

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

**In Re:**

**US Wind Inc., for the  
Maryland Offshore Wind Project**

**Permit Number: Permit-to-Construct 047-0248;  
NSR Approval NSR-2024-01; PSD Approval PSD-2024-01**

**Appeal No. OCS 25-01**

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**MARYLAND DEPARTMENT OF THE ENVIRONMENT’S  
MOTION FOR ABEYANCE OF PROCEEDINGS AND STAY OF ORDER REQUIRING  
REPUBLICATION OF NOTICE**

Pursuant to 40 C.F.R. § 124.19(f), Respondent the Maryland Department of the Environment (“MDE”) respectfully moves that the Environmental Appeals Board (“EAB”) issue an order holding further proceedings in this case in abeyance pending the resolution of appellate proceedings and staying the order requiring republication of MDE’s notice of permit issuance.

This case involves an appeal of an air quality permit-to-construct, PSD Approval, and NSR Approval issued by MDE on June 6, 2025 to US Wind Inc., for the construction of an Outer Continental Shelf Source approximately 10 miles off the coast of Worcester County, Maryland (“OCS Permits”) pursuant to the Clean Air Act, 42 U.S.C. § 7627. On July 7, 2025, the Mayor of Ocean City, Maryland, and County Commissioners of Worcester County, Maryland (collectively “Petitioners”) filed a petition for review with the EAB of MDE’s decision to issue the OCS Permits. On July 30, 2025, MDE filed a Response to Petition for Review and Motion for Summary

Disposition arguing, inter alia, that the EAB lacks jurisdiction to review the petition. On August 25, 2025, EPA Region 3, in consultation with EPA's Office of General Counsel, filed a responsive brief arguing that the EAB has jurisdiction over the petition.

Following reply briefing from all parties, the EAB issued its Order Affirming Board Jurisdiction on December 16, 2025 ("December 16 Order"). The December 16 Order concluded that the EAB has jurisdiction to review the petition because the OCS Permits issued by MDE under its EPA-approved state regulations is a federal action delegated by the EPA Administrator, and therefore an appeal to the EAB is required to exhaust administrative remedies for the purpose of judicial review in federal court. The December 16 Order further required MDE to reissue its public notice of permit issuance by January 9, 2026, including information regarding appeal procedures directing all appeals to be filed with the EAB. The December 16 Order explained that the EAB would subsequently consider the merits of Petitioner's claims, along with any other petitions filed with EAB within 30 days of the reissued public notice of permit issuance. In response to MDE's request for clarification and reconsideration of the deadline, the EAB issued an Order on January 16, 2026 requiring MDE to reissue its notice by February 12, 2026 and clarifying the procedures to be used ("January 16 Order").

On January 26, 2026, US Wind Inc. filed an interlocutory appeal of the EAB's final order on jurisdiction with the United States Court of Appeals for the Fourth Circuit. Attachment # 1. Subsequently, on February 6, 2026, MDE filed its own appeal of EAB's jurisdictional order with the Fourth Circuit. Attachment # 2.<sup>1</sup> Those appeals seek to resolve the on-going dispute regarding

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<sup>1</sup> This attachment is a true and accurate copy of the filing submitted to the Fourth Circuit's electronic filing system earlier today. At the time of this filing, MDE has received a confirmation of payment but has not received a date stamped copy, which the court clerk informs may take 24 to 48 hours.

the proper venue in which a petition for judicial review of the OCS Permits should be heard. Therefore, MDE respectfully asks the EAB to stay its January 16 Order and to place the merits proceedings of this petition in abeyance until the Fourth Circuit issues a final decision or otherwise disposes of the pending interlocutory appeals.

A stay of the EAB notice deadline and placing the merits proceedings in abeyance is warranted here. EAB has broad discretion to stay proceedings to provide for the fair, efficient, and impartial adjudication of issues before it. 40 C.F.R. § 124.19(n); *In Re: Desert Rock Energy Company, LLC*, 14 E.A.D. 484, 2009 WL 5326323, \*25 (2009). Abeyance will promote efficiency and preserve the resources of the parties and the EAB. The jurisdictional question appealed to the Fourth Circuit involves fundamental issues of first impression regarding the nature of the permits issued by a state under 42 U.S.C. § 7627(a)(3). That dispute involves a controlling question of law directly relevant to resolution of the petition in this forum—whether the OCS Permits are properly subject to review in Maryland or the federal court system. Without a stay and abeyance, it is possible that additional parties will appeal, expanding the number of issues before the EAB and increasing time and litigation costs for all parties. And if the Fourth Circuit determines, on appeal, that the EAB has erred with respect to the jurisdictional issue, that ruling will be dispositive of the entire case, thereby avoiding expensive litigation.

