



State of New Jersey  
DIVISION OF RATE COUNSEL  
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TRENTON, NEW JERSEY 08625

PHIL MURPHY  
*Governor*

SHEILA OLIVER  
*Lt. Governor*

BRIAN O. LIPMAN  
*Director*

March 1, 2023

**Via Electronic Filing Only**

Carmen D. Diaz, Acting Secretary  
New Jersey Board of Public Utilities  
44 South Clinton Avenue, First Floor  
P.O. Box 350  
Trenton, New Jersey 08625

**Re: In the Matter of the Petition of Ocean Wind, LLC Pursuant to N.J.S.A. 48:3-87.1(f) for a Determination that Easements Across Green Acres Restricted Properties and Consents Needed for Certain Environmental Permits in, and with Respect to, the City of Ocean City are Reasonably Necessary for the Construction or Operation of the Ocean Wind 1 Qualified Offshore Wind Project  
BPU Docket No. QO22020041  
Appellate Docket No. A-000789-22T1**

Dear Secretary Diaz:

Please accept this letter brief in lieu of a more formal submission on behalf of the New Jersey Division of Rate Counsel (“Rate Counsel”). This letter brief is in support of Rate Counsel’s Motion to Settle the Record filed pursuant to Rule 2:5-5. Rate Counsel objects to certain documents currently in the Statement of Items Comprising the Record (“Statement of Items”) that were not part of the record before the Board of Public Utilities (“Board”).

**BACKGROUND**

Ocean Wind, LLC (“Ocean Wind”) filed a petition with the Board on February 2, 2022 requesting that the Board determine whether certain easements and consents are “reasonably necessary” for the construction of the Ocean Wind I project (“Project”). On February 23, 2022,

the Board retained the petition for hearing and assigned President Joseph L. Fiordaliso as the Presiding Officer. President Fiordaliso issued a procedural schedule on March 1, 2022 (“March 1 Order”), which ordered that supplemental information requested by Staff from Ocean Wind to be filed on or before March 14, 2022. The procedural schedule also set forth dates for the filing of public comments, opposition and/or testimony from responding parties and Ocean’s Wind’s response thereto, as well as a date for oral argument. Notably missing from the procedural schedules issued in this matter was any opportunity for discovery or evidentiary hearings, which is typical for cases that involve disputes of material fact.<sup>1</sup>

On March 14, 2022, Ocean Wind submitted the requested supplemental information. On March 22, 2022, President Fiordaliso issued an Order directing the City of Ocean City (“Ocean City”) to be added as a necessary party and modified the procedural schedule to provide for additional time for meeting the procedural deadlines set forth in the March 1 Order. Although none of the parties were given the opportunity to ask formal discovery regarding the petition in the procedural scheduled issued by President Fiordaliso, Rate Counsel informally requested additional information through data requests directed to Ocean Wind. Ocean Wind provided responses to the informal data requests, although some responses were incomplete.

By Order dated September 28, 2022, the Board issued an Order in the above-referenced matter finding the identified property interests and consents to be reasonably necessary for the construction of Project. Ocean City appealed to the Appellate Division of the New Jersey Superior Court on the basis that the Board did not have sufficient evidence to weigh all interests

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<sup>1</sup> The issue of whether there was a dispute of material fact may arise when the parties dispute the merits of this appeal, however this issue is not dispositive for purposes of resolving this motion.

and factors and, as such, its decision is arbitrary and capricious. Rate Counsel is a statutory party to the appeal pursuant to N.J.S.A. 52:27EE-48.

On January 11, 2022, pursuant to Rule 2:5-4(b), the Office of the Attorney General, representing the Board, filed with the Appellate Division the Statement of Items. See Statement of Items attached hereto as Exhibit A. Although the Statement of Items properly included certain items comprising the record, Rate Counsel's informal discovery requests directed to Ocean Wind, and the responses thereto, should be stricken from the Statement of Items for the reasons set forth herein. Accordingly, Rate Counsel has filed this Motion to Settle the Record.

### **ARGUMENT**

The Statement of Items includes, as Items Eight and Ten, respectively, what are described as "Division of Rate Counsel's Informal Discovery Requests to Ocean Wind, LLC" and "Ocean Wind, LLC's Transmittal Letter and Response [*sic*] to the Division of Rate Counsel's Informal Discovery Requests" ("informal discovery"). See Rate Counsel's informal discovery questions and Ocean Wind's responses to Rate Counsel's informal discovery questions, attached hereto as Exhibit B. Inclusion of the informal discovery in the Board's Statement of Items is improper as it would inappropriately broaden the record on appeal to include documents that were not filed with the Board nor incorporated into the Board's record at any point in the proceeding.

