

August 28, 2024

Lisa Vest
DNREC Office of the Secretary
89 Kings Highway
Dover, DE 19901

via Public Hearing Web Portal

RE: Comments Regarding Docket #2024-P-MULTI-0007 (U.S. Wind Permitting Requests and Delaware Environmental Impacts)

I am a Delaware resident and homeowner in the North Bethany Beach, Delaware community of Tower Shores. I am a party directly affected by the subject applications--as a property owner in the subject area and member of Tower Shores Beach Association, immediately adjacent to the 3Rs Road site (a Delaware State Park public beach) where the Applicant, U.S. Wind (USW), seeks to bring ashore high-powered, underground electric cables to transmit power between its proposed offshore windfarm¹ and a proposed inland substation in Sussex County, which is immediately adjacent to public wetlands. I am also a Delaware attorney specializing in administrative law, land use, and government-related matters. Should these permits be granted, I reserve the right to file appeals or litigation on behalf of myself and/or other impacted parties.

- 1. WHILE THE PERMITS SOUGHT PERTAIN TO DRILLING, DREDGING, BURYING AND CONVEYING ELECTRICITY THROUGH CABLES THROUGH DELAWARE, BECAUSE THEY ARE INTEGRALLY (AND LITERALLY) TIED TO THE ENTIRE USW WIND FARM PROJECT, THE DELAWARE APPLICATIONS CANNOT BE CONSIDERED IN A VACUUM, WHILE DISREGARDING THE TURBINE/OCEAN ASPECTS.**

My first comment and objection to the DNREC process thus far is that it was repeatedly stated at the public hearing, and in prior public presentations by the Agency that comments on the wind farm aspect of the project (anything beyond the

¹ The US Wind Project, in a Maryland offshore lease project, seeks to build 121+/- wind turbines, each up to 953' tall, as close as 15 miles from the shoreline. The offshore lease area stops at exactly the southernmost Delaware state line (taken out to ocean waters) and the turbines would be visible to, and impact, the entire Delaware coastal zone from Fenwick Island up to Rehoboth.

actual cables) would not be heard or considered by DNREC. DNREC's pre-emptive and unilateral refusal to consider turbine and offshore wind-farm concerns affecting Delaware citizens, during a complex "joint permitting" process for a massive project with federal, multi-state and local effects, impairs public participation and the public's right to be heard. It also impacts DNREC's obligation to consider all factors, including public concerns, which may inform its decision making on whether the permits should be granted.

The digging and underwater/underground placement of cables, as well as potentially a huge inland substation (hosting 2 million volts of incoming electricity) in Delaware cannot and must not be considered in a vacuum. The critical questions raised by the DNREC permitting process(es) are (1) whether allowing the project will have an adverse impact on DE natural resources, and (2) whether it is in the interests of DE residents and the protection of *lands held in the public interest*. The connection (literal and theoretical) of the cables to a massive offshore windfarm cannot be ignored. The wind turbines are not physically in DE but the lease site for turbines ends at exactly at the DE/MD border (off of Fenwick Island) – obviously in immediate proximity to the Sussex County beaches and coastal resources, which DNREC is charged with protecting. The ocean wind turbine portion of the project proposes to use technology which is still relatively untested and unproven, and the fact that this offshore activity can pose major risks and socio-economic detriment to the State of DE, its citizens and its natural resources, cannot be disregarded (see Vineyard Wind discussion below). **The fact that DNREC does not itself regulate offshore wind does not mean that DNREC cannot or should not consider its implications as to these permit requests, when those factors directly affect Delaware.² *In the absence of DNREC consideration of these issues, the State is effectively unprotected.***

The drilling and cables requested by the permits would literally not exist "but for" the Maryland-based windfarm, and would be directly entering Delaware therefrom. The presence of a huge, visible, and potentially audible, windfarm directly off of State shores directly affects Delaware residents, tourists, businesses and fishermen. The concerns of these constituents are certainly relevant to whether this Project and these permits are in the public interest and Delaware's environmental

² The Wetlands Regulations, for example, specifically require consideration of economic impacts resulting from the Project for which a permit is sought (7 Admin. C. 7502, §12.7), and the Subaqueous Lands Regulations, require consideration, *inter alia*, of the "Public Use Impact" of the Project. 7 Admin. C. 7504, §4.6.

interest (as opposed to the private interest of USW or the State’s potential financial interest as a leaseholder, leasing public lands for the sole benefit of a private entity).

