



STATE OF NEW JERSEY
Board of Public Utilities
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www.nj.gov/bpu/

CLEAN ENERGY

IN THE MATTER OF THE PETITION OF OCEAN WIND)	ORDER ON MOTION TO
LLC PURSUANT TO N.J.S.A. 48:3-87.1(F) FOR A)	DISMISS AND MOTION TO
DETERMINATION THAT CERTAIN EASEMENTS AND)	RECUSE
CONSENTS NEEDED FOR CERTAIN)	
ENVIRONMENTAL PERMITS IN, AND WITH RESPECT)	DOCKET NO. QO22050347
TO, THE COUNTY OF CAPE MAY ARE REASONABLY)	
NECESSARY FOR THE CONSTRUCTION OR)	
OPERATION OF THE OCEAN WIND 1 QUALIFIED)	
OFFSHORE WIND PROJECT)	

Parties of Record:

Brian O. Lipman, Esq., Director, Division of the Rate Counsel
Gregory Eisenstark, Esq., Cozen O'Connor, P.S., on behalf of Ocean Wind LLC
Michael J. Donohue, Esq., Blaney Donohue & Weinberg, P.C., on behalf of Cape May County
Gerald M. Thornton, Commissioner Director, Board of Commissioners, Cape May County
Kevin Lare, Administrator, Board of County Commissioners, Cape May County
Rita M. Rothberg, County Clerk, Cape May County
Jeffrey R. Lindsay, Esq., County Counsel, Cape May County
Dorothy F. McCrosson, Esq., Solicitor for the City of Ocean City, McCrosson & Stanton, P.C.
M. James Maley, Jr., Esq., Maley Givens, P.C. for Upper Township

BY PRESIDENT FIORDALISO:

By this Order, I deny Cape May County’s Motion to Decline Jurisdiction and Dismiss the Petition Without Prejudice as Unripe for Disposition and Nonjusticiable Under N.J.S.A. 48:3-87.1(f) and N.J.S.A. 20:3-1 et seq., and I deny Cape May County’s Motion for the Recusal of the Board and Transmittal of the Matter to the Office of Administrative Law.

I. BACKGROUND AND PROCEDURAL HISTORY

On May 20, 2022, Ocean Wind LLC (“Ocean Wind” or “Petitioner”) filed a petition (“Petition”) with the New Jersey Board of Public Utilities (“Board” or “BPU”), pursuant to N.J.S.A. 48:3-87.1(f), the Offshore Wind Economic Development Act (“OWEDA” or “2021 Amendment”), seeking the Board’s determination that certain easements across properties owned by the County of Cape May, New Jersey (“County”) and certain consents needed from the County for certain environmental permits in and with respect to the County are reasonably necessary for the construction or operation of

Petitioner's qualified offshore wind project ("QOWP"), Ocean Wind I ("Project" or "OW1"). The Petition specifically details Petitioner's preferred route for its onshore cable, from the point at which the undersea cable running from the Project itself will make landfall at the shore and then run onshore, underground, to an end point at a proposed substation property location ("Preferred Route"). The Petition also explains that horizontal directional drilling ("HDD")¹ will be used to effectuate certain portions of the Preferred Route. Additionally, the Petition describes a temporary easement that Ocean Wind seeks ("Temporary Easement") that runs across and under the same, single lot as the permanent easement Ocean Wind also seeks ("Permanent Easement"), specifically, the lot located at Block 3350.01, Lot 17.01 of the Official Tax Map of the City of Ocean City ("Lot").²

On June 8, 2022, the County filed a motion with the Board requesting that the Board decline jurisdiction over the Petition and to dismiss the Petition without prejudice as unripe for disposition and as nonjusticiable under N.J.S.A. 48:3-87.1(f) and N.J.S.A. 20:3-1 et seq. ("Motion to Dismiss"). On June 20, 2022, Ocean Wind filed a reply brief in opposition to the June 8, 2022 Motion ("Dismiss Reply"), and on June 27, 2022 the County filed a reply to Ocean Wind's June 20, 2022 Dismiss Reply ("County's Dismiss Rebuttal").

On June 29, 2022, the Board retained the Petition for hearing and, pursuant to N.J.S.A. 48:2-32, designated me as the Presiding Officer authorized to rule on all motions that arise during the pendency of these proceedings to secure a just and expeditious determination of the issues ("June 29, 2022 Order"). Further, the June 29, 2022 Order directed the County to be included as a necessary party.

On July 5, 2022, I issued an Order setting the procedural schedule in this matter, including a July 15, 2022 deadline to file motions ("July 5, 2022 Order"). Multiple government entities requested that the deadline to file motions to intervene be extended from July 15, 2022 to July 31, 2022.³ These government entities generally noted that the added time would help them confer with the appropriate decision makers and provide them with sufficient time to prepare any filings. In response, on July 14, 2022, I issued an Order modifying the procedural schedule to accommodate the requests for an extension of the deadline for filing motions, with the new deadline of July 29, 2022 ("July 14, 2022 Order"). These motions and additional modifications to the procedural schedule are addressed in a separate Order Ruling on Motions and Modifying the Procedural Schedule that I issued on August 15, 2022 ("August 15, 2022 Order").

On August 22, 2022, the County filed a motion seeking the Board's recusal from this matter, transmission of the matter to the Office of Administrative Law ("OAL") for the assignment of this matter to an Administrative Law Judge ("ALJ"), and a suspension of the procedural schedule ("Recusal Motion"). Ocean Wind replied ("Recusal Reply") on September 1, 2022. The County filed

¹ HDD is a drilling technology wherein a hole is drilled vertically under a waterbody or land, then turns at an angle so that it runs under and parallel horizontally to certain areas along the surface. Given the depth at which HDD generally occurs, adverse surface impacts are generally limited, if such impacts occur at all. See e.g., Faruque Hossain, Sustainable Design and Build, at 3.1.3.4 ("Horizontal Drilling") (2019), <https://www.sciencedirect.com/topics/engineering/horizontal-drilling>; Sohrab Zendehboudi, et al., Shale Oil and Gas Handbook, at 4.1 ("Horizontal Drilling") (2017), <https://www.sciencedirect.com/topics/engineering/horizontal-drilling>.

² Petition at 11-12.

³ Requests to extend the deadline to file motions were received from the following government entities: Borough of Avalon; Township of Dennis; Township of Lower; Township of Middle; City of North Wildwood, City of Ocean City; City of Sea Isle City; Borough of Stone Harbor; County of Cape May; and the New Jersey League of Municipalities. In addition, the New Jersey Association of Counties also submitted a request to extend this deadline.

a rebuttal to Ocean Wind's Recusal Reply ("County's Recusal Rebuttal") on September 9, 2022.

II. THE MOTIONS

A. The Motion to Dismiss

1. The County's Motion to Dismiss

The County's Motion to Dismiss moves for the Board to decline jurisdiction of the Petition and dismiss it without prejudice. The Motion to Dismiss argues that the Petition is untimely, unripe for disposition, and nonjusticiable. Motion to Dismiss at 1. The County alleges that the Petition fails to comply with requirements under the 2021 Amendment, N.J.S.A. 48:3-87.1(f), and the Eminent Domain Act ("EDA"), N.J.S.A. 20:3-1 et seq.

As its first argument, and as the implicit foundation for its two substantive arguments, the County focuses on the first sentence of a certain paragraph of the New Jersey Constitution, Art. IV, Sec. VII, para. 11 ("Constitutional Provision"), which states the following:

The provisions of this Constitution and of any law concerning municipal corporations formed for local government, or concerning counties, shall be liberally construed in their favor. The powers of counties and such municipal corporations shall include not only those granted in express terms but also those of necessary or fair implication, or incident to the powers expressly conferred, or essential thereto, and not inconsistent with or prohibited by this Constitution or by law.

[Id.]

The County advocates that, with respect to the 2021 Amendment, the Constitutional Provision "compel[s]" the Board to "liberally construe [OWEDA] in favor of the County." Motion to Dismiss at 2. The County contends that the Board should interpret the 2021 Amendment so that any disputed issues regarding N.J.S.A. 48:3-87.1(f) are resolved in the County's favor. Id.

The County next advances two substantive arguments. *First*, the Motion to Dismiss contends that the Petition is an "action" under the EDA because it is a "prelude to a taking of real property by a government agency, in this case, the BPU on behalf of Ocean Wind 1." Motion to Dismiss at 8. The County then argues that the Petition fails to satisfy the "*bona fide* negotiations" requirement – a pre-action requirement – under the EDA at N.J.S.A. 20:3-6.

The County then references a letter dated April 12, 2022 from Ocean Wind to the County (the "April 12, 2022 Letter"), noting that this letter was Ocean Wind's "attempt" to comply with the *bona fide* negotiation requirement. Motion to Dismiss at 8. The County clarified that the letter is unsuccessful in its attempt at such compliance insofar as it is not specific enough and fails to present an appropriate appraisal to comply with the EDA's "*bona fide* negotiations" requirement.

Second, the County contends that the 2021 Amendment imposes a notice requirement, one that requires a petitioner to submit a written request to the property owner identifying the property interests that are reasonably necessary, 90 days before a petition can be filed with the Board pursuant to N.J.S.A. 48:3-87.1(f). Motion to Dismiss at 2. The County states that the Petition identifies a letter dated September 28, 2021 from Ocean Wind to the County ("September 28, 2021 Letter"), which the County contends contains "certain vague, ambiguous and conditional" language that cannot satisfy the request requirement. Id. at 2-5. According to the County, the vague language of the September

28, 2021 Letter made it “impossible to conclude what specifically OW1 [sought].” Id. at 3. The County contends that the request requirement is a standard that demands specific – not vague – language, otherwise a petitioner would be allowed “to shift the burden of determining what is actually required” for a QOWP to “a County governing body.” Id. at 4.

Along these same lines, the County also contends that Petitioner asked the County to sign a “Property Owner Certification Form” without providing the proper background information and context. Motion to Dismiss at 5-6. The County asserts that this form would require it to certify through the County’s Administrator or the County’s Director of the Board of Commissioners that the County examined information and documents submitted as part of this form, and believes such information and documents to be true. Id. at 5. The County contends that it never received any documents or information from Petitioner and therefore could not reasonably be expected to sign the certification.

The County’s Motion to Dismiss does not contest the Preferred Route articulated in Ocean Wind’s Petition.

2. Ocean Wind’s Reply

From a procedural perspective, Ocean Wind first contends that the Petition facially meets the requirements for the Board to assert jurisdiction under N.J.A.C. 14:1-5.4. Dismiss Reply at 1-2. This regulation states that the Board can assert jurisdiction if the “petition . . . appears on its face to state a matter within the Board’s jurisdiction.” Ocean Wind explains that the Petition was filed pursuant to the 2021 Amendment, and its September 28, 2021 Letter was issued more than 90 days prior to filing its Petition. Id. at 2. Ocean Wind contends that the Petition, therefore, facially comes under the Board’s jurisdiction.

