

September 5, 2023

PUBLIC (REDACTED) COPY

VIA EMAIL (BOARD.SECRETARY@BPU.NJ.GOV)

Gregory Eisenstark

Direct Phone 973-200-7411

Direct Fax 973-200-7465

geisenstark@cozen.com

Ms. Sherri Golden
Board Secretary
New Jersey Board of Public Utilities
44 South Clinton Ave.
3rd Floor, Suite 314
Trenton, NJ 08625-0350

**Re: Ocean Wind LLC Compliance filing pursuant to P.L. 2023, c. 99
BPU Docket No. _____**

Dear Secretary Golden:

This firm represents Ocean Wind LLC ("Ocean Wind") in conjunction with the above referenced matter.

Enclosed for filing on behalf of Ocean Wind is a compliance filing pursuant to P.L. 2023, c. 99 in regard to the Ocean Wind 1 qualified offshore wind project ("Compliance Filing").

The Compliance Filing includes an Affidavit of David Hardy, Chief Executive Officer of Orsted North America, Inc., with an attached milestone schedule, as well as a compliance statement of EEW American Offshore Structures, Inc.

Certain portions of the Compliance Filing contain confidential information. Accordingly, Ocean Wind is filing both confidential and redacted versions of the Compliance Filing. An affidavit of Matthew Kaplan, Project Manager of Ocean Wind 1, attesting to the reasons for confidential treatment for the Compliance Filing, is also enclosed. The redacted (public) version of the Compliance Filing is enclosed herewith. The confidential version of the filing was transmitted separately.

The redacted (public) version of the filing is being provided to the Division of Rate Counsel. The confidential version will be provided to Rate Counsel after the execution of a non-disclosure agreement for this matter.

Respectfully submitted,

Cozen O'Connor



By: Gregory Eisenstark, Esq.

LEGAL\65725093\1

c: Jim Ferris, BPU
Robert Brabston, BPU
Michael Beck, Esq., BPU
Kevin Dillon, BPU
Kimberly Diamond, Esq., BPU
Brian Lipman, Esq., Director, Division of Rate Counsel
Maura Caroselli, Esq., Division of Rate Counsel
David Wand, Esq., Division of Rate Counsel

STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES

Ocean Wind LLC Compliance Filing Pursuant to P.L. 2023, c. 99 : BPU DOCKET NO.: _____
:
: AFFIDAVIT OF
: MATTHEW KAPLAN
:
:

Matthew Kaplan, of full age, states:

1. I am the Authorized Person of Ocean Wind LLC (“Ocean Wind”), and I am authorized to make this Affidavit on behalf of Ocean Wind.
2. On September 5, 2023 Ocean Wind is filing with the New Jersey Board of Public Utilities (the “BPU” or “Board”) a compliance filing pursuant to P.L. 2023, c. 99 (“Compliance Filing”) in regard to the Ocean Wind 1 Qualified Offshore Wind Project (“Ocean Wind 1”).
3. The Compliance Filing contains detailed information about Ocean Wind 1’s schedule and milestones for making certain investments in and undertaking associated activities in relation to EEW American Offshore Structures, Inc.’s (“EEW AOS”) monopile manufacturing facility project in Paulsboro, New Jersey (“Paulsboro Project”).
4. The Paulsboro Project is currently at the stage where EEW AOS is negotiating and entering into various financially significant contracts for equipment, materials, services and other aspects of the facility. As such, EEW AOS is negotiating with various vendors within the offshore wind supply chain. Ocean Wind and other offshore wind projects are in various stages of development along the east coast of the United States and are also negotiating with supply chain vendors for similar products and services. As such, public disclosure of certain details contained within the Compliance Filing could harm Ocean Wind’s and/or EEW AOS’s

competitive position vis-à-vis other offshore wind projects, and vis-à-vis vendors, in regard to supply chain procurement and negotiations with vendors.

5. Accordingly, the Compliance Filing contains substantial information that Ocean Wind has not disclosed publicly. Such information is non-public information and is closely guarded by Ocean Wind. As discussed above, this concern is particularly acute during the current phase of the Project's development.

6. If this information were made public, it would place Ocean Wind at a competitive disadvantage relative to negotiation with vendors and timely access to the supply chain. In turn, this could lead to unfair advantages to Ocean Wind's competitors. As a result, the Compliance Filing contains Trade Secret information.

7. With this Affidavit, Ocean Wind is filing a Public Copy and a Confidential Copy of the Supplement.

8. Specifically, the information redacted consists of practices, processes, commercial analyses, or compilations of information not generally known or reasonably ascertainable by the public, by virtue of which Ocean Wind obtains an economic advantage in the process of negotiating with vendors. This is valuable commercial information that provides Ocean Wind with an advantage over vendors and potential competitors of Ocean Wind, who do not have this information, and it is not publicly available.

9. These Trade Secrets are exempt from disclosure under the Open Public Records Act, N.J.S.A. 47:1A-1 et seq. and the Board's regulations at N.J.A.C. 14:1-12.1(b).

