Nine Municipalities' Comments").¹ In addition, Ocean Wind responds to issues raised in certain other filed public comments.

Response to Rate Counsel Comments

Rate Counsel's comments are a combination of untimely and irrelevant complaints about the Board of Public Utilities' ("Board" or "BPU") procedural schedule, misstatements of law concerning the issues before the Board in this matter, and factually erroneous statements concerning alleged impacts of the Board's decision in this matter on rates that will be charged to utility customers. As a threshold matter, many of these issues are the same ones raised in the Direct Testimony of Maximilian Chang on behalf of Rate Counsel ("Chang Testimony"). Ocean Wind filed two pieces of rebuttal testimony responding to and entirely refuting Mr. Chang's

¹ The Nine Municipalities sought intervention status in this proceeding and were instead granted participant status. The municipalities include 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.

claims. Yet, in its filed public comments, Rate Counsel does not even acknowledge Ocean Wind's rebuttal testimony, let alone admit that Mr. Chang's alleged concerns have no merit. Rate Counsel's comments are inaccurate and irrelevant and the Board should disregard them.

It is important to recognize this proceeding does not concern a public utility capital project and, therefore, the Board's decision will not impact the rates (or bills) of electric public utility customers at all. Rather, this matter concerns the Board's consideration of the grant of easements (and related relief with respect to consents for certain environmental permits) to Ocean Wind for a segment of the on-shore transmission line that is required to move the electricity from the Ocean Wind 1 Project ("Project") offshore wind turbines to the electric grid in New Jersey. As the Board is well-aware, both the price Ocean Wind will receive for Offshore Renewable Energy Certificates ("ORECs") from the Project, as well as the quantity of ORECs, were determined in the Board's June 21, 2019 Order.² Except in very narrow circumstances not applicable to this Petition, the OREC price that utility customers will pay, and that Ocean Wind will receive, has been set. Therefore, the Board's decision in the instant matter will have zero impact on utility customers' rates. For this reason (and leaving aside the factual inaccuracies in nearly all of Rate Counsel's comments), all of Rate Counsel's alleged concerns about impact on rates are irrelevant.

First, Rate Counsel erroneously argues that the issue for the Board to decide in this matter is "whether the Preferred Route of the Project's onshore export cable is 'reasonably necessary for the construction or operation of the qualified offshore wind project.'" *Rate Counsel Comments*, p. 2. This is a clear misstatement of the statutory criteria under *N.J.S.A. 48:3-87.1(f)*. Rather, as Ocean Wind has stated in its Petition, the issues before the Board are: (1) whether the requested *easements* are reasonably necessary for the construction or operation of the Project; and (2)

² *I/M/O the Board of Public Utilities Offshore Wind Solicitation for 1,100 MW – Evaluation of the Offshore Wind Applications*, BPU Dkt. No. QO18121289, Order dated June 21, 2019 ("June 21, 2019 Order").

whether 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 Project, in both cases along the route chosen by Ocean Wind. *Petition*, pp. 1, 3-4, 9-13, 15-19; Exhibits OW-1, OW-2, and OW-3. Ocean Wind used the descriptive term “Preferred Route” to describe the planned path for the interconnection at a new, onshore substation that will be constructed in Upper Township, New Jersey. However, Ocean Wind is not, through this Petition or any other, required to have the Board approve any particular onshore cable route. That decision is left to Ocean Wind.

In this regard, this Petition is dissimilar to a Petition filed by a public utility pursuant to *N.J.S.A. 40:55D-19* of the Municipal Land Use Law (“MLUL”). In such petitions, because the petitioner is normally a regulated public utility, the Board is properly concerned as to whether the route chosen for a utility capital project is reasonably necessary. Similarly, in such utility filings, the Board may be properly concerned with the cost of the chosen route and of alternatives, because the cost will ultimately be included in the public utility’s rate base and be “paid for” by the utility’s customers. Here, in contrast, Ocean Wind is *not* a public utility and has not filed a petition under the MLUL. It is Ocean Wind, and not utility customers, that bears the entire cost risk for the construction of the onshore cable at issue in this filing. Accordingly, there is no reason or requirement for the Board to require Ocean Wind to provide cost estimates of the alternative routes considered.³

Rate Counsel’s misstatement of the main issue before the Board and its related attempt to subject this Petition to the same standards as utility filings under *N.J.S.A. 40:55D-19* is both the

³ In fact, the Board has reached the same conclusion in its September 28, 2022 Order in *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 Easements Across Green Acres-Restricted Properties And Consents Needed For Certain Environmental Permits In, And With Respect To, The City Of Ocean City Are Reasonably Necessary For The Construction Or Operation Of The Ocean Wind 1 Qualified Offshore Wind Project*, Docket No. QO22020041, Order at pp. 20-21.

basis for many of its other claims and, at the same time, the reason such claims are not relevant here. Ocean Wind responds to each of Rate Counsel's specific comments in turn.