Further, Ocean Wind states that the County’s Motion can be analogized to a motion to dismiss for lack of jurisdiction under New Jersey Court Rule 4:6-2(a). Dismiss Reply at 2. That standard requires a court to “treat[] all the allegations of a pleading as true, and consider[] only whether those allegations are legally sufficient to establish the necessary elements of the claimed cause of action.” Id. at 4 (quoting Maxim Sewerage v. Monmouth Ridings, 273 N.J. Super. 84, 90 (Law Div. 1993)). Ocean Wind thus contends that under a motion to dismiss, the question is not whether the 90-day request was sufficient, but whether the 90-day request was facially made. For this reason, Ocean Wind asserts that the request was facially made, and, consequently, the County’s Motion should be denied.

Turning to the substance, Ocean Wind contends that the Constitutional Provision does not require the Board to liberally construe the 2021 Amendment in favor of the County. Dismiss Reply at 6-9. Ocean Wind also argues that the September 28, 2021 Letter satisfies the 90-day request standard under N.J.S.A. 48:3-87.1(f)(2) and specifically identifies the needed permits for the Project. Id. at 11. Ocean Wind further contends that the written request requirement only applies to real property interests under N.J.S.A. 48:3-87.1(f)(2), while the request for consents comes under a consultation requirement under N.J.S.A. 48:3-87.1(f)(3). Ocean Wind explains that, “if anything, Ocean Wind’s 90-day notice was over-inclusive, not under-inclusive.” Dismiss Reply at 13.

Ocean Wind explains that it made a request for an easement across the Lot in the September 28, 2021 Letter. Dismiss Reply at 17-18. Ocean Wind states that in this letter, it identified the Lot as Green Acres encumbered because, at that time, it could not determine whether or not the property was Green Acres encumbered or a public right of way. Id. at 18. To ensure that it was addressing either of these outcomes, Ocean Wind explains that by describing the Lot as Green Acres-

encumbered, the September 28, 2021 Letter put the County on notice in case an easement indeed was necessary. In the Petition, Ocean Wind asserts that it confirmed with the New Jersey Department of Environmental Protection (“NJDEP”) that no portion of the Lot is Green Acres encumbered. Petition at 12; September 28, 2021 Letter at 2. Ocean Wind further explains that based on information it received through the due diligence it conducted, including information obtained through several requests made under the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 *et seq.*, commonly known as “OPRA,” it now believes that the Lot, in fact, is located in a public right of way. Dismiss Reply at 19. The analysis and explanation for this is set forth in the April 12, 2022 Letter.⁴ Urbish Testimony, at Appendix J; April 12, 2022 Letter at 1. Ocean Wind explains that if a definitive determination is made that the Lot indeed is on a public right of way, then “Ocean Wind will withdraw its relevant requests from the instant proceeding.” Dismiss Reply at 19.

Also, with respect to the Property Owner Certification Form, Ocean Wind explains that the document is not a separate permit, as the County suggests, but rather a standard form used for purpose of evidencing a landowner’s consent to proceed with environmental permitting review. Dismiss Reply at 11. Ocean Wind contends that it explained this form’s purpose to the County through an email and telephone calls that followed thereafter. *Id.* at 13. For purposes of clarifying the exact contents of the Property Owner Certification Form, Ocean Wind provides as an appendix to its Reply a copy of its completed version of this two-page form, as well as the cover letter from Ocean Wind to the County that accompanied such completed form. In addition, Ocean Wind’s September 28, 2021 Letter, which identifies the Lot as the land parcel at issue as well as the permits, licenses, and approvals that would require the County’s consent for that Lot, provided additional clarification regarding the specific block and lot in question. Dismiss Reply at 17.

Lastly, with respect to the County’s EDA claim, Ocean Wind argues that EDA procedures are not relevant to the Petition, insofar as the 2021 Amendment supersedes the EDA. Dismiss Reply at 16. According to Ocean Wind, the plain language of the 2021 Amendment makes clear that this statute is intended to supersede other state laws, including the EDA. *Id.* at 16-17. Therefore, the EDA’s “*bona fide* negotiations” requirement does not apply.

3. The County’s Rebuttal on the Motion to Dismiss

In the County’s Dismiss Rebuttal, the County reiterates its originally articulated contention in its Motion that the Petition fails to satisfy the 2021 Amendment’s 90-day request pre-filing requirement for providing notice that contains “specific, unequivocal and unconditional demands” with respect to the approvals, consents, and easements it seeks from the County. County’s Dismiss Rebuttal at 6; Motion to Dismiss at 2. The County further argues that the Board is obligated to determine whether the September 28, 2021 Letter’s usage of the terms “(if required)” and “may” is sufficient to satisfy the specificity requirement associated with the 2021 Amendment’s 90-day statutory notice period, lest this 90-day pre-action requirement be turned into a nullity. County’s Dismiss Rebuttal at 4.

With respect to substance, the County reiterates that the September 28, 2021 Letter was too vague to meet the requisite 90-day notice standard. County’s Dismiss Rebuttal at 5-8. The County urges

⁴ The second paragraph of the April 12, 2022 Letter states, in part, the following: “After further research, Ocean Wind now believes that the [Lot] is not Green Acres-restricted. The Property is not listed on the Recreation and Open Space Inventory (ROSI) on file with Green Acres. At the time the County acquired the [Lot] in 1960, there was no Green Acres funding. In addition, based on the express language in the vesting deed, a copy of which is enclosed herewith, there is no evidence that the County ever intended to use the Property for recreational or open space purposes. In fact, given the 1960 vesting deed, it is clear that the [Lot] is purely a public right-of-way.”

that the September 28, 2021 Letter's usage of nebulous terms, such as "if required," made Petitioner's request conditional, something that the County argues should not be allowed. Id. The County further alleges that allowing for the request to be considered conditional would shift the burden under the statute from the developer to the County, thereby requiring the County, rather than Petitioner, to determine Petitioner's "specific and actually required needs." Id. at 4-5. Lastly, the County argues that the 2021 Amendment does not supersede the EDA. Id. at 10-11.

B. The County's Motion for the Recusal of the Board and Transmittal of the Matter to the Office of Administrative Law

1. The County's Motion to Recuse

The County⁵ argues that the Board must recuse itself from this proceeding under common law principles and specific statutes and rules because the Board is "an advocate for the construction of offshore wind generation facilities." Recusal Motion at 1. According to the County, the Board cannot be an impartial and unbiased judge of the issues the Petition presents. Id. at 2. The County clarifies that the Recusal Motion does not allege any corrupt intent or ethical lapse by the Board or its members. Id. Instead, the County contends that the Board has an underlying bias and conflict due to its role as a promoter of clean energy policies.

The County arrives at this argument through two steps. First, the County contends that this proceeding is "quasi-judicial" in nature. Recusal Motion at 3. The County notes that, in this proceeding, the Board is accepting testimony, intervenors and participants have been allowed, and there will be an oral argument. Id. Further, the County argues that the Board's duty here follows a long-standing principle that outlines when an administrative proceeding is quasi-judicial: "Where the administrative tribunal is under a duty to consider evidence and apply the law to the facts found, thereby exercising discretion or judgment judicial in nature on evidentiary facts, the function is ordinarily quasi-judicial and not ministerial." Id. at 4 (quoting Handlon v. Town of Belleville, 4 N.J. 99, 103-106 (1950)).

Additionally, because the Board has chosen to sit as the "judge" under this "contested case," the body of law concerning recusal and disqualification applies to the Board. Id. at 8-9. The County observes that under the Administrative Procedure Act ("APA"), the Board may have assigned an ALJ to consider the Petition. Id. at 9 (citing N.J.S.A. 52:14F-8(b)).

Second, the County explains that quasi-judicial personnel must recuse/disqualify under the same standards that apply to judges.⁶ Id. at 5-8. At its core, the standard asks whether a reasonable and informed citizen would have doubts about the personnel's impartiality. Id. at 6 (citing State v. Dalal,

⁵ Nine Municipalities – Sea Isle City, Dennis Township, Lower Township, Borough of Avalon, Middle Township, Lower Township, Borough of Wildwood Crest, Borough of Stone Harbor, City of Wildwood, and City of North Wildwood – filed to join Cape May County's two motions. These entities have participant status and not party status to this proceeding. In any event, their arguments restate the ones put forward by the County. Thus, I do not summarize their filings here.

⁶ The County supplements its discussion of the standard with two additional sources. One, the New Jersey Uniform Code of Ethics, Section IX, which explains that a state employee should recuse himself when he or she has a financial or personal interest that "might be reasonably expected to impair a State official's objectivity and independence . . . [or] create an impression or suspicion" of the same. Motion at 6-7. Next, the New Jersey Board of Public Utilities has a Supplemental Ethics code that incorporates the New Jersey Conflicts of Interest Law and regulations at N.J.A.C. 19:61-1.1 et seq.

221 N.J. 601, 607 (2015); Wyzykowski v. Rizas, 132 N.J. 509, 523 (1993); In re Bator, 395 N.J. Super. 120, 127 (App. Div. 2007)). The County notes that this analysis has been applied to state administrative agencies. Id. (citing Wyzykowski, 132 N.J. at 523).

The County then explains the various indicia that allegedly show bias or partiality on behalf of the Board. Recusal Motion at 9-16. These take various forms, but at their core, they all note that the Board has been charged with implementing state policies to get “wind mills installed off the New Jersey coast as soon as possible.” Id. at 9. According to the County, this means the Board cannot act as an impartial arbiter in this proceeding. Specifically, the County identifies the following indicia:

- The Board awarded Ocean Wind, by Order dated June 21, 2019, the first award to construct a qualified offshore wind facility. Recusal Motion at 10-11. The award commits New Jersey ratepayers to pay offshore wind renewable energy credits, known as “ORECs,” for the energy Ocean Wind produces.
 - The award was issued to further OWEDA’s, N.J.S.A. 48:3-87.1, legislative mandate and Governor Murphy’s Executive Orders 8 and 92. Id. at 10-11. Together, these laws direct the Board to take actions to promote and realize the development of 7,500 MW of offshore wind in the state by 2035. Id.
 - The County contends, that although the Board is formally an independent agency, it has been expressly working to advance the mandates set forth by the Legislature and Governor Murphy. Id. at 11-12.
- The Board commissioned the creation of the New Jersey Offshore Wind Strategic Plan, which was published in September 2020. Id. at 13. The Plan is a roadmap to achieving 7,500 MW by 2035. Id.
- Board and Board Staff often wear wind mill lapel pins during public meetings. Id. at 14-15. This signals, according to the County, that the Board is not impartial on a proceeding involving offshore wind.

The County concludes that the Board should recuse itself from this matter. The County then moves to transmit this matter for assignment to an ALJ. Id. at 16. Although not expressly stated, it implies that the County contends transmission would cure the Board’s alleged bias.

The County also moves to suspend the procedural schedule in this proceeding. They note that there are two motions – the Motion to Dismiss and the Motion to Recuse – that should be decided before proceeding with the procedural schedule governing submission of testimony, public hearing, and oral argument, among other procedural steps.

