

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Baltimore Division)**

MAYOR AND CITY COUNCIL OF
OCEAN CITY MARYLAND, *et al.*,

Plaintiffs/Cross-Defendants,

v.

UNITED STATES DEPARTMENT
OF THE INTERIOR, *et al.*,

Defendants/Cross-Defendants,

and

US WIND, INC.

*Defendant-Intervenor/Cross-
Plaintiff.*

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Civil Action No: 1:24-cv-03111-
SAG

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**BRIEF FOR THE STATE OF DELAWARE
AS AMICUS CURIAE IN SUPPORT OF CROSS-PLAINTIFF US WIND’S MOTION
FOR A PRELIMINARY INJUNCTION**

The State of Delaware and its citizens, including particularly electric utility customers, would experience considerable and irreparable harm if the efforts of the Trump Administration to interfere with the approved US Wind Offshore Wind Project (hereinafter, the “Project”) are not stopped. The offshore wind turbines in Maryland waters would be supported by onshore facilities in Delaware to connect to the regional power grid. The Delaware portions of the Project have been subject to rigorous review by the State Department of Natural Resources and Environmental Control (“DNREC”). DNREC issued a subaqueous lands lease and permits, a wetlands permit, and a coastal construction permit to US Wind. Delaware as *amicus curiae* therefore supports US Wind’s Motion for a Preliminary Injunction to preserve the project status and allow construction to proceed, pending further litigation.

I. Delaware Has a Significant Role in the Maryland US Wind Project.

US Wind, Inc., proposes to develop a commercial-scale, offshore wind energy project off the coast of Maryland in the Atlantic Ocean, just south of the border with Delaware. The proposed project is comprised of up to 121 wind turbine generators, up to four offshore substations, up to four offshore/onshore export cables, and one meteorological tower, in a gridded array pattern distributed across the leased area, from eleven to twenty-six miles from shore. Portions of the proposed export cables are located under state-regulated wetlands and subaqueous lands in the Atlantic Ocean within Delaware state waters and the Indian River Bay. The underwater/underground export cables are proposed to land at 3R's Beach in Delaware Seashore State Park, south of Bethany Beach, and to interconnect into a proposed substation to be constructed adjacent to the Indian River Power Plant in Sussex County, Delaware.¹

Delaware onshore support facilities are essential to the operation of the Project. US Wind has committed to substantial investments in onshore facilities to be located within Delaware Seashore State Park, and at the Indian River site. The Indian River facility houses a decommissioned fossil fuel (coal) power plant, and would now be used to transmit clean wind energy to the power grid. In addition, US Wind would invest in upgraded transmission facilities within Delaware. The project is supported by the State of Delaware Department of Natural Resources and Environmental Control ("DNREC"), through its Division of Climate, Coastal & Energy. All necessary State, and local approvals² have been obtained, following a rigorous process

¹ US Wind Project - DNREC at <https://dnrec.delaware.gov/us-wind/> (accessed on October 26, 2025).

² See 85 Del.Laws Ch.44 (June 30, 2025) and 85 Del.Laws Ch. 59 (June 30, 2025) regarding conditional use permits for electrical substations.

of administrative review. At all stages of a lengthy administrative process, US Wind has been a cooperative partner.

The Project is expected to deliver power from the offshore wind facilities to customers in the Delmarva Power and Light (“DP&L”) (Delaware/Maryland), Baltimore Gas and Electric (“BGE”) (Maryland), Potomac Electric Power Company (“PEPCO”) (Maryland) and Potomac Edison (“APS”) (Maryland) electric power service territories. These service territories are part of the broader PJM wholesale power market. PJM is a regional transmission organization (“RTO”) that coordinates the movement of wholesale electricity in all or parts of thirteen states (including all of Delaware), and the District of Columbia. Power directly delivered to one area of PJM can have broader impacts on energy and capacity prices throughout the wholesale market, given the interconnected nature of the transmission grid in the Eastern Interconnection.