2. DNREC’S “JOINT PERMITTING” PROCEEDING RESULTED IN PROCEDURAL DEFECTS AND A LACK OF MEANINGFUL PUBLIC NOTICE.

The U.S. Wind Project is a matter of known public interest, particularly in Sussex County. DNREC electing to hold a “Joint Permitting” Process, Public Comment and (Virtual) Public Hearing” Process resulted in **illusory and ineffective notice** to the public. Because of the volume and technical nature of what is effectively an almost 4000 page³ “document dump” associated with grouping at least 4 (5, including consistency) distinct permit applications, in a single proceeding, in addition to failing to follow specific statutory and regulatory permitting provisions for each application, caused a logistical denial of *meaningful* public participation. The application materials were voluminous, poorly organized and often incomplete – perhaps evidencing U.S. Wind’s lack of experience with the regulatory processes.

Many of the relevant materials are missing, hidden, not referenced or confusing. For example: the “Division of Watershed” item contains only the 34-page “Coastal Construction Application”, yet many of the relevant and necessary materials regarding the beach/offshore aspect of the Project may be found in items under the (separately regulated) “Water Quality Certification” and “Wetlands” portion of the online documents. The four permits sought are subject to four different sets of statutory and complex regulatory criteria. Even as a regulatory attorney, the materials were beyond challenging to search and wade through, and there was not enough time to examine each of the 4000 pages of technical application materials, as applied to multiple Title 7 Chapters and Regs (which laws were not linked or cited in the original permitting announcement). The average citizen could not possibly be meaningfully informed by the manner in which these combined applications were presented. Considering each permit individually, as the Code envisions, in a separate permitting announcement and following the unique procedures for considering each of them, would at least have given people a fighting chance to learn what the applications consisted of. And would have resulted in a more meaningful review by DNREC itself.

³ The application and supporting materials alone, appearing as links on the Joint Permitting Hearing webpage, under “Narrative” (298 pages), “Water Quality Certification,” “Wetlands and Subaqueous Lands” and “Coastal Construction” total **3890 pages**.

Of even more concern, holding a joint process resulted in omitted procedural steps. For example, with respect to the “Coastal Construction” permit (drilling and cables under the ocean and state park beach), holding a Joint Permitting process resulted in the avoidance of a mandatory step in permit approval. The Division is supposed to make a “determination” considering each of the detailed criteria in the Regulations governing Beach Protection (7 Admin C. §5102)⁴. Only after such determination, an aggrieved party may appeal to the Secretary and then a public hearing shall be scheduled. No such determination appears in the record. On July 9, 2024, the hearing officer advised the public that *the Secretary* would be making “his decision” on all of the applications after the public hearing and the public comment period closing on September 9, 2024.⁵ Because of having no preliminary determination, as specifically required by the Beach Protection Regulations, the Secretary (normally the appellate reviewer) would be deciding the issue in the first instance. Nor did the public have an opportunity, at the July 9th public hearing, to review in advance, comment on or challenge what would have been the Division’s preliminary determination, which the Rules envision.

The current “joint” permitting process should be terminated and each permit application should be resubmitted to proceed individually, as required by their respective statutes and regulations.

3. THE REQUESTED PERMITS ARE NOT AUTHORIZED BECAUSE OTHER NECESSARY PERMITS & REVIEWS HAVE NOT BEEN OBTAINED OR CONSIDERED.

Putting aside for a moment the merits of the current applications, this Project should not proceed due to the absence of other permit applications which appear to be statutorily required.

- This Project, involving intensive sub-marine, subterranean and sub-wetland drilling and pipelines, should require review for a Coastal Zone Permit. The entire Delaware portion of the U.S. Wind project lies in the Delaware Coastal Zone (7 Del.C. §7002(i)). The Project consists of drilling and the running of vast pipelines for miles through and under public beaches, ocean and wetlands areas. Infrastructure associated with offshore drilling for oil or gas is

⁴ Similar criteria exist for the Wetlands and Subaqueous Lands application(s). Also, no declaration of completeness by the Division of Water appears in the record, as required by 7 Admin. Code §7502, 8.6.