2. Ocean Wind’s Reply on the Motion to Recuse

Ocean Wind argues that the County could cite no example “in which an entire administrative agency recused itself from performing its duties, particularly where the Legislature has provided that agency with the explicit authority to carry out such duties.” Recusal Reply at 2. Further, Ocean Wind contends the County’s proposed cure would be ineffective because, under the APA, the Board would review an ALJ’s decision and make a final determination that could conflict with the ALJ’s analysis. Reply at 3.

Ocean Wind also cites case law for the legal standard applicable to recusal. In In Matter of Carberry, 114 N.J. 574, 585 (1989), the court held that public officials in an administrative agency should not decide a matter if they are “tainted by actual bias.” Recusal Reply at 5. Further, the court explained that an agency official is not tainted merely because they “know the facts of a case” or have “announced an opinion on a disputed issue.” Id. (quoting In Matter of Carberry, 114 N.J. at 585).

Ocean Wind notes that administrative agencies perform the charges set to them by the Legislature. Reply at 6 (citing Matter of Kallen, 92 N.J. 14, 20 (1983)). The agency gains experience through its specialized tasks and areas of focus. Id.

Ocean Wind argues that the County has not met the legal standard for recusal. Notably, Ocean Wind points out that the County has not alleged the Board has any corrupt pecuniary or personal interests in the matter. Recusal Reply at 9. According to Ocean Wind, the County’s Recusal Motion only alleges bias because of the Board is carrying forward the duties charged to it by law. Id. at 10. Ocean Wind claims that the Board’s execution of its duties under law does not warrant recusal.

Last, Ocean Wind argues that the County’s proposed cure would not redress the problems the County claims exist. Any decision by an ALJ would go to the Board, who would need to consider and decide whether to approve or reject it. Recusal Reply at 12.

3. County’s Rebuttal on the Motion to Recuse

In the County’s Recusal Rebuttal, the County reasserts that the Board is a “champion” of wind power projects and therefore could not remain impartial in a proceeding under the 2021 Amendment. Recusal Rebuttal at 3.

The County’s Recusal Rebuttal amplifies the County’s proposed cure. The County explains that the Board is able to issue an order under N.J.S.A. 52:14B-10(f) and N.J.A.C. 1:1-18.9 to empower an ALJ to render a final agency decision. Recusal Rebuttal and 3-4. The County contends that, in fact, the Board must do so.

III. DISCUSSION AND FINDINGS

A. Jurisdiction and Authority

1. Motion to Dismiss

With respect to the procedural rules governing Board filings, the Board is required to evaluate a petition before it in accordance with the standards set forth in N.J.A.C. 14:1-5.4, “Procedures of Board on Filing of Petition”:

(a) If in the opinion of the Board the petition complies substantially with these rules and appears on its face to state a matter within this Board’s jurisdiction, and necessary copies have been received and fees paid, the Secretary of the Board shall file same.

(b) If after review the Board determines that a petition is deficient, the Board may refuse to consider and may issue an order dismissing said petition.

[N.J.A.C. 14:1-5.4(a)-(b).]

Based on the above rule, the Board retains authority to determine whether or not a particular petition states a matter that falls under the Board's jurisdiction and for which the Board may take action, or whether that petition may be dismissed for being deficient. Ocean Wind has satisfied the procedural requirements of N.J.A.C. 14:1-5.4(a), insofar as it complied with the rules and procedures for filing its Petition.

Further, N.J.A.C. 14:1-5.4(a) explains that the Board may consider a petition if it "appears on its face to state a matter within the Board's jurisdiction." Id. To interpret this rule, Staff is guided by similar requirements in the N.J. Court Rules. Petitioner analogizes this requirement to the standard for a motion to dismiss under Rule 4:6-2, which is akin to a Rule 12(b) motion in the Federal Rules of Civil Procedure.⁷ I agree.

According to N.J. Court Rule 4:6-2, "a pleading which sets forth a claim for relief . . . shall contain a statement of the facts on which the claim is based, showing that the pleader is entitled to relief, and a demand for judgment for the relief to which the pleader claims entitlement." By analogy, a petition before the Board would need to follow similar principles. New Jersey case law cautions that a motion to dismiss under Rule 4:6-2(e) should be "treated with great caution and should only be granted in the rarest of instances." Sickles v. Cabot Corp., 379 N.J. Super. 100, 106 (App. Div. 2005). This is why New Jersey courts are urged to view allegations in a complaint "with great liberality and without concern for a plaintiff's ability to prove the facts alleged in the complaint." Id. at 106. A court is required to treat all of the allegations in the pleading as true, and to consider only "whether those allegations are legally sufficient to establish the necessary elements of the claimed cause of action." Maxim Sewerage v. Monmouth Ridings, 273 N.J. Super. 84, 90 (Law Div. 1993). I apply this standard.

In the instant matter, Ocean Wind's Petition invokes the 2021 Amendment at N.J.S.A. 48:3-87.1(f), which allows a petitioner to "seek the New Jersey Board of Public Utilities' . . . determination that certain easements across properties owned by the County . . . and certain consents needed from the County for certain environmental permits in, and with respect to the County, are reasonably necessary for the construction of the Project." Petition at 1. OWEDA outlines the scope of the Board's authority with respect to the approval and development of QOWPs. This includes the 2021 Amendment establishing N.J.S.A. 48:3-87.1(f) and (g).

Additionally, pursuant to the 2021 Amendment, a QOWP developer may petition the Board to obtain property interests from local government entities and preempt local government approvals. The statute distinguishes between existing rights of way, N.J.S.A. 48:3-87.1(f)(1); real property interests, N.J.S.A. 48:3-87.1(f)(2); and local government approvals, N.J.S.A. 48:3-87.1(f)(3). If the Board finds the property interests and approvals are reasonably necessary for the construction or operation of the project, the successful petitioner must record the Board order with the county recording officer and determine compensation for the property interest in Superior Court and any local government approvals are preempted or superseded. The statute creates a distinction between existing rights of way, N.J.S.A. 48:3-87.1(f)(1), real property interests, N.J.S.A. 48:3-87.1(f)(2), and required local approvals for permitting, N.J.S.A. 48:3-87.1(f)(3). A petition seeking real property interests requires

⁷ This is New Jersey's version of the Federal Rules of Civil Procedure (U.C.S.C. Fed. Rules Civ. Proc. R. 12(b)(1)-(7)), which detail defenses to a claim for relief, is contained within N.J. Court Rules, R. 4:6-2. Viewing the Motion in the light most favorable to the County, it appears that the County's Motion seeks to invoke either N.J. Court Rule R. 4:6-2(a), claiming that the Board lacks subject matter jurisdiction over the subject matter in the Petition, or R. 4:6-2(e), claiming that the Petition fails to state a claim upon which relief can be granted.

a written request to the affected local government entity 90 days prior to filing the petition. N.J.S.A. 48:3-87.1(f)(2). A petition seeking preemption of local government approvals requires pre-petition consultation with the affected local government. N.J.S.A. 48:3-87.1(f).

Here, Ocean Wind filed a Petition under the provisions of the 2021 Amendment. For the Board to take jurisdiction, the Petition must show that it comes under the terms established in the 2021 Amendment. As discussed above, the Petition identifies one Temporary Easement and one Permanent Easement that Ocean Wind seeks from the County, both on the same, single lot. Ocean Wind notes the following permits, approvals, and licenses that require consent:

- New Jersey Department of Environmental Protection (NJDEP) Division of Land Use Regulation
 - NJDEP DLRP Multi-Permit Application
 - Waterfront Development Permit
 - Coastal Areas Facility Review Act (CAFRA) Permit and Coastal Consistency Determination
 - Coastal Wetlands Permit
 - Freshwater Wetlands Permit, Transition Area Waiver(s)
 - Geotechnical Survey Investigation Permits (if additional surveys required);
- Tidelands license from the NJDEP Bureau of Tidelands Management where the County is the upland owner;
- Cape Atlantic Conservation District Erosion and Sediment Control Approval for the cable installation;
- NJDEP Short Term de Minimis General Permit (B7) for groundwater discharge resulting from construction dewatering activities; and
- Temporary Dewatering permits for water withdrawal from construction dewatering activities.

[Petition at 12-13.]

Ocean Wind explains that additional NJDEP approvals and consents may be needed once construction is underway. Id.

As shown above, the Petition involves a real property interest under N.J.S.A. 48:3-87.1(f)(2) and local government approvals under N.J.S.A. 48:3-87.1(f)(3). Therefore, for the Board to retain jurisdiction, Ocean Wind must also show that it made a written request to the local government property owner at least 90 days before filing the Petition. N.J.S.A. 48:3-87.1(f)(2). Ocean Wind contends that it made this request through its September 28, 2021 Letter to the County. In that letter, Ocean Wind identified the property at Block 3350.01, Lot 17.01 of the Official Tax Map of the City of Ocean City. Petition at Appendix F. According to Ocean Wind's Dismiss Reply, this Lot may be a public right of way. Dismiss Reply at 19-20. This issue was explained to the County in the April 12, 2022 Letter. Urbish Testimony at Appendix J. If, indeed, the Lot is a public right of way, Ocean Wind has explained that it will withdraw its request for the property interest. Dismiss Reply at 19-20.

With respect to local government approvals, the September 28, 2021 Letter includes the above-listed permits, approvals and license consents but includes an "if required" qualifier. Urbish Testimony at Appendix F. The September 28, 2021 Letter also requests consents for road opening permits from the County Department of Public Works, if required. These road opening permits were not included in the Petition.

I find that Ocean Wind has properly invoked the 2021 Amendment and included factual assertions

to meet the pre-filing consultation and the timely submittal of the written request requirements.⁸ Under a motion to dismiss analogy, the Board need not address the merits of the facts – for instance, whether the September 28, 2021 Letter sufficiently satisfies the 90-day request requirement. The Board can therefore retain jurisdiction of this matter. Dismissal at this stage is thus inappropriate.

I **HEREBY FIND** that the Petition is properly before the Board; the Board may assert and retain jurisdiction and authority over the Petition, and the Board is statutorily authorized to evaluate the merits of the Petition before it. I **HEREBY FIND** that the Petition complies with the requisite procedural requirements of N.J.A.C. 14:1-5.4(a) for the Board to hear and consider it. I **HEREBY DENY** the County's motion for the Board to decline jurisdiction over the Petition.

Notwithstanding the foregoing, I further address Cape May County's substantive arguments in a section that follows ("Board's Additional Analysis on Motion to Dismiss"). Notably, I find these arguments lacking. I would thus deny the County's Motion to Dismiss under substantive grounds as well. Before doing so, I first address the County's Recusal Motion.

2. The County's Motion for the Recusal of the Board and Transmittal of the Matter to the Office of Administrative Law

The County argues that the Board cannot hear this Petition. State law charges the Board to realize and implement clean energy policies, including the state's efforts to secure 7,500 MW of offshore wind by 2035.⁹ Because this Petition involves an offshore wind project, the County contends the Board is conflicted, or at least would appear conflicted to a reasonable and informed person. Staff therefore reviewed the standard for recusal and disqualification.

The standard is fact-sensitive and asks whether a public official has an interest that would interfere with objective decision making. Thompson v. City of Atlantic City, 190 N.J. 359, 374-75 (2007). Proof of an actual conflict of interest is not needed, so long as there is a potential conflict. Id. In other words, would a "reasonable fully informed person" doubt the public official's impartiality. State v. Dalal, 221 N.J. 601, 607 (2015).