II. Delaware and Its Residents Would Sustain Harm if the Project Does Not Proceed.

A. Completion of the Project Would Help Delaware and Its Regional Partners Meet Increased Demand for Electric Power.

The regional grid operator for Delaware, PJM, estimates that demand for electricity is now growing much faster than over the past two decades, and much faster than previously predicted in planning future capacity. Unforeseen users such as data centers with massive power demands have lent an urgency to bringing new power sources online. Because new electrical generation typically takes several years to be approved and built, this out-of-balance trajectory of demand and generation is likely to persist for several years.³ As PJM summarized in its PJM Summer Outlook 2025, “PJM continues to voice concerns about the supply and demand imbalance driven by

³ Declaration of Delaware Public Advocate, Jameson Tweedie (attached hereto as Exhibit C).

generator retirements and the slow build of new resources in the face of accelerating demand growth.”⁴

PJM operates to ensure there is always a “reserve”—i.e. an excess of generation capacity above anticipated demand—to ensure grid reliability. However, in May 2025 PJM warned of “potential reserve margin shortages during peak operating periods” based on increased demand and decreased generation. While PJM has plans in place to ensure customers are not impacted, it puts in stark relief the risk of electricity demand continuing to grow faster than electricity generation in the region. Unless that trend is mitigated through the addition of significant sources of new generation, the risks to consumers will grow, both in higher costs and threats to reliability. As PJM stated in its Summer Outlook 2025, renewable resources are becoming an increasingly important component to maintain reliability.⁵ The US Wind Project, projected to go online as early as 2029, would directly address this deficit with ample supplies of clean energy, a total of **1.710 MW**, sufficient to power **700,000 homes**. The Project is the largest energy generation operation, of any form, that is proposed to be developed in the near term on the Delmarva peninsula.

B. US Wind Upgrades Will Enhance Grid Security and Reliability.

As part of its development process, US Wind entered into negotiations, a term sheet, and ultimately a set of contracts with the State of Delaware that include a variety of benefits for Delaware and Delawareans.⁶ In developing the Project, US Wind will fund over **\$200 million** in upgrades to the transmission system on the Delmarva peninsula, as directed by PJM and executed

⁴ PJM Summer Outlook 2025, May 9, 2025, available at: <https://insidelines.pjm.com/pjmsummer-outlook-2025-adequate-resources-available-for-summer-amid-growing-risk> (emphasis added).

⁵ Letter of Delaware Public Advocate, Jameson Tweedie, to Delaware House of Representatives Natural Resources and Energy Committee (June 17, 2025).

⁶ Declaration of Jameson Tweedie, Delaware Public Advocate.

by local transmission system owners. These transmission upgrades are likely to reduce congestion costs that are ultimately passed onto Delaware ratepayers, thus generating net savings in utility bills. These upgrades are also anticipated to increase the security and reliability of the local electric grid. This could mean fewer power outages and reduced risk of interruptions in power. An investment of this magnitude into the transmission system on the Delmarva peninsula will have long-term reliability benefits for Delaware ratepayers, benefits now in jeopardy.

C. The Project Will Reduce Renewable Portfolio Standard Compliance Costs, and Will Reduce Energy, Capacity, and Congestion Prices.

Like many states, Delaware has a renewable portfolio standard (RPS) that requires an increasing portion of electricity to be produced by renewable sources.⁷ The agreement between US Wind and Delaware requires US Wind to provide **150,000 MWHs** of zero-cost RECs (Renewable Energy Credits) annually once the project is operational, saving ratepayers **\$76 million** over the contract term.⁸ Renewable Energy Credits are market-based instruments that represent tangible rights to renewable electricity generation. They are issued when one megawatt-hour (MWh) of electricity is generated and delivered to the grid from a renewable energy source. These zero-cost RECs resulting from Delaware's participation in the Project would reduce the number of RECs that utilities otherwise need to acquire, or alternative compliance payments that utilities need to make, thus lowering compliance costs for utilities and thereby lowering costs that will get passed on to ratepayers. At current REC prices, this would translate to approximately **\$3,750,000** in savings annually for Delaware electric consumers.

