

In The Matter Of:
OCEAN WIND LLC

November 10, 2022

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4 IN THE MATTER OF THE PETITION OF OCEAN WIND LLC
5 PURSUANT TO N.J.S.A. 48:3-87.1(f) FOR A
6 DETERMINATION THAT CERTAIN EASEMENTS AND CONSENTS
7 NEEDED FOR CERTAIN ENVIRONMENTAL PERMITS IN, AND
8 WITH RESPECT TO, THE COUNTY OF CAPE MAY ARE
9 REASONABLY NECESSARY FOR THE CONSTRUCTION OR
10 OPERATION OF THE OCEAN WIND 1 QUALIFIED OFFSHORE
11 WIND PROJECT

12 DOCKET NO. QO22050347

13 ORAL ARGUMENTS

14 H E L D:

15 Via ZOOM Video Conferencing
16 DIAL IN: 646-931-3860
17 WEBINAR ID: 81646887840
18 PARTICIPANT ID: 317323
19 Thursday, November 10, 2022
20 9:00 a.m.

21 B E F O R E:

22 JOSEPH L. FIORDALISO
23 PRESIDENT
24 NEW JERSEY
25 BOARD OF PUBLIC UTILITIES

TRANSCRIPTION BY:
Nancy Ambrose,
C.C.R.

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23 Board of Public Utilities

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2 NEW JERSEY BOARD OF PUBLIC UTILITIES
3 COMMISSIONERS:

4 ROBERT M. GORDON
5 DIANNE SOLOMON
6 MARY-ANNA HOLDEN
7 DR. ZENON CHRISTODOULOU

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<p>1 I N D E X</p> <p>2</p> <p>3 PRESENTER PAGE REBUTTAL</p> <p>4 GREGORY EISENSTARK, ESQ. 12 70</p> <p>5 Ocean Wind</p> <p>6 MICHAEL J. DONOHUE, ESQ. 24 75</p> <p>7 County of Cape May</p> <p>8 DOROTHY F. MC CROSSON, ESQ. 47 79</p> <p>9 City of Ocean City</p> <p>10 BRIAN O. LIPMAN, ESQ. 54 80</p> <p>11 N.J. Division of</p> <p>12 Rate Counsel, Director 77</p> <p>13 PAUL J. BALDINI, ESQ. 59</p> <p>14 Nine Participant</p> <p>15 Municipalities</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 Today we have the following on the</p> <p>2 docket in this matter: On May 20, 2022 Ocean</p> <p>3 Wind, LLC filed a petition with the Board on June</p> <p>4 8, 2022.</p> <p>5 The County filed a motion that the</p> <p>6 Board, requesting that the Board decline</p> <p>7 jurisdiction over the petition, and that the Board</p> <p>8 dismiss the petition without prejudice as ripe for</p> <p>9 disposition and as nonadjustable under N.J.S.A.</p> <p>10 48:3-87.1(F) and N.J.S.A. 20:3-1, et seq.</p> <p>11 On June 20, 2022 Ocean Wind, LLC</p> <p>12 filed a reply brief in opposition to the County's</p> <p>13 June 8 motion. And on June 27, 2022 the County</p> <p>14 filed a reply to Ocean Wind, LLC's June 20, 2022</p> <p>15 reply brief.</p> <p>16 On June 29, 2022 the Board issued an</p> <p>17 order retaining the petition, directing that the</p> <p>18 County be included as a necessary party and</p> <p>19 designating me as the Presiding Officer.</p> <p>20 As Presiding Officer, among other</p> <p>21 things, I am authorized to secure a just and</p> <p>22 expeditious determination on the issues regarding</p> <p>23 this petition.</p> <p>24 On July 5, 2022 I issued an order</p> <p>25 setting the initial procedural schedule. On July</p>
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<p>1 PRESIDENT FIORDALISO: Good morning.</p> <p>2 My name is Joe Fiordaliso, and I am the President</p> <p>3 of the New Jersey Board of Public Utilities.</p> <p>4 I'm here with my colleagues, all of</p> <p>5 them, and we are anxious to hear these opening</p> <p>6 oral arguments. And the transparency of this</p> <p>7 particular event is vital. We want everyone to</p> <p>8 have the opportunity to contribute and so on.</p> <p>9 Today we will have the oral argument</p> <p>10 regarding the Petition filed by Ocean Wind, LLC</p> <p>11 Requesting a Determination that Certain Easements</p> <p>12 and Consents Needed for Certain Environmental</p> <p>13 Permits in and with Respect to the County of Cape</p> <p>14 May are Reasonably Necessary for the Construction</p> <p>15 or Operation of the Ocean Wind Qualified Offshore</p> <p>16 Wind Project. Docket Number QO22050347.</p> <p>17 N.J.S.A. 48:3-87.1(F) grants the</p> <p>18 Board the authority to make a determination on</p> <p>19 this petition.</p> <p>20 Since we have all four Commissioners</p> <p>21 of the Board present today, the proceeding is a</p> <p>22 public meeting of the New Jersey Board of Public</p> <p>23 Utilities. Adequate notice of this meeting has</p> <p>24 been provided as required by the Open Public</p> <p>25 Meetings Act set forth in N.J.S.A. 10:4-6, et seq.</p>	<p>1 14, 2022 I issued an order modifying the initial</p> <p>2 procedural schedule. I issued the order to</p> <p>3 accommodate multiple government entities that</p> <p>4 requested certain deadlines be extended so that</p> <p>5 they could file motions to intervene.</p> <p>6 On August 15, 2022 I issued an order</p> <p>7 that modified the procedural schedule for a second</p> <p>8 time. And that ruled on the motion to intervene</p> <p>9 that the government entities had filed.</p> <p>10 City of Ocean City and Upper Township</p> <p>11 were granted Intervenor status, while other</p> <p>12 motives were granted participant status.</p> <p>13 On August 22, 2022 the County filed a</p> <p>14 motion seeking the Board's recusal from this</p> <p>15 matter and suspension of the procedural schedule.</p> <p>16 In the motion the County requested that this</p> <p>17 matter be transferred to the Office of</p> <p>18 Administrative Law and reassigned to an</p> <p>19 Administrative Law Judge.</p> <p>20 Ocean Wind, LLC filed its reply on</p> <p>21 August 22, a reply to this August 22 motion, on</p> <p>22 September 1, 2022, and the County responded with</p> <p>23 its reply on September 9, 2022.</p> <p>24 On September 27, 2022 I issued an</p> <p>25 order on the matters to dismiss and recuse,</p>

<p style="text-align: right;">Page 9</p> <p>1 denying both. On September 28, 2022 the Board 2 issued an order designating substitute public 3 hearings officer for two public hearings that were 4 held on September 29, 2022. 5 In addition, in oral arguments or 6 oral comments received from members of the public 7 during these two public hearings, public written 8 comments were accepted up to and including October 9 12, 2022, in accordance with the procedural 10 schedule. 11 The petition is one of the very first 12 of its kind to request authorization under 13 N.J.S.A. 48:3-87.1(f), the Offshore Wind Economic 14 Development Act, otherwise known as OWEDA. The 15 Board takes this responsibility very seriously and 16 is committed to providing a fair and transparent 17 process. 18 With us today are representatives 19 from the parties and Intervenors in this matter. 20 We have Ocean Wind, LLC; Cape May County, New 21 Jersey; City of Ocean City, New Jersey; Upper 22 Township, New Jersey; and the New Jersey Division 23 of Rate Counsel. 24 Each of these representatives will 25 have an opportunity to present their argument and</p>	<p style="text-align: right;">Page 11</p> <p>1 reasonably necessary for the construction or 2 operation of Ocean Wind 1 Qualified Offshore Wind 3 Project. 4 Please refrain from discussing 5 offshore wind generally, other issues regarding 6 Ocean Wind 1 Qualified Offshore Wind Project or 7 any other matters outside the scope of the matter 8 at hand. 9 I would ask that when you are 10 speaking, please be sure that your camera is on 11 and that you are unmuted. And when you are not 12 speaking, please turn both your camera and your 13 microphone off. 14 The procedure today will be as 15 follows: First I will ask each of the parties and 16 Intervenors to place their appearances on the 17 record and make their statement. 18 Second, I will ask each of the 19 Participants to place their appearances on the 20 record and make their statements. Third, after 21 all statements have been made, I will ask each 22 party and Intervenors if they would like to make a 23 rebuttal statement. 24 I will now ask the parties and 25 Intervenors to state their appearance and deliver</p>
<p style="text-align: right;">Page 10</p> <p>1 to provide rebuttal after all parties, Intervenors 2 and Participants have spoken. 3 The nine Participant municipalities 4 in this matter will also have an opportunity to 5 present their short, and I underline short, 6 arguments as well. 7 These nine Participants are as 8 follows: Borough of Avalon; Township of Dennis; 9 Township of Lower; Township of Middle; City of 10 North Wildwood; City of Sea Isle City; Borough of 11 Stone Harbor; City of Wildwood; and the Borough of 12 Wildwood Crest. 13 The representatives speaking on 14 behalf of these municipalities who are with us 15 today will have the opportunity to present such 16 arguments. As I already mentioned, the 17 Commissioners are present today and may ask 18 questions. 19 I want to remind the parties, the 20 Intervenors and the Participants that arguments in 21 this proceeding should be limited to the matter at 22 hand. Specifically, whether the easements and 23 consents that Ocean Wind, LLC seeks and that are 24 needed for certain environmental permits in and 25 with respect to the County of Cape May, are</p>	<p style="text-align: right;">Page 12</p> <p>1 their statements. With that, I invite Ocean Wind, 2 LLC to make its statement. 3 MR. EISENSTARK: Thank you, President 4 Fiordaliso. This is Gregory Eisenstark with the 5 law firm Cozen O'Connor on behalf of the 6 Petitioner, Ocean Wind, LLC. 7 Just as a matter of procedure, 8 President Fiordaliso, should I make my opening 9 argument now, or are you going to take all of the 10 other appearances first and then come back to me? 11 PRESIDENT FIORDALISO: No, you can 12 make your statement now, sir. 13 MR. EISENSTARK: Okay. Thank you, 14 President Fiordaliso, and thank other members of 15 the Board and Board Staff who are present here 16 today for the opportunity to participate in this 17 Oral Argument. 18 I'm going to start by summarizing the 19 filing. I think as everyone who is here today 20 knows, this petition in this matter involves Ocean 21 Wind 1, which will be the first qualified offshore 22 wind project constructed off the coast of New 23 Jersey. It's an 1100 megawatt project. 24 In order to get the power that will 25 be generated by the wind farm out in the Atlantic</p>