Staff notes that the County has not identified any New Jersey law – nor has Staff found any – that would apply the standard so expansively to an entire administrative agency charged under law to conduct a proceeding. Most precedent concerns whether individuals have a personal interest. See Thomson, 190 N.J. at 374 ("Public confidence requires that municipal officials avoid conflicting interests that convey the perception that a personal rather than the public interest might affect decision-making on matters of concern."). This is commonly financial- or relationship-based. Wyzykowski v. Rizas, 132 N.J. 509, 524-25 (1993) (reviewing circumstances where the recusal standard has been applied); Petrick v. Planning Bd. of City of Jersey City, 287 N.J. Super. 325, 331 (App. Div. 1996). At its boundary, the standard has been applied to council members who were also members of a church opposed to liquor licenses. Wyzykowski v. Rizas, 132 N.J. at 524-25 (citing Marlboro Manor, Inc. v. Board of Comm'rs, 187 N.J. Super. 359, 454 A.2d 905 (App.Div.1982)).

Reviewing New Jersey and other precedent, Staff finds that the County's expansive reasoning is not supported. It is well understood that administrative agencies often comingle legislative and judicial functions. Kisor v. Wilkie, 139 S. Ct. 2400, 2421-22 (2019). Agencies are put in the position to

⁸ In the next section, I also find that the EDA's bona fide negotiations requirement is not applicable. *Infra*, at 13.

⁹ On September 21, 2022, Governor Murphy signed Executive Order No. 307, increasing the OSW goal to 11,000 MW by 2040. Exec Order N. 307 (2022).

implement and advance policy, and they will often take a public position on policy matters. Hortonville Joint School Dist. v. Hortonville Education Asso., 426 U.S. 482, 493 (1976); Matter of Kallen, 92 N.J. at 20-21 (“Administrative agencies effectuate the programs and policies the Legislature specifically delegates to them. In recognition of the agency’s regulatory responsibilities, the Legislature specifically reserved the decisional power in the agency head. The decisional power may be exercised either through rulemaking or adjudication.”). That is not enough cause to recuse an entire agency from a related quasi-judicial proceeding. Hortonville Joint School Dist., 426 U.S. at 493. The bar for recusal is high. See Matter of Carberry, 114 N.J. 574, 585 (1989) (“An agency head, however, does not automatically become partial or unfair merely because that person has become familiar with the facts of the case through the performance of statutory or administrative duties.”). For instance, an entire administrative body has been recused where every member had a pecuniary interest. Gibson v. Berryhill, 411 U.S. 564 (1973).

Having a high bar for purposes of agency recusal makes sense. The argument the County poses questions the fundamental construction of administrative agencies. The United States Supreme Court explained this construction decades ago. In FTC v. Cement Institute, 333 U.S. 683 (1948), a corporation claimed the Federal Trade Commission was biased, and must recuse itself, because the agency published reports and opinions – mandated by Congress or the President – on fair trade issues. Id. at 700. The Court explained that the corporation’s “position, if sustained, would to a large extent defeat the congressional purposes” of the statute. Id. at 701. Congress gave the agency, and no one else, the authority to hear the issue. Id. Further, requiring recusal would “handicap agency experience instead of advantaging it.” Id. After all, expertise and developed knowledge make an administrative agency a strong choice to act as a quasi-judicial decision maker. Matter of the Application for Medicinal Marijuana Alternative Treatment Center for Pangaea Health and Wellness, LLC, 465 N.J. Super. 343, 372-73 (App. Div. 2020) (explaining that judicial deference is given to agency decision makers because of their learned expertise); FCC v. RCA Communications, 346 U.S. 86, 97 (1953) (“[A]gencies [are] better equipped. . . by insight gained through experience, and by more flexible procedure . . .”).

Indeed, many agencies in New Jersey are tasked with quasi-judicial roles that relate to their quasi-legislative functions. To name a few, the NJDEP promotes a clean environment and reviews environmental permit applications. The New Jersey Department of Transportation promotes focused investments in transportation and reviews certain related petitions. The New Jersey Division of Consumer Affairs promotes safe business practices and issues a variety of licenses. All of these agencies have developed expertise that improves their quasi-legislative and judicial decision making.

Here, the Legislature charged the Board, and the Board alone, with reviewing a petition under the 2021 Amendment. N.J.S.A. 48:3-87.1. The Legislature and Governor have also charged the Board with advancing the state’s clean energy policies. This does not create a conflict that requires recusal. The Legislature likely understood the Board would have relevant expertise to address petitions under the 2021 Amendment. Under law, it is presumed that an administrative agency acts reasonably. See City of Newark v. Nat. Res. Council, Dep’t of Env’t Prot., 82 N.J. 530, 539 (1980) (explaining that there is a “strong presumption of reasonableness that an appellate court must accord an administrative agency’s exercise of statutorily delegated responsibility”). Without a strong showing of bias – something that goes beyond familiarity with, or stated policy stances on, related issues – there is no cause for the Board to recuse itself. I note that the County has not alleged the Board has any ill intent or conflicting pecuniary or personal interests.

Lastly, the County argues the Board's "bias" could be cured by referring this case to an ALJ.¹⁰ I do not see how that could be the case. An ALJ does not have the authority to decide the Petition for the Board. N.J.S.A. 52:14B-10; Bouie v. New Jersey Dept. of Community Affairs, 407 N.J. Super. 518, 527 (App. Div. 2009) ("[T]he APA does not assign final decision-making authority to ALJs. An ALJ's role in the administrative process is to submit a report containing recommended findings of fact and conclusions of law to the agency head, who retains authority to make the final agency decision."). Even if an ALJ conducts the hearing, the 2021 Amendment tasks the Board with making a final decision on the Petition. Unless the Board must defer to the ALJ for its decision on the Petition – which is not the law of New Jersey – the County's proposed cure does not make sense.

The County contends the Board can and must effectively abdicate its authority under the 2021 Amendment to an ALJ pursuant to N.J.S.A. 52:14B-10(f) and N.J.A.C. 1:1-18.9. Staff notes that these provisions do not establish when, or even if, an agency must abdicate its authority. Because I see no cause to recuse, I see no reason to abdicate the Board's role under the 2021 Amendment. In fact, abdication would partly nullify the 2021 Amendment because the decision maker would be unable to utilize any learned experience in the process. See FTC v. Cement Institute, 333 U.S. at 700-01; Matter of the Application for Medicinal Marijuana, 465 N.J. Super. at 372-73.

I **HEREBY DENY** the County's motion to recuse and transmit the case to an ALJ. Because the County's Recusal Motion and Motion to Dismiss are being decided today, I also **HEREBY DENY** the County's request in its Recusal Motion to suspend the procedural schedule.

B. Jurisdiction and Authority - Board's Additional Analysis on Motion to Dismiss

1. 2021 Amendment and the Eminent Domain Act

To address the substantive issues the Recusal Motion raises, Staff began by looking at the 2021 Amendment and the EDA. Staff found that the plain language of the 2021 Amendment does not incorporate EDA's *bona fide* negotiations requirement.

The County and Ocean Wind have differing views on how the 2021 Amendment should be implemented in relation to the EDA. The County contends that a petition under the 2021 Amendment constitutes an "action" under the EDA. Therefore, according to the County, Ocean Wind's Petition must show that it met EDA requirements, such as the *bona fide* negotiations provision at N.J.S.A. 20:3-6. Ocean Wind contends that the 2021 Amendment was intended to supersede EDA procedures "up to the time compensation is due to be paid." Dismiss Reply at 17.

While the EDA can inform the Board on implementation of the 2021 Amendment, Staff does not read the 2021 Amendment to incorporate the EDA process other than the explicit requirement for a successful petitioner to comply with the EDA compensation determination in Superior Court. The plain text does not support application of the EDA process beyond the compensation determination. In reviewing a statute, the first step is to give the language its "ordinary meaning and significance." DiProspero v. Penn, 183 N.J. 477, 492 (2005). Staff did not find anything to show that the 2021

¹⁰ Note, I do not find I need to address here whether this case is "contested" under the Administrative Procedure Act or not. N.J.S.A. 52:14F-7 ("Nothing in this amendatory and supplementary act shall be construed to deprive the head of any agency of the authority pursuant to section 10 of P.L.1968, c.410 (C.52:14B-10) to determine whether a case is contested or to adopt, reject or modify the findings of fact and conclusions of law of any administrative law judge consistent with the standards for the scope of review to be applied by the head of the agency as set forth in that section and applicable case law."). There is no cause to recuse the Board, in either event.

Amendment was intended to incorporate EDA procedures beyond the explicit reference to the EDA for determining compensation in the Superior Court. To overcome a presumption against an implied repeal, there must be “proof beyond a reasonable doubt that the [L]egislature intended a negation of the prior law.” Chasin v. Montclair State Univ., 159 N.J. 418, 447 (1999). However, a later expression of legislative will clearly in conflict with an earlier statute on the same subject will control if legislative intent to supersede earlier law is found. Id.

First and foremost, the EDA is “not an enabling statute, but rather, [it] provides a uniform procedure for all entities with the power to condemn to follow.” State v. 1 Howe St. Bay Head, LLC, 463 N.J. Super. 312, 340 (App. Div. 2020). For the first time since enactment of the EDA that Staff can surmise, the Legislature established a different process from the EDA for a QOWP or approved open access OSW transmission facility through the 2021 Amendment. Staff notes that the Board reviews petitions by utilities seeking condemnation authority for utility routes pursuant to N.J.S.A. 48:3-17.7. There, if the route receives Board approval, the utility then proceeds in accordance with the EDA to obtain property interests and determine compensation. The Legislature could have extended or provided a similar process to OSW projects seeking property interests from local governments; it chose not to.

The Legislature established a similar but separate process for QOWPs.¹¹ Rather than a condemnation action filed with the Superior Court under the EDA, the Legislature provided for review by the Board for a limited class of projects seeking property interests from local government. The Board is guided by the EDA process in establishing its procedures under the 2021 Amendment. However, the Board is not bound by the EDA by the plain terms of the 2021 Amendment. The 2021 Amendment provides for a written request for the necessary property interest with a 90-day waiting period before filing a petition for relief, a public hearing, and a Board determination. If the petition is approved, the successful petitioner shall record the Board Order with the appropriate county recording officer. N.J.S.A. 48:3-87.1(f)(2) (“[S]uch [Board Order] shall effectuate the [developer’s property interests] . . . and shall be recorded by the appropriate county recording officer at the request of the [developer]”). The successful petitioner will seek a compensation determination under the EDA in Superior Court, N.J.S.A. 48:3-87.1(f)(2), but that requirement is separate from the Board Order that “effectuates” the property interests.

Staff does not interpret the limited reference to the compensation determination to compel the application of other EDA requirements on the 2021 Amendment process where the Legislature provided a process before the Board rather than the Superior Court and established a “reasonably necessary” standard for the Board’s review. Instead, if the Board makes a “reasonably necessary” finding, the QOWP developer should prepare a form of Board Order – in recordable form – for the Board President’s review and signature. The QOWP developer can then submit the approved Board Order to the applicable county’s recording officer for recording, when appropriate.