⁵ Transcript, p. 22.

prohibited in the Delaware Coastal Zone, even if the operation occurs offshore. 7 Del.C. §7003(b). While this Project does not involve oil or gas, drilling is drilling regardless of the energy source involved and the statute recognizes the adverse effects of drilling in the Coastal Zone. If the Secretary determined that the Project does not require a Coastal Zone permit, that determination (and reasoning) should have been stated in the public record, and was not.

- No Permits should not be issued for the proposed project before it undergoes PLUS review, which is required for “site plan reviews...within environmentally sensitive areas.” 29 Del.C. §9203. This project targets a number of environmentally sensitive areas in Sussex County.
- The Substation portion of the Project is not currently permitted by Sussex County zoning. The U.S. Wind applications submitted to DNREC describe and include as part of the Project, “US Wind substations [which] would be constructed” on a Sussex County parcel immediately adjacent to the inland bays.” A substation is not permitted by right in Sussex County’s zoning code, but must be obtained via a conditional use permit. County Council held a hearing on USW’s subsidiary’s application on July 30, 2024 at which substantial opposition was placed in the record, and councilmembers questioned whether the County’s CU criteria was met. No zoning decision has yet been issued. Unless and until this CU is granted, the substation cannot be built and the Project would not be in compliance with zoning requirements. Thus, the Project cannot be approved, as obviously the substation is part and parcel of the entire Project, serving as the terminus for the high-powered cable pipelines.
- Pursuant to 7 Del.C. §6003(c)(1), “No permit may be granted unless the county or municipality having jurisdiction *has first approved* the activity by zoning procedures provided by law.” *See also* 7 Del.C. §6604(a) (“No permit may be granted unless the county or municipality having jurisdiction *has first approved* the activity by zoning procedures provided by law.”); §6618 (“a permit granted under this chapter shall not authorize an activity in contravention of county or municipal zoning regulations.”). **Without waiver of other objections, these State permits simply cannot issue unless and until Sussex County approves the zoning application.**

4. THE STATE OF DELAWARE’S “TERM SHEET” AGREEMENT WITH U.S. WIND IMPAIRS THIS AGENCY’S CONSIDERATION OF THE APPLICATIONS.

On or about December 19, 2023, Delaware Governor, John Carney, and the CEO of US Wind, signed a “Term Sheet” reflecting an “understanding as to terms and conditions” of a proposed lease for US Wind to lease the Delaware public State Park beach at 3Rs road in order to “construct and operate” its onshore transmission facilities and export cables – in short, the exact subject matter of the current permit applications, with a proposed consideration for the lease of \$350,000/year. Both the Term Sheet and a press release, issued simultaneously, touted the purported benefits of the USW Project for the State of Delaware. No permit applications had yet been filed in Delaware.

The “Term Sheet” – a contract between the State and the Applicant in everything but name-- designed to facilitate the Project—, creates a conflict of interest, or at least the appearance of impropriety in the Agency’s consideration of these applications. This Term Sheet, and Governor’s declared interest and conceptual pre-approval of the US Wind’s offshore wind project, prior to the official start of permitting proceedings, creates at least the potential for undue influence on neutral decision making. Here, the Governor’s subordinate Secretary, and the Secretary’s subordinate Agency (DNREC) and Division officials, are now tasked with making recommendations on whether this Project– openly desired by the Chief Official of the Executive branch (Governor) – should proceed. The Term Sheet states only alleged or potential benefits to the State from the Offshore/onshore wind project, with no discussion or consideration of any possible detriments or risks. The State, via the Governor, has a vested financial interest in obtaining the lease income from USW, set forth in the Term Sheet. Given that the Project has been openly endorsed by the Governor, all ensuing processes by entities subordinate to the Governor are effectively *pro forma*⁶. There has also been a lack of transparency from the Governor’s office and the Agency, as the plan for Delaware’s involvement, as “term sheet” discussions had apparently been years in the making, with little or no prior notice to the public. Again, this is action to be taken—not on investment

⁶ Similarly, DNREC’s Director of Parks & Recreation, Raymond Bivens, issued a letter on behalf of the Agency “as landowner of 3Rs Beach” in DE Seashore State Park “authorizing” USW’s submission of an application for activities to be conducted on the property (in the record), signifies an element of preapproval, or at least non-objection, by the Agency for the permits.

property--but on *public lands* and natural resources dedicated to recreational use and conservation.