<p style="text-align: right;">Page 13</p> <p>1 Ocean to shore where the load is, where the users 2 are, where the power is needed, you need to bring 3 the power ashore via cables, wires. 4 For the Ocean Wind 1 project there 5 have been two interconnection points onshore that 6 have been identified. One in Lacey Township in 7 Ocean County, and one in Upper Township in Cape 8 May County. 9 This matter, of course, concerns the 10 onshore cable to the Upper Township point of 11 interconnection, which will be at a new substation 12 that will be constructed near the old BL England 13 generating plant. That's an old fossil fuel-fired 14 electric generation plant that is now out of 15 service. 16 As President Fiordaliso alluded to a 17 couple minutes ago, the statutory basis for this 18 filing are the 2021 amendments to the Offshore 19 Wind Economic Development Act, or OWEDA. That is 20 N.J.S.A. 48:3-87.1(f), and then subparagraphs two 21 and three. 22 Let me say also at the outset, Ocean 23 Wind filed this petition only after extensive 24 discussions and outreach with the County of Cape 25 May, in hopes that we can reach accommodations,</p>	<p style="text-align: right;">Page 15</p> <p>1 preempt the County consents for certain New Jersey 2 Department of Environmental Protection permits. 3 That's required because when a 4 developer wants to construct something that 5 requires environmental approvals on property 6 that's owned by some other entity, in this case 7 it's Cape May County, the property owner has to 8 consent to the deed and the permits. 9 Again, the project has sought the 10 consent of Cape May County, but Cape May has not 11 been willing to give that consent. 12 Therefore, we've had to come to the 13 Board to ask the Board to essentially step into 14 the County's role and say yes, it's okay, you may 15 proceed with those DEP permit applications, and 16 hopefully at the end of the day receive the 17 necessary DEP permits. 18 With respect to the route, let me 19 just briefly summarize the onshore portion of the 20 route that's at issue here. And for those of you 21 that are familiar with the proceeding that just 22 concluded a little while ago regarding Ocean City, 23 it is, of course, the same route we're talking 24 about. 25 The preferred route that is described</p>
<p style="text-align: right;">Page 14</p> <p>1 reach agreements, to let the project move forward 2 with the route to the point of interconnection in 3 Upper Township without the need to file this 4 petition. 5 The project began discussions with 6 the County in 2019 shortly after it received the 7 OREC award. There have been many discussions over 8 that period of time between now and the time the 9 petition is filed, but unfortunately no real 10 progress was made to resolve it. 11 And for that reason, because time is 12 moving forward, there are many, many commitments 13 the project has, both commitments to the State, 14 contractual commitments, deadlines, the project 15 really had no choice but to file the petition 16 asking the Board to step in here. 17 As I think most folks are aware, the 18 issues in this filing are fairly limited. There 19 are really only two issues. 20 One is that Ocean Wind is asking the 21 Board to approve its acquisition of a temporary 22 and a permanent easement over a parcel of land 23 that is owned by the County. 24 The second issue is under the OWEDA 25 amendments, we're asking the Board to essentially</p>	<p style="text-align: right;">Page 16</p> <p>1 in the petition would make landfall, come ashore, 2 so to speak, at 35th Street and proceed west to 3 Bay Avenue and then north on Bay Avenue to 4 Roosevelt Boulevard. 5 And then it crosses what's referred 6 to either as Crook Horn Creek or Peck's Bay at the 7 Roosevelt Boulevard bridge. 8 It then will continue along Roosevelt 9 Boulevard within public rights-of-way, turning 10 north on State Route 9, and then proceed to the 11 proposed substation property near BL England. 12 Again, the easements in question here 13 are right at the point where the cable will cross 14 the Roosevelt Boulevard bridge area at Crook Horn 15 Creek. 16 And just before I forget, I just want 17 to make it clear that Ocean Wind has made an 18 offer, which remains outstanding to the County, to 19 acquire the easements. We made the offer back in 20 the spring of this year. The offer's not been 21 accepted, we haven't received a counterproposal. 22 That offer to acquire the easements 23 remains outstanding and is still valid. 24 The other point I'd just like to 25 make, just so it's clear, is that all portions of</p>

<p style="text-align: right;">Page 17</p> <p>1 the onshore cable that we're talking about here 2 will be installed underground. We're not talking 3 about overhead construction. 4 This construction will be underground 5 construction, very similar to the types of 6 underground construction that public utilities 7 have used throughout New Jersey for many, many 8 years, for decades. 9 It will be installed in one of two 10 methods. Either the bulk of the construction 11 along the public roadways will be installed in 12 underground conduits, the same way that existing 13 underground infrastructure is installed in many 14 municipalities throughout the state. It will be 15 no different. 16 In certain areas at the beach landing 17 and at the bridge crossing, it will be installed 18 using what's called horizontal directional 19 drilling, which is a slightly different method, 20 which this simply allows you to cross certain 21 areas by basically drilling in a horizontal 22 fashion to install the cable. 23 But again, I just want to emphasize 24 the construction in these underground electric 25 lines really are no different than the many other</p>	<p style="text-align: right;">Page 19</p> <p>1 Again, and just a little bit more 2 detail -- and of course, all of the details are in 3 our petition, our filing, our pre-filed 4 testimony. And the DEP permits, as I said before, 5 are primarily division of land use resource 6 permits and related approvals that are required 7 from the DEP, and the consent the Board needs to 8 approve the project's ability to move forward with 9 those permits in lieu of the County consent for 10 them to be pursued. 11 I'm going to turn now briefly to the 12 statutory standard of review. And President 13 Fiordaliso already said it, so I won't beat a dead 14 horse here. But the issue is, of course, whether 15 the requested easements in this issue are 16 reasonably necessary for the construction or 17 operation of the qualified offshore wind project. 18 And it's important to remember that, 19 in fact, the same reasonably necessary standard 20 applies to the preemption of the consents for the 21 DEP permits. I think it's important to remember 22 that reasonably necessary doesn't mean absolutely 23 necessary. 24 It doesn't mean that the chosen, the 25 preferred onshore route is the absolute best. It</p>
<p style="text-align: right;">Page 18</p> <p>1 underground electric lines that are installed and 2 have operated for decades and decades throughout 3 the State of New Jersey without issue. 4 A little bit more specifics, a few 5 more specifics on the actual easements. As I said 6 before, both of them, both the easements are on 7 the exact same lot and block. It's Block 350.01, 8 Lot 17.01. 9 This is property that is, as I said, 10 on the northern side of the road at the crossing 11 of the Crook Horn Creek. 12 The first easement that we've 13 identified would be a temporary easement that 14 totals .257 acres, so about a quarter-of-an-acre 15 that would be used only during the construction 16 portion of the project in that area. 17 It would be a temporary easement that 18 the project would need for 18 months from the 19 start of construction. Once construction is 20 completed and the line is in service, that 21 temporary easement will no longer be needed. 22 The permanent easement is on the same 23 lot and block, and that totals 0.357 acres. That 24 easement will be approximately 30 feet wide and 25 will be used for the underground cable.</p>	<p style="text-align: right;">Page 20</p> <p>1 doesn't mean even that it's the least expensive 2 route. It only, reasonably necessary means what 3 you would think it means when you read it from a 4 common sense perspective. 5 It means that the solution of the 6 project as proposed is a reasonable one that will 7 achieve the desired result here, the 8 interconnection of the offshore part of the 9 project to the onshore electric grid. 10 In regard to the selection of the 11 preferred route, our direct or rebuttal testimony 12 goes into extensive detail about the siting 13 process. It was a very iterative process where 14 the project in a very high level identified many 15 different potential points of interconnection. 16 Those, for a variety reasons that are 17 discussed in the testimony, were narrowed down, 18 and eventually determined that the two best ones 19 for this project, given where the offshore lease 20 area is located, given what the onshore, what the 21 capacity of the existing onshore electric grid is 22 at different locations, and narrowed it down to 23 the two I mentioned earlier, Lacey Township and 24 the point in Upper Township. 25 The route selection process was</p>

<p style="text-align: right;">Page 21</p> <p>1 thorough. After the points of interconnection 2 were identified, it was another iterative, both 3 qualitative and quantitative process, where Ocean 4 Wind looked at many different potential routes to 5 get from the ocean to Upper Township. 6 It looked at the impacts that this 7 route would have on a variety of different 8 stakeholders, of course on the residents, on the 9 environmental impacts, impacts on marine issues 10 with the different bodies of water that are in 11 this area, impacts on historic resources. 12 Ease of construction, whether or not 13 it's constructible. You can't pick a route and 14 then find out that it's impossible to construct 15 it, because there are engineering reasons why it 16 can't be constructed. 17 So there were a whole host of 18 different criteria that the project evaluated. 19 And ultimately, in regard to the interconnection 20 in Upper Township, the route that we've described 21 in the filing and that involves these two 22 particular easements, was determined to have the 23 least cumulative impacts of any of the potential 24 routes. 25 And that's why it was chosen. That's</p>	<p style="text-align: right;">Page 23</p> <p>1 as I said before. And if those agreements could 2 not be reached in a reasonable amount of time, so 3 we simply at this time, to meet the deadlines in 4 the Board's 2019 order and as far as starting 5 construction, we need to move forward now, you 6 know. 7 The other thing I'll just say here 8 briefly, we've heard some of the other parties 9 here have said, well, it's premature because the 10 federal permitting process hasn't concluded yet. 11 Well, that simply isn't correct. It's not 12 premature for the Board to rule on these issues 13 now. 14 Because first of all, the easement 15 issues, we need easements in order to be able to 16 finalize the route and to begin construction. We 17 can't construct without the easements and we can't 18 begin construction without the NJDEP permits. 19 Secondly, it's sort of the chicken 20 and the egg argument. The federal permitting 21 process requires consistency review, and the state 22 permits are needed in order to comply with the 23 federal permitting consistency review process. 24 So it simply isn't accurate that the 25 project, or quite frankly now that the petition</p>
<p style="text-align: right;">Page 22</p> <p>1 why Ocean Wind is moving forward with this point 2 of interconnection and this route. 3 Again, I think we've heard, and I'll 4 save some of this for my rebuttal testimony, but 5 we've heard from various different parties about 6 different issues that they've raised. 7 I think when the Board will review 8 Ocean Wind's testimony, its direct testimony, its 9 rebuttal testimony, it's abundantly clear that the 10 filing satisfies the statutory standard of 11 reasonably necessary. 12 We've gone through everything, we've 13 explained what the construction practices will 14 be. We've explained -- one of the other statutory 15 criteria that I should mention here and is covered 16 extensively in the testimony we had, the project 17 is required to consult with the municipality, or 18 in this case the County, prior to filing the 19 petition. 20 We did that. There was extensive 21 outreach, as I said, from day one. Ocean Wind 22 would have and still would strongly prefer to 23 reach agreements with the County, so we would not 24 need the Board to rule on this petition. 25 Unfortunately time is moving forward,</p>	<p style="text-align: right;">Page 24</p> <p>1 has been filed, the Board can or should wait for 2 the federal government to finalize their 3 permitting review. 4 It's simply, both things have to 5 happen at the same time, so the project can move 6 forward and finish the permitting stage of it, and 7 actually begin the construction phase of the 8 project. 9 At this point that covers what I'd 10 like to say in my initial comments. And I would 11 reserve the right to respond in rebuttal to the 12 statements of other parties as necessary. Thank 13 you. 14 PRESIDENT FIORDALISO: Thank you, 15 sir. 16 Next I invite the County of Cape May 17 to make its statement. And if its attorney would 18 state its appearance and then make the statement, 19 please? 20 MR. DONOHUE: Thank you. 21 President Fiordaliso, good morning. 22 Good morning to members of the Board. Good 23 morning to Participants and Staff. Thank you. 24 Michael Donohue of the Law Offices of 25 Blaney, Donohue & Weinberg in Avalon on behalf of</p>