The 2021 Amendment regarding condemnation is limited in scope, applying only to OSW projects seeking property interests from local government. The Legislature was clearly aware of the EDA and its associated procedure, yet elected to provide a different process and different forum before the Board for this limited class. As to this limited class, the 2021 Amendment controls, and the Board has complied with its requirements. Tp. of Mahwah v. Bergen County Bd. of Taxation, 98 N.J. 268, 281 (1985) (“Every reasonable construction should be applied to avoid a finding of implied repealer.”); Chasin v. Montclair State Univ., 159 N.J. 418, 447 (1999), (holding, however a later expression of legislative will clearly in conflict with an earlier statute on the same subject will control if legislative

¹¹ The Legislature was clearly aware of the EDA process when it included reference to the EDA process in the 2021 Amendment for purposes of determining compensation. N.J.S.A. 48:3-87.1(f)(2).

intent to supersede earlier law is found).

I **HEREBY FIND** that the EDA does not apply at this stage. Because I find the EDA does not apply to the proceedings before the Board, I need not address the County's contention whether the EDA's bona fide negotiation requirement has been satisfied.

2. The 2021 Amendment's Written Request Requirement

Turning to the 2021 Amendment, the County contends that Ocean Wind failed to satisfy the 90-day written request requirement. As explained above, I do not need to resolve whether the September 28, 2021 Letter satisfies the written request or consultation requirement, as that issue is premature at this stage of the proceeding. Notwithstanding the foregoing, I nevertheless address the substantive argument here.

The County argues that Ocean Wind's September 28, 2021 Letter was not specific enough to satisfy the statutory request or consultation requirements. The County further argues that the Property Owner Certificate Form proffered by Ocean Wind – which, if signed, would provide the County's consent to Ocean Wind for it to conduct project activities on the identified Lot and submit permit applications to the NJDEP for review – likewise failed to meet the statutory requirement.

Under the 2021 Amendment, an offshore wind developer may obtain property interests from local governments after filing a petition at the Board, where the Board may determine whether the identified property interests are reasonably necessary for the construction or operation of the project. As noted above, the statute creates a distinction between existing rights of way, N.J.S.A. 48:3-87.1(f)(1), real property interests, N.J.S.A. 48:3-87.1(f)(2), and required local approvals for permitting, N.J.S.A. 48:3-87.1(f)(3). For the offshore wind developer to obtain either real property interests or preempt local approvals, the Board must find that the identified properties and approvals are reasonably necessary for the offshore wind project. However, only a petition regarding real property interests requires a 90-day written request to the affected local government entity. N.J.S.A. 48:3-87.1(f)(2). To use existing rights of way or file a petition concerning local permitting, the offshore wind developer must satisfy the "consultation" requirement with the affected local government. N.J.S.A. 48:3-87.1(f); *compare* N.J.S.A. 48:3-87.1(f)(2) (containing a 90-day written request requirement) *with* N.J.S.A. 48:3-87.1(f)(1) and N.J.S.A. 87.1(f)(3) (containing no 90-day written request requirement). The 2021 Amendment does not define "written request" or "consultation."

The County contends that the Constitutional Provision requires that these terms be construed in favor of local governments. Staff finds that not to be the case. Further, the analysis below helps guide the interpretation of the 2021 Amendment.

The Constitution, Art. IV, Section VII, para. 11 states the following:

The provisions of this Constitution and of any law concerning municipal corporations formed for local government, or concerning counties, shall be liberally construed in their favor. The powers of counties and such municipal corporations shall include not only those granted in express terms but also those of necessary or fair implication, or incident to the powers expressly conferred, or essential thereto, and not inconsistent with or prohibited by this Constitution or by law.

[Id.]

First and foremost, the Constitutional Provision does not apply if there is a clear intent to supersede local laws. In re Petition of Hackensack Water Co., 196 N.J. Super. 162, 169-70 (App. Div. 1984) (explaining that local powers can be superseded if the statute clearly provides it; explaining in a similar statute that the BPU can make a reasonably necessary finding to overcome municipal consents). When necessary to accomplish state policies and objectives, the authority of governmental subdivisions of the state may be abridged. Id. at 170. Here, the 2021 Amendment intended to preempt local approvals to advance the public policy in favor of offshore wind development.

However, the Legislature understood that local communities should have a participatory role in the process. In this context, the Board's power to make a "reasonably necessary" finding was designed to protect communities. Jersey Cent. Power & Light Co., 166 N.J. Super. at 545 ("[N.J.S.A. 48:3-17.7] requires advance approval by the PUC of any utility's exercise of its power of condemnation. It was designed as protection against arbitrary exercise of a utility's condemnation power; it empowers the PUC to prevent condemnation, not compel it.").

This analysis is buttressed by understanding the role of the 2021 Amendment. Offshore wind development concerns the state as a whole, not only local municipalities. Electricity, once on the grid, is distributed where needed throughout the electric grid. Accordingly, the Project effectively impacts, relates to, pertains to, affects, and involves every county in New Jersey, not just the County alone. In this context, every New Jersey county, as well as the state, is necessarily "concerned" with both the Project and the outcome of the decision on the Petition.

The Board, therefore, weighs the need for the requested property interests. The balance, however, is not in the locality's favor; the analysis recognizes that the greater public interest must be favored over the local interest. In re Public Service Electric & Gas Co., 35 N.J. 358, 376-77 (1961) (the BPU "must weigh all interests and factors in light of the entire factual picture and adjudicate the existence or non-existence of reasonable necessity therefrom" and "if the balance is equal, the utility is entitled to the preference, because the legislative intent is clear that the broad public interest to be served is greater than local consideration.").

Combining these principles – (1) advancing the policies of offshore wind development, and (2) providing local government with an opportunity to participate in the process – the Board must ensure that the offshore wind developer is not arbitrarily abusing the powers granted to it by the 2021 Amendment. The Board must also ensure that a local government cannot unreasonably impede or thwart efforts by the offshore wind developer to move forward with its project. New York C. R. Co. v. Ridgefield, 84 N.J. Super. 85, 94 (App. Div. 1964) (explaining that a similar law was created to prevent local governments from impeding or "thwart[ing]" interests of the public good). Staff views this as a core purpose behind the legislation's direction for the Board to make a reasonably necessary determination. It will guide my interpretation of the 2021 Amendment.

When interpreting the statute, Staff first looked to the statutory language. Matter of Ridgefield Park Bd. of Educ., 244 N.J. 1, 18-19 (2020). If the language is clear, the interpretive analysis is at an end. If it is not, I can consider extrinsic materials to assist in the analysis. Id. Here, the plain language is not clear.

The County claims the written request must be read to require a specific request. Motion to Dismiss at 3. The County references a dictionary that defines request as "to ask to do something." Id. at 4. According to the County, the request must therefore be specific and cannot use any "conditional language." Id. The County explains that it should not be its burden to determine what is actually

required for the project. Id.

Staff does not read the statute to require the type of specificity the County demands. Instead, Staff finds that applying a reasonable request standard best satisfies the Legislature's intent. As noted above, the 2021 Amendment seeks to ensure that the offshore wind developer is not abusing the powers that the statute may grant to it. However, that must be balanced so that local government cannot unilaterally impede an important public policy project.

Under a reasonable request standard, the offshore wind developer must notify and explain that it is developing a project that implicates local land use interests. The request must also explain what these local land interests may be, ensuring that local governments have an opportunity to understand and discuss the project requirements. In this way, the request should work to open a dialogue between the offshore wind developer and the local interest. The local government then may respond to the request by noting the property interests that are most important to its community.

Within this framework, I agree with the County that the burden to identify the necessary property interests is on the offshore wind developer. However, the identified property interests need not be unconditional or set in stone. The request is always going to be conditional. It will be conditional on feedback from the local government, and it will be conditional as the developer solidifies its plans. To hold otherwise – finding a request deficient because it used an “if required” qualifier – would elevate form over substance. Ferreira v. Rancocas Orthopedic Assocs., 178 N.J. 144, 154 (2003) (explaining that a good rule must encourage parties to “act diligently”). However, the developer must be reasonable and give the affected local government a reasonable opportunity to understand the request. The developer must identify actual property interests and approvals. It must be clear that the developer has worked to narrow the scope of its request so that the local government can make an informed assessment of the types of approvals that may be sought.

The September 28, 2021 Letter identifies real property interests. The Petition identifies two easements over the identified Lot. Id. However, Ocean Wind's Dismiss Reply explains that the affected land may actually be a public right of way. Dismiss Reply at 19-20; Urbish Testimony at Appendix J. If this, in fact, turns out to be the case, Petitioner intends to remove the request for these easements from the Petition. Dismiss Reply at 19-20.

I find the September 28, 2021 Letter satisfies the requisite standard for the real property interest at stake. Although Petitioner possibly misidentified the Lot to be Green Acres-encumbered property, the request by itself put the County on notice of the property interest. This notice contained sufficient specificity for the County to understand the request. I **HEREBY REQUEST** Ocean Wind to notify me at the earliest opportunity to confirm whether or not the Lot is within, in whole or in part, a public right of way.

Turning to the identified approvals that may be required, Staff notes the different pre-petition directives under the 2021 Amendment. State v. Courtney, 243 N.J. 77, 85 (2020) (“The statute's plain language is the 'best indicator of legislative intent.’”) (citation omitted). The Legislature only included the written request requirement for real property interests intentionally. Ge Solid State v. Director, Division of Taxation, 132 N.J. 298, 308 (1993) (“[W]here the Legislature has carefully employed a term in one place and excluded it in another, it should not be implied where excluded.”). Therefore, an offshore wind developer need only demonstrate that it satisfied the consultation requirement before filing a petition seeking preemption of local government approvals.

Staff finds that the Property Owner Certification form comes under the consultation requirement of

N.J.S.A. 48:3-87.1(f)(3). The Property Owner Certification form does not grant any real property interests. It is aimed at providing local government approval to perform regulated activities and NJDEP reviews. Likewise, the other approvals the September 28, 2021 Letter identifies do not fall under the 90-day written request requirement. I find that the September 28, 2021 Letter identified and sufficiently explained the likely approvals needed. I find that the September 28, 2021 Letter satisfies the written request requirement for the easement, and it also satisfies the less formal consultation requirement for consents and approvals.

The September 28, 2021 Letter listed a number of permits, licenses, and approvals that would require the County's consent.¹² These, excepting two road opening permits, are the same as those identified in the Petition. I **HEREBY FIND** this sufficient to conclude that Petitioner has met the consultation requirement.

IV. CONCLUSIONS

I **HEREBY DIRECT** that this Order be posted on the Board's website. For reference, the June 29, 2022 Order, the July 5, 2022 Order, and the July 14, 2022 Order are included in Exhibit A hereto.

I **HEREBY DENY** the County's Motion to Dismiss and the County's Recusal Motion.

This ruling is subject to ratification or modification by the Board, as it deems appropriate during the proceedings in this matter.