5. THE APPLICATON DOES NOT PROVIDE SUFFICIENT INFORMATION OR DATA REGARDING THE PROJECT'S OVERALL SAFETY, NOR ASSURANCES AGAINST ADVERSE IMPACTS ON THE DELAWARE OCEAN, BEACH AND BAY ECOSYSTEMS, MARINE LIFE AND WILDLIFE.

The claims U.S. Wind makes in its applications, that there will be little to no harm to the natural resources, are simply conclusory and unsupported by scientific data. Many serious questions exist (i.e. how will particular marine species be affected; what is the data on EMF at various depths, and its effect on human and marine life; what cable-related safety protocols and emergency response measures are in place?). USW makes claims and statements that its activities will not harm or will not substantially or detrimentally affect the natural resources in the protected areas, but the burden should be on the applicant to *demonstrate* safety and compliance with statutory criteria with scientific data.

Notably, in the federal permitting process, the *USEPA itself has cautioned against running cables through the Indian River Bay*, saying “EPA strongly recommends that BOEM avoid impacts to the Indian River Bay,” and notes that the Delaware Inland bays are

“estuary[ies] of national significance . . . [with] highly productive estuarine environments support[ing] may species of birds, fish, mammals and other wildlife as well as robust economic activity. *The inland bays are particularly sensitive to environmental change*, as they are shallow and poorly flushed by tidal movement.”

See BOEM FEIS, Appendix O, p. O-20. Similarly, NOAA and NMFS, in their comments to the DEIS, recognize that the offshore (ocean) waters are “sensitive ecological areas provid[ing] valuable natural habitat for . . . marine resources, and that *the Indian River Bay is “particularly vulnerable to impacts”* and is “already stressed.” *Id* at p. O-38.⁷

⁷ NOAA and NMFS note that almost *1.4 million (1,368,000) cubic yards of material* would be disturbed and removed by dredging as part of USW’s proposed cable placement. O-38.

If even the federal agencies so strongly advise that Delaware’s inland bays (protected as estuaries of national significance) should not be disturbed in the manner envisioned by USW’s proposed Project, surely this Agency, which is specifically charged with protecting these natural resources on behalf of the State of Delaware, should not ignore these issues, and should deny the permits.

US Wind, in its Delaware application, fails to provide DNREC with any answers, and fails to direct it to data, ensuring environmental safety, and addressing the specifically required regulatory criteria for each application.⁸ The only document in the record, upon which it may seek to rely (and this is only a guess because USW does not provide any analysis or specific citations), as to environmental issues such as safety or marine life is the August 2023 “USACE Section 404/10 Permit Application,” which has been misleadingly put into the DNREC record with the title “2024 US Wind Individual Permit Application.” This is not, in fact, a Delaware permit application at all, but rather was a prior federal submission to the USACE, addressing issues of concern in the ocean waters (well outside of the 3Rs Beach and Delaware wetlands areas for which permits are sought here). ***USW cannot have it both ways – claiming that the Delaware permits must not consider federal (windfarm) issues, yet submitting materials from the federal application process to (presumably) bolster its claims that its activity will not have any detrimental environmental impact in Delaware.***

The application materials also reveal areas of critical missing information. In the Wetlands Application (p. 33), US Wind tells DNREC that it *does not know* if concrete mattresses will be placed in the ocean and/or bays to secure the high-power cables and, if they are used, that the locations “are unknown until after installation” (which would obviously be well after permit approval). Notably, USW advised the public, at various public meetings, that cables would be shielded/protected by concrete mattresses. BOEM’s EIS also stated that cables may need additional protection systems. USW further tells Delaware that “cable protection . . . would be required where burial depth was not achieved due to unforeseen circumstances.” Thus, USW is proceeding on a “trust us” or “we will figure it out as we go along” promise. This is an insufficient and unreasonable basis upon which to grant such consequential permits. The entire offshore and onshore cable route(s) run through areas whose primary purpose is serving as a nature habitat and public recreation area (as well as being nearby residential areas). Public use of the area is year-round, but with an additional huge influx of beach and bay users, and boaters in the spring and

⁸ I.e. 7 Admin. C. 5102, §§4.5; 5.3 (Beach Protection); 7 Admin. C. 7504, §§7.0; 8.4, 12.0 (Wetlands); 7 Admin. C. 7502, §§4.0.

summer seasons. There is the risk of incalculable harm to humans and marine life if these multi-GW cables were to become exposed or damaged in the marine environment. “Trust us” is insufficient on an issue of such importance.