Rate Counsel's comments contain vague references to potential alternative routes, presumably including those that Ocean Wind described in its prefiled testimony in this matter. *Rate Counsel Comments*, p. 3. In so doing, Rate Counsel refers to Mr. Chang's testimony and alleges that certain alternatives "may impact fewer stakeholders." *Id.* Mr. Chang's testimony refers to the abandoned railroad alternative route and the Great Egg Harbor alternative route. However, Rate Counsel's comments ignore the detailed explanations in Ocean Wind witness Pilar Patterson's rebuttal testimony (Exhibit OW-2 Rebuttal) that explains why these alternative routes were eliminated from consideration.

As Ms. Patterson explained in her rebuttal testimony, "this matter does not call for the Board to determine whether some alternative route is 'better' than the Preferred Route. Rather, the purpose of this proceeding is for the Board to determine whether the requested easements are 'reasonably necessary' under the statutory criteria."⁴ Ms. Patterson further responded to Mr. Chang's testimony and explained the breadth of Ocean Wind's route analysis and the consideration of impacts and stakeholders:

Q. After acknowledging that the Preferred Route has the shortest length of disturbed roadway, Mr. Chang comments "However, the road mile length does not identify the abutters that would be affected by the Preferred Route. For example, the Railroad Route impacts historic districts, but follows an abandoned railroad right of way. The Great Egg Harbor route impacts shellfish areas, but would have a lesser

⁴ Exhibit OW-2 Rebuttal, p. 8.

impact on residential and commercial properties.” Chang Testimony, p. 15, line 17 – p. 16, line 4. Please respond.

A. As stated above and in my direct testimony, the selection of the Preferred Route considered direct and indirect impacts on natural, cultural, and socioeconomic resources. The Preferred Route minimizes impacts on these resources, including historic districts, residences, and natural resources. While the Preferred Route may have greater indirect impacts on adjacent residences than the Great Egg Harbor Route, the increased potential for direct impacts on natural, cultural, and socioeconomic resources, as well as engineering and construction constraints, made the evaluated alternative routes either impracticable or more impactful and these were thus eliminated from further consideration. Additionally, it is important to note that the construction impacts associated with the development of the Preferred Route will be temporary. All areas affected by construction will be restored to prior condition or better following construction. See Exhibit OW-1 (Direct Testimony of Jason Kalwa).

Q. Mr. Chang also states “Ocean Wind describes six routes, but there may be other alternatives that may be longer than the Preferred Route but may impact fewer stakeholders or may be lower cost, and thus should be considered by the Board.” Chang Testimony, p. 15, lines 7-9. Does this statement have any merit?

A. No. As demonstrated in my direct testimony and exhibits, Ocean Wind conducted a detailed and comprehensive route analysis. That analysis

demonstrates the basis for the selection of the Preferred Route. Mr. Chang's statement about "other alternatives" is speculation and in no way impacts the validity of Ocean Wind's alternatives analysis.⁵

Thus, contrary to Rate Counsel's assertion that there is not "adequate explanation provided in the record currently before the Board" (*Rate Counsel Comments*, p. 3) as to the reason other alternatives were not pursued, there is, in fact, *detailed* record evidence that provides the exact reasons for Ocean Wind's decision to not use these alternatives. Rate Counsel is clearly incorrect in contending that there is not sufficient evidence in the record regarding the reasons the abandoned railroad alternative and the Great Egg Harbor route were removed from consideration. In fact, there is extensive, unrebutted evidence in the record on this issue.⁶

In sum, Rate Counsel's comments are plainly wrong. As explained above, the matter does not require the Board to approve the "best route" for the onshore cable. Under *N.J.S.A.* 48:3-87.1(f), the Board is only required to determine whether the requested easements and environmental permit consents are "reasonably necessary." Moreover, there is ample evidence in this proceeding that explains and justifies Ocean Wind's selection of the Preferred Route and the need for the easements.