⁷ Declaration of Public Advocate, Jameson Tweedie.

⁸ Term Sheet between the State of Delaware and US Wind, Inc., dated December 19, 2023 ("Term Sheet"), at III.1.

The Project is projected to lower wholesale power costs for Delaware customers in two ways. First, the availability of offshore wind generation at low cost and high capacity acts to reduce power pricing within the PJM wholesale power market, particularly during the evening peak demand period. Second, the incremental additional power from the Project will tend to increase available supply in the PJM power market, putting downward pressure on capacity prices in the majority of years, as compared to the baseline factors.⁹ Additionally, contracting with the Project defers the need for an equal volume of REC procurements by Delaware to meet the state's RPS. Together, these impacts reduce ratepayer costs in Delaware.

Without the Project benefits, a consultant has projected that regional utility Delmarva Power and Light Company ("DP&L") all-hours power prices would steadily rise due to increased natural gas prices and tightening reserve margins, from around \$36/MWh in 2027 to an estimated \$51/MWh by 2040. Completion of the Project would, however, be expected to reduce average all-hours DP&L prices over the same timeframe by at least 1.5%.¹⁰

Apart from lowering power prices, the Project would also have the benefit of reducing wholesale capacity costs for Delaware ratepayers. Adding additional capacity into a zone, in this case through the Indian River substation interconnection, raises the zone's "reserve margin", a measure of reliability-rated generation capacity versus expected peak load. If other factors remain stable, adding additional capacity (thereby increasing reserve margins) lowers capacity prices, as the available "supply" of capacity is now greater relative to the expected "demand" for electricity.¹¹

⁹ "Delaware Offshore Wind Benefits", PA Consulting Group Inc. (October 2023) at 11-12.

¹⁰ "Delaware Offshore Wind Benefits", PA Consulting Group Inc. (October 2023) at 13.

¹¹ "Delaware Offshore Wind Benefits", PA Consulting Group Inc. (October 2023) at 14.

D. The Project Will Reduce Costs and Benefit Utility Customers.

The US Wind Project will have clear benefits to Delaware consumers, by reducing or offsetting costs that consumers would otherwise pay in the rates paid to utilities. The US Wind Project will increase the supply of electricity into Sussex County. US Wind estimates that this increased supply of electricity will lower energy and capacity prices in Delaware by **\$253 million** over the contract term. Energy and capacity prices have increased since this estimate was prepared, and projected demand has increased sharply, so the projected savings will grow higher. Adding a large source of energy generation feeding into southern Delaware will help to offset this upward trend in energy and capacity prices.

A typical **residential** customer would be expected to save **\$186** over the life of the US Wind contract (essentially twenty years), whereas a typical **commercial** customer would be expected to save **\$1,609**, and a typical **industrial** customer would be expected to save **\$162,936**. These savings on utility bills come in the form of both lower electricity costs as well as avoided purchases of REC's (Renewable Energy Credits) to meet Delaware's RPS¹². Regardless of the magnitude of the savings, having a large source of generation feeding into Delaware would have benefits in both energy and capacity costs ultimately paid by consumers in their monthly utility bills. If the Project cannot be completed as scheduled and contemplated by state and federal approvals, all of these consumer savings would be lost.

¹² "Renewable energy portfolio standard" and "RPS" means the percentage of electricity sales at retail in the state that is to be derived from eligible [clean] energy resources. 26 *Del.C.* §352(25).