The very point of the permitting process and DNREC review is to protect Delaware citizens and the natural environment from harm. USW’s applications do not address or alleviate public safety concerns. In addition to the environmental concerns discussed above, this project brings with it potential risks of fire or explosion (due to incredibly high-power transmission), as well as possible oil or chemical discharges at sea from the turbines themselves. Each ocean wind turbine and substation contains thousands of gallons of lubricating oil and diesel oil. The total stored offshore would be in excess of 508,000 gallons of oil. See also discussion below regarding pollution from blade failure. The ocean does not respect interstate boundaries when carrying potentially toxic materials.

Emergencies with power cables are not unprecedented. Transmission cables from Block Island, buried less than 7 feet deep (the same or lesser depths are proposed here for the inland bays), became exposed on a recreational beach several years ago. The Block Island farm is a fraction of the size and capacity as the farm USW seeks to build just off of Delaware beaches. Are our local first responders prepared to deal with such emergencies?⁹ The application states that US Wind itself will be responsible for “periodic inspection” of the cables. Besides the problematic “trust us” scenario, USW – in its first wind project ever -- simply lacks the experience to reliably ensure the ongoing safety of this type of equipment

Marine life is a key stakeholder in this matter which cannot speak for itself. USW’s own proposal acknowledges that it has not yet conducted vital studies on the impact of this project on key marine species and other wildlife, some of which find unique sanctuary in and around Delaware waters – such as the critical horseshoe crabs, commercial and recreational fish populations, bats and endangered migratory birds. DNREC has, itself, put no data into the public record as to studies or effects on these species both from drilling and maintaining these types of high-voltage cables. Additionally, it is well known that wind farms (including noise from testing and building them)– the extent of which is still not fully known – pose a great threat to the critically endangered right whale and other marine mammals.

⁹ The State of Delaware All-Hazard Mitigation Plan contains no analysis of or plans for response to potential hazards associated with an offshore/onshore wind energy project.

6. ALTERNATIVES EXIST TO USW’S PROPOSAL TO DRILL AND BURY POWER LINES WITHIN DELAWARE’S FRAGILE COASTAL ZONE FOR USW’S MARYLAND PROJECT.

A key consideration before granting permits in such a unique and environmentally sensitive area (set aside for public use), is whether less invasive (to Delaware) alternatives exist, and to consider a cost/benefit analysis of approving the proposed action. First and foremost, this is a Maryland project, and Delaware stands to gain little or nothing economically or practically. The SOLE PURPOSE of the permits and actions sought to be taken in Delaware is to enable US Wind to facilitate a Maryland Wind Farm, procured under a Maryland offshore lease, for the (stated) benefit of Maryland ratepayers.

Alternatives to Delaware onshoring exist, and they are found in Maryland. USW could seek to build additional infrastructure in Maryland but it is cost-prohibitive to do so, and has been opposed by many Maryland lawmakers. Ocean City has specifically refused to host the cable landfall. USW does not want to take on these fights, so it has come to Delaware, negotiating a pre-permitting deal with the Governor. In short, it’s cheaper and easier for US Wind to bypass its Maryland obstacles by using Delaware as a relatively cheap and easy pitstop. DNREC should not approve permanent alterations to, and risks to the State’s most valuable and irreplaceable natural resources, simply to help US Wind reap the benefits of its Maryland contract.

The bottom line is that this is a Maryland project and Maryland should host all of its infrastructure. If Maryland can’t or won’t, that is US Wind’s problem to solve – not the State of Delaware’s (particularly not by using lands held in the public interest). If it will cost more to do the Project entirely in Maryland, that is a cost of doing business, which USW should have factored in at the inception of the offshore lease agreement.