<p style="text-align: right;">Page 25</p> <p>1 the County of Cape May. 2 Initially I want to indicate that the 3 County, of course, incorporates all of its 4 arguments, all of its paper submissions. 5 In the interest of the Board's time 6 and judicial economy I'm not going to argue every 7 single thing I've argued so far. It's of record. 8 Our motions, our objections continue, etc. 9 Like I said, I don't want to belabor 10 too many issues. But there are a number of things 11 that should be touched on, there are a number of 12 legal issues that need to be preserved in oral 13 argument. 14 As Mr. Eisenstark said, we're here 15 under the section of OWEDA 48:3-87.1(f), which 16 essentially allows the offshore wind project to 17 file a petition such as this with the BPU in order 18 for the BPU to do a couple of things. 19 Mainly to stand in the shoes of 20 elected officials. And that is the main reason or 21 a main reason why the County has felt compelled to 22 essentially, you know, object to the process. 23 The County feels strongly, or the 24 officials in the County feel strongly that the 25 voters should not be disenfranchised by a process</p>	<p style="text-align: right;">Page 27</p> <p>1 Grossman 457 New Jersey Super 416, a case from the 2 Appellate Division 2019. 3 So in the assessing reasonably 4 necessary analysis, the Board isn't compelled to 5 simply look at, well, does the applicant, the 6 petitioner, demonstrate, or form its own opinion 7 that, hey, this is reasonably necessary because we 8 looked at everything else and this is what we 9 would like to do? 10 That's not the standard. The 11 standard is to look at all of the facts and 12 circumstances, engage in a balancing of interest 13 to determine whether this particular route must be 14 the one. 15 The County argues that the applicant 16 petitioner should not be able to shift that burden 17 to the County, that they should have to be able to 18 establish conclusively that only this route is the 19 one that will work, and is reasonably necessary 20 for compelling substantial reasons, not just for 21 the benefit of the project. 22 And balancing all of the interests 23 here, as President Fiordaliso went through at the 24 top of this proceeding, there are a number of 25 parties here that are very interested. And there</p>
<p style="text-align: right;">Page 26</p> <p>1 such as this, with all due respect to every member 2 of the Board, where an unelected State authority 3 steps into the shoes of elected officials and 4 essentially sets them aside and begins to make 5 decisions for them. 6 It's not unheard of, but this is a 7 brand new process. One thing that I think 8 everybody agrees on is these are matters of first 9 impression. It's a brand new statute, has not 10 been subject to judicial scrutiny. There's no 11 jurisprudential guidance on any aspect of it. But 12 there are other similar processes. 13 We understand that, we've argued that 14 as well. But these are matters of first 15 impression. Mr. Eisenstark touched on it as did 16 President Fiordaliso, the reasonably necessary 17 standard. The County disagrees that that serves 18 to utterly limit our discussion only to certain 19 things, but we are going to try to stay within 20 those parameters. 21 But the court has said that the 22 analysis of the reasonably and necessary standard 23 is to include consideration of all facts and 24 circumstances, and a balancing of interests. 25 That's in our papers, Borough of Glassboro v.</p>	<p style="text-align: right;">Page 28</p> <p>1 is objections, which I'm sure you'll hear, I won't 2 speak for any of them. 3 This is, as the County has argued, a 4 quasi-judicial proceeding. I think any legal 5 conclusion to the contrary is wrong. And all of 6 those standards apply to this proceeding. 7 The County has made arguments of 8 rightness and justiciability. In other words, are 9 these matters really ready to be disposed of? And 10 the County has argued that they are not. What we 11 hear is time, time, time. 12 Time is certainly an important 13 consideration, but should it really be the only 14 consideration? Should the only consideration 15 really be, hey, if we don't get this done right 16 now, it may disrupt our timeline? 17 It's been this sort of a Catch 22 for 18 the County and other parties, because the argument 19 is made, well, we have an agreement with the BPU, 20 we have to start delivering this power. So 21 consequently all this has to happen now, time 22 should control the outcome. 23 That doesn't appear to be a very 24 reasonable argument. 25 In terms of the environmental reviews</p>

<p style="text-align: right;">Page 29</p> <p>1 that are to take place, as the Board is well aware 2 Universal Energy Management is in the process of a 3 draft and Environmental Impact Statement review. 4 There's a historical resource analysis taking 5 place. 6 The draft Environmental Impact 7 Statement is not scheduled to come to a sort of 8 point of finality until April of 2023. And other 9 processes, including DEP process, multiple 10 processes, there's about a half-dozen or so looks 11 like, applications for the DEP, will also be 12 moving forward. 13 And here's really the problem as the 14 County sees it in that regard, in terms of the 15 question of time, and I'll put it this way: 16 Not to be flip about it, but we've 17 all, I think everybody involved in this process, 18 been involved in complex state and federal 19 environmental permitting applications. Right? 20 Has anyone ever lived through that 21 experience and not had those agencies change their 22 project? I think the answer to that question is 23 no. It is almost a fait accompli that those 24 agencies are going to change what has been 25 proposed.</p>	<p style="text-align: right;">Page 31</p> <p>1 certainly would not be competent to review that 2 information, nor would any of the elected 3 officials. It would really require the County to 4 retain some expert who could review all of that 5 documentation and say it looks accurate, it looks 6 complete. 7 That never happened, never given the 8 opportunity really to do that. So in terms of 9 signing the consent, the County is not being 10 obstinate or trying to throw a monkey wrench in 11 this whole process. There's no official who could 12 sign it. 13 Because they did not make that 14 representation on a certification, which is 15 essentially swearing under oath to what's included 16 and what the DEP wanted. 17 So the representation is accurate on 18 its face that the County has not consented. But 19 there's substantial important legal and factual 20 reasons why that hasn't happened. 21 So at this point, Ocean Wind comes to 22 the Board and says, we need you to step into the 23 shoes of these five elected officials. 24 We just had an election a couple 25 nights ago. Tens of thousands of residents of</p>
<p style="text-align: right;">Page 30</p> <p>1 And if those changes impact this 2 preferred route, which they are likely to do for 3 reasons I'll talk about in a moment, we're going 4 to be back here again. I'll touch more on that in 5 a moment. 6 What we look at in terms of this 7 proceeding asks for two questions. The first is a 8 question of whether the BPU should put aside the 9 elected officials of Cape May County when it comes 10 to consent to the DEP applications. 11 Here's where we got hung up on that: 12 The certification required to be signed by the 13 County to submit to the DEP contains a provision 14 that says, we have reviewed all of the 15 documentation associated with all of these 16 applications and we find it to be accurate -- I'm 17 paraphrasing -- and complete. That's essentially 18 what that the certification requires. 19 No County official was in a position 20 to do that. And we were not provided with, 21 although Ocean Wind's answer was, well, you never 22 asked for it, but it should be clear that it's 23 part of the process that you're asking for consent 24 of this nature to provide all that documentation. 25 And frankly, there's no one, I</p>	<p style="text-align: right;">Page 32</p> <p>1 Cape May County voted for who they want to 2 represent them on the Board of County 3 Commissioners who make these types of decisions. 4 And Ocean Wind says, well, we're not 5 getting anywhere with the County, so we need, 6 respectfully again, unelected state authority to 7 step in, and we argue disenfranchise those voters, 8 the voter who trusted those five people to make 9 these types of decisions. 10 The first question is on the 11 consents. The consent is to allowing the 12 environmental applications to move forward. I 13 won't talk about any type of settlement type of 14 discussion we had, because those are confidential 15 and shouldn't be in this proceeding. 16 But there were some discussions 17 outside of the context about, is there a way to 18 offer our non-objection to the applications moving 19 forward, so to speak. Didn't really seem to be a 20 way to do that. There was consent in the form of 21 BPU requires or nothing. 22 And that's unfortunate. Because I 23 think if there was a third way, that question may 24 not be before the Board, but here we are. 25 The second part of the petition is</p>

<p style="text-align: right;">Page 33</p> <p>1 the taking. I think it's important to stress and 2 understand, this is a condemnation proceeding, 3 there's no other way to look at it. The Board is 4 being asked to take property interest from the 5 County. And if we have a condemnation proceeding, 6 then we are in the context of eminent domain. 7 Now, again, the County believes that 8 any conclusion that this is not a proceeding that 9 impacts or implicates the law of eminent domain is 10 just wrong. Now, it doesn't mean that every 11 provision of the Eminent Domain Act applies. 12 What it does mean is that the due 13 process that mirrors the due process procured in 14 the provisions of Eminent Domain has to be 15 afforded to the County. 16 There's, if you'll indulge me for one 17 moment, the courts have said the legislature may 18 not fight over arbitrate power of administrative 19 agencies. 20 But as long as the discretion of 21 administrative officers is hemmed in by standards 22 sufficiently defending guiding its exercise and 23 delegation of the eminent domain power can be 24 constitutional. 25 It's obvious that a statute that</p>	<p style="text-align: right;">Page 35</p> <p>1 appraisal. That's sort of the sine qua non for 2 any condemnation proceeding. The property has to 3 be subject to an appraisal, the property itself. 4 What happened here, the County was 5 presented with an offer based on a appraisal of 6 other property, not this property. And as we 7 pointed out in the papers, that's not what the 8 Eminent Domain Act calls for. 9 In fact, the Act calls for the County 10 to have the ability to accompany the appraiser to 11 the site, to then get the appraisal, along with a 12 description of the methodology valuation used by 13 the appraiser. 14 Now, interestingly, and we appreciate 15 Ocean Wind finally doing this, an appraisal was 16 conducted in the last couple of weeks. We got the 17 report just a few days ago. But it's important to 18 understand that that -- and again, if you'll 19 indulge me -- 20 N.J.S.A. 20:3-6 is part of the 21 Eminent Domain Act. It encourages entities to try 22 to resolve these issues before filing suit. And 23 they're pre-action requirements. The appraisal is 24 a big one. 25 The pre-action appraisal is a big one</p>
<p style="text-align: right;">Page 34</p> <p>1 allows an administrative agency to exercise the 2 right of condemnation also contemplates all 3 necessary requirements to satisfy due process. 4 So in other words, all those things 5 that are typical in an eminent domain proceeding 6 should be part of this process. This goes back to 7 what I pointed out in the beginning about these 8 being matters of first impression. 9 Every decision that the BPU makes in 10 the context of this petition will be implying 11 that. It would be establishing processes that 12 will be utilized, in all likelihood, on a number 13 of occasions, for perhaps this project, Ocean Wind 14 2, and other projects that are coming along. 15 So decisions that are made now are 16 extraordinarily important in terms of determining 17 how to mirror the due process provisions of the 18 Eminent Domain Act and the law interpreting it. 19 So certainly I'm not suggesting Ocean 20 Wind's being dismissive of this process. But it 21 is much more important in terms of this proceeding 22 that I think it has been afforded thus far, at 23 least. 24 Part of that due process is that the 25 property in question has to be subject to an</p>	<p style="text-align: right;">Page 36</p> <p>1 because the courts are trying not to have to deal 2 with these things, right, as I'm sure the BPU 3 would prefer. 4 So that provision for a pre-action 5 appraisal often allows the parties to engage in 6 substantive discussions that avoid litigation. 7 And it is strictly required before any 8 condemnation action can be filed. 9 The court says the purpose is subject 10 to strict instruction. If a condemnor may ignore 11 statute and then later cure it during the 12 proceedings, the whole purpose of having a 13 pre-action appraisal will be completely 14 frustrated. 15 Indeed, an order for a stay so the 16 condemnor may then do what it should have done 17 earlier, will encourage noncompliance. 18 In other words, it will encourage 19 parties who seek a taking by eminent domain to 20 simply ignore the pre-action requirement. And the 21 courts go on to say that the remedy for that is 22 dismissal without prejudice. 23 So what do we have here? We have 24 undisputedly, beyond dispute, an action for a 25 taking, a condemnation action filed without</p>

