

**BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.**

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In re:	)	
Atlantic Shores Offshore	)	
Wind, LLC, for the	)	
Atlantic Shores Project 1	)	
and Project 2	)	OCS Appeal No. CAA 24-01
	)	
EPA Permit Number: OCS-EPA-R2 NJ 02	)	
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**EPA REGION 2's RESPONSE TO ATLANTIC SHORES OFFSHORE WIND, LLC'S  
MOTION FOR RECONSIDERATION**

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## **I. INTRODUCTION**

The United States Environmental Protection Agency (EPA) Environmental Appeals Board (EAB or Board) should deny the motion (the Motion) filed by Atlantic Shores Offshore Wind, LLC and Atlantic Shores Offshore Wind Project 1, LLC (collectively, Atlantic Shores) seeking reconsideration of the Board's March 14, 2025 order (Order) remanding the Atlantic Shores Project 1 and Project 2 OCS air permit (Permit) to EPA Region 2. Atlantic Shores has not shown an error of law or fact warranting reconsideration of the EAB's Order, and therefore the Board should deny the Atlantic Shores Motion.

## **II. FACTUAL AND PROCEDURAL BACKGROUND**

EPA Region 2 issued the Permit for Atlantic Shores Project 1 and Project 2 (Project) on September 30, 2024. On October 15, 2024, Petitioner Save Long Beach Island, Inc. filed a petition for review of the Permit with the Board. EPA Region 2 and Atlantic Shores each filed responses to the petition on November 5, 2024.<sup>1</sup> Region 2 then filed on February 28, 2025, a motion for voluntary remand of the Permit, and Atlantic Shores filed its opposition to that motion (3/7/25 Opposition) on March 7, 2025. The Board granted Region 2's Motion on March 14, 2025. Atlantic Shores filed the present Motion for Board reconsideration of that order on March 24, 2025, and Region 2 is now timely filing its response to this Motion.

## **III. STANDARD AND SCOPE OF REVIEW**

Under 40 C.F.R. § 124.10(m), "[m]otions for reconsideration must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors." Reconsideration is generally reserved for cases in which the Board has made a demonstrable error, such as a

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<sup>1</sup> For a more complete case history up until Nov. 5, 2024, *see* EPA Region 2's Response to Petition for Review, filed with the Board in this matter on Nov. 5, 2024, at 6-7 (filing #3).

mistake on a material point of law or fact. *See, e.g., In re Coastal Energy Corp.*, NPDES Appeal No. 17-04, 217 EPA App. LEXIS 27, at \*2 (E.A.B. Nov. 2, 2017). A motion for reconsideration is not an opportunity for a party to raise new legal theories or to reargue the case in a more convincing fashion. *See, e.g., In re Deseret Generation & Transmission Coop. Bonanza Power Plant*, CAA Appeal No. 24-01, 2024 EPA App. LEXIS 25 at \*2-\*3 (E.A.B. Nov. 8, 2024) (quoting *In re Gen. Elec. Co.*, RCRA Appeal No. 16-01, 2018 EPA App. LEXIS 12, at 2 (E.A.B. Mar. 7, 2018)); *In re Coastal Energy Corp.* at 2. “A party's failure to present its strongest case in the first instance does not entitle it to a second chance in the form of a motion to reconsider.” *See, e.g., In re Bear Lake Props., LLC*, UIC Appeal No. 11-03, 2012 EPA App. LEXIS 27 at \*4 (E.A.B. July 26, 2012) (quoting *In re Haw. Elec. Light Co., Inc.*, PSD Appeal Nos. 97-15 through 97-22, 1999 EPA App. LEXIS 50 at \*7 (E.A.B. Mar. 3, 1999)).

#### IV. ARGUMENT

The Board should reject Atlantic Shores’ Motion because Atlantic Shores failed to demonstrate an error of law or fact warranting reconsideration. Rather, Atlantic Shores’ motion for reconsideration represents Atlantic Shores’ impermissible attempt to reargue the case by both repeating arguments it had already raised, and presenting certain new arguments and legal theories for the first time that it could have raised initially.

First, Atlantic Shores’ Motion argues extensively that CAA section 165 prevents the Board from remanding the Permit to Region 2. Motion at 3-10. However, Atlantic Shores already argued that section 165 poses an impediment to remand at pages 14-17 of its 3/7/25 Opposition, which the Board considered; the Motion attempts at length to reargue Atlantic Shores’ prior position. The Motion relies heavily upon *Avenal Power Ctr., LLC v. EPA*, 787 F. Supp. 2d 1 (D.D.C. 2011), but Atlantic Shores could have discussed this case – a district court

case from outside the 3<sup>rd</sup> Circuit – in its initial 3/7/25 Opposition. Its failure to do so does not warrant Board consideration now of Atlantic Shores’ arguments.

Next, the Motion raises arguments regarding the specificity with which Region 2 identified the scope of the review or permit revisions it would undertake following remand, another issue the Board explicitly addressed in its Order. Motion at 11-16. The Motion also argues a lack of specificity in Region 2’s motivation for remand, including its reliance on the Presidential Memorandum. *Id.* Such arguments, too, were including in Atlantic Shores’ 3/7/25 Opposition, at pages 5-14. Atlantic Shores now seeks to reargue its position in what it hopes is a more convincing manner.

Finally, the Motion argues for the first time that “Region 2’s Motion was motivated at least in part by political pressure.” Motion at 17. Atlantic Shores failed to raise this argument in its 3/7/25 Opposition, and presents no change in the factual or legal situation between then and now warranting Board consideration.

## **V. CONCLUSION**

For all of the foregoing reasons, Region 2 respectfully requests that the Board deny Atlantic Shores’ Motion and allow the Board’s March 14, 2025, Order remanding the Permit to stand.

Date: April 3, 2025

Respectfully submitted,

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### **STATEMENT OF COMPLIANCE WITH WORD COUNT**

I hereby certify that Region 2's Response to Petition for Review (exclusive of the Table of Contents, Table of Authorities, this Statement of Compliance, and the attached Certificate of Service) contains 847 words, as calculated using Microsoft Word word-processing software.

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Sara Froikin



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EPA Appeal No. CAA 24-01

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing EPA Region 2's Response to Atlantic Shores Offshore Wind, LLC's Motion for Reconsideration was filed electronically with the Clerk of the Environmental Appeals Board using the EAB eFiling System, and was served via electronic mail on:

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