E. Capital Investments by U.S Wind in Delaware Confirmed During the Project Review Process Will Benefit the State.

The comprehensive review of the Project by DNREC included a public information session, a public hearing on July 9, 2024, a public comment period, a Technical Response Memo from DNREC subject matter experts, and the Order of the Secretary dated December 9, 2024. A total of 446 public comments were received and responded to, covering issues of financial stability, bonding, decommissioning, emergency response, navigation/dredging, fisheries impact, recreational disruption, electromagnetic fields (“EMF”), sediment/water quality, wetland impacts, and general environmental concerns. The Hearing Officer’s Report is attached as Exhibit A, and the Secretary’s Order is attached as Exhibit B hereto. Secretary Garvin specifically issued a water quality certification (“WQC”) required for the utilization of the United States Army Corps of Engineers’ Individual Permit regarding the construction activities associated with the proposed offshore wind project.

In addition to the offshore/onshore cable infrastructure and the substation to be constructed at Indian River, U.S Wind has committed to various expenditures and improvements and mitigation activities within Delaware. For example, engineering and operational controls would reduce water turbidity during construction, including dredging, pursuant to a monitoring plan calling for sampling and testing of Bay waters.¹³ US Wind committed to funding for training of local emergency response personnel and to improvement of dock structures and access channels.¹⁴ For purposes of navigation, US Wind committed to funding additional channel markers and bathymetric surveys, and to dredging where necessary.¹⁵ US Wind will provide funds to DNREC

¹³ Secretary’s Order at 10-11.

¹⁴ Hearing Officer Report at 11.

¹⁵ Hearing Officer Report at 12-13.

for the construction of a docking, offloading, and landing facility for local commercial fish and shellfish harvesters in the Inland Bays, and will establish a Maintenance and Research Fund to support other research or resource management projects related to impacts from the infrastructure and operations in State of Delaware waters.¹⁶ US Wind has further committed to provide funding for maintenance and or upgrades to state-owned recreational access facilities to compensate for potential behavioral changes and inconvenience to recreational users of Delaware's Inland Bays.¹⁷ In light of the temporary impacts to state-regulated wetlands from dredging for cables, US Wind has proposed mitigation measures that significantly exceed the minimal disturbance caused by the temporary placement of the pipelines. Specifically, US Wind will fund DNREC's proposed Okie Preserve Habitat Restoration and Shoreline Protection Project, or a similar ecological restoration initiative in Delaware's Inland Bays.¹⁸ At the end of the project life, structures would be removed in the reverse order of installation, at US Wind expense, pursuant to the decommissioning plan and a posted performance bond.¹⁹

These substantial capital improvements are intended to mitigate the impact of construction and operation of the onshore facilities, preserve the local ecosystem, protect local industries, promote recreational uses, and monitor ongoing water quality within areas affected by the Project. Residents, visitors, and commercial interests will benefit from the investments and amenities to be provided, in addition to the benefit to the State and local economies of the jobs and tax revenue generated by the onshore facilities and staff employed during the life of the Project.

¹⁶ Hearing Officer Report at 14-15.

¹⁷ Hearing Officer Report at 16.

¹⁸ Hearing Officer Report at 20-21.

¹⁹ Hearing Officer Report at 10.

II. Delaware Residents Will Enjoy Environmental Benefits from the Project.

A. Clean Energy Will Reduce Harmful Emissions and Improve Air Quality.

By offsetting the dispatch of energy generated by combustion of fossil fuel, the Project would reduce emissions of **Carbon Dioxide** by **1.3 million tons** per year, **Nitrogen Monoxide** by **274 tons** annually, and **Sulphur Dioxide** by **230 tons** per year, within the PJM grid region, over a twenty-year timeframe. For context, the reduced Carbon Dioxide emissions would be the equivalent to removing over 262,000 vehicles with internal combustion engines from the road each year.²⁰ The reduced emissions of these criteria pollutants would provide even more tangible public health benefits to Delaware residents in the form of reduced respiratory illness and distress, saving lives and healthcare costs. This reduced air pollution is particularly noteworthy in light of the historically disproportionate impacts of such emissions on disadvantaged communities adjacent to power plants. By injecting clean power into Delaware, the Project would reduce the region's reliance on these fossil generators – making environmental justice aspirations easier to achieve.

