

# Legal opposition mounting

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lian told council members, "We've done everything we think we can."

He said officials and citizens should call the governor's office in protest every day and keep on calling.

"It makes no sense to me how five people (BPU commissioners) or how the state can just take everything

away from us," Gillian said, referring to how decisions on rights of way should belong to municipalities. (The legislation that gave the BPU the authority with projects such as wind farms targeted Ocean City after local officials began noting their opposition to the Danish company's project.)

About a week later, on June 13, the Cape May Coun-

ty Board of County Commissioners hired two "powerful and experienced law firms" to fight offshore wind farms.

In a news release issued Friday, June 16, the commissioners announced they hired Washington, D.C.-based Marzulla Law Firm and attorney Anthony Bocchi of the law firm Cullen-Dykman, with offices in New York, New Jersey and Wash-

ington, D.C.

Marzulla will review federal permits being sought by Ørsted and will recommend to the county any potential legal challenges that may arise from the federal permit processes, according to the commissioners, and Bocchi will review and challenge the permits issued to Ørsted by the NJDEP.

The law offices of Blaney, Donohue & Weinberg based in Avalon already are litigating on behalf of the county in the Appellate Division of New Jersey Superior Court over approvals issued to Ørsted by the NJDEP. Former Superior Court Judge Michael J. Donohue has been special counsel to the county. The county also has the law office of Cultural Heritage Partners working "to defend historic resources."

"We had hoped that both state and federal regulatory agencies would actually do their jobs and subject Ørsted's Ocean Wind project to the same type of scrutiny that they subject our homeowners and small businesses to when it comes to environmental permitting," Donohue said in the release. "Anyone who has ever attempted to undertake a waterfront construction project in Cape May County knows how these regulatory agencies make us jump through hoops and over rising hurdles, sometimes for years."

"But on the Ørsted project, it looks like these environmental regulatory agencies have fast-tracked their approvals and skipped important steps that are in place to protect the environment, including marine mammals. With the addition of these expert law firms, the county's legal team is prepared to fight on every available front to challenge the state and federal approvals being issued to Ørsted."

County officials said they will demand a hearing on recently issued NJDEP permits and will review and "likely challenge" each federal permit as it is issued. "We still believe that the state and federal governments have failed to address the continuing deaths of whales and dolphins and other marine mammals," County Commission Director Len Desiderio said. "If Ørsted's surveying equipment is leading to the deaths of the whales and dolphins, one can only imagine how many more will die if offshore construction of hundreds of windmills takes place."

"The plan to create a su-

perhighway of windmills off of our beaches should be halted until studies can be completed to answer the questions about the whales and other serious negative environmental and economic impacts that are likely to occur.

"And if those studies show that our losses will be severe, then these windmills should not be built," he continued. "Right now, Ørsted has made Cape May County part of a mass experiment and they have no idea how bad the results will be and, frankly, they don't seem to care. Our serious legal team will be looking for avenues to stop these projects from damaging our environment and our economy."

When the county passed a resolution May 23 formally opposing Ocean Wind 1, it said research showed the project could lead to a 15 percent decrease in tourism, equating to a loss of \$1.11 billion in revenue and nearly 6,000 tourism-related jobs.

Local and county officials and civic groups have also claimed the visual impact of the wind farms on the horizon would harm property values along the coast.

## Citizens groups file suit in court

On Friday, attorney Bruce I. Afran announced that Protect Our Coast NJ, Inc., Defend Brigantine Beach, Inc. and Save Long Beach Island, Inc., have filed a 52-page suit in Superior Court in New Jersey challenging the NJDEP's approval of the Ocean Wind 1 project. Named as a co-defendant is Ocean Wind LLC, Ørsted's U.S. subsidiary.

Filing in the Appellate Division, Afran said the wind turbines, that would be more than 900 feet tall, would not only be visible from the beaches in New Jersey's shore communities but would destroy the seabed.

In a "statement of facts and procedural history" in the filing, Afran wrote the project "will cause significant losses to marine fish and mammals, compress the seabed and alter seafloor habitats, cause species loss and decline and injure the commercial fishing industry. No methods are shown in the record to mitigate species and habitat loss."

The issues it is raising on appeal against the NJDEP's "Consistency Certification" includes that the certification is contrary to the record about the harms the project will cause, fails to "identify mitigation measures and

relies upon future unknown measures to combat ecological, species and economic harm," that the NJDEP improperly included factors outside of its purview such as renewable energy goals that do not relate to coastal zone factors, and that it is premature because it relied on the Draft Environmental Impact Statement to make its decision.

The suit also said the certification "fails to consider or propose remedies for esthetic and economic injuries and loss to the recreational, food, lodging and fishing industries or fails to adequately evaluate such losses and harm."

"DEP has acknowledged the wind turbines will destroy marine habitat, compress the seafloor, severely damage marine communities, compromise migration corridors for endangered marine mammals, cause commercial fishing stocks to decline, and injure the beach economy," Afran said in a release Friday. "Yet, the state persists in the bizarre belief that this massive engineering project will not injure our state's coastal zone, one of the most important marine communities on the East Coast and the core of New Jersey's \$47 billion tourist industry."

"We hope the offshore wind industry begins to understand that it will face fierce and growing legal battles if it continues in this destructive mission," Afran continued.

"This is the first of a series of lawsuits that will challenge the federal and state governments' targeting of New Jersey's coast with a vast industrial project that will permanently damage the ocean environment and our shore communities," said Keith Moore, head of Government Affairs for Defend Brigantine Beach.

"Ocean Wind 1 remains steadfast in its efforts to educate the public, elected officials and stakeholders throughout the permitting process, construction, and operations phases of the project," Liz Thomas, spokesperson for Ocean Wind 1 said in reaction to the civic groups' legal action.

"It is important to note that BOEM recently issued a robust 2,300 page Final Environmental Impact Statement (FEIS) on Ocean Wind 1, which is the product of review by nine federal agencies, three state agencies, and over one hundred consulting parties, including local municipalities, tribes, and community organizations," Thomas said. "As noted in the FEIS, the regulatory review of the project and lease area began in 2011. The regulatory process has been lengthy, thorough, and transparent."

## Project support, expected effects

Not only do offshore wind projects have the backing of the New Jersey governor, but also of the Biden Administration, which supports deploying 30 gigawatts of offshore wind energy capacity by 2030, according to BOEM.

"BOEM continues to make progress toward a once-in-a-generation opportunity to build a new clean energy industry in the United States," BOEM Director Elizabeth Klein stated in a May 22 press release. "Offshore wind is a critical component of the Biden-Harris administration's strategy to tackle the climate crisis, while creating good-paying jobs and ensuring economic opportunities are accessible to all communities."

In late May, BOEM released its Final Environmental Impact Statement on Ocean Wind 1. It ran more than 2,300 pages, not including lengthy addendums, and listed anticipated effects not only of that project but cumulatively of other projects planned off the coast.

The impacts ranged from negligible to major on things such as fisheries, commercial and recreational fishing, navigation, whales and other mammals, tourism and visual impact.

It also noted that with all of the projects in the area, as many as 662 wind turbines would be visible from Ocean City, some as close as 10.9 miles in the other projects. The report notes Ocean Wind 2 would have as many as 111 wind turbines, Atlantic Shore South would have 204 and Atlantic Shores North 148.

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