<p style="text-align: right;">Page 37</p> <p>1 satisfaction of that pre-action requirement for an 2 appraisal beforehand. 3 The Eminent Domain Act, and 4 interestingly OWEDA in this section, then 5 requiring a 90-day period after the appraisal is 6 supplied before a suit can be brought, before a 7 petition can be filed, before a condemnation act 8 can be filed. 9 And the purpose of that 90-day period 10 is to do what the Act wants to happen, what the 11 courts want to happen, is to arm the condemnee 12 with the methodology on valuation, with the 13 appraisal, so that a realistic assessment can be 14 made and some discussion can be had during that 15 90-day period. 16 That never happened. And the courts 17 are clear that that cannot be cured mid-suit or 18 mid-petition, because that would encourage people 19 to not comply with that provision. 20 So the County argues that we now have 21 the appraisal. But really that portion of this 22 application should be dismissed without 23 prejudice. 24 And once it is, then the 90-day 25 period should start and parties can discuss</p>	<p style="text-align: right;">Page 39</p> <p>1 object to how this has been brought together to 2 the analysis that has been presented or not 3 presented. And that should be part of that 4 balance. That should be a major consideration. 5 In addition to that, our engineer 6 identified the fact that the preferred route is 7 going right through wetlands. Wetlands are a 8 terrifying word in an environmental setting 9 complex in our neck of the woods, and I'm sure in 10 the experience of many of the Board members. 11 As soon as you say the word wetlands, 12 you know you have to deal with a stack of 13 environmental considerations before you can 14 disturb one piece of cordgrass. 15 This route will go through wetlands. 16 And we're not sure how many areas of wetlands it 17 will disturb. Because Roosevelt Boulevard itself, 18 as our engineer argued, does not have a wide 19 improved shoulder. 20 It has mostly grass shoulder that, in 21 fact, is wetlands. It's a causeway right into a 22 barrier island. So much of it runs essentially 23 just right through wetlands. 24 So that roadway, that shoulder, also 25 abuts or is actually part of in some places the</p>
<p style="text-align: right;">Page 38</p> <p>1 whether or not any of that methodology makes sense 2 in terms of valuation, or if the offer is 3 acceptable or could be negotiated. 4 And the County's argument in that 5 regard stands, I think the law requires, I think 6 that's where the court can come down. 7 In terms of the preferred route 8 versus alternate routes, etc., I won't get down 9 into minutia, the Board has all that, very 10 competent staff, experienced in these things to 11 review what has been submitted. 12 But as was argued in the Ocean City 13 petition context, and has been argued somewhat in 14 this petition context already, and as the County 15 submitted in the pretrial testimony of its County 16 engineer, in the opinion of the County, that 17 analysis has not been sufficient. 18 Even the analysis of the preferred 19 route is leaving out major components in terms of 20 this balancing of interest. Right? There are 21 nine, ten towns in Cape May County who have 22 essentially filed some opposition to the process, 23 some of them have a direct interest. Right? 24 Ocean City does, the County does. 25 That should be part of the balancing. Those folks</p>	<p style="text-align: right;">Page 40</p> <p>1 wetlands. We don't know, there's been no analysis 2 of what that impact will be from this route. 3 Also, the engineer pointed out that 4 the Roosevelt Boulevard bridge over Crook Horn 5 Creek, will have to be widened and perhaps 6 replaced. There's a plan apparently to put 7 bumpers on the north side where this route is 8 proposed to go. 9 And no one has answered the question 10 of how that will impact the route in the future, 11 or the bridge, the ability to repair or replace 12 the bridge. And that raises the question then, if 13 that is going to happen during the 30-, 40-year 14 life span of this project, what happens then? 15 Do we have to shut down the entire 16 property, the entire operation, power generation 17 operation in order to move these lines? Do we 18 have to move the bridge to a different place that 19 can cost millions and millions of dollars to 20 taxpayers? 21 There's no consideration of those 22 questions whatsoever in the presentation or the 23 argument in favor of the proposed route. There 24 are also alternate routes that weren't considered, 25 as the engineer pointed out. And the Board can go</p>

<p style="text-align: right;">Page 41</p> <p>1 look at that detail in the testimony. 2 But there's a Parkway route that was 3 described where the upland Parkway right-of-way 4 could be potentially used. There's an abandoned 5 railroad, which could be used. 6 And these abandoned railroad beds, 7 I'm sure the Board sees in various places, and 8 probably has even dealt with no doubt, are being 9 utilized in this fashion very effectively. And 10 the railroad bed is being upgraded to contain the 11 facility underground very effectively on a route 12 that makes sense. 13 And then improving the abandoned 14 railroad beds to make it a bike path or a walking 15 path or something of that nature, which would be 16 fantastic for the community, and a great thing for 17 a corporate resident. 18 So all of those things, in addition 19 to all the other arguments we made, I think the 20 Board needs to consider when talking about what's 21 reasonably necessary and what the courts require 22 in this balancing approach, and considering all 23 the facts and circumstances. 24 Just indulge me for one second. What 25 we have not seen really, other than what is</p>	<p style="text-align: right;">Page 43</p> <p>1 But we are in the midst of a project 2 that will impact us, I say us, the State of New 3 Jersey, perhaps the world, in a good way, we all 4 hope so. But us here in Cape May County for 30 5 years, and we're talking about time. 6 The impacts to this will be great. 7 And I know this proceeding is not going to deal 8 with questions of the impacts to fisheries and 9 tourism and the view shed and those things. But 10 for us that's all very serious, very important. 11 And we think they should be considered. 12 What the County believes is going to 13 happen, and it's unfortunate, is that the Board 14 will act as it acts and the Board will make a 15 decision. 16 If the Board makes the decision to 17 approve this preferred route at this time, then 18 we're all going to watch the environmental permit 19 processes move forward and change the project and 20 change what has to be done and where it can be 21 done. And what happens then? 22 So let's, if you'll indulge me again, 23 play this out very quickly. The Board grants the 24 easements. Ocean Wind pursues its filing. We 25 operate interestingly under the Eminent Domain Act</p>
<p style="text-align: right;">Page 42</p> <p>1 essentially just opinion, and not really analysis, 2 not really a detailed breakdown analysis of all 3 the other routes -- Egg Harbor Bay route, Parkway 4 route, the railroad route -- I assume if that was 5 available we would all have it. 6 It wasn't done. Essentially there 7 appears to have been an assessment, this is the 8 shortest route and the cheapest route, this is 9 what we deem to be reasonably necessary. We don't 10 want to burden the project with extra costs. 11 But we don't know, because no 12 analysis has been presented in that regard, 13 whether there would be extra costs for these other 14 routes. 15 And in that balancing approach that 16 the courts require when you deal with something 17 that the question is reasonably necessary, money 18 is only one factor. But we don't know. And 19 that's part of the problem. We don't know because 20 that analysis has not been presented. 21 So I'll just recap. The County 22 resubmits all its arguments obviously. We think 23 that these issues are not ripe yet, they're not 24 complete. There's plenty of time. Time I know is 25 a factor.</p>	<p style="text-align: right;">Page 44</p> <p>1 at that point, which is specifically incorporated 2 into OWEDA by reference, to determine the value of 3 the property which we can agree. 4 And an easement is recorded, a 5 permanent easement over this piece of land, before 6 any of the environmental permitting is done. And 7 the environmental permitting goes back and says, 8 can't do it there, but it's got to move 200 feet 9 to the north or south. 10 Then we're back here again. Because 11 there won't be an easement for that portion of 12 land. And I shouldn't say we're back here again, 13 maybe we work it out. But if we don't, we're back 14 here again and doing this all over again. 15 Whereas, if those processes are 16 allowed to move forward we wouldn't have to do 17 that. And this will be the final part, one of the 18 final parts of the argument. 19 We have argued, and we don't seek 20 this, we argue this alternatively, we argued for a 21 dismissal without prejudice of the entire 22 application. 23 But this Board can bifurcate these 24 questions. In other words, split these things in 25 half.</p>

<p style="text-align: right;">Page 45</p> <p>1 The Board can look at the DEP consent 2 question and say, you know what, those 3 applications need to move forward for the reasons 4 Mr. Eisenstark said, so that all of the 5 environmental permitting processes can move 6 forward, and we're going to get into that. 7 But on the taking question we're 8 going to hold that, because we don't know yet. 9 It's not concretized, it's not certain yet for us 10 to say that's definitely where you're going to go, 11 that's definitely how you're going to do this. So 12 we're going to step in and effectuate a taking of 13 the County's property. 14 That question can be held until such 15 time as those environmental permitting processes 16 are complete. That would seem to make sense. 17 Again, we argue this alternative. It seems to 18 make a lot of sense. 19 The last thing I would say, because 20 there has been some dismissal of the State 21 Constitution, the Board is aware, it's in our 22 submissions, that there is a provision of our 23 State Constitution, Article 4, Section 7, 24 Paragraph 11, requires that any law concerning 25 municipal corporations or for local government or</p>	<p style="text-align: right;">Page 47</p> <p>1 statement. 2 MS. MC CROSSON: Thank you, sir. 3 Good morning, President Fiordaliso, Commissioners, 4 Board Staff. Thank you for the opportunity to 5 present on behalf of Ocean City. 6 I was before the BPU in June in the 7 first petition that involved Ocean City, and for 8 purposes of this record, I'm going to reiterate 9 arguments made in that proceeding, which is 10 docketed as QO2202004. 11 Ocean City renews its argument that 12 the New Jersey Administrative Code under Section 13 7:36-26.8 permits the local government, be it 14 Ocean City or Cape May County, to initiate any and 15 all application for the diversion of land on its 16 recreation and open space inventory. 17 The 2021 amendment to N.J.S.A.'s 18 48:3-87.1, which appears to have been targeted at 19 Ocean City, and designed specifically to benefit 20 Ocean Wind and Orsted, denies Ocean City's power 21 to decide whether Ocean Wind, a private entity, 22 may take municipal or public property rights 23 within Ocean City and Cape May County. 24 Whether this amendment will be upheld 25 in the face of a legal challenge remains to be</p>
<p style="text-align: right;">Page 46</p> <p>1 concerning counties shall be liberally construed 2 in their favor. That's in our State 3 Constitution. 4 Ocean Wind seems to argue that the 5 Constitution can be set aside because OWEDA says 6 any laws that affect, this sort of trumps that. 7 But the County's position is the State 8 Constitution cannot be trumped in that manner. 9 And the County argues, the members of 10 the Board in considering this must consider that 11 constitutional provision and liberally construe 12 OWEDA in favor of the County, not in favor of the 13 petition. 14 So when there are questions of this 15 nature, the Constitution should be given some 16 respect in that regard. 17 I think that's all I have at this 18 moment. I appreciate it. I'm more than happy to 19 take questions from the Board at the appropriate 20 time. And we would reserve hopefully some time 21 for rebuttal, if necessary. Thank you. 22 PRESIDENT FIORDALISO: Thank you very 23 much, sir. 24 I now invite the City of Ocean City's 25 attorney to state her appearance and make their</p>	<p style="text-align: right;">Page 48</p> <p>1 seen. The City and now the County have cited to 2 New Jersey Constitution Article 4, Section 7, 3 Paragraph 11, any law concerning municipal 4 corporations formed for local government or 5 concerning counties shall be liberally construed 6 in their favor. 7 Of course that argument applies in 8 this case, as well as it did in the other. Ocean 9 City urges this Board to refer Ocean Wind's 10 petition to the Office of Administrative Law to 11 contest the case under N.J.S.A. 52:14F-1, et seq., 12 for hearing and disposition. 13 All three factors set forth in the 14 case of Board of Education of the Upper Freehold 15 Regional School District versus State Health 16 Benefits Commission, 314 NJ Super 486, Appellate 17 Division 1998, are present in this matter as they 18 were in the prior case. 19 This hearing is required by statute. 20 The hearing will result in adjudication concerning 21 rights, duties, obligations, privileges, benefits 22 or other relations, and the hearing involves 23 specific parties, rather than a large segment of 24 the public. 25 Additionally, discovery is required</p>