The promised “rental” described in the “Term Sheet” from a 3Rs beach land lease (\$350,000/year) along with a speculative “potential” for excess RECs is a pittance compared with the massive economic detriment the State would suffer in terms of loss of tourism and property values, if visitors and owners have to deal with the visual (and potential noise) pollution of a huge windfarm directly in the path and viewshed of Delaware’s pristine beach and ocean lands, along with experimental ultra high-voltage cables running underneath a public beach and bays where families gather for recreation. As the volume of public comments in this process show, the vast majority of Delaware, and particularly Sussex County, residents do not favor

this Project and their use and enjoyment of Delaware’s coastal resources will be negatively impacted. Negative impacts will also undoubtedly occur to our State’s marine life and wildlife, who cannot advocate for themselves and for which the Department is charged with protecting.

7. THE RECENT “VINEYARD WIND” TURBINE BLADE FAILURE AND RESULTING ENVIRONMENTAL DAMAGE COUNSELS STRONGLY AGAINST APPROVAL OF THESE APPLICATIONS.

It is by now well-known that, on July 13, 2024¹⁰, part of a single blade on an operational turbine, in waters off Nantucket, broke off and fell into the ocean. This occurred on an ordinary weather day, and no reason has yet been given for the collapse. This news report, updated several weeks after the incident, describes the major pollution (plastics, fiberglass and other nonbiodegradable materials), and the cleanup required, from the failure of part of one single blade (the impact of the materials on fish and marine life is still another serious open question):

Vineyard Wind has deployed a crew of 56 contractors to assist in the cleanup of the island’s beaches, and town officials said Friday that no town staff are actively engaged in removing the debris.

*The wind energy company reported Wednesday [July 17th] that crews had removed 17 cubic yards of debris, **enough to fill more than six truckloads.** On Friday, crews continued debris collection efforts across south shore beaches, along with Jetties Beach ahead of a triathlon on Saturday.*

“The components of the debris observed to be floating offshore are a mix of foam and fiberglass pieces of varying sizes,” town officials wrote Friday.

*“Vessels crews will continue efforts to **collect debris offshore to lessen the amount of debris landing on Nantucket beaches.**”*

At least some of the debris has started washing ashore on Martha’s Vineyard, according to trustees on the neighboring island. (emphasis added)

<https://www.bostonherald.com/2024/07/19/nantucket-select-board-to-pursue-reimbursement-against-vineyard-wind-in-wake-of-blade-failure/>

¹⁰ Vineyard Wind “did not publicly reveal the Saturday [July 13] incident until Monday [July 15], and similarly did not disclose that it shut down power production on Saturday night until Wednesday [July 17] — one day after federal safety officials said work at the project is “shut down until further notice.” <https://www.wbur.org/news/2024/07/18/vineyard-wind-blade-break>

This single blade failure – just a tiny part of the total Vineyard Wind windfarm – is proving to be an economic and environmental disaster for the Nantucket area at the height of the summer tourist season. At least six area beaches were closed for days, and the fishing industry was halted. At the time of this collapse, only about 10 of the approved 62 wind turbines had been installed and operating. Thus, the VW project was not even fully operational and, even if/when fully built out, *would be less than half the size of the windfarm proposed by US Wind* off the shores of Maryland and Delaware beaches. US Wind’s project would entail *121 turbines, with 363 blades*, just off our coast. It goes without saying that tourism from the beautiful and currently-pristine Delaware beaches are one of, if not the greatest, external revenue generators for the State, and similar blade failure/pollution would be disastrous.

Little to nothing is known about the potential effects of static failure, fatigue failure, and aging in an ocean environment, on these massive blades, and, of course, this is not addressed in the USW application materials. Bird strikes are also a known risk for wind turbines, and could well implicate blade integrity on a regular basis, not to mention the ecological concern of harm to bird species.

A Business Wire article from August 7, 2024 contains the warning:

“Blade failures are not rare. [WindPower Monthly reports that](#) wind turbine rotor blades are failing at a rate of around 3,800 a year, globally, including failures at Dogger Bank only a few months ago.”

*If they build all nine projects and given the rate of blade failures, 15 blades could fall into the ocean here every year.. **That would be over 1000 tons of epoxy, fiberglass, and foam contaminating our beaches and ocean every year. A 747 weighs 200 tons. Do we want the debris equivalent of 5 jumbo jets, polluting our waters every year?***

“The Vineyard Wind disaster proves that the permitting process is inadequate. Until we fully understand the dangers of this type of contamination, we should not proceed with further development,” Dr. Quattrochi Knight said.