DATED: September 27, 2022

BY:



JOSEPH L. FIORDALISO
PRESIDENT

¹² The County notes that the Petition identified a need for "Cape Atlantic Conservation District Erosion and Sediment Control Approval for the cable installation." Motion to Dismiss at 5. The County contends that the Cape Atlantic Conservation District is an independent entity and the County cannot grant the required approvals. *Id.* While that may be true, the Petition only seeks to preempt any consents or approvals that the County may be required to provide for the identified permits, approvals and licenses. Petition at 13.

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

BPU DOCKET NO. QO22050347

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Township of Lower c/o Kyle D. Weinberg, Esq. Blaney, Donohue & Weinberg, P.C. 2123 Dune Drive, Suite 11 Avalon, NJ 08202 kyle@blaneydonohue.com	Borough of Avalon c/o Nicole J. Curio, Esq. Blaney, Donohue & Weinberg, P.C. 2123 Dune Drive, Suite 11 Avalon, NJ 08202 nicole@blaneydonohue.com
Township of Dennis c/o Kyle D. Weinberg, Esq. Blaney, Donohue & Weinberg, P.C. 2123 Dune Drive, Suite 11 Avalon, NJ 08202 kyle@blaneydonohue.com	City of Ocean City c/o Dorothy F. McCrosson, Esq. City Solicitor, City of Ocean City, NJ 200 Asbury Avenue Ocean City, NJ 08226 DMcCrosson@OCNJ.US
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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

Exhibit A:



Agenda Date: 6/29/22
Agenda Item: 8B

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CLEAN ENERGY

IN THE MATTER OF THE PETITION OF OCEAN WIND)	ORDER DESIGNATING
LLC PURSUANT TO N.J.S.A. 48:3-87.1(F) FOR A)	COMMISSIONER, SETTING
DETERMINATION THAT CERTAIN EASEMENTS AND)	MANNER OF SERVICE AND
CONSENTS NEEDED FOR CERTAIN)	BAR DATE
ENVIRONMENTAL PERMITS IN, AND WITH RESPECT)	
TO, THE COUNTY OF CAPE MAY ARE REASONABLY)	DOCKET NO. QO22050347
NECESSARY FOR THE CONSTRUCTION OR)	
OPERATION OF THE OCEAN WIND 1 QUALIFIED)	
OFFSHORE WIND PROJECT)	

Parties of Record:

Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel
Gregory Eisenstark, Esq., Cozen O'Connor, P.C., on behalf of Ocean Wind LLC
Michael J. Donohue, Esq., Blaney Donohue & Weinberg, P.C., on behalf of Cape May County
Gerald M. Thornton, Commissioner Director Board of County Commissioners, Cape May County
Kevin Lare, Administrator Board of County Commissioners, Cape May County
Rita M. Rothberg, County Clerk, Cape May County
Jeffrey R. Lindsay, Esq., County Counsel, Cape May County

BY THE BOARD:

By this Order, the New Jersey Board of Public Utilities (“Board” or “BPU”) considers retention of a petition filed by Ocean Wind LLC’s (“Ocean Wind” or “Company”), which requests that the Board determine that certain easements across properties owned by the County of Cape May (“Cape May County” or “County”) and certain consents needed from the County for certain environmental permits in, and with respect to the County, are reasonably necessary for the construction or operation of the Ocean Wind 1 Qualified Offshore Wind Project (“Project”) (“Cape May Petition”).

BACKGROUND

In response to Governor Murphy’s Executive Order No. 8, which called upon the Board to fully implement the Offshore Wind Economic Development Act, the Board issued its first offshore wind solicitation in September 2018. Ocean Wind submitted an application and in June 2019, the Board approved the Project as a Qualified Offshore Wind Project (“QOWP”). Since the award,

Ocean Wind has been in the planning, permitting and preconstruction phase of the Project. A significant aspect of the preconstruction activities involves obtaining the necessary easements, permits and consents for the onshore construction of the electricity export cable, which will bring the renewable electricity from the offshore wind turbines to the electric transmission and distribution system in New Jersey.

On February 2, 2022, Ocean Wind filed a petition with the Board, pursuant to N.J.S.A. 48:3-87.1(f), seeking the Board's determination that certain easements across Green Acres-restricted properties owned by the City of Ocean City, New Jersey ("Ocean City"), and that certain municipal consents needed for particular environmental permits in or with respect to Ocean City, are reasonably necessary for the construction or operation of the QOWP, Ocean Wind I ("Ocean City Petition").

On May 20, 2022, Ocean Wind filed the instant petition, pursuant to N.J.S.A. 48:3-87.1(f), seeking the Board's determination that certain easements across properties owned by the Cape May County and certain consents needed from the County for certain environmental permits in, and with respect to the County, are reasonably necessary for the construction or operation of the Project.

The Cape May Petition pertains only to Cape May County and is the subject of this Order. While the Cape May Petition and the Ocean City Petition both concern the same onshore cable for the electricity export cable of Ocean Wind 1's QOWP, each petition covers different easements and consents for different parts of the cable.

N.J.S.A. 48:3-87.1(f) grants the Board the authority to make a determination on a petition from a QOWP "seeking authority to obtain the easement, right-of way, or other real property interest."

DISCUSSION

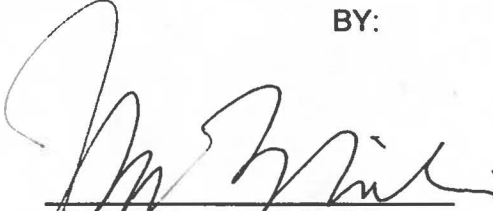
The Board has determined that it should retain the Cape May Petition. Accordingly, pursuant to N.J.S.A. 48:2-32, the Board **HEREBY DESIGNATES** President Joseph L. Fiordaliso as the presiding officer with authority to rule on all motions that arise during the pendency of this proceeding and to modify any schedules that may be set as necessary to secure a just and expeditious determination of the issues. Further, the Board **HEREBY DIRECTS** that the County of Cape May be included as a necessary party in this proceeding, and **HEREBY DIRECTS** any entity seeking to intervene or participate in this matter file the appropriate application with the Board on or before July 15, 2022. Any party wishing to file a motion for admission of counsel, pro hac vice, should do so concurrently with any motion to intervene or participate.

In addition, in compliance with the Board's Order in Docket No. EO20030254, all parties are **HEREBY DIRECTED** to serve all documents electronically. No hard copies shall be filed until the Board lifts the restrictions imposed in that Order. The Board **HEREBY DIRECTS** Board Staff to post this Order to the Board's website.

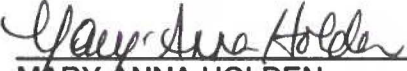
The effective date of this Order is July 1, 2022.

DATED: June 29, 2022

BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
PRESIDENT



MARY ANNA HOLDEN
COMMISSIONER



DIANNE SOLOMON
COMMISSIONER



UPENDRA J. CHIVUKULA
COMMISSIONER



ROBERT M. GORDON
COMMISSIONER

ATTEST: 

CARMEN D. DIAZ
ACTING SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public Utilities.

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

DOCKET NO. QO22050347

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STATE OF NEW JERSEY
Board of Public Utilities
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DIVISION OF CLEAN ENERGY

IN THE MATTER OF THE PETITION OF OCEAN WIND)	ORDER SETTING
LLC PURSUANT TO N.J.S.A. 48:3-87.1(F) FOR A)	PROCEDURAL SCHEDULE
DETERMINATION THAT CERTAIN EASEMENTS AND)	
CONSENTS NEEDED FOR CERTAIN)	DOCKET NO. QO22050347
ENVIRONMENTAL PERMITS IN, AND WITH RESPECT)	
TO, THE COUNTY OF CAPE MAY ARE REASONABLY)	
NECESSARY FOR THE CONSTRUCTION OR)	
OPERATION OF THE OCEAN WIND 1 QUALIFIED)	
OFFSHORE WIND PROJECT)	

Parties of Record:

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Gregory Eisenstark, Esq., Cozen O'Connor, P.C., on behalf of Ocean Wind LLC
Michael J. Donohue, Esq., Blaney Donohue & Weinberg, P.C., on behalf of Cape May County
Gerald M. Thornton, Commissioner Director Board of County Commissioners, Cape May County
Kevin Lare, Administrator Board of County Commissioners, Cape May County
Rita M. Rothberg, County Clerk, Cape May County
Jeffrey R. Lindsay, Esq., County Counsel, Cape May County

BY PRESIDENT FIORDALISO:

By this Order, I set forth a procedural schedule for this proceeding.

BACKGROUND

On May 20, 2022, Ocean Wind LLC (“Ocean Wind” or “Petitioner”) filed a petition (“Petition”) with the New Jersey Board of Public Utilities (“Board” or “BPU”), pursuant to N.J.S.A. 48:3-87.1(f), seeking the Board’s determination that certain easements across properties owned by the County of Cape May (“County”) and certain consents needed from the County for certain environmental permits in or with respect to the County are reasonably necessary for the construction or operation of Petitioner’s qualified offshore wind project, Ocean Wind I (“Project” or “QOWP”).

N.J.S.A. 48:3-87.1(f)(2) grants the Board the authority to make a determination on a petition from a qualified offshore wind project “seeking authority to obtain the easement, right-of way, or other

real property interest.”

On June 8, 2022, Michael J. Donohue, Esq. on behalf of the County of Cape May, filed a motion with the Board, requesting the Board to decline jurisdiction over the Petition and to dismiss the Petition without prejudice as unripe for disposition and non-justiciable under N.J.S.A. 48:3-87.1(f) and N.J.S.A. 20:3-1 et seq. (“June 8, 2022 Motion”). On June 20, 2022, Ocean Wind filed a reply brief in opposition to the June 8, 2022 Motion, and on June 27, 2022 the County filed a reply to Ocean Wind’s reply. The June 8, 2022 Motion will be addressed at a later date.

On June 29, 2022, the Board retained the Petition for hearing and, pursuant to N.J.S.A. 48:2-32, designated myself as the presiding officer authorized to rule on all motions that arise during the pendency of these proceedings and to modify any schedules that may be set as necessary to secure a just and expeditious determination of the issues (“June 29, 2022 Order”). Further, the June 29, 2022 Order directed the County to be included as a necessary party, and further directed any entities seeking to intervene or participate in this matter to file the appropriate motions with the Board on or before July 15, 2022.

I note that P.L. 2021, c. 178 envisions a transparent and public process for the evaluation. In accordance with N.J.S.A. 48:3-87.1(f)(2), the Board is required to hold a public hearing and to provide the opportunity for public comments on the Petition.

The public will have an opportunity to file comments and attend a public hearing. I, President Fiordaliso, will preside over the public hearing. Notice of the public hearing shall be provided to the "news media, the owner of the real property subject to the petition, and the governing body and municipal clerk of the municipality and the clerk of the county in which the lands proposed to be conveyed are located." N.J.S.A. 48:3-87.1(f)(2). Public Comments may be submitted using the Board's Public Document Search tool, located at <https://publicaccess.bpu.state.nj.us/> using DOCKET NO. QO22050347.