Similarly, Rate Counsel's argument (at p. 4 of its comments) that the Board should require Ocean Wind to provide cost estimates of alternative routes considered "to ensure that the approved [] OREC price was reasonable to incent the development of offshore wind" is misplaced. First, as discussed above, the OREC prices were established in 2019 and cannot be revisited now as part

⁵ Exhibit OW-2 Rebuttal, pp. 5-6.

⁶ *See also* Exhibit OW-2 Rebuttal, pp. 10-11 (providing sufficient evidence and detailed explanation for why the "abandoned railroad" option is not a preferable route); *id.*, pp. 11-12 (providing sufficient evidence and detailed explanation for why the "Great Egg Harbor" route was not chosen as a preferred route by Ocean Wind).

of this proceeding. Moreover, Rate Counsel's statement that such cost estimates of alternative routes are necessary to "inform the reasonableness of the Preferred Route" is equally unavailing for many reasons. As explained above, Ocean Wind has already provided sufficient evidence explaining the reasons for Ocean Wind's decision to not use the alternative routes initially considered. More fundamentally, this matter does not call for the Board to determine whether an alternative route is "better" than the Preferred Route. The purpose of this proceeding is for the Board to determine whether the requested easements are "reasonably necessary" under the statutory criteria.

On page 5 of Rate Counsel's Comments, it argues that the Board's decision will "impact the transmission upgrade cost sharing mechanism approved by the Board," referencing the Chang Testimony. What Rate Counsel again fails to acknowledge is that Ocean Wind's Rebuttal Testimony of Matthew Kaplan completely refuted this point. In responding to the exact same issue when Mr. Chang raised it, Mr. Kaplan explained:

Q. On page five of his testimony, Mr. Chang states "[s]hould the Board grant Ocean Wind its requested easement, I recommend that the Board require Ocean Wind to provide an estimate of the network transmission upgrade costs associated with each of the point of interconnection ("POI") options under different build out scenarios for Ocean Wind I and future phases, since ratepayers are obligated to share transmission network upgrade costs with Ocean Wind, and assume 100% of the transmission network upgrade costs beyond \$174 million." Do you agree with that recommendation?

A. No. First, neither the transmission system upgrade costs (“TSUC”) nor the TSUC sharing mechanism are at issue in this proceeding. The scope of the TSUC sharing mechanism is limited to the costs associated with interconnection upgrades, inclusive of PJM network upgrades and Capacity Interconnection Rights (CIRs). The Project bears 100% of the costs associated with the offshore and onshore transmission system to the onshore substation, including the costs of the easements from Cape May County at issue in this matter. In the context of this petition, which only involves consents for NJDEP permits and the specific easements required from Cape May County, such costs are entirely outside of the scope of the TSUC sharing mechanism with New Jersey ratepayers.⁷

Thus, it is clear that this matter will not impact the TSUC mechanism at all. Accordingly, Rate Counsel’s statement on page 5 of its Comments that the Board should require Ocean Wind to demonstrate that “its Preferred Route is also the least-cost plan when including the transmission cost upgrades” is entirely off-base. As discussed above, there is no requirement that the Board approve any particular route; or find that the route is “least cost”; and the TSUC mechanism is simply not involved here. Rate Counsel’s repeated reliance on Mr. Chang’s erroneous statements, which have been thoroughly rebutted, is both logically quizzical and contrary to the record evidence in this matter.

At pages 5-7 of its Comments, Rate Counsel argues that the process the Board has used for this matter is not sufficient, again relying on procedures under a different statutory scheme. As discussed above, this matter is not equivalent to a public utility filing under *N.J.S.A. 40:55D-19*,

⁷ Exhibit OW-4 Rebuttal, at p. 3.

so Rate Counsel's reliance on procedures followed for matters filed under that statute are not relevant. It is clear that Rate Counsel has been afforded extensive "process" in this matter. Rate Counsel has served discovery on the Petitioner (which Ocean Wind responded to); Rate Counsel has filed testimony responding to the Ocean Wind Petition and pre-filed testimony; Rate Counsel has participated in a public hearing; and Rate Counsel has filed written comments. As the matter proceeds, Rate Counsel will have the opportunity to participate in oral argument before the Board. It is clear that Rate Counsel has been afforded an ample opportunity to participate in this matter, consistent with all the process that it is due.

Response to Nine Municipalities' Comments

The Nine Municipalities submitted written comments with the Board, largely raising issues that are (1) not before the Board in this matter or (2) have already been raised in their prior submissions. It is necessary for Ocean Wind to respond to these contentions and to correct the inaccuracies and false statements made by the Nine Municipalities in their comments.

