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August 15, 2024



VIA EMAIL

Shawn Garvin, Secretary
Department of Natural Resources and Environmental Control
shawn.garvin@delaware.gov

RE: US Wind Applications Docket #2024-P-MULTI-0007

Dear Secretary Garvin,

I write, on behalf of my clients, the Caesar Rodney Institute and several individuals, regarding the jointly submitted applications of US Wind for permits related to subaqueous lands and wetlands in the above referenced matter.

While the Department of Natural Resources (“DNREC”, “Department”) has opened the period to allow an opportunity for public comment, these two applications are, at present, incomplete.

As to the Subaqueous Lands application, Delaware Administrative Code, Chapter 7504, in 3.1.2.5 requires any such application to attach “evidence of zoning approval for the project. The Department may defer consideration of the application if it determines that substantive questions regarding the validity of the county’s or municipality’s actions are raised in an appeal of that action.” No such evidence is attached to the application.

With regard to the Wetlands application, again, Delaware Administrative Code, 7502, 8.5.4 requires “evidence of local zoning approval” in order to complete the application. No evidence of such approval appears in the record.

Of course, no such evidence could be presented because, at this moment, the zoning request relevant to this project is presently under deliberation by Sussex County Council.

The regulations mandate compliance with the requirements of what information needs to be provided to complete the application, including zoning approval.

If they did not, there would not be a provision relating to Department action if an appeal of a zoning decision was active.

This raises a question and a request.

First, the question. Did the Department issue a declaration stating that the respective applications were complete, as specifically required in Delaware Administrative Code, Chapter 7502, Subsection 8.6? If so, could you please provide a copy, as I cannot locate it in the public documents, which, admittedly, are voluminous.

Next, the request. I ask that you suspend the permitting process and public comment period until the applications are entirely complete, and then re-notice and re-open the comment period based on the complete applications to offer the public a meaningful opportunity to provide comment.

Given that the applications are not complete, the public does not have all the information to which they are entitled to review and upon which they have the right to make submissions within the prescribed comment period. Clearly the zoning decision by Sussex County will have a bearing on comment that the public might make regarding the application. The public will not be fully informed and able to properly and effectively provide input in the process unless the application is complete in every respect, and the information properly presented regarding each aspect of what is required to complete the application

This issue is one of significant public interest. Coalitions have formed, email chains have been created, crowds of Delaware residents attended the public information opportunities provided by BOEM and others. The public has a right to the opportunity to make meaningful and informed comment.

Because this is such a significant issue, especially for those who live in the coastal areas of Sussex County, if I do not hear from you within five days, I will be forced to bring litigation to seek an injunction to suspend the permitting process and the comment period until the applications which are pending are complete.

You may notify me of your decision by response to this email communication, or by phone or text at 302-542-1268.

Thank you, and I look forward to hearing from you.

Respectfully,

/s/ M. Jane Brady

M. Jane Brady
Brady Legal Group

Cc: Lisa Vest, Hearing Officer (Via Email lisa.vest@delaware.gov)
CRI

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