<p style="text-align: right;">Page 49</p> <p>1 in this matter. Ocean Wind is focused on its 2 preferred route to cross Ocean City's beach, 3 across the barrier island itself, and Ocean City's 4 and Cape May County's wetlands. 5 They have dismissed the alternate 6 routes, including the route through Great Egg 7 Harbor Inlet. Ocean City, Cape May County and the 8 public have a right to know why the alternate 9 routes have been dismissed. 10 In the absence of factual support for 11 its claims that the alternate routes have the 12 challenges that Ocean Wind claims, the Board 13 should consider the possibility that these reasons 14 are pretextual, and that Ocean Wind is simply 15 pursuing the easiest or least expensive route to 16 its own benefit and to the detriment of the City, 17 the County and the public. 18 The lack of discovery in this process 19 may undermine its legitimacy in the eyes of the 20 public. In some respects this process may be 21 analogous to cases under the Eminent Domain Act, 22 where no or extremely limited discovery is 23 permitted. 24 However, considering whether 25 discovery should be required, the Board should</p>	<p style="text-align: right;">Page 51</p> <p>1 sufficient width to accommodate this route, as can 2 be readily seen, without impacting the burrowing 3 area in the Ocean City shore. 4 Restriction of other vessels during 5 construction in this wide inlet does not equate to 6 closure of the inlet, as Ocean Wind would have you 7 believe. Navigation would continue during the 8 temporary period of construction as it did when 9 the Ocean City-Longport Bridge was constructed. 10 They talk about disturbance of 11 shellfish habitat. Well, that can be addressed by 12 monetary contributions to the NJDEP's dedicated 13 fund for Shellfish Habitat Mitigation and 14 Restoration, pursuant to N.J.A.C. 7:7-9.2. This 15 is done on a regular basis. 16 And as noted before, Ocean Wind's 17 claim that the two historic bridges which could be 18 impacted by the Great Egg Harbor route is just 19 simply inaccurate. The overwhelming benefit of 20 the Great Egg Harbor route is the utter lack of 21 disturbance to the citizenry of Ocean City, Cape 22 May County, and the public in general. 23 The City's pristine beach and 24 wetlands and the County wetlands would not be 25 excavated or disturbed. The streets would not be</p>
<p style="text-align: right;">Page 50</p> <p>1 treat this matter in the same way it treats other 2 matters which come before them in the Municipal 3 Land Use Law, where the same standard of 4 reasonably necessary is applied. 5 As the City argued with respect to 6 the first Ocean Wind petition, Ocean Wind has 7 failed in its burden to establish that it's 8 proposed route cutting a swath across the width of 9 Ocean City and through Cape May County with a 10 backhoe is reasonably necessary. 11 Ocean City requests that the BPU 12 carefully consider the Great Egg Harbor route as 13 an alternate route to the BL England facility, and 14 compel Ocean Wind to provide evidence as to why 15 that alternate route is not being pursued. 16 Expert testimony is now required to 17 poke holes in Ocean Wind's argument about the 18 challenges which caused it to dismiss the Great 19 Egg Harbor route. The two routes seem to be 20 comparable, the route through Great Egg Harbor and 21 the route through Barnegat Bay as an underwater 22 route that presents challenges. 23 However, nothing that cannot be 24 overcome, as they have overcome those challenges 25 in the Oyster Creek project. The inlet is of</p>	<p style="text-align: right;">Page 52</p> <p>1 opened. Ocean City would still bear the aesthetic 2 effects of this project, but that's not before 3 this Board. 4 However, the Island and the County 5 would not be defaced, and the activities of the 6 people on the Island and the County would not be 7 interrupted. 8 Without evidentiary support for its 9 rejection of the Great Egg Harbor route and the 10 other routes, how can this Board evaluate 11 (inaudible)? If there's another route how can 12 this be determined to be reasonably necessary? 13 The challenges cited by Ocean Wind 14 appear to have been overcome in the Oyster Creek 15 proposal. Could the strategies utilized to reach 16 the Oyster Creek station be implemented in the 17 Great Egg Harbor Inlet? If so, why is Ocean Wind 18 insisting that the proposed route is reasonably 19 necessary? 20 I agree with Mr. Eisenstark. The 21 question before the Board is not whether the route 22 through Ocean City is the easiest, fastest, least 23 expensive. The Board is to determine whether 24 (inaudible). But not reasonable, that's not the 25 inquiry before you. It's reasonably necessary.</p>

<p style="text-align: right;">Page 53</p> <p>1 If there's more than one route, then 2 going through Ocean City is not reasonably 3 necessary. And Ocean Wind has not given any 4 information about alternate routes to make a 5 determination. 6 Until Ocean Wind explains why the 7 Great Egg Harbor route was rejected, and explains 8 how the obstacles upon which it bases its 9 rejection of the Great Egg Harbor route and other 10 routes are different than those that evidently it 11 believes it can overcome in the Oyster Creek 12 project, this Board cannot be certain that Ocean 13 Wind is not arbitrarily abusing the power that the 14 2021 amendment granted to it. 15 The Board should not make a finding 16 until the proposed route is demonstrated to be 17 reasonably necessary. Ocean City concurs with and 18 shared the arguments made on behalf of Cape May 19 County. 20 The idea of bifurcating the Board's 21 decision, allowing some of the permittees to go 22 forward without granting the easements, is a good 23 suggestion, one which we hope that the Board will 24 take seriously. 25 The record before you is deficient.</p>	<p style="text-align: right;">Page 55</p> <p>1 you know, is whether the requested easement is 2 reasonably necessary for the construction or 3 operation of the qualified wind project. 4 And it's important again to remember 5 what's not in front of the Board today. Offshore 6 wind is not in front of the Board. Where wind 7 turbines will be placed is not in front of the 8 Board. It's just this route, whether it is 9 reasonably necessary. 10 Rate Counsel sees two problems with 11 the Board making this decision at this time. 12 First, it's the procedural posture in this case. 13 Because of that the decision has essentially 14 already been made. 15 In the Ocean City matter the Board 16 found that the requested easements were reasonably 17 necessary. In doing so they evaluated the exact 18 same route that's in front of the Board now. 19 As we explained then, bifurcating 20 these two requests leaves out anyone participating 21 solely in this case. The Ocean City order came 22 out the day before the public hearing in this 23 matter, before written public comments were filed, 24 and before obviously this oral argument. 25 The result was that many people,</p>
<p style="text-align: right;">Page 54</p> <p>1 Ocean City asks the Board to either bifurcate its 2 decision, as Mr. Donohue suggested, or deny the 3 petition. And the Board (inaudible). The City 4 requests that the Board refer this petition to the 5 Office of Administrative Law. 6 Thank you. 7 PRESIDENT FIORDALISO: Thank you very 8 much for your comments. 9 I will now invite Upper Township's 10 attorney to state their appearance and give their 11 statement. 12 MR. MALEY: Good morning. Jim Maley 13 on behalf of Upper Township. And Upper Township 14 does not have an affirmative statement to make, we 15 just reserve for any rebuttal. 16 PRESIDENT FIORDALISO: Very good. 17 Thank you, sir. I will now call upon Rate Counsel 18 to state their appearance and to make their 19 statement. 20 MR. LIPMAN: Good morning, President 21 Fiordaliso and Commissioners. Brian Lipman of the 22 New Jersey Division of Rate Counsel. It's going 23 to be hard to follow that last argument and be 24 succinct, but I'll do my best. 25 The issue before the Board today, as</p>	<p style="text-align: right;">Page 56</p> <p>1 members of the public, were confused at the public 2 hearing for the matter, since the Ocean City order 3 was issued that day before. They questioned why 4 they were even attending a public hearing for 5 things that they perceived to have already been 6 decided. 7 Bifurcating the two matters confused 8 the public, and it also made the overall 9 procedural process of these matters more opaque. 10 Moreover, as a result of deciding in favor of the 11 Ocean City matter, it's virtually impossible for 12 the Board to rule against the petition here. 13 To do so would likely have to 14 overturn the Ocean City order, an extremely 15 unlikely outcome. Thereby, deciding the Ocean 16 City before hearing from the parties here, the 17 Board has essentially deprived the parties in this 18 matter the ability of being heard. 19 The second problem we see is the 20 record in this matter. We believe the record is 21 fundamentally flawed. There's a petition before 22 the Board. 23 The parties were not afforded the 24 opportunity to ask for discovery regarding that 25 petition. The parties were not afforded the</p>