First, the Nine Municipalities' statement that the Board's decisions on the County of Cape May's motions were not posted on the BPU website is entirely false. *Nine Municipalities' Comments*, p. 2. The decisions are currently posted on the Board's website for public viewing, accessible through the docket number for this proceeding. The Board's decisions were also served via email on the service list for this matter.

Second, the Nine Municipalities' concern regarding the time allotted for speaking during the September 29, 2022 public hearing is without merit. *Nine Municipalities' Comments*, p. 1. Counsel for the Nine Municipalities had three minutes to speak at the hearing, which was

appropriate given their role as participants in this matter.⁸ Moreover, as is the case with other citizens, residents, and members of the public—the Nine Municipalities were entitled to — and did — submit written comments of their desired length to inform the Board’s consideration of Ocean Wind’s Petition.

Third, the Nine Municipalities continue to question the Board’s authority to decide Ocean Wind’s Petition and contend that the proceeding should be transmitted to the Office of Administrative Law (“OAL”). *Nine Municipalities’ Comments*, p. 2. Ocean Wind has responded to and the Board has rejected this argument for several compelling reasons. Principally, the New Jersey Legislature has empowered and required the Board under the Offshore Wind Economic Development Act, *N.J.S.A. 48:3-87.1 et seq.*, to determine the instant Petition. Moreover, transmittal to the OAL rests in the discretion of the Board but such a transmittal would be returned to the Board by the OAL because the statute has determined that the Board, not the OAL, should be the final decision-maker for this proceeding. This argument is unsupported in law and fact and has already been rejected by President Fiordaliso in this matter.⁹

Fourth, the Nine Municipalities assert that the “County and Ocean City have repeatedly reached out to Ocean Wind to try to resolve the differences” and that Ocean Wind has failed to involve the stakeholders from the County in the process or allowed such stakeholders to participate in the process. *Nine Municipalities’ Comments*, p. 2-4. These contentions are both unsupported

⁸ See BPU Dkt. No. QO18121289, Order dated September 27, 2022 at pp. 4-5 (denying the Nine Municipalities’ Motion to Intervene and granting the Nine Municipalities participant status).

⁹ BPU Dkt. No. QO18121289, Order dated September 27, 2022 at p. 11 (“I **HEREBY FIND** that the Petition is properly before the Board; the Board may assert and retain jurisdiction and authority over the Petition, and the Board is statutorily authorized to evaluate the merits of the Petition before it.”); *id.* at p. 13 (“An [Administrative Law Judge (“ALJ”)] does not have the authority to decide the Petition for the Board ... Even if an ALJ conducts the hearing, the [statute] tasks the Board with making a final decision on the Petition. Unless the Board must defer to the ALJ for its decision on the Petition – which is not the law of New Jersey – the County’s proposed cure [for transmittal to the OAL] does not make sense.”).

and wholly inaccurate, and have been completely addressed by the initial testimony and rebuttal testimony of Madeline Urbish.¹⁰ Prior to filing the Petition, Ocean Wind engaged in meaningful discussions with the County regarding the necessary consents and permitting, beginning in August 2019, immediately after the BPU awarded Ocean Wind the Project. Ms. Urbish's testimony documents these communications and community engagement. However, Ocean Wind Project staff were often met with delays when attempting to advance discussions and schedule meetings to discuss the Project and necessary County consents. After many discussions, meetings, and letters exchanged by Ocean Wind and Cape May County, there was never any indication that Cape May County would voluntarily provide Ocean Wind with any of the necessary approvals or consents for environmental permitting, or grant the required easements. Ocean Wind was forced to file its Petition to secure Board approval in order to meet Project deadlines and the necessary timeline for operation; however, Ocean Wind would have preferred to reach an agreement with the County amicably and without Board intervention. Ocean Wind consistently made itself available to meet with the appropriate leadership and representatives of the County to discuss Ocean Wind's requests. The Nine Municipalities' state that additional time for the Board to decide the Petition is needed because "[i]t is respectfully submitted there is no reason that issues amongst the parties cannot be resolved amicably," *Nine Municipalities' Comments*, p. 5. However, as Ms. Urbish explained in her testimony, Cape May County leadership responded to a representative of Ocean Wind during the course of this proceeding that Ocean Wind should have no contact with County employees as a result of the instant Petition.¹¹ Ocean Wind continues to believe there is a lot to be gained by the County through its involvement in the Project and would welcome the

¹⁰ Exhibit OW-3, Exhibit OW-3 Rebuttal.