Pursuant to Rule 2:5-5(a), a party may contest the record by moving to settle the record before the agency. "The appellate court, on motion, may review such determination or may, on its own motion, order a correction of the record or may direct the court or agency to do so." R. 2:5-5(a). The record on appeal consists of "all papers on file in the court, or courts or agencies below, with all entries as to matters made on the records of such courts and agencies, the

stenographic transcript or statement of the proceedings therein, and all papers filed with or entries made on the records of the appellate court.” R. 2:5-4(a)(emphasis added). As the Board has previously acknowledged, the purpose of the Statement of Items is to provide the reviewing court with a record that fully and truly discloses what occurred before an agency, and properly accounts for the evidence that was considered in reaching the decision on appeal. Taylor v. Jersey Cent. Power and Light Co., BPU Docket No. EC06020077U (Oct. 30, 2009) (citing Mount Olive Complex v. Twp of Mount Olive, 340 N.J. Super. 511, 527 (2001)). The rule is intended to give notice to litigants that a reviewing court will not consider material which is not in the trial court's record. Mount Olive Complex, 340 N.J. Super. at 527 (citing State v. Harvey, 151 N.J. 117, 201-02 (1997), cert. denied, 528 U.S. 1085 (2000)). Appellate courts will generally not consider material which is not in the record of the court or agency below by way of adduced proof, judicially noticeable facts, stipulation, admission or a recorded proffer of excluded evidence. Pressler & Verniero, Current N.J. Court Rules, cmt. 1 on R. 2:5-4(a) (2023). See also Gertrude Harris v. Middlesex County College, 353 N.J. Super. 31, 48 (App. Div. 2002) (striking materials that were found not to be included in the record below) (citing Harvey, 151 N.J. at 201-202 (1997)). Therefore, the judiciary has made clear that the record on appeal should include only those items on file with the Board and parties should not add to the record, via the Statement of Items, items not introduced below. In re New Jersey Bell Telephone Co., BPU Docket No. TT92030358 (Dec. 15, 1993) (finding that while the parties were aware of correspondence exchanged during the development of the record, they did not seek to introduce it into the record or use it on cross-examination and therefore excluded it from the Statement of Items).

Although Rate Counsel recognizes that, as a matter of course, the Board Secretary is routinely copied on discovery that is exchanged between the parties to a proceeding, it often simply means that that the Board is in receipt of the document. See In re the Long Term Capacity Agreement Pilot Program (“LCAPP”), BPU Docket No. EO11010026, 6 n.13 (Nov. 9, 2011) (noting that when a document is stamped “filed” with the agency, the filed document is deemed considered by the Board within the meaning of Rule 2:5-4 to be made part of the record on appeal, whereas when a document is marked “received” there is no correlation to that document having been considered by the Board). As such, an email transmitting discovery or answers to discovery that happens to include the Board Secretary as part of the service list does not mean that the discovery questions themselves, nor their responses, are "filed" with the Board for purposes of comprising the record on appeal. This fact is supported by the Board’s electronic docket maintained in this matter under the Public Document Search. The informal discovery was not entered into the electronic docketing system and therefore was not filed with – nor considered by – the Board in making its determination. See Public Document Search, Docket No. QO22020041, attached hereto as Exhibit C (last visited Jan. 18, 2023).

Further, this fact was acknowledged and understood by Ocean Wind when it stated in its informal responses to Rate Counsel that it “reserves the right to object to the admission of any material contained in the enclosed responses into the record in this proceeding” and instead answered the questions “in the spirit of cooperation.” See Ex. B. Based on this response, Ocean Wind appears to have been acting under the same assumption as Rate Counsel, i.e. that the informal responses were not automatically considered evidentiary material. Rather, the informal

questions and responses were never filed with the Board nor admitted into the record as evidence, and therefore cannot be considered as part of the Statement of Items.

In addition, when the Board has previously specified the nature of the documents that comprise a Statement of Items on appeal, it has excluded discovery documents as well as documents “not on file with the Board.” See In re LCAPP, BPU Docket No. EO11010026 at 7 (citing In re New Jersey Bell, Docket No. TT92030358 (Dec. 15, 1993) (finding that documents not on file with the Board were to be excluded from the contents of the Statement of Items). On this basis, Rate Counsel reiterates that the informal discovery was not publically available and posted on the Board’s Public Document Search and therefore is “not on file with the Board” and, as such, should be stricken from the Statement of Items.