<p style="text-align: right;">Page 57</p> <p>1 opportunity to cross-examine the witnesses 2 supporting that petition. 3 Essentially the Board has before it a 4 petition, and no party, including Board Staff, has 5 had the opportunity to properly determine if it's 6 accurate, credible or complete. 7 I would note that Mr. Eisenstark 8 referred briefly to rebuttal testimony that was 9 filed by Ocean Wind. There was no chance to ask 10 anything, either informal or otherwise, on the 11 rebuttal testimony. 12 And it's disingenuous for the Board 13 to then state that no person had evidence opposing 14 the petition. How could they? Due process serves 15 two essential purposes. To ensure that every 16 party has the opportunity to be truly heard, and 17 to give the decider of fact the confidence that 18 the evidence before it is viable. 19 Here neither has been accomplished, 20 and simply due process has not been afforded. 21 Ultimately the Board must determine that this 22 easement is reasonably necessary. 23 This is a higher bar than a simple 24 eminent domain case, which requires only 25 necessity. Reasonable was added to the statute</p>	<p style="text-align: right;">Page 59</p> <p>1 the attorneys to state their appearance and 2 indicate the municipalities they are representing, 3 if it's more than one. 4 So if you would start stating your 5 appearance, please? 6 MR. BALDINI: I'm assuming you're 7 talking to me. And thank you, Mr. Chairman. 8 My name is Paul J. Baldini. I'm an 9 attorney, I'm licensed in the State of New 10 Jersey. And I do represent nine municipalities 11 before this Board, as I have done. 12 PRESIDENT FIORDALISO: So you are 13 representing all nine? 14 MR. BALDINI: Yes, sir, I am. 15 PRESIDENT FIORDALISO: Okay. Very 16 good. The floor is yours, sir. 17 MR. BALDINI: Thank you, sir, I 18 appreciate that. I also wish to thank the entire 19 board of the BPU for listening to these comments. 20 I am here on behalf of nine Cape May 21 County municipalities. These municipalities 22 sought intervention status and were denied the 23 opportunity to intervene. 24 So it is clear, I am here on behalf 25 of the City of Sea Isle, Dennis Township, Lower</p>
<p style="text-align: right;">Page 58</p> <p>1 and it must have meaning. 2 Reliance from the eminent domain 3 statute is misplaced and has led to a process 4 where the parties, the public, and frankly, the 5 Board has been deprived of a full record upon 6 which to base a decision. 7 Rate Counsel will not, because we 8 cannot take a position on this petition. I am not 9 happy with this conclusion. And frankly the Board 10 should not be either. 11 The simple fact is that Rate Counsel 12 does not have sufficient information to reach a 13 reasonable decision. It is unclear to Rate 14 Counsel how the Board does either. Thank you. 15 PRESIDENT FIORDALISO: Thank you, 16 Director Lipman. 17 And thank everyone who has made a 18 statement thus far. 19 At this time I would like to invite 20 the nine participants to place their appearances 21 on the record. It's my understanding that Counsel 22 may be representing a number of these 23 municipalities. 24 So we're going to approach this, with 25 your permission, a little bit differently, and ask</p>	<p style="text-align: right;">Page 60</p> <p>1 Township, the Borough of Avalon, Middle Township, 2 the Borough of Wildwood Crest, the Borough of 3 Stone Harbor, the City of Wildwood, and the City 4 of North Wildwood. 5 Collectively I represent the 6 overwhelming majority of residents who reside in 7 Cape May County and will be affected by the 8 decisions of the Board. 9 At the outset, the municipalities 10 specifically reserve the right to challenge any 11 and all approvals granted to Ocean Wind pursuant 12 to this process. 13 The municipalities feel the Board 14 does not have authority to move forward with 15 this. The County has laid out numerous arguments, 16 and I will not repeat those here before the Board. 17 But I do reserve all rights to these 18 nine municipalities, including the right to appeal 19 and challenge the decision to deny Intervenor 20 status to these municipalities. By participating 21 in these proceedings we are not waiving any 22 rights. 23 Turning to consideration of Ocean 24 Wind's petition seeking authority to obtain an 25 easement over both Ocean City and County property,</p>

<p style="text-align: right;">Page 61</p> <p>1 there are a number of considerations. Some of the 2 considerations are specific to each municipality, 3 and some are general to all nine municipalities. 4 Under the statute N.J.S.A. 48:3-87.1, 5 one must keep in mind that this is a new statute, 6 which has never before been used. As such, it is 7 absolutely imperative that all municipalities and 8 all stakeholders be involved in the process. 9 The rules being made by the BPU as 10 the BPU goes through the process will, in the 11 future, affect all nine municipalities, yet they 12 have been effectively shut out of the process by 13 the BPU. 14 Decisions to be made by the BPU are 15 decisions that impact home rule and undermine the 16 legitimacy of the process. Heretofore, these 17 decisions were made by elected officials and the 18 affected communities. They will now be made by 19 the BPU. 20 I have been specifically immodest not 21 to address the legitimate and important issues of 22 residents of Cape May County, such as damage to 23 fragile beaches, wetlands and other protected 24 lands, impact on tourism, the fishing industry or 25 environmental damage to birds and whales. So be</p>	<p style="text-align: right;">Page 63</p> <p>1 Wind. Yet requests from the County and Ocean City 2 have been ignored. 3 The rush to move forward with taking 4 of land without the required Environmental Impact 5 Statements is particularly troubling to Dennis 6 Township. 7 Dennis is a rural community with 8 large sections of environmentally protected and 9 sensitive lands. To transverse these lands when 10 there are other more viable routes available is 11 disconcerting to the residents of Dennis 12 Township. 13 Lower Township is a community in Cape 14 May County that has both oceanfront beaches and 15 Delaware Bay beaches. The cavalier approach to 16 taking a land from Ocean City which is sensitive, 17 which is sensitive land, is a huge concern to 18 Lower Township. 19 As future wind development occurs in 20 the Atlantic Ocean and Ocean Wind proceeds south, 21 there will be arguments by Ocean Wind to not only 22 traverse Lower Township's pristine beaches in the 23 Atlantic Ocean, but for some residents its 24 pristine beach along the Delaware Bay. 25 The process of the taking and the</p>
<p style="text-align: right;">Page 62</p> <p>1 it. 2 But these towns go on record as 3 calling out what is happening. The City of Sea 4 Isle City is immediately adjacent to Ocean City 5 and directly impacted by the easement sought. 6 If there is a way to deliver the 7 energy to its final inland destination that does 8 not run through the beaches of Ocean City or the 9 County access roads to Ocean City, then such 10 should be the preferred route. 11 The Great Egg Harbor route is a 12 reasonable route. It avoids roads traveled by and 13 on the residents of Sea Isle City. 14 Keep in mind that Sea Isle City send 15 its children to Ocean City High School. The 16 residents of Sea Isle City drive those streets 17 every day. They will be directly impacted by the 18 decisions made by the BPU. 19 The reasonable route of going through 20 Ocean City and along the County road may be 21 reasonable to the BPU, but is not reasonable to 22 the residents of the City of Sea Isle City. 23 Dennis Township being an inland 24 community has concerns over the way the route is 25 selected, with no financial disclosures by Ocean</p>	<p style="text-align: right;">Page 64</p> <p>1 impact upon environmentally sensitive land is 2 extremely important to the Township of Lower 3 Township, and directly affects its residents. 4 If the easement in taking is provided 5 against Ocean City, then is Lower Township one of 6 the next communities to suffer such a fate? If 7 so, why aren't they at the table as stakeholders? 8 The Borough of Avalon is immediately 9 adjacent to the City of Sea Isle City, and also in 10 the line to have Ocean Wind place windmills 11 directly east of the community. This would be 12 Phase 2. 13 Avalon is a vacation town with sight 14 of the wind farm being detrimental to 15 vacationers. Quite frankly, this goes without 16 saying. 17 PRESIDENT FIORDALISO: If I may just 18 interrupt you for a moment? We're addressing the 19 transmission lines, not the location or the 20 position of wind turbines. 21 MR. BALDINI: Thank you, sir. And I 22 understand that you're now suppressing my right to 23 be heard here today. I understand that, I accept 24 it. 25 But understand that this City of, in</p>

<p style="text-align: right;">Page 65</p> <p>1 this case Avalon, will not stand by idly while 2 their opportunity to be heard is transversed. So 3 that we are clear, I reserve all rights relative 4 to these communities to be heard. Thank you, sir. 5 PRESIDENT FIORDALISO: I am not 6 suppressing anyone's right to state their 7 opinions. I did at the beginning of this 8 proceeding indicate that the arguments would be 9 directed specifically to the transmission lines 10 and their location. 11 MR. BALDINI: I remain with my 12 objection, sir. And so be it. 13 I'll turn to Middle Township, since 14 Avalon has been suppressed. Middle Township is an 15 inland community similar to Dennis Township, with 16 much protected pristine infrastructure. 17 Middle Township is also concerned 18 about the process, and in an effort to utilize the 19 process it involves all elected officials. One 20 can hardly say that a reasonable road or a 21 reasonable route is a route in which no elected 22 officials have a say. 23 So from Middle Township's 24 perspective, the very process is tainted and fails 25 to provide for appropriate input from affected</p>	<p style="text-align: right;">Page 67</p> <p>1 The Borough of Stone Harbor has no 2 reason for the preferred route to go through 3 pristine beach-front property and along the County 4 road when there is an alternative route in Great 5 Egg Harbor. 6 The BPU is requested by this 7 municipality to take a closer look at what is a 8 preferred route and what is a reasonably preferred 9 route, and request that the Board take appropriate 10 action to protect the beach-fronts and protect the 11 County rights-of-way. 12 The City of Wildwood and the City of 13 North Wildwood are oceanfront communities 14 immediately adjacent to each other. 15 These communities face the same 16 issues as the Borough of Wildwood Crest faces, and 17 opposes the preferred route offered by Ocean Wind, 18 and supports Ocean City in its efforts to move the 19 preferred route to the Great Egg Harbor. 20 The communities implore the BPU to 21 listen to Ocean City and listen to the County and 22 listen to the elected officials, so that the BPU 23 can perform its function of allowing for a 24 transparent and open process, at the same time 25 ensuring that Ocean Wind is able to move forward</p>
<p style="text-align: right;">Page 66</p> <p>1 municipalities. 2 Middle Township also supports the 3 idea of using the Great Egg Bay Harbor route and 4 bypassing Ocean City and the County road. This is 5 the reasonable route. Quite frankly, the majority 6 of Cape May County residents understand that to be 7 the reasonable route, even if Ocean Wind does 8 not. 9 The Borough of Wildwood Crest is also 10 a beach-front community, which faces the same 11 problems that Ocean City faces, that Sea Isle 12 faces and that Avalon faces. 13 The Borough is a small community 14 which depends greatly -- I will stop after making 15 this statement, Mr. Chairman -- depends greatly on 16 tourism and influx of summer residents. The 17 implications are clear. 18 So again, I will not go into the area 19 you asked me not to go into. But I reserve the 20 rights on behalf of the Borough of Wildwood Crest 21 as well, as all nine municipalities. 22 The Borough of Stone Harbor is 23 watching the process and recognizes the risks to 24 residents and visitors of the Borough, as Stone 25 Harbor views the process which is unfolding.</p>	<p style="text-align: right;">Page 68</p> <p>1 with its project in an environmentally sensitive 2 and appropriate fashion. 3 I also note it is clear from the 4 record that not only the County of Cape May, but 5 also Ocean City, have repeatedly reached out to 6 Ocean Wind. I heard the comments of Ocean Wind 7 that their offer remains open. 8 It is my suggestion that Ocean Wind 9 should be more proactive. Sit down with the 10 County, sit down with Ocean City, and find a way 11 to resolve these outstanding issues. 12 The stakeholders want to speak to 13 Ocean Wind, Ocean Wind should be open and 14 transparent in the way it deals with the 15 municipalities and the County. 16 The municipalities are further 17 concerned that the proposed installation along the 18 County road limits the County's ability to install 19 additional drainage or other underground 20 facilities due to proximity regulations. 21 As testified by the County engineer 22 at length before the Board, this is a problematic 23 process. Perhaps equally troubling is the fact 24 that Ocean Wind has failed to address the impact 25 of the need for elevated infrastructure in the</p>