¹¹ Exhibit OW-3 Rebuttal, pp. 9-10.

opportunity to reach an agreement with the County that addresses the County's concerns while enabling the Project to advance in the requisite timeframe.

Fifth, the Nine Municipalities raise concerns with various aspects of the Project and the Preferred Route, including infrastructure impacts, drainage, and proposed decommissioning, among others. *Nine Municipalities' Comments*, pp. 3-5. Many of these issues are outside of the scope of this proceeding. Nonetheless, the Rebuttal Testimony of Jason Kalwa addressed many of these other considerations and concerns in responding to Cape May County witness Robert Church's prefiled written testimony:

Q. On page five (at line 20) through page six (at line 17), the Church Direct Testimony lists so-called "Other Considerations," which Mr. Church claims have been unaddressed by the Project. Can you please respond to these statements?

A. Yes. Mr. Church raises several items that have been addressed, or will be addressed in the ordinary course of constructing the transmission line, which, as I have said, is really not distinguishable from other common utility underground line projects.

For instance, regarding the County's ability to install additional drainage, without clear understanding of the County plans (which would ordinarily be shared during the kinds of meetings, which I described above, and which have not yet occurred as a result of County engineering department unavailability), even if there are horizontal expansions to the ROW as indicated on page 7 line 15 of Mr. Church's testimony, I would reasonably infer sufficient space will be created to accommodate new

installations. Additionally, based on our previously mentioned utility survey data, it appears as though there will be sufficient room within the existing travel lanes even after the installation of our proposed duct bank.

Regarding the potential corrosive impact of the Project line on other utility mains, this installation will be similar to other electric line installations near other utilities where such impacts are not deemed significant. Accordingly, we do not anticipate significant impacts for the Project.

Regarding the useful life of the transmission line, it is anticipated that the proposed duct bank and cable will be useful for at least the duration of the proposed windfarm, which is in excess of thirty years. It is unclear what potential future use could exist, but one could hypothesize that the line could find further use for a future project, or could be abandoned in place consistent with industry standards when that time arrives.

Regarding the impact of the Project on the use of normal road equipment for resurfacing activities, there are no additional precautions necessary, nor will the transmission line interfere with the access to, or maintenance of, other utility systems, which will coordinate with the Project just as the Project will coordinate with them relative to any access, maintenance or other issues.

Regarding the possibility of a future raising of the Roosevelt Boulevard causeway, without the further discussions I have previously mentioned with Mr. Church and County engineering department, in which

the Project has been unable to engage due to County unavailability, there is no basis, and none is contained in Mr. Church's testimony, as to why such eventuality differs for the Project as compared to the existing utilities within the ROW. At this juncture, there is no basis for considering this as any impediment to the Project at all. However, we remain open to the types of availability and opportunity to discuss such matters as would be reasonably afforded any public utility infrastructure project where issues are resolved, obstacles addressed and cooperation and coordination are standard.¹²

Finally, the Nine Municipalities contend that the record is devoid of any cost analysis as to the alternative routes considered by Ocean Wind, *Nine Municipalities' Comments*, p. 4. Ocean Wind has responded to this issue above in response to Rate Counsel's Comments. The purpose of this proceeding is categorically not for the Board to consider whether Ocean Wind's Preferred Route to the onshore substation is the most cost efficient. The Board's June 21, 2019 Order has firmly established OREC prices and the TSUC mechanism. The cost recovery via ORECs has already been established, and virtually all of the cost risk involved in the onshore construction falls on Ocean Wind. The issue before the Board in this proceeding is whether the requested easements are "reasonably necessary" under the statutory standard. Ocean Wind's Petition and testimony has clearly satisfied the statutory standard.

In sum, the Nine Municipalities' Comments are inaccurate, irrelevant, or have already been addressed and responded to by the Board or Ocean Wind in this proceeding. The Nine Municipalities have been provided adequate opportunity to participate in this proceeding and sufficient due process, and it is clear that their concerns are already well-represented as they often

¹² Exhibit OW-1 Rebuttal, at p. 11-13.

repeat the same arguments made by Cape May County, a party to this proceeding. Nothing contained within the comments of the Nine Municipalities provides the Board with reason to deny Ocean Wind's Petition or delay Ocean Wind's delivery of clean energy to the State of New Jersey.