Abeyance would also avoid irreparable harm. MDE would suffer serious and irreparable harm by being forced to participate in a proceeding to which it is not bound. *See Meredith v. Federal Mine Safety and Health Review Commission*, 177 F.3d 1042, 1052 (D.C. Cir. 1999). Moreover, as noted above, requiring MDE to comply with notice reissuance will have irreparable legal consequence of restarting the statute of limitations for appeal, and may subject MDE to additional unwarranted petitions. Failure to stay the January 16 Order would force MDE into a

Hobson's choice, where it could either face the legal consequence of the notice reissuance or face the possibility of sanctions should it decline to do so. 40 C.F.R. § 12.19(n) (a party in an EAB proceeding who fails to comply with an order may face sanctions which include "drawing adverse inferences against a party, striking a party's pleadings or other submissions from the record, and denying any or all relief sought by the party in the proceeding."). Petitioners, on the other hand, would not be prejudiced or otherwise harmed by the grant of a stay of the January 16 Order or abeyance of the proceedings because the OCS Permits are stayed during the appeal process. In fact, Petitioners they have similarly requested abeyance in the parallel state proceeding pending resolution of the EAB petition "and any subsequent petition for judicial review in federal court". Attachment # 3, Pet. Mem. Supp. Mot. Stay, No. C-23-CV-25-000184, at 6 (Md. Cir. Ct. Worcester Cty., Feb. 3, 2026).

For the foregoing reasons, good cause exists for the requested abeyance of these proceedings and stay of the January 16 Order to reissue notice by February 12, 2026. Courts routinely grant stays or abeyance in similar circumstances, where separate litigation could affect or narrow the relevant issues. *See Ctr. for Biological Diversity v. EPA*, 56 F.4th 55, 71 (D.C. Cir. 2022) (courts "routinely stay [their] hand when parties identify developments that are likely to render judicial resolution unnecessary"). And EPA itself has recently confirmed that abeyance is appropriate when there may be questions about jurisdiction. *See Western States Petroleum Ass'n v. EPA*, EPA's Reply in Support of Motion to Hold Case in Abeyance or Alternatively to Dismiss, Case No. 25-1080, Doc. 2113831 at 2 (D.C. Cir. May 1, 2025) ("No party has questioned this Court's authority to hold this case in abeyance rather than deciding the jurisdictional dispute right now.").

Good cause thus exists for the requested relief. For the foregoing reasons, the EAB should stay the reissuance deadline and hold these proceedings in abeyance until the question posed on to the Fourth Circuit on interlocutory appeal is adjudicated or the application is rejected. Pursuant to 40 C.F.R. § 124.19(f)(2), MDE contacted counsel for Petitioners and US. Wind to request their positions on this Motion. US Wind supports this Motion and intends to file its own motion. Petitioners take no position on the Motion.

Dated: February 6, 2026

Respectfully submitted,

/s/ Michael F. Strande

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### **CERTIFICATE OF SERVICE**

I hereby certify that on February 6, 2026, the foregoing Motion for Abeyance of Proceedings and Stay of Order Requiring Republication of Notice in the matter of US Wind Inc., for the Maryland Offshore Wind Project, Permit-to-Construct 047-0248; NSR-2024-01; PSD Approval PSD-2024-01, were sent to the following parties in the above reference proceeding in the manner indicated:

By first-class U.S. mail to Petitioners Mayor and City Council of Ocean City, Maryland and Commissioners of Worcester County, Maryland through their attorneys of record, Nancie G. Marzulla, and Roger J. Marzulla, at 1150 Connecticut Ave., NW, Suite 1050, Washington, D.C. 20036; and

By first-class U.S. mail to US Wind Inc., through their attorneys of record, Toyja E. Kelly, Sr. and Carroll Wade McGuffey III, at Troutman Pepper Locke LLP, World Trade Center Baltimore, 401 East Pratt Street, Suite 1810, Baltimore, MD 21202; and

By e-filing system to the Environmental Appeals Board.

/s/ Michael F. Strande  
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