<p style="text-align: right;">Page 69</p> <p>1 near future due to global warming. 2 So quite frankly, the point of that 3 is that if these roads become inundated and it 4 causes problems in raising that and protecting 5 these municipalities, then using the Great Egg 6 Harbor route would have been the reasonable route 7 and would not be impacted by global warming or 8 climate change or rising tides, as the beaches and 9 as critical infrastructure leading in and out 10 Ocean City will be impacted. 11 Finally, the record is devoid of any 12 cost analysis as to the alternate routes 13 considered by Ocean Wind. Although money is not 14 the only factor, the boroughs and the towns are 15 sensitive to the fact that financial 16 considerations come into place for everything. 17 So if we find that the costs are not 18 prohibitive but differential, then the reasonable 19 route should be Great Egg Harbor, as requested by 20 Ocean City, and not through its beaches and its 21 County roads. 22 I thank you for listening to these 23 comments. And I hope you have a good day, sir. 24 PRESIDENT FIORDALISO: I appreciate 25 your comments, sir. Thank you.</p>	<p style="text-align: right;">Page 71</p> <p>1 context, that the legislature may empower the BPU 2 to supersede municipal or County approvals where 3 the statewide interest in public utilities, or in 4 this instance in offshore wind projects, is 5 paramount to local interest. 6 In fact, that's the very reason that 7 the BPU has had jurisdiction to overrule municipal 8 and county determinations with respect to local 9 zoning and siting approvals, since literally the 10 turn of the last century. 11 And it's the very reason why these 12 legislative amendments to OWEDA were necessary 13 here, to essentially give the Board the power to 14 override municipal objections or County 15 objections, where the interests of the state and 16 the citizens as a whole should be paramount. And 17 I submit that that applies here. 18 The law is clear that the Board, that 19 the legislature may empower the Board, or other 20 state municipalities, to do just what it has 21 empowered the BPU to do here. 22 Briefly, the County made an argument 23 that it didn't, couldn't or wouldn't consent to 24 the DEP permit applications because it didn't feel 25 that it was competent to review the documents, and</p>
<p style="text-align: right;">Page 70</p> <p>1 Now I will invite the parties and 2 Intervenor to make any rebuttal statements, 3 should they wish to do so. I will call on the 4 parties and Intervenor in the same order as 5 before. 6 Ocean Wind, you may proceed to make 7 your rebuttal statement, if you have one. 8 MR. EISENSTARK: Yes. Thank you, 9 President Fiordaliso. Gregory Eisenstark again on 10 behalf of Ocean Wind. I do have a bit of 11 rebuttal. I'll try to keep it short in the 12 interest of time 'cause we've already been going 13 for quite a while. 14 Let me respond first to some of the 15 arguments that Counsel for the County made. The 16 County's main objection seems to be to the statute 17 itself that allows, gives the Board jurisdiction 18 over this petition. 19 And again, the County repeated the 20 phrase, stand in the shoes of elected officials, 21 many, many times. The fact is under state law, 22 all municipal authority derives from state 23 legislature. So that's Number 1. 24 Secondly, it's clear in many, many 25 different contexts, including a public utility</p>	<p style="text-align: right;">Page 72</p> <p>1 didn't have the expertise or knowledge to sign the 2 certification. 3 With all due respect, private 4 property owners, municipalities and counties sign 5 those DEP certifications every week of the year. 6 I'm sure the County has a county engineer, he 7 filed testimony in this case. 8 Why they felt they couldn't ask for a 9 copy of that, review them and get comfortable with 10 them, is beyond me. But with all due respect, 11 that's a bit of a weak argument. 12 Ocean Wind would be happy to share 13 those documents with the County, would have been 14 happy to share them if they asked for them, would 15 have been happy to sit down with them and explain 16 them if they needed assistance. 17 But that's a fairly standard part of 18 the BPU permitting process, that municipalities 19 and counties engage in all of the time. 20 Again, I won't go into a lot of 21 rebuttal to the County's argument about the 22 applicability of the Eminent Domain Act for one 23 primary reason, the County made those arguments in 24 its earlier motion to dismiss. 25 We replied and responded to them in a</p>

<p style="text-align: right;">Page 73</p> <p>1 lengthy legal brief. And the Board has denied the 2 County's motion and rejected all of those 3 arguments. 4 That issue has already been decided 5 in this case, and the Board simply decided here 6 again at the end of the case, quite frankly, that 7 the process that the OWEDA amendments lay out for 8 the acquisition of easements by condemnation are 9 clear. 10 The process starts with the BPU. 11 Once the BPU, if the BPU approved, gives the 12 authority for the offshore wind project to go 13 forward, then there's a process that's set forth 14 in the statute concerning the recording of the 15 property interest, and then the determination of 16 the appropriate compensation if the parties can 17 agree to it. 18 There's no due process issue here. 19 What the project has done and what the Board did 20 in the Ocean City case, and what we're asking the 21 Board to do in this case, complies with state law 22 in all respects. 23 Finally, both the County and Ocean 24 City made a number of comments suggesting that the 25 route selection process was insufficient. Again,</p>	<p style="text-align: right;">Page 75</p> <p>1 may happen. 2 But we're here today, we need to move 3 forward with the project. We've made a record 4 before the Board on the easements that we're 5 seeking and the consents that we're seeking. 6 And you know, who knows what's going 7 to happen in the future, five, ten, 40 years from 8 now? All of that is just speculation. And it's 9 no basis for the Board to wait, none of that is 10 any factual or evidential basis for the Board to 11 bifurcate this proceeding and only give the permit 12 consents but hold off on the easements. 13 We need to go forward now. That's 14 the position Ocean Wind is taking. The record is 15 complete. It's ripe for the Board to make a 16 decision. And we encourage the Board to do so. 17 That's all I have on rebuttal, 18 President Fiordaliso, and I thank you. 19 PRESIDENT FIORDALISO: Thank you. 20 I now invite Cape May County to make 21 its rebuttal statement, if they have one. 22 MR. DONOHUE: Thank you, sir. I 23 appreciate it, and I appreciate the Board's time 24 and attention, I really do. 25 First of all, the County joins in the</p>
<p style="text-align: right;">Page 74</p> <p>1 you know, I'm not going to belabor the point, but 2 there's extensive written testimony in the record 3 of this proceeding. 4 Ocean Wind has filed direct and 5 rebuttal testimony explaining the route selection 6 process, explaining in detail the alternate routes 7 that were considered and why those routes were 8 ultimately not pursued, including the Great Egg 9 Harbor route that a number of parties have spoken 10 in favor here today. 11 So for the parties to come and argue 12 that there's been no analysis of alternate routes 13 is simply not true. And I'll just direct the 14 Board to look at Ocean Wind's testimony in this 15 case where that analysis is provided. 16 Finally, a brief response to comments 17 that a few parties have made, the County and I 18 believe the non-municipality Participants just 19 made, that there may be future changes to road 20 structures or to a bridge, or that the DEP or the 21 federal government may change part of the project 22 on review. 23 That's just speculation. There's no 24 evidentiary basis in the record to sustain that. 25 It's pure speculation of Counsel. A lot of things</p>	<p style="text-align: right;">Page 76</p> <p>1 arguments made by Ocean City, by Rate Counsel and 2 by the lead Counsel for the nine municipalities. 3 We would reiterate all of the arguments we've 4 submitted so far. We re-up here. 5 Not to belabor them, interesting that 6 the argument is that the County is a creature of 7 the state and therefore the elected officials 8 don't matter. I'm not sure it's exactly what Mr. 9 Eisenstark's saying, to be fair, but it's sort of 10 how it came out. 11 That can't be a reasonable position 12 to take. Elected officials do matter, the voters 13 do matter. The fact that they entrust these 14 elected officials with these types of decisions, 15 that matters. 16 Ocean Wind argues that the body of 17 law with regard to the Municipal Land Use Law and 18 the authority of the Board in that context should 19 overlay OWEDA context. Maybe that's a reasonable 20 argument. 21 But that has not been tested in any 22 court. There is nothing, there's no jurisprudence 23 to tell us that applies, that that makes sense, 24 that is how the law would be interpreted. 25 And as I indicated previously, and</p>

<p style="text-align: right;">Page 77</p> <p>1 certainly not telling members of the Board 2 anything they don't already know, every decision 3 here is a matter of first impression, will have a 4 lasting impact on every municipality, every 5 county, that might ultimately be affected by wind 6 projects. Those are pretty heavy ambiguity issues 7 and they shouldn't just be dismissed out of hand. 8 In terms of signing the 9 certification, just because so many people sign 10 those without thinking, doesn't mean the County is 11 compelled to sign without thinking. 12 And we appreciate the admission that 13 Ocean Wind did not supply all of the underlying 14 documentation that would have allowed the County 15 to do their own analysis. 16 And again, Ocean Wind seeks to engage 17 in burden shifting and put the burden on the 18 County. That was their burden, not ours. Just as 19 it's their burden to provide detailed and complete 20 and specific requests, as the Board will see in 21 our submissions or has seen already, requests that 22 we got literally contained in letters the 23 parenthetical phrase, if required, and a whole 24 list of things that Ocean Wind said, well, we need 25 your consent for this if required.</p>	<p style="text-align: right;">Page 79</p> <p>1 proceeding. 2 And it is not speculation in terms of 3 wetlands and all these other environmental issues, 4 it's not speculation. It's very informed, 5 educated, reasonable inferences that are typical 6 in this type of proceeding. 7 So with that, I thank the Board for 8 your attention and your time this morning. And I 9 yield back, Mr. President. Thank you. 10 PRESIDENT FIORDALISO: Thank you for 11 your comments, sir. 12 I now invite the City of Ocean City 13 to make its rebuttal statement, if they have one. 14 MS. MC CROSSON: Thank you. Mr. 15 Donohue has covered all the points that I would 16 make on behalf of Ocean City. Rather than repeat 17 them, I'd like to adopt his arguments that he made 18 in response or in rebuttal. 19 And also, Ocean City would also adopt 20 the positions taken by Rate Counsel and Counsel 21 for Participant municipalities which were made 22 after our argument. 23 I have nothing further. Thank you. 24 PRESIDENT FIORDALISO: Thank you. 25 I now invite Upper Township to make a</p>
<p style="text-align: right;">Page 78</p> <p>1 The burden shouldn't be on the County 2 to determine what's required for the project, that 3 should be on the project. The project should have 4 to come and say precisely, specifically, this is 5 exactly what we need and we need your consent. 6 How can anyone consent to something 7 when somebody says, hey, I need your consent to 8 this, if it's required? Well, how do we know it's 9 required? That's your job, not ours. 10 No one has argued that there's been 11 no analysis of alternate routes. We've argued 12 there has not been substantial and complete 13 analysis. And most importantly, as Rate Counsel 14 pointed out, there's not been any tested analysis, 15 because we weren't afforded the opportunity for 16 discovery and cross-examination. 17 So what's come before the Board is a 18 one-sided argument. It is not contested. It has 19 not been subjected to scrutiny. It has not been 20 subject to cross-examination, none of that has 21 happened in this proceeding. 22 As we have argued in our paper 23 submissions, all that is contrary to 24 administration procedures and procedures that are 25 supposed to be employed in this type of petition</p>	<p style="text-align: right;">Page 80</p> <p>1 rebuttal statement, if they have one. 2 MR. MALEY: Thank you. On behalf of 3 the Township we don't have any comments. We're 4 good. Thanks. 5 PRESIDENT FIORDALISO: Thank you, 6 sir. I now invite Rate Counsel to make any 7 rebuttal statement, if they have one. 8 MR. LIPMAN: I'll be extremely 9 brief. I just want to point out that the 10 arguments you've heard show that there's still 11 factual disputes, that a proper hearing with 12 proper ability to cross-examination, discovery, 13 etc., would have resolved and provided a robust 14 record from which the Board can make its ultimate 15 determination. 16 Thank you. 17 PRESIDENT FIORDALISO: Thank you, 18 sir. 19 I want to thank everyone who has 20 participated today. This is an important issue 21 and one where transparency is extremely important. 22 I will now ask my colleagues if they 23 have any questions or comments they wish to make 24 at this time? 25 COMMISSIONER GORDON: President,</p>