<https://www.businesswire.com/news/home/20240807637698/en/Grassroots-Environmental-Group-Green-Oceans-Calls-for-Moratorium-on-Offshore-Wind-Construction-After-Nantucket-Disaster>

8. THE CURRENT PERMIT APPLICATIONS SHOULD BE REJECTED, AND DELAWARE SHOULD NOT HOST ANY PART OF THE PROJECT, WITHOUT SECURED BONDING TO OFFSET POTENTIAL RISKS TO THE STATE.

Yet one more reason for disapproval of the requested permits exists. US Wind's Application Materials show no evidence of bonds being posted for any of the proposed Delaware activities or infrastructure. Bonds are always required by the State of Delaware for projects which result in even minor impacts to state-owned lands or resources. This is a huge, major, infrastructure project, in a still novel industry, proposed by a party (U.S. Wind) which has no prior experience building offshore wind projects and, therefore, no track record. Indeed, this would be an experiment, as it is their first project ever.

USW offers Delaware no bonding, and no plans as to how it would address the cost of potential equipment damage or failures, which would directly and adversely affect Delaware beaches and tidal waters. Delaware's coastal zone, even more so than New England's, faces frequent tropical storms, hurricanes and nor'easters, which could potentially decimate a huge ocean windfarm, particularly as it ages, and failure of ocean/turbine components, similar to Vineyard Wind's, could pollute the entire Delaware shoreline and likely a large part of the east coast. At a minimum, Delaware should demand a substantial fully-secured bond before State permits *for any aspect of the project*, are granted. Indemnification, while mentioned in the lease "term sheet," is an illusory remedy, when a company like US Wind might easily declare bankruptcy in the face of a major failure.

CONCLUSION

While it may seem obvious, this review process should not lose sight of the fact that every action US Wind seeks to take in Delaware is an action which would be taken on, through and under public lands. USW is seeking to place potentially dangerous, unproven, invasive and unsightly (turbines) equipment on, in, in view of and through **public recreational property**. It is seeking to run massive, ultra-high voltage cables under and through Delaware's most fragile and valuable natural resources—the beach and inland bays. DNREC should not forget its primary obligation and charge in the Delaware State Code, which is to protect the unique, beautiful and valuable natural resources of the State of Delaware – both now and for future generations. This Project does nothing to further or uphold that obligation.

DNREC is statutorily charged with protecting, conserving and acting in the interests of Delaware's natural resources. 7 Del.C. §6801 provides that the

Beaches of the Atlantic Ocean and Delaware Bay shoreline of Delaware are hereby declared to be valuable natural features which furnish recreational opportunity and provide storm protection for persons and property, as well as being an important economic resource for the people of the State. . . .Development and habitation of beaches must be done with due consideration given to the natural forces impacting upon them and the dynamic nature of those natural features. The purposes of this chapter are to enhance, preserve and protect the public and private beaches of the State. . . .

Similarly, 7 Del.C. §7201 recognizes that:

Subaqueous lands within the boundaries of Delaware constitute an important resource of the State and require protection against uses or changes which may impair the public interest in the use of tidal or nontidal waters.

DNREC's approval of the USW permits at this stage would be in derogation of the Agency's charge to protect Delaware's scenic and natural resources. Delaware is a coastal state and cannot ignore the impacts of facilitating an offshore wind project which will directly and detrimentally impact the Delaware coast and coastal tourism. There are no benefits to the State from this Maryland Project other than the proposed *de minimis* rental fee at 3Rs beach. The technology U.S. Wind seeks to place – including running subaqueous ultra-high-powered cables under and through (1) public state-park beaches, (2) Delaware ocean waters, (3) wetlands and (4) subaqueous lands -- all disruptive to marine life -- is novel and unproven as to safety. There is no research or data in the record upon which DNREC can rely upon to approve such permits, while fulfilling its statutory and regulatory obligations of ensuring the safety of the State, its citizens and visitors, the beaches, and the coastal and inland waterways.

For the foregoing reasons, I respectfully request that DNREC **deny** each of the U.S. Wind applications which are the subject of Docket #2024-P-MULTI-0007.

Respectfully submitted,

/s/ Stephani Ballard Wagner

Stephani J. Ballard Wagner