Furthermore, the limited procedural schedule set forth by President Fiordaliso did not afford the parties an opportunity to conduct formal discovery, nor did it afford the parties the opportunity participate in adjudicatory hearings as a means to introduce the informal discovery into the record. This issue concerning the lack of a formal discovery process and adjudicatory hearings was raised by Rate Counsel very early in this proceeding, as well as, in its statement at the oral argument and written comments filed thereafter, but it was never addressed by President Fiordaliso nor the Board. Instead, the Board made its determination that the subject property interests and consents were reasonably necessary for the construction of the Project based on an incomplete record that lacked minimal procedural standards required to substantiate Ocean Wind’s claims as credible evidence on which to base a final agency decision.<sup>2</sup>

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<sup>2</sup> On February 17, 2023, Commissioner Dianne Solomon issued a dissent noting agreement with Rate Counsel’s position and that “the record is lacking for [The Board] to determine if the preferred route is reasonably necessary and I further agree that we are entitled to information regarding the cost of the route.” I/M/O Petition Of Ocean Wind LLC Pursuant To N.J.S.A. 48:3-87.1(f) For A Determination That Certain Easements And Consents Needed

Carmen D. Diaz, Acting Secretary

March 1, 2023

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**CONCLUSION**

Accordingly, the informal discovery and responses thereto were not properly in the record before the Board and cannot be included in the record on appeal. As these documents were not filed with the Board or properly moved into the record, they should be stricken from the Statement of Items.

Respectfully Submitted,

BRIAN O. LIPMAN, ESQ., DIRECTOR  
NEW JERSEY DIVISION OF RATE COUNSEL

BY: */s/ T. David Wand*

T. David Wand, Esq.  
Deputy Rate Counsel

TDW/ml  
Exhibits

c: Service List (via electronic mail)

# **EXHIBIT A**

MATTHEW J. PLATKIN  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Respondent  
New Jersey Board of Public Utilities

Office of the Attorney General  
Division of Law  
25 Market Street, P.O. Box 112  
Trenton, NJ 08625

By: Paul Youchak  
Deputy Attorney General  
(609) 815-2278  
Attorney ID# 311832019

SUPERIOR COURT OF NEW  
JERSEY APPELLATE DIVISION  
DOCKET NO. A-000789-22

IN THE MATTER OF THE  
PETITION OF OCEAN WIND LLC  
PURSUANT TO N.J.S.A. 48:3-87.1(f)  
FOR A DETERMINATION THAT  
EASEMENTS ACROSS GREEN  
ACRES-RESTRICTED PROPERTIES  
AND CONSENTS NEEDED FOR  
CERTAIN ENVIRONMENTAL  
PERMITS IN, AND WITH RESPECT  
TO, THE CITY OF OCEAN CITY  
ARE REASONABLY NECESSARY  
FOR THE CONSTRUCTION OR  
OPERATION OF THE OCEAN WIND  
1 QUALIFIED OFFSHORE WIND  
PROJECT

On Appeal from the New Jersey Board  
of Public Utilities

Docket No. QO22020041

**STATEMENT OF ITEMS  
COMPRISING THE RECORD ON  
APPEAL**

TO: ALL COUNSEL OF RECORD

PLEASE TAKE NOTICE that Respondent, New Jersey Board of Public Utilities (“Board” or “BPU”), hereby certifies and files pursuant to R. 2:5-4(b) the Statement of Items Comprising the Record on Appeal in the above matter. The items comprising the record are as follows:

1. February 2, 2022	Ocean Wind, LLC’s Verified Petition
2. February 2, 2022	Direct Testimony of Jason Kalwa (Exhibit OW-1) on behalf of Ocean Wind, LLC
Attachments	<ul style="list-style-type: none"> <li>- Appendix A: Jason Kalwa’s Selected Experience</li> <li>- Appendix B: Onshore Transmission Single Circuit Duct Bank Section</li> <li>- Appendix C: Survey Maps</li> </ul>
3. February 2, 2022	Direct Testimony of Pilar Patterson (Exhibit OW-2) on behalf of Ocean Wind, LLC
Attachments	<ul style="list-style-type: none"> <li>- Appendix A: Pilar Patterson’s Selected Experience</li> <li>- Appendix B: Survey Map, B&amp;L England Substation and Onshore Routing</li> <li>- Appendix C: B&amp;L England Landfall and Onshore Export Cable Route Alternatives Considered</li> <li>- Appendix D: Metes and Bounds Description Proposed Diversion Area, Description and Maps</li> </ul>
4. February 2, 2022	Direct Testimony of Madeline Urbish (Exhibit OW-3) on behalf of Ocean Wind, LLC
Attachments	<ul style="list-style-type: none"> <li>- Appendix A: Madeline Urbish’s Selected Experience</li> <li>- Appendix B: Ocean Wind, LLC’s Proposed Notice of Filing and Public Hearing</li> <li>- Appendix C: Mayor Jay A. Gillian’s Message to the Public, MediaWize (February 7, 2020)</li> <li>- Appendix D: Draft Ordinance Granting Consent and Permission to Ocean Wind,</li> </ul>