<p style="text-align: right;">Page 81</p> <p>1 Commissioner Bob Gordon here. I just want to 2 thank all of those who made their presentations 3 today. And I assure you that the Board will be 4 reviewing that information very carefully. Thank 5 you. 6 PRESIDENT FIORDALISO: Thank you. 7 Anyone else would like to make a statement or have 8 any questions? 9 COMMISSIONER HOLDEN: President 10 Fiordaliso, I would like to assure all the 11 participants and all the Intervenors and the 12 parties that we have, we take all testimony, all 13 of the voluminous information that's been provided 14 to us in all of the situations, into 15 consideration. 16 And should also note that many of us 17 on the Board have been elected officials and have 18 years of experience in Land Use Law, as well as 19 what we have to take into consideration, what the 20 legislature has deemed necessary for the utility 21 Board. Thank you. 22 PRESIDENT FIORDALISO: Thank you. 23 Anyone else? 24 MR. CHRISTODOULOU: Mr. President, if 25 I can have a few words?</p>	<p style="text-align: right;">Page 83</p> <p>1 PRESIDENT FIORDALISO: Counsel for 2 Cape May? 3 MR. DONOHUE: Yes, thank you. 4 Commissioner Solomon, if I understand your 5 question, my argument is the Municipal Land Use 6 sort of roadblock that sometimes get thrown up, 7 that the Board has authority and has had for a 8 very long time to sort of make decisions for the 9 benefit of the broader community, right, instead 10 of a narrow community. 11 The argument is that the body of law 12 should apply here and be looked at by the Board. 13 But this does not involve Municipal Land Use in 14 any respect. It's a brand new statute, and 15 whether or not that makes sense the Board will 16 have to determine, and maybe ultimately a court. 17 Our argument in terms of the Eminent 18 Domain Act is that the law is clear that 19 essentially the due process in this proceeding has 20 to mirror the due process there. 21 It doesn't have to adopt the entire 22 Eminent Domain Act, although I should note a 23 portion of it is specifically incorporated by 24 reference in OWEDA. 25 But that flavor, so to speak, of due</p>
<p style="text-align: right;">Page 82</p> <p>1 PRESIDENT FIORDALISO: Sure. 2 MR. CHRISTODOULOU: Thank you. And 3 thank you everyone, really, for the very 4 informative information, not just from today's 5 testimony but from the written testimony that are 6 we are reviewing. 7 And I just want to assure everyone 8 that the entire Board takes this matter very 9 seriously. And as my colleagues have mentioned 10 already, we will take every bit of information 11 given to us to make the most informed and far 12 reaching decisions that we can. 13 So thank you all very much. And 14 please rest assured that we will do a very great 15 job on everyone's behalf. 16 PRESIDENT FIORDALISO: Thank you. 17 COMMISSIONER SOLOMON: President 18 Fiordaliso, I also have some comments to make, and 19 I also want to ask Counsel if they can clarify 20 some other points with respect to the standard, 21 the reasonableness standard they're suggesting. 22 One, that we consider Municipal Land 23 Use applications over the Eminent Domain 24 standard. Is that the argument that is being 25 made? I guess this is Counsel for Cape May.</p>	<p style="text-align: right;">Page 84</p> <p>1 process isn't part of this proceeding. So if the 2 taking is to be effectuated, the condemnee should 3 be entitled to those rights that exist there. 4 As Rate Counsel pointed out, I think 5 it was Rate Counsel, it's a limited process. It's 6 a limited process in terms of discovery. 7 It's designed to hopefully have the 8 parties confer beforehand, which is why we spend 9 so much time talking about that appraisal 10 requirement, a 90-day period after that's provided 11 to try and talk these things out. That due 12 process was not afforded here. 13 So our argument is not necessarily 14 that the bylaw of Municipal Land Use interfaces 15 with BPU's obligations doesn't apply at all, we 16 just don't know. We don't know that and I feel 17 for the Board, because there's no jurisprudence to 18 guide you. 19 Our argument is that because a taking 20 is being effectuated, the law is clear that that 21 due process protection, things that would 22 typically be afforded, has to be afforded here. 23 Does that answer your question? 24 COMMISSIONER HOLDEN: Yes. So you're 25 saying that there needs to be more broadly a look</p>

<p style="text-align: right;">Page 85</p> <p>1 at in terms of due process requirements under this 2 proceeding, our proceeding? 3 MR. DONOHUE: Yes, yes. Yes, 4 Commissioner. 5 COMMISSIONER HOLDEN: So 6 additionally, things within the record, I think it 7 was Rate Counsel was suggesting, are missing from 8 the record for us to consider because of the 9 application that we've made with respect to due 10 process? 11 MR. DONOHUE: I would say, not to 12 belabor it, but I would echo what Rate Counsel 13 argued, and we've argued this in our submissions, 14 that that process of discovery and 15 cross-examination is designed to create that 16 robust record, that tested analysis, rather than a 17 one-sided analysis. 18 So that the Board can look at that 19 and say we are confident that we have a very 20 robust record, that the opinions of the 21 petitioner's experts have been tested, and subject 22 to a real thorough analysis. The questions have 23 been asked and the parties have been afforded the 24 opportunity to cross-examine and ask those 25 questions so that the record is complete.</p>	<p style="text-align: right;">Page 87</p> <p>1 all the other potential routes have not been 2 subject to that analysis. 3 There's been no presentation on those 4 questions to say, the Egg Harbor route is great, 5 hypothetically, but it's going to cost an extra 6 \$150 million. 7 We don't know. Right? We don't know 8 if it is demonstrably so much more expensive to go 9 that route that it would not then be reasonable, 10 right, under the reasonably necessary analysis. 11 So yes, that is an argument that was 12 made consistently during the Ocean City proceeding 13 by Rate Counsel and in this proceeding that we 14 have joined. 15 COMMISSIONER HOLDEN: That's all I 16 have at this time. Thank you. I didn't know if 17 anybody else wanted to speak to the things that I 18 raised, but thank you. 19 PRESIDENT FIORDALISO: Thank you, 20 Dianne. I think it's worth mentioning that, and I 21 mentioned it at the beginning, the transparency is 22 extremely important. And as Commissioner Holden 23 mentioned, many of us or some of us have been 24 elected officials. And we certainly understand 25 from that perspective what local municipalities</p>
<p style="text-align: right;">Page 86</p> <p>1 And as Rate Counsel pointed out, an 2 argument we join in and others joined in, that 3 hasn't happened here. So yes, correct, 4 absolutely, that would be part of the due process 5 that we're talking about. 6 COMMISSIONER HOLDEN: That would go 7 to, I think it was the last proceeding we had, 8 though it hasn't been brought up much in this 9 proceeding, in looking at the cost for an issue, 10 the preferred route. Well, that's not 11 determinative on which route is selected. 12 That is something you would say we 13 are entitled to have provided to the Board for 14 consideration and to probe as part of this 15 proceeding. Is that what you're suggesting? 16 MR. DONOHUE: Yes. In fact, we, as 17 the County, in response to the petition have the 18 luxury of having Rate Counsel, right, that's 19 involved in these proceedings, who's pointed that 20 out with tremendous expertise and very well 21 argued, that those analyses have not been 22 presented either. 23 Cost is a factor, but it's not the 24 controlling factor. Right? But we don't know, 25 again, it's something we just don't know because</p>	<p style="text-align: right;">Page 88</p> <p>1 encounter. 2 I think we have to keep in mind, and 3 I'm sure those who have a legal background 4 understand this, the only authority the Board of 5 Public Utilities has is what is given to us by 6 elected officials. And those elected officials 7 comprise the legislature. 8 So I think that that's an important 9 factor to certainly keep in mind. I think it's 10 also important to keep in mind -- and I don't have 11 any questions, I think all of the attorneys 12 presented their cases well. 13 And we will, as one of my colleague 14 mentioned thoroughly go through all of the 15 information, written information we've gotten from 16 stakeholders, information from our first gathering 17 and certainly from these oral arguments, to come 18 to what we believe is in the best determination 19 for the communities of Cape May and for the entire 20 State of New Jersey. 21 That's our charge. And we take this 22 very, very seriously because it's a serious 23 matter. We understand that. So if you leave with 24 nothing else in mind, know that we take your 25 comments and your oral arguments and all of the</p>

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1 other testimony we've received very seriously.

2 And it's reviewed. And sometimes it

3 takes us a while to come to a decision. All of

4 you have been given the opportunity to present

5 your oral arguments.

6 And now that the parties and

7 Intervenorers have also been given the opportunity

8 for rebuttal statements, I will conclude this

9 meeting.

10 Please be advised that no formal

11 action will be taken today on this matter. All

12 arguments and rebuttal arguments made today and

13 all recorded materials submitted under the docket

14 will be taken into consideration.

15 The Board will take formal action on

16 the petition at a later date. And certainly

17 everyone will be apprised of that time frame once

18 it is determined.

19 I want to thank my fellow

20 Commissioners. It is now, I have 10:58 a.m., and

21 this meeting is closed.

22 Thank you very much. Have a

23 wonderful day, everyone.

24 (The hearing is adjourned.)

25

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1 C E R T I F I C A T E

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4 I, NANCY AMBROSE, LICENSE NO. 30XI00199300, a

5 Certified Court Reporter of the State of New

6 Jersey, do hereby certify that the foregoing is a

7 true and accurate transcript of the testimony as

8 taken stenographically by and before me at the

9 time, place and on the date hereinbefore set

10 forth, to the best of my ability.

11

12 I DO FURTHER CERTIFY that I am neither a relative

13 nor employee nor attorney nor counsel of any of

14 the parties to this action, and that I am neither

15 a relative nor employee of such attorney or

16 counsel, and that I am not financially interested

17 in the action.

18

19

20 NANCY AMBROSE
Certified Court Reporter
of the State of New Jersey

21

22

23

24

25

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