DISCUSSION & FINDINGS

I **HEREBY ISSUE** the following procedural schedule (“Schedule”) attached hereto as Exhibit A. I further **HEREBY DIRECT** the parties to comply with the Schedule’s terms and to work cooperatively with each other to the fullest extent possible in the interests of reaching a just determination in this proceeding. The Schedule provides the parties with opportunities to present evidence and arguments to aid in the Board’s deliberation.

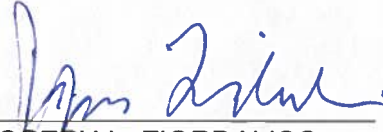
In compliance with the Board’s Order in Docket No. EO20030254, all parties are **HEREBY DIRECTED** to serve all documents electronically. No hard copies shall be filed until the Board lifts the restrictions imposed in that Order.

I **HEREBY DIRECT** that this Order be posted on the Board’s website.

This provisional ruling is subject to ratification or other alteration by the Board, as it deems appropriate during the proceedings in this matter.

DATED: 7/5/22

BY:

A handwritten signature in blue ink, appearing to read "Joseph L. Fiordaliso", written over a horizontal line.

JOSEPH L. FIORDALISO
PRESIDENT

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

DOCKET NO. QO22050347

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DOCKET NO. QO22050347

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OCEAN CITY	
<p>Melissa Rasner Municipal Clerk City of Ocean City 861 Asbury Avenue Ocean City NJ 08226 mrasner@ocnj.us</p>	<p>Dorothy F. McCrosson, Esq. City Solicitor McCrosson & Stanton, P.C. 200 Asbury Avenue Ocean City, New Jersey 08226 dmccrosson@ocnj.us</p>
<p>Hon. Jay Gillian, Mayor City of Ocean City 861 Asbury Avenue Ocean City, NJ 08226 mayor@ocnj.us</p>	
NJDEP	
<p>Shawn M. LaTourette, Commissioner 401 E. State St. 7th Floor, East Wing P.O. Box 402 Trenton, NJ 08625-0402 commissioner@dep.nj.gov</p>	<p>Sean D. Moriarty, Deputy Commissioner for Legal, Regulatory and Legislative Affairs 401 E. State St., 7th Floor, East Wing P.O. Box 402 Trenton, New Jersey 08625-0402 Sean.Moriarty@dep.nj.gov</p>
<p>Martha Sullivan Sapp, Director, Green Acres Program Mail Code 501-01 P.O. Box 420 501 East State Street, 1st floor Trenton, New Jersey 08625-0420 Martha.Sapp@dep.nj.gov</p>	

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

DOCKET NO. QO22050347

**Exhibit A:
Procedural Schedule**

Item	Date
Motions Due	July 15, 2022
Opposition and Testimony from Parties	July 29, 2022
Ocean Wind Reply	August 12, 2022
Public Hearing	August 23, 2022
Public Written Comments Deadline	September 6, 2022
Settlement Conference	Week of September 12, 2022
Parties Respond to Public Comments	September 20, 2022
Oral Argument	Week of October 3, 2022

Further details regarding the Public Hearing and Oral Argument will be forthcoming.

DOCKET NO. QO22050347



STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

DIVISION OF CLEAN ENERGY

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

ORDER MODIFYING THE
PROCEDURAL SCHEDULE

DOCKET NO. QO22050347

Parties of Record:

Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel
Gregory Eisenstark, Esq., Cozen O'Connor, P.C., on behalf of Ocean Wind LLC
Michael J. Donohue, Esq., Blaney Donohue & Weinberg, P.C., on behalf of Cape May County
Gerald M. Thornton, Commissioner Director Board of County Commissioners, Cape May County
Kevin Lare, Administrator Board of County Commissioners, Cape May County
Rita M. Rothberg, County Clerk, Cape May County
Jeffrey R. Lindsay, Esq., County Counsel, Cape May County

BY PRESIDENT FIORDALISO:

By this Order, I set forth a modified procedural schedule in this proceeding.

BACKGROUND

On May 20, 2022, Ocean Wind LLC ("Ocean Wind" or "Petitioner") filed a petition ("Petition") with the New Jersey Board of Public Utilities ("Board" or "BPU"), pursuant to N.J.S.A. 48:3-87.1(f), seeking the Board's determination that certain easements across properties owned by the County of Cape May ("County") and certain consents needed from the County for certain environmental permits in or with respect to the County are reasonably necessary for the construction or operation of Petitioner's qualified offshore wind project, Ocean Wind I ("Project" or "QOWP").

N.J.S.A. 48:3-87.1(f)(2) grants the Board the authority to make a determination on a petition from a qualified offshore wind project "seeking authority to obtain the easement, right-of way, or other real property interest."

On June 8, 2022, Michael J. Donohue, Esq., on behalf of the County of Cape May, filed a motion with the Board, requesting the Board to decline jurisdiction over the Petition and to dismiss the Petition without prejudice as unripe for disposition and non-justiciable under N.J.S.A. 48:3-87.1(f) and N.J.S.A. 20:3-1 et seq. ("June 8, 2022 Motion"). On June 20, 2022, Ocean Wind filed a reply brief in opposition to the June 8, 2022 Motion ("June 20, 2022 Reply Brief"), and on June 27, 2022 the County filed a reply to Ocean Wind's June 20, 2022 Reply Brief. The June 8, 2022 Motion will be addressed at a later date.

On June 29, 2022, the Board retained the Petition for hearing and, pursuant to N.J.S.A. 48:2-32, designated me as the presiding officer authorized to rule on all motions that arise during the pendency of these proceedings as well as to modify any schedules that may be set as necessary to secure a just and expeditious determination of the issues ("June 29, 2022 Order"). Further, the June 29, 2022 Order directed the County to be included as a necessary party, and further directed any entities seeking to intervene or participate in this matter to file the appropriate motions with the Board on or before July 15, 2022.

On July 5, 2022, I issued an Order setting the procedural schedule in this matter ("July 5, 2022 Order"). That Order set the July 15, 2022 due date for motions to be filed. Since the time of that Order, multiple government entities requested that the deadline to intervene be extended until July 31, 2022. These government entities generally noted that the added time would help them confer with the appropriate decision makers and provide them with time to prepare any filings.

I note that P.L. 2021, c. 178 envisions a transparent and public process for the evaluation of the Petition. In accordance with N.J.S.A. 48:3-87.1(f)(2), the Board is required to hold a public hearing and to provide the opportunity for public comments on the Petition.

The public will have an opportunity to file comments and attend a public hearing. I, President Fiordaliso, will preside over the public hearing. Notice of the public hearing shall be provided to the "news media, the owner of the real property subject to the petition, and the governing body and municipal clerk of the municipality and the clerk of the county in which the lands proposed to be conveyed are located." N.J.S.A. 48:3-87.1(f)(2). Public Comments may be submitted using the Board's Public Document Search tool, located at <https://publicaccess.bpu.state.nj.us/> using DOCKET NO. QO22050347.

MODIFIED PROCEDURAL SCHEDULE

In order to accommodate the parties' ability to meaningfully participate in this proceeding and to provide for more flexibility, I set forth the modified procedural schedule ("Modified Schedule") in Exhibit A herein. Motions to intervene will now be due on July 29, 2022.

DISCUSSION & FINDINGS

I **HEREBY ISSUE** the following Modified Schedule identified as Exhibit A herein. While there is no formal discovery period established for this proceeding, I further **DIRECT** the parties to comply with the Modified Schedule's terms and to work cooperatively with each other to the fullest extent possible

in the interest of reaching a just determination in this proceeding. The Modified Schedule provides the parties with opportunities to present evidence and arguments to aid in the Board's deliberation.

I **HEREBY DIRECT** that this Order be posted on the Board's website. For reference, the June 29, 2022 Order and July 5, 2022 Order are included in Exhibit B herein.

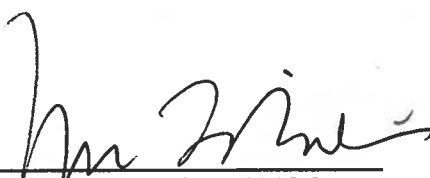
Parties are **HEREBY DIRECTED** to serve all documents electronically.

This provisional ruling is subject to ratification or other alteration by the Board, as it deems appropriate during the proceedings in this matter.

DATED:

BOARD OF PUBLIC UTILITIES
BY:

7/14/22



JOSEPH L. FIORDALISO
PRESIDENT

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

BPU DOCKET NO. QO22050347

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<p>Rita M. Rothberg County Clerk County of Cape May 7 N Main Street P.O. Box 5000 Cape May Court House, NJ 08210-5000 coclerk@co.cape-may.nj.us</p>	<p>Jeffrey R. Lindsay, Esq. County Counsel County of Cape May 7 N Main Street P.O. Box 5000 Cape May Court House, NJ 08210-5000 jeffrey.lindsay@co.cape-may.nj.us</p>
<p>Michael J. Donohue, Esq. Blaney Donohue & Weinberg, P.C. 2123 Dune Drive, Suite 11 Avalon, NJ 08202 mike@blaneydonohue.com</p>	

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Hon. Jay Gillian, Mayor City of Ocean City 861 Asbury Avenue Ocean City, NJ 08226 mayor@ocnj.us	
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Martha Sullivan Sapp, Director, Green Acres Program Mail Code 501-01 P.O. Box 420 501 East State Street, 1 st floor Trenton, New Jersey 08625-0420 Martha.Sapp@dep.nj.gov	
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Township of Lower c/o Kyle D. Weinberg, Esq. Blaney, Donohue & Weinberg, P.C. 2123 Dune Drive, Suite 11 Avalon, NJ 08202 kyle@blaneydonohue.com	Borough of Avalon c/o Nicole J. Curio, Esq. Blaney, Donohue & Weinberg, P.C. 2123 Dune Drive, Suite 11 Avalon, NJ 08202 nicole@blaneydonohue.com
Township of Dennis c/o Kyle D. Weinberg, Esq. Blaney, Donohue & Weinberg, P.C. 2123 Dune Drive, Suite 11 Avalon, NJ 08202 kyle@blaneydonohue.com	City of Ocean City c/o Dorothy F. McCrosson, Esq. City Solicitor, City of Ocean City, NJ 200 Asbury Avenue Ocean City, NJ 08226 DMcCrosson@OCNJ.US
City of Sea Isle City c/o Paul L. Baldini, Esq. Law Offices of Paul J. Baldini, P.A. 4413 New Jersey Avenue Wildwood, NJ 08260 paul@paulbaldinilaw.com	Borough of Stone Harbor c/o Steven A. Morris, Esq. Karavan & Morris, P.C. 3311 New Jersey Avenue P.O. Box 1310 Wildwood, NJ 08260 Steve@KaravanMorris.com
Upper Township c/o M. James Maley, Jr., Esq. Maley Givens, P.C. 1150 Haddon Avenue Suite 210 Collingswood, NJ 08108 jmaley@maleygivens.com	
NEW JERSEY STATE LEAGUE OF MUNICIPALITIES	
New Jersey State League of Municipalities c/o Frank Marshall, Esq. 222 West State Street Trenton, NJ 08608 league@njlm.org	

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

**Exhibit A:
Modified Procedural Schedule**

Item	Date
Motions Due	July 29, 2022
Ocean Wind's Responses to Motions	August 5, 2022
Opposition and Testimony from Parties	August 17, 2022
Ocean Wind Reply	August 26, 2022
Public Hearing	September 8, 2022
Public Written Comments Deadline	September 21, 2022
Settlement Conference	September 28, 29 or 30, 2022
Parties Respond to Public Comment	October 7, 2022
Oral Argument	Week of October 17, 2022

Further details regarding the Public Hearing and Oral Argument will be forthcoming.