	LLC To Install Electrical Cable Systems and Conduit in the City of Ocean City
	- Appendix E: Ocean Wind I Project Overview, Presentation, dated December 3, 2020
	- Appendix F: Letter from A. Bullwinkel, Senior Legal Counsel, Ocean Wind, LLC to J. Gillian, Mayor, City of Ocean City, dated May 13, 2021
	- Appendix G: Letter from M. Reimer, Project Development Director, Ocean Wind, LLC to J. Gillian, Mayor, City of Ocean City, dated August 11, 2021
	- Appendix H: Letter from M. Reimer, Project Development Director, Ocean Wind, LLC to D. McCrosson, City Solicitor, dated November 1, 2021
	- Appendix I: Letter from M. Reimer, Project Development Director, Ocean Wind, LLC to D. McCrosson, City Solicitor, dated December 15, 2021
	- Appendix J: Letter from D. McCrosson, City of Ocean City, to C. Roy, on behalf of Ocean Wind, LLC, dated December 23, 2021
	- Appendix K: Letter from C. Roy, on behalf of Ocean Wind, LLC, to D. McCrosson, City of Ocean City, dated December 22, 2021
	- Appendix K: Letter and Appraisal Report, as Transmitted to the City of Ocean City, dated December 22, 2021
5. February 23, 2022	Board Order Designating Commissioner Joseph L. Fiordaliso as Presiding Officer, BPU Docket No. QO22020041, Agenda Item 8B
6. March 1, 2022	President's Order Setting the Procedural Schedule and Request for Supplemental Information, BPU Docket No. QO22020041
Attachments	- Exhibit A: Procedural Schedule
	- Exhibit B: Supplemental Questions

7. March 14, 2022	Ocean Wind, LLC's Transmittal Letter and Enclosed Responses to the Supplemental Questions set forth in Exhibit B to the March 1, 2022 Order
8. March 18, 2022	Division of Rate Counsel's Informal Discovery Requests to Ocean Wind, LLC
9. March 22, 2022	President's Order Modifying the Procedural Schedule and Naming the City of Ocean City as a Party of Record, BPU Docket No. QO22020041
Attachments	- Exhibit A: Procedural Schedule
	- Exhibit B: February 23, 2022 and March 1, 2022 Orders, BPU Docket No. QO22020041
10. April 4, 2022	Ocean Wind, LLC's Transmittal Letter and Response to the Division of Rate Counsel's Informal Discovery Requests
11. April 27, 2022	City of Ocean City's Response to Ocean Wind's March 14, 2022 Response to the Board's Supplemental Questions
12. April 27, 2022	Direct Testimony of Maximilian Chang on behalf of the New Jersey Division of Rate Counsel
Attachment	- Maximilian Chang's Selected Experience
13. April 29, 2022	Ocean Wind, LLC's Letter Regarding the Revised Easement Acreage
14. April 29, 2022	Ocean Wind, LLC's Amended Verified Petition
15. April 29, 2022	Amended Direct Testimony of Pilar Patterson (Exhibit OW-2) on behalf of Ocean Wind, LLC
Attachment	- Appendix D (Revised)
16. April 29, 2022	Ocean Wind, LLC's Copy of the Public Hearing Notices
17. May 11, 2022	Rebuttal Testimony of Jason Kalwa (Exhibit OW-1-Rebuttal) on behalf of Ocean Wind, LLC
18. May 11, 2022	Rebuttal Testimony of Pilar Patterson (Exhibit OW-2-Rebuttal) on behalf of Ocean Wind, LLC
19. May 11, 2022	Rebuttal Testimony of Matthew Kaplan (Exhibit OW-4-Rebuttal) on behalf Ocean Wind, LLC
Attachment	- Appendix A: Matthew Kaplan's Selected Experience
20. May 17, 2022	Ocean Wind, LLC's Transmittal Letter and Enclosed Certification of Service and an Affidavit of Publication in Regard to the Public Hearing