10. The information redacted from the Public Copy should remain confidential until Ocean Wind agrees otherwise.



Matthew Kaplan

Dated: September 5, 2023

Sworn to and subscribed
electronically this 5th day
of September, 2023



Gregory Eisenstark
Attorney-at-Law,
State of New Jersey

The undersigned attorney, Gregory Eisenstark, certifies that the affiant electronically acknowledged the genuineness of the signature.



Gregory Eisenstark, Esquire

AFFIDAVIT OF COMPLIANCE

I, **DAVID HARDY**, of full age, being duly sworn according to law, upon my oath says as follows:

1. I am the Chief Executive Officer of Ørsted North America, Inc. (“Ørsted NA”), 399 Boylston St., 12th Floor, Boston, Massachusetts 02116, which is an indirect subsidiary of Ørsted A/S and is the indirect parent company of Ocean Wind LLC (“Ocean Wind 1”). I have personal knowledge of the facts contained herein. I submit this Affidavit in connection with Paragraph 4a(1) of P.L. 2023, c. 99 and Ocean Wind 1’s compliance filing submitted concurrently herewith in accordance with Paragraph 4a of P.L. 2023, c. 99 (the “Compliance Filing”).

2. Upon acceptance of the Compliance Filing by the New Jersey Board of Public Utilities (the “BPU”), I can affirm that Ocean Wind 1 shall complete and operate the Ocean Wind 1 approximate 1,100-megawatt Qualified Offshore Wind Project (“Ocean Wind 1 Project”) within the Bureau of Ocean Energy Management (“BOEM”) Lease Area OCS-A 0498. The Ocean Wind 1 Project will be connected to the New Jersey electric transmission grid and will contribute to the renewable energy goals set by Governor Murphy’s Executive Order 8.

3. The Ocean Wind 1 Project is a qualified offshore wind project under the Offshore Wind Economic Development Act (“OWEDA”), N.J.S.A. 48:3-87.1 et seq., as ordered by the BPU on June 21, 2019 in Docket No. QO18121289, and under P.L. 2023, c. 99.

4. Since the BPU issued its June 21, 2019 Order, Ocean Wind 1 has completed the planning and design phase of the Ocean Wind 1 Project and is currently in the permitting, production and pre-construction phase.

5. In compliance with Paragraph 4a(3) of P.L. 2023, c. 99 and upon acceptance of the Compliance Filing by the BPU, Ørsted NA or its affiliate Ocean Wind 1 will deposit \$200,000,000

into an Escrow Account subject to the execution of a written escrow agreement between Ocean Wind 1, the BPU and the escrow agent (“Escrow Agreement”) in a form that shall be mutually agreed to by Ocean Wind 1, the BPU and the escrow agent. The Escrow Agreement shall be provided to the BPU on or before October 4, 2023. Because, as explained in Paragraph 6 of this Affidavit, Ocean Wind 1 has met its obligations under Paragraph 4a(2)(a)(i) to make “all outstanding investments in qualified wind energy facilities included within the [Ocean Wind 1 Project’s] solicitation application,” Ocean Wind 1’s \$200,000,000 escrow deposit will be available to support Ocean Wind 1’s obligations under Paragraph 4a(2)(a)(ii) to make investments in qualified wind energy facilities with respect to Phase II of EEW American Offshore Structures, Inc.’s (“EEW AOS”) monopile manufacturing facility project in Paulsboro, New Jersey (“Paulsboro Project”) as described in the Compliance Filing. The specific terms and conditions governing the purpose and use of Ocean Wind 1’s \$200,000,000 escrow deposit are set forth in the Compliance Filing. For purposes of clarity, upon acceptance of the Compliance Filing by the BPU, Ocean Wind 1 affirms that it shall complete the additional investments in qualified wind energy facilities in accordance with Paragraph 4a(1) of P.L. 2023, c. 99, and the funding of the Escrow Account as set forth herein shall constitute such completion.

6. Ocean Wind 1 has made “all outstanding investments in qualified wind energy facilities included within the [Ocean Wind 1 Project’s] solicitation application” under Paragraph 4a(2)(a)(i) of P.L. 2023, c. 99. The original Ocean Wind 1 Offshore Wind Renewable Energy Certificate (“OREC”) application included a pledge to make an “investment in manufacturing” to support Phase I of the EEW AOS’ Paulsboro Project. [REDACTED]

[REDACTED]

7. [REDACTED]

[REDACTED]

8. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

9. [REDACTED]

10. No Milestone Payment will be made until the BPU approves Ocean Wind 1's Compliance Filing and Phase II Investment Schedule and has provided Ocean Wind 1 written assurances that pre-payments and or other monies advanced to EEW AOS in Ocean Wind 1's sole discretion since the date of enactment of P.L. 2023, c. 99, would qualify as investments that would reduce Ocean Wind 1's obligations under Paragraph 4a(2)(a)(ii) of P.L. 2023, c. 99 