B. Reduced Greenhouse Gas Emissions Will Enable Delaware to Combat Climate Change.

The Delaware General Assembly enacted the Delaware Climate Change Solutions Act of 2023²¹ to develop a comprehensive approach to reduce emissions of greenhouse gases in the State and to maximize the State's adaptation and resiliency to the effects of climate change. This action was based on legislative findings as follows:

- (1) Anthropogenic emissions of greenhouse gases are contributing to climate change and have caused global temperatures to rise by approximately 1 degree Celsius above preindustrial levels.
- (2) Climate change threatens the health and well-being of the people of Delaware, particularly Delawareans residing in historically over-burdened and under-served

²⁰ “Delaware Offshore Wind Benefits”, PA Consulting Group Inc. (October 2023) at 19.

²¹ 7 *Del.C. Ch. 100*; 84 *Del. Laws Ch. 141*.

communities, and results in severe impacts such as sea-level rise, increasing temperatures and changes to precipitation patterns. Climate change will also intensify and increase the frequency of extreme weather events, such as coastal storm surges, flooding, and heat waves.

(3) The threat that climate change poses to Delaware is multi-faceted, resulting in disruptions and damage to the State's agriculture industry, water resources, built infrastructure, natural resources, and public health.

(4) Delaware has the lowest mean elevation of any state in the nation and is therefore particularly vulnerable to coastal climate change impacts, including sea-level rise, flooding, saltwater intrusion into drinking water and agricultural lands, erosion, wetland loss, beach loss, and extreme storm events.

(5) Delaware's economy and public safety are dependent on transportation, water, and energy infrastructure systems that must be adaptive to current and future climate change.

(6) Climate change poses risks to Delaware's continued economic vitality, including an industrial center and major port located on the Delaware River, subject to flooding and storm surge; a tourism economy on the Atlantic Beach communities exposed to sea-level rise, flooding, and storm impacts; and a robust agriculture sector vulnerable to weather extremes, flooding, and saltwater intrusion.

(7) The continued health and quality of life of Delaware's residents are dependent upon reducing its emissions of greenhouse gases and maintaining and improving the State's resiliency to the impacts of climate change.

(8) Actions taken to reduce greenhouse gas emissions and increase resiliency to climate change have co-benefits to economic development, job opportunities, public health and air and water quality.²²

The Act sets a year 2030 target for a 50% reduction in greenhouse gas emissions from baseline 2005 levels, and a year 2050 target of net zero emissions. The clean energy generated through the US Wind Project would generate no greenhouse gas emissions, and thus would significantly advance Delaware's progress toward the 2030 and 2050 targets mandated by the General Assembly. Wind energy is consistent with the Delaware Climate Action Plan²³ mandated by the Act.

²² 7 Del.C. §10001(a).

²³ 7 Del.C. §10004.

III. Injunctive Relief Is Essential Now to Prevent the Collapse of the Project.

Despite the federal and state permit awards and approvals of the Project following exhaustive review, the Trump Administration has belatedly sought to interrupt construction through unilateral executive action. This is no time to move the goal posts. It is too late for that, and the President lacks the authority²⁴ to rescind or stall a project approved after over a decade of work and review and compliance. US Wind negotiated in good faith and ultimately contracted with the State of Delaware to invest in facilities and programs, and Delaware's approval of the Project is conditioned on these commitments. The arguments now being regurgitated have already been finally resolved through rigorous scientific and administrative review, according to law, and are binding on the current Administration.²⁵ US Wind and the states of Maryland and Delaware, in good faith reliance on those approvals, have moved toward project implementation. The injunction sought by US Wind would preserve the status quo and allow the Project to proceed to completion, as contemplated by the final approval. Delaware urges this Court to grant the injunctive relief sought.

²⁴ As set forth in the Memorandum of Law submitted by US Wind in support of its Motion for Preliminary Injunction.

²⁵ As set forth in the Memorandum of Law submitted by US Wind in support of its Motion for Preliminary Injunction.

Respectfully submitted,

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