Response to Other Filed Public Comments

Additional members of the public filed written comments with the Board. Some of these comments were related to issues before the Board in this matter; others were comments about the Project or offshore wind in general. Ocean Wind has summarized the comments relevant to this matter in question form and responds to them below.

1) Has Ocean Wind conducted an environmental review? How will the Project impact wildlife?

Response: Ocean Wind is conducting many site-specific environmental surveys to characterize the existing conditions of the Project area and understand potential impacts on wildlife. These environmental surveys include wetlands and waterbody delineations, threatened and endangered species surveys, tree surveys, submerged aquatic vegetation ("SAV") surveys, fisheries monitoring, and seal haul-out and feeding surveys. Ocean Wind's Construction and Operations Plan ("COP") also identifies other surveys that were performed in connection with the Project and includes the results of these surveys as appendices. The COP and appendices can be found at <https://www.boem.gov/ocean-wind>.

Ocean Wind is committed to minimizing potential impacts to environmental resources to the maximum extent practicable and is working closely with regulatory agencies (including the Bureau of Ocean Energy Management ("BOEM"), New Jersey Department of Environmental Protection ("NJDEP"), United States Army Corps of Engineers ("USACE"), and National Oceanic and Atmospheric Administration ("NOAA"), National Marine Fisheries Service ("NMFS")) to

determine the appropriate avoidance, minimization, and mitigation efforts to implement. BOEM issued a draft Environmental Impact Statement (“EIS”) in June 2022 and is expected to issue a final EIS in March 2023 that will analyze the environmental impacts of the Project (including potential impacts on wildlife) as required by the National Environmental Policy Act (“NEPA”).

2) How will Ocean Wind address any public safety concerns during installation and operation of the underground cable?

Response: Ocean Wind will follow the standard practices of public utilities within the State of New Jersey for the installation and operation of the underground facilities. Ocean Wind will comply with all local, state, and federal requirements concerning such installation and operation. This includes all aspects of construction and operation of the facilities. Similar underground electric cables are installed and operated throughout the State without issue. Please refer to the Direct Testimony of Jason Kalwa (Exhibit OW-1).

3) Who is responsible for maintaining the buried cables and ensuring they operate safely?

Response: Ocean Wind will be responsible for safely operating and maintaining the installed facilities throughout their life expectancy. As part of the process to ensure this safe operation, routine inspections will be performed as described in Section V of Jason Kalwa’s testimony (Exhibit OW-1).

4) How will tourism and property values be impacted by the Project?

Response: The facilities at issue in this matter will be located underground, just like other electric, gas, water, sewer and telecommunications facilities that are common in Ocean City and all other municipalities in the State of New Jersey. After installation, there is no reason to believe that property values or tourism will be impacted, as there will be no visual or other impact from these

facilities. Please refer to Ocean Wind's Testimony of Jason Kalwa (Exhibit OW-1), which describes in detail the installation of the cables and associated underground facilities.

5) *Is the Great Egg Harbor route less environmentally impactful than running the cable underground through Ocean City?*

Response: The underground cable route proposed in Ocean City is sited largely within existing paved areas and road right-of-way ("ROWS"), minimizing impacts on wetlands and wildlife. Horizontal directional drilling ("HDD") is proposed to drill under wetlands and water at the Crook Horn Creek/Peck Bay crossing to minimize impacts to wetland and water environments and associated wildlife. HDD will also be utilized at the 35th Street landfall so as to minimize impacts to the ecological communities of the beaches and dunes.

The environmental impacts associated with the Great Egg Harbor route are notably more extensive, as previously stated in Pilar Patterson's rebuttal testimony (Exhibit OW-2 Rebuttal). In addition, if the cable were to be sited within Great Egg Harbor, the in-water route through the Great Egg Harbor Bay and Shipping Channel would result in 5.8 miles of cable burial within designated shellfish habitat.

6) *Other miscellaneous comments*

Finally, several of the public's comments were outside of the scope of this Petition and are not directly relevant to the cable routing through Ocean City. The Project addresses most of these

comments on the Project's website: oceanwindone.com under the [Resources @ FAQ](#)'s tab. The Project can be reached by email at info@oceanwind.com for additional information.

Respectfully submitted,
COZEN O'CONNOR, PC
Attorneys for Ocean Wind LLC

A handwritten signature in blue ink, appearing to read "Gregory Eisenstark".

Dated: October 26, 2022

By: Gregory Eisenstark