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

BPU DOCKET NO. QO22050347

**Exhibit B:
June 29, 2022 Order and July 5, 2022 Order**

DOCKET NO. QO22050347



Agenda Date: 6/29/22
Agenda Item: 8B

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CLEAN ENERGY

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

ORDER DESIGNATING)
COMMISSIONER, SETTING)
MANNER OF SERVICE AND)
BAR DATE)

DOCKET NO. QO22050347

Parties of Record:

- Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel**
- Gregory Eisenstark, Esq., Cozen O'Connor, P.C., on behalf of Ocean Wind LLC**
- Michael J. Donohue, Esq., Blaney Donohue & Weinberg, P.C., on behalf of Cape May County**
- Gerald M. Thornton, Commissioner Director Board of County Commissioners, Cape May County**
- Kevin Lare, Administrator Board of County Commissioners, Cape May County**
- Rita M. Rothberg, County Clerk, Cape May County**
- Jeffrey R. Lindsay, Esq., County Counsel, Cape May County**

BY THE BOARD:

By this Order, the New Jersey Board of Public Utilities ("Board" or "BPU") considers retention of a petition filed by Ocean Wind LLC's ("Ocean Wind" or "Company"), which requests that the Board determine that certain easements across properties owned by the County of Cape May ("Cape May County" or "County") and certain consents needed from the County for certain environmental permits in, and with respect to the County, are reasonably necessary for the construction or operation of the Ocean Wind 1 Qualified Offshore Wind Project ("Project") ("Cape May Petition").

BACKGROUND

In response to Governor Murphy's Executive Order No. 8, which called upon the Board to fully implement the Offshore Wind Economic Development Act, the Board issued its first offshore wind solicitation in September 2018. Ocean Wind submitted an application and in June 2019, the Board approved the Project as a Qualified Offshore Wind Project ("QOWP"). Since the award,

Ocean Wind has been in the planning, permitting and preconstruction phase of the Project. A significant aspect of the preconstruction activities involves obtaining the necessary easements, permits and consents for the onshore construction of the electricity export cable, which will bring the renewable electricity from the offshore wind turbines to the electric transmission and distribution system in New Jersey.

On February 2, 2022, Ocean Wind filed a petition with the Board, pursuant to N.J.S.A. 48:3-87.1(f), seeking the Board's determination that certain easements across Green Acres-restricted properties owned by the City of Ocean City, New Jersey ("Ocean City"), and that certain municipal consents needed for particular environmental permits in or with respect to Ocean City, are reasonably necessary for the construction or operation of the QOWP, Ocean Wind I ("Ocean City Petition").

On May 20, 2022, Ocean Wind filed the instant petition, pursuant to N.J.S.A. 48:3-87.1(f), seeking the Board's determination that certain easements across properties owned by the Cape May County and certain consents needed from the County for certain environmental permits in, and with respect to the County, are reasonably necessary for the construction or operation of the Project.

The Cape May Petition pertains only to Cape May County and is the subject of this Order. While the Cape May Petition and the Ocean City Petition both concern the same onshore cable for the electricity export cable of Ocean Wind 1's QOWP, each petition covers different easements and consents for different parts of the cable.

N.J.S.A. 48:3-87.1(f) grants the Board the authority to make a determination on a petition from a QOWP "seeking authority to obtain the easement, right-of way, or other real property interest."

DISCUSSION

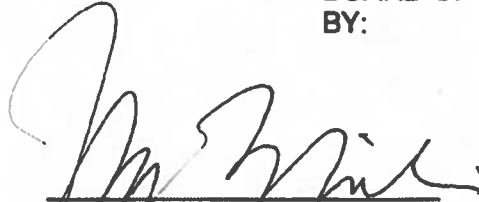
The Board has determined that it should retain the Cape May Petition. Accordingly, pursuant to N.J.S.A. 48:2-32, the Board **HEREBY DESIGNATES** President Joseph L. Fiordaliso as the presiding officer with authority to rule on all motions that arise during the pendency of this proceeding and to modify any schedules that may be set as necessary to secure a just and expeditious determination of the issues. Further, the Board **HEREBY DIRECTS** that the County of Cape May be included as a necessary party in this proceeding, and **HEREBY DIRECTS** any entity seeking to intervene or participate in this matter file the appropriate application with the Board on or before July 15, 2022. Any party wishing to file a motion for admission of counsel, pro hac vice, should do so concurrently with any motion to intervene or participate.

In addition, in compliance with the Board's Order in Docket No. EO20030254, all parties are **HEREBY DIRECTED** to serve all documents electronically. No hard copies shall be filed until the Board lifts the restrictions imposed in that Order. The Board **HEREBY DIRECTS** Board Staff to post this Order to the Board's website.

The effective date of this Order is July 1, 2022.

DATED: June 29, 2022

BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
PRESIDENT



MARY ANNA HOLDEN
COMMISSIONER



DIANNE SOLOMON
COMMISSIONER



UPEENDRA J. CHIVUKULA
COMMISSIONER



ROBERT M. GORDON
COMMISSIONER

ATTEST:



CARMEN D. DIAZ
ACTING SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public Utilities.

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

DOCKET NO. QO22050347

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STATE OF NEW JERSEY
Board of Public Utilities
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DIVISION OF CLEAN ENERGY

IN THE MATTER OF THE PETITION OF OCEAN WIND)	ORDER SETTING
LLC PURSUANT TO N.J.S.A. 48:3-87.1(F) FOR A)	PROCEDURAL SCHEDULE
DETERMINATION THAT CERTAIN EASEMENTS AND)	
CONSENTS NEEDED FOR CERTAIN)	DOCKET NO. QO22050347
ENVIRONMENTAL PERMITS IN, AND WITH RESPECT)	
TO, THE COUNTY OF CAPE MAY ARE REASONABLY)	
NECESSARY FOR THE CONSTRUCTION OR)	
OPERATION OF THE OCEAN WIND 1 QUALIFIED)	
OFFSHORE WIND PROJECT)	

Parties of Record:

Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel
Gregory Eisenstark, Esq., Cozen O'Connor, P.C., on behalf of Ocean Wind LLC
Michael J. Donohue, Esq., Blaney Donohue & Weinberg, P.C., on behalf of Cape May County
Gerald M. Thornton, Commissioner Director Board of County Commissioners, Cape May County
Kevin Lare, Administrator Board of County Commissioners, Cape May County
Rita M. Rothberg, County Clerk, Cape May County
Jeffrey R. Lindsay, Esq., County Counsel, Cape May County

BY PRESIDENT FIORDALISO:

By this Order, I set forth a procedural schedule for this proceeding.

BACKGROUND

On May 20, 2022, Ocean Wind LLC (“Ocean Wind” or “Petitioner”) filed a petition (“Petition”) with the New Jersey Board of Public Utilities (“Board” or “BPU”), pursuant to N.J.S.A. 48:3-87.1(f), seeking the Board’s determination that certain easements across properties owned by the County of Cape May (“County”) and certain consents needed from the County for certain environmental permits in or with respect to the County are reasonably necessary for the construction or operation of Petitioner’s qualified offshore wind project, Ocean Wind I (“Project” or “QOWP”).

N.J.S.A. 48:3-87.1(f)(2) grants the Board the authority to make a determination on a petition from a qualified offshore wind project “seeking authority to obtain the easement, right-of way, or other

real property interest.”

On June 8, 2022, Michael J. Donohue, Esq. on behalf of the County of Cape May, filed a motion with the Board, requesting the Board to decline jurisdiction over the Petition and to dismiss the Petition without prejudice as unripe for disposition and non-justiciable under N.J.S.A. 48:3-87.1(f) and N.J.S.A. 20:3-1 et seq. (“June 8, 2022 Motion”). On June 20, 2022, Ocean Wind filed a reply brief in opposition to the June 8, 2022 Motion, and on June 27, 2022 the County filed a reply to Ocean Wind’s reply. The June 8, 2022 Motion will be addressed at a later date.

On June 29, 2022, the Board retained the Petition for hearing and, pursuant to N.J.S.A. 48:2-32, designated myself as the presiding officer authorized to rule on all motions that arise during the pendency of these proceedings and to modify any schedules that may be set as necessary to secure a just and expeditious determination of the issues (“June 29, 2022 Order”). Further, the June 29, 2022 Order directed the County to be included as a necessary party, and further directed any entities seeking to intervene or participate in this matter to file the appropriate motions with the Board on or before July 15, 2022.

I note that P.L. 2021, c. 178 envisions a transparent and public process for the evaluation. In accordance with N.J.S.A. 48:3-87.1(f)(2), the Board is required to hold a public hearing and to provide the opportunity for public comments on the Petition.

The public will have an opportunity to file comments and attend a public hearing. I, President Fiordaliso, will preside over the public hearing. Notice of the public hearing shall be provided to the “news media, the owner of the real property subject to the petition, and the governing body and municipal clerk of the municipality and the clerk of the county in which the lands proposed to be conveyed are located.” N.J.S.A. 48:3-87.1(f)(2). Public Comments may be submitted using the Board’s Public Document Search tool, located at <https://publicaccess.bpu.state.nj.us/> using DOCKET NO. QO22050347.

DISCUSSION & FINDINGS

I **HEREBY ISSUE** the following procedural schedule (“Schedule”) attached hereto as Exhibit A. I further **HEREBY DIRECT** the parties to comply with the Schedule’s terms and to work cooperatively with each other to the fullest extent possible in the interests of reaching a just determination in this proceeding. The Schedule provides the parties with opportunities to present evidence and arguments to aid in the Board’s deliberation.

In compliance with the Board’s Order in Docket No. EO20030254, all parties are **HEREBY DIRECTED** to serve all documents electronically. No hard copies shall be filed until the Board lifts the restrictions imposed in that Order.

I **HEREBY DIRECT** that this Order be posted on the Board’s website.

This provisional ruling is subject to ratification or other alteration by the Board, as it deems appropriate during the proceedings in this matter.

DATED: 7/5/22

BY:



JOSEPH L. FIORDALISO
PRESIDENT

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

DOCKET NO. QO22050347

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**Exhibit A:
Procedural Schedule**

Item	Date
Motions Due	July 15, 2022
Opposition and Testimony from Parties	July 29, 2022
Ocean Wind Reply	August 12, 2022
Public Hearing	August 23, 2022
Public Written Comments Deadline	September 6, 2022
Settlement Conference	Week of September 12, 2022
Parties Respond to Public Comments	September 20, 2022
Oral Argument	Week of October 3, 2022

Further details regarding the Public Hearing and Oral Argument will be forthcoming.

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