21. May 19, 2022	Transcript of Public Hearing, AM Session
22. May 19, 2022	Transcript of Public Hearing, PM Session
23. May 19, 2022	Written Public Comment - E-mail from R. Schafer to the Board of Public Utilities
24. May 19, 2022	Written Public Comment – Email from M. & L. Plousis to the Board of Public Utilities
25. May 19, 2022	Written Public Comment - E-mail from L. Hammond to the Board of Public Utilities
Attachment	- March 8, 2022 e-mail from L. Hammond to Ocean Wind regarding written comments
26. May 21, 2022	Written Public Comment – Comment Submitted on the Board’s Public Document Search Tool by S. Cox
27. May 31, 2022	Written Public Comment – Comment Submitted on the Board’s Public Document Search Tool by C. Harry
28. June 2, 2022	Written Public Comment – Comment Submitted on the Board’s Public Document Search Tool by R. Lawton
29. June 2, 2022	Written Public Comment – New Jersey Division of Rate Counsel
30. June 16, 2022	Ocean Wind, LLC’s Response to Public Comments
31. June 20, 2022	Oral Argument Public Notice
32. June 20, 2022	Proof of Publication and Certificate of Service Regarding Oral Argument
33. June 24, 2022	Transcript of the Oral Argument
34. September 28, 2022	Board Order Granting Ocean Wind, LLC’s Petition, BPU Docket No. QO22020041, Agenda Item 8C
35. October 14, 2022	Ocean Wind, LLC’s Proposed Order Captioned “Order Granting the Taking of Easements”
36. November 2, 2022	Board Order on the Taking of Easements, BPU Docket No. QO22020041
Attachments	- Exhibit A: September 28, 2022 Board Order Granting Ocean Wind, LLC’s Petition, BPU Docket No. QO22020041, Agenda Item 8C
	- Exhibit B: Survey Report, Green Acres Diversion Description Part of Block 611.11, Lots 137 and 145, Part of Block 3500 Lot 1, dated March 23, 2022

	- Exhibit C: Survey Report, Green Acres Diversion Description Part of Block 3350.01, Lot 17, dated March 23, 2022
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RESPECTFULLY SUBMITTED,

MATTHEW J. PLATKIN  
ATTORNEY GENERAL OF NEW JERSEY

By: /s/ Paul Youchak  
Paul Youchak  
Deputy Attorney General  
Paul.Youchak@law.njoag.gov

Date: January 11, 2023

## **EXHIBIT B**

**IN THE MATTER OF THE PETITION OF OCEAN WIND, LLC PURSUANT TO  
N.J.S.A. 48:3-87.1(f) FOR A DETERMINATION THAT EASEMENTS ACROSS GREEN  
ACRES-RESTRICTED PROPERTIES AND CONSENTS NEEDED FOR CERTAIN  
ENVIRONMENTAL PERMITS IN, AND WITH RESPECT TO, THE CITY OF OCEAN  
CITY ARE REASONABLY NECESSARY FOR THE CONSTRUCTION OR  
OPERATION OF THE OCEAN WIND 1 QUALIFIED OFFSHORE WIND PROJECT**

**BPU DOCKET NO. QO22020041**

**OCEAN WIND, LLC'S RESPONSES TO THE DIVISION OF RATE COUNSEL'S  
INFORMAL DISCOVERY REQUESTS**

**Introductory Statement Applicable to All Responses Below:**

Because the procedural schedule in this matter does not provide for written discovery, Ocean Wind is providing these responses in the spirit of cooperation. Ocean Wind notes that many of Rate Counsel's requests seek information that is not relevant to this matter. More specifically, many of Rate Counsel's requests seek information relating to the cost of alternatives considered by Ocean Wind. Given the structure of the Board of Public Utilities' OREC Order and award, the financial risk and costs association with alternative routes falls largely on Ocean Wind. With the exception of the transmission system upgrade cost sharing mechanism, it is Ocean Wind, and not New Jersey electric utility ratepayers, that bears the risk of the project costs. Accordingly, Ocean Wind does not concede that any of the information provided in these responses is relevant or material to any issue which may arise during the course of this proceeding. Moreover, Ocean Wind reserves the right to object to the admission of any material contained in the enclosed responses into the record in this proceeding.

RCR-INF-1. Please refer to the direct testimony of Pilar Patterson on page 9, lines 1 to 7. Indicate if Ocean Wind, LLC (Company) prepared a cost comparison made between the three different routes from the Offshore Wind I to the PJM interconnection point. Please provide all source documents supporting the Company's decision for the Preferred Route in electronic format, with all formulae intact, source data used, and explain all assumptions and calculations used. Please note any differences in Green Acres diversions needed.

Ocean Wind does not have cost estimates for the two alternative routes discussed on page 9, lines 1 to 7 of Ms. Patterson's testimony. As discussed in Ms. Patterson's testimony, the alternatives analysis focused primarily on other issues. As also discussed in Ms. Patterson's testimony, each of these alternatives crossed Green Acres encumbered parcels. Each of these alternatives was also longer than the Preferred Route. Typically, shorter routes will have a lower impact and a lower cost than longer routes.

RCR-INF-2. Please refer to the direct testimony of Pilar Patterson on page 16, lines 15 to 21, wherein it indicates that, Ocean Wind has been advised by NJDEP that the Project must receive all relevant New Jersey Department of Environmental Protection (NJDEP) permits and approvals, including approvals for the Green Acres diversion of the Properties, by October 28, 2022. Please explain the current state of the overall timeline and the time for approvals, as well as any delays related to the NJDEP approval process.

Ocean Wind 1 anticipates submitting its environmental permit applications to the NJDEP in the second quarter of 2022 and continues to anticipate the need to receive approvals by October 28, 2022. Ocean Wind is proceeding through the Green Acres diversion process and is requesting approval of the diversion from the NJDEP and the State House Commission by the end of the third quarter/early fourth quarter, 2022.

RCR-INF-3. Please refer to the direct testimony of Pilar Patterson on page 14, lines 13 to 23. Provide all workpapers and source documents complying with the Company's requirements under N.J.S.A. 48:2-87.1(f)(2) for the Preferred Route in electronic form, with all spreadsheet links and formulas intact, source data used, and explain all assumptions and calculations used.

Pursuant to N.J.S.A. 48:3-87.1(f)(2), Ocean Wind 1 must compensate Ocean City for the fair market value of the easements. Ocean Wind 1 retained a Green Acres approved appraiser, Lee Ann Kampf, MAI, ASA, IFAS, CTA, to determine the fair market value of the permanent easements required to construct the Project across Ocean City's Properties. Prior to establishing a value for the easements, Ms. Kampf completed and submitted pre-appraisal fact sheets, together with proposed drawings, to NJDEP, Green Acres Program, on August 6, 2021. After reviewing and approving the pre-appraisal fact sheets, Green Acres issued written appraisal instructions on October 19, 2021. Ms. Kampf prepared two appraisals, one for Block 3350.01, Lot 17 (Bay Lot) and one for Block 611.11, Lots 137 and 145, Block 3500, Lot 1 (including riparian grant) (Beach Lots) in accordance with the instructions received from Green Acres. The instructions required the easements to be valued "as is," with no contingencies or approvals based on their economic highest and best use, and subject to the extraordinary assumption that the properties are clean and free from environmental contamination and debris, and if this is not true, the assignment results may be affected. Ms. Kampf appraised the easement across the Bay Lot as \$0, and originally assigned a nominal value of \$200. After the review of the appraisal by a NJDEP Green Acres review appraiser, Ms. Kampf increased the nominal value to \$500. Ms. Kampf valued the easement across the beach lots as \$20,000, and her appraisal was reviewed by a Green Acres review appraiser without any further changes as to the appraised amount. Ms. Kampf's appraisals (both dated January 28, 2022) were approved by Green Acres. The data, calculations, and assumptions are set forth in the appraisal.

In addition, also pursuant to N.J.S.A. 48:3-87.1(f)(2), Ocean Wind 1 is required to provide funds for the acquisition of three times the area proposed for diversion for additional land for recreation and conservation purposes within Cape May County. These funds may be provided to the NJDEP, Green Acres Program; a local government unit; or a qualifying tax-exempt nonprofit organization. Since the total area of the diversion is 0.658 acres, Ocean Wind 1 must provide funds for the acquisition of at least 1.974 acres of property within Cape May County.

Ocean Wind 1 calculated the minimum compensation that would be required by the Green Acres Regulations, which is determined by applying various ratios to either the acreage or market value of diverted lands. Because the sponsor (Ocean Wind 1) is a private entity and monetary compensation is proposed, the regulations require that the permanent right of way be compensated for by at least a ten-to-one ratio. See N.J.A.C. 7:36-26.10(g). The total appraised value of the permanent easements to be acquired by Ocean Wind 1 is \$20,500. Accordingly, \$205,000 is the minimum monetary compensation required under the Green Acres Regulations. Thus, Ocean Wind 1 proposes to pay \$205,000.00 for the diversion of Green Acres encumbered lands, (subject to confirmation that it is sufficient to acquire the requisite acreage), which is consistent with the Green Acres Regulations.

Ocean Wind 1 will discuss with the NJDEP, Green Acres Program the appropriate entity to receive these funds. The compensation for the diversion must be used for land acquisition within three years from the date of the issuance of an order by the BPU granting Ocean Wind 1 the permanent easements.

RCR-INF-4. Please refer to the direct testimony of Pilar Patterson on page 14, lines 20 through 23. Indicate if the Company has identified a parcel(s) that would qualify under N.J.S.A. 48:2-87.1(f).

The Company has not identified a parcel that would qualify, nor is it required to identify a parcel under N.J.S.A 48:2-87.1(f). Instead, the Company is required to will provide funds for the acquisition of land that would meet the requirements as described on page 14, lines 20 through 23. As fully explained in the response to RCR-INF. 3 above, Ocean Wind 1 proposes to pay \$205,000.00 for the acquisition of replacement land totaling 1.974 acres. For more detailed information, see the response to RCR-INF-3.

RCR-INF-5. Please refer to the direct testimony of Pilar Patterson at Appendix C. Indicate if the Company has cost estimates for each of the alternatives shown in the figure. If so, please provide a copy of the cost estimate with identified risk and contingency. If not, please explain.

Ocean Wind does not have cost estimates for each of the alternatives. As discussed in Ms. Patterson's testimony, the alternatives analysis focused primarily on other issues. In addition, many of potential alternative routes were eliminated from consideration at an early stage of the analysis, at which time a cost estimate would not have been possible.

- RCR-INF-6. Please refer to Supplemental Question One, attached as Exhibit B to the Order dated March 1, 2022 in this docket. Indicate if the cable routes were quantitatively ranked based on the criteria listed in Table 1-1 during the Phase 1 screening. If so, please provide a copy of the rankings for the alternatives. If not, please explain.

Project components, including cable routes, were not quantitatively ranked during the Phase 1, 2 or 3 screenings. However, an extensive qualitative comparison using the criteria outlined in Table 1-1 was made to evaluate the cable routes during Phases 1 through 3. Please refer to Exhibit OW-2 (Direct Testimony of Pilar Patterson), at pp. 3-11 and Ocean Wind's response to BPU's Supplemental Question 1 in this matter.

- RCR-INF-7. Please refer to Supplemental Question Number One on Exhibit B. Indicate if the cable routes were quantitatively ranked based on the criteria listed in Table 1-1 during the Phase 2 screening. If so, please provide a copy of the rankings for the alternatives. If not, please explain.

Please see the response to RCR-INF-6.

- RCR-INF-8. Please refer to Supplemental Question Number One on Exhibit B. Indicate if the cable routes were quantitatively ranked during the Phase 3 screening. If so, please provide a copy of the rankings for the alternatives. If not, please explain.

Please see the response to RCR-INF-6.

- RCR-INF-9. Please refer to Supplemental Question Four on Exhibit B. Indicate if the \$350 million upgrade cost estimate for the Higbee substation includes network upgrades across New Jersey and Pennsylvania. If not, please indicate if the Company has an estimate for the network upgrade costs.

Yes, the upgrade cost estimates include all anticipated network upgrades.

RCR-INF-10. Please refer to Supplemental Question Four on Exhibit B. Indicate if the \$350 million upgrade cost estimate for the Ontario substation includes network upgrades across New Jersey and Pennsylvania. If not, please indicate if the Company has an estimate for the network upgrade costs.

The Project did not provide a cost estimate for interconnection at the Ontario substation. However, as both Ontario and Higbee substations are adjacent to each other in Atlantic City and served at 69KV, it would be a reasonable assumption to assume that injecting into either substation would create similar network upgrade costs.

RCR-INF-11. Please refer to Supplemental Question Four on Exhibit B. Indicate if New Jersey ratepayers would be responsible for network upgrade costs associated with a point of interconnection at either the Higbee or Ontario substation under the State Agreement Approach between New Jersey and Federal Energy Regulatory Commission. Please explain why or why not.

The Project is not participating in the State Agreement Approach. The State Agreement Approach was not an option at time of project award and routing selection, nor does it align with the Project's Board-mandated Commercial Operations Dates (CODs). As such, the Project has not evaluated the potential ratepayer impact under the State Agreement Approach.

RCR-INF-12. Please refer to Supplemental Question 10 on Exhibit B. Indicate if the Company's preferred route requires United States Army Corp of Engineer (USACE) approval or mitigations. If so, please explain.

Yes, the preferred route will require permits from the USACE under Section 10 and 408 of the Rivers and Harbors Act, and under Section 404 of the Clean Water Act.

RCR-INF-13. Please refer to Supplemental Question 11 on Exhibit B. Identify which routes would impact USACE, United States Fish and Wildlife Service (USFWS), NJDEP and/or historical properties.

Ocean Wind must obtain a number of authorizations as outlined in Volume 1, Table 2.2-1 of its Construction and Operations Plan which can be found online at <https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/OCW01-COP-Volume-I.pdf>. These authorizations would not be expected to substantially differ for any of the alternative routes considered as identified in Exhibit OW-2 (Direct Testimony of Pilar Patterson). However, additional authorizations may be required pending further investigations and discussions with the relevant authorizing agencies.

RCR-INF-14. Please refer to Supplemental Question 13 on Exhibit B. Indicate if the Company considered burying cables along the entire railroad right of way versus overhead cables. If so, please provide the cost difference between the two options. If not, please explain.

During the preliminary analysis, Ocean Wind considered both underground and overhead cables for the abandoned railroad right-of-way alternative. An overhead route was not pursued due to visual impacts. Because the abandoned railroad right-of-way was not considered a viable alternative, Ocean Wind did not perform a cost difference analysis as between overhead and underground construction.

RCR-INF-15. Please refer to Supplemental Question Four on Exhibit B. Indicate if the Company considered future injection increases beyond the capacity required by Ocean Wind I at the B.L. England Point of Interconnection (BLE POI). If so, please identify what steps, if any, the Company has considered taking at the BLE POI to preserve the possibility of additional future offshore wind injections at the same POI whilst minimizing upgrade costs. If not, please explain.

No, for the B.L. England Point of Interconnection, Ocean Wind LLC has only retained a single queue position to account for the project's awarded capacity.

RCR-INF-16. For each of the alternative routes, please identify and describe any portion of the route that is above ground. For each above ground segment, please indicate if any above ground segment is subject to the Green Acres requirement. If not, please explain.

The alternative routes not carried forward were not matured to the extent where Ocean Wind evaluated the full extent of overhead line requirements and subsequent impacts on Green Acres requirements.

RCR-INF-17. For the Preferred Route, please identify and describe any portion of the route that is above ground. For each above ground segment, please indicate if it is necessary to construct that segment above ground. If not, please explain why not.

A small portion of the grid connection line between Ocean Wind LLC's onshore substation and Atlantic City Electric's onshore substation is above ground. An above ground line was requested by Atlantic City Electric. This portion of the route is not the subject of this filing.

# **EXHIBIT C**

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**Docket # :** QO22020041-      **Open Date :** 02/03/2022      **Divisions :** CLEAN ENERGY DIVISION / PRIMARY  
**Case Status :** UNDER REVIEW      **Last Update :** 9/20/2022 9:09:37 AM  
**Case Caption :** IN THE MATTER OF THE PETITION OF OCEAN WIND LLC PURSUANT TO N.J.S.A. 48:3-87.1(f) FOR A DETERMINATION THAT EASEMENTS ACROSS GREEN ACRES-RESTRICTED PROPERTIES AND CONSENTS NEEDED FOR CERTAIN ENVIRONMENTAL PERMITS IN, AND WITH RESPECT TO, THE CITY OF OCEAN CITY ARE REASONABLY NECESSARY FOR THE CONSTRUCTION OR OPERATION OF THE OCEAN WIND 1 QUALIFIED OFFSHORE WIND PROJECT

  

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<input type="checkbox"/> QO22020041-	2-23-22-8B (DocumentHandler.ashx?document_id=1256616)	ORDERS	BPU Staff	2-23-22-8B	02/24/2022
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<input type="checkbox"/> QO22020041-	DKT NO QO22020041 OCEAN WIND NOTICE OF PUBLIC HEARING TRANSMITTAL (DocumentHandler.ashx?document_id=1264340)	CORRESPONDENCE	BPU Staff	DKT NO QO22020041 OCEAN WIND NOTICE OF PUBLIC HEARING TRANSMITTAL	04/29/2022
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<input type="checkbox"/>	QO22020041- QO22020041 NOTICE PUBLIC MEETING OW1 ORAL ARGUMENT 6-20-22 (DocumentHandler.ashx?document_id=1271010)	NOTICES	BPU Staff	QO22020041 NOTICE PUBLIC MEETING OW1 ORAL ARGUMENT 6-20-22	08/01/2022
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In the Matter of the Petition of Ocean Wind, LLC Pursuant to N.J.S.A. 48:3-87.1(f) for a Determination that Easements Across Green Acres-Restricted Properties and Consents Needed for Certain Environmental Permits in, and with Respect to, the City of Ocean City are Reasonably Necessary for the Construction or Operation of the Ocean Wind 1 Qualified Offshore Wind Project  
BPU Dkt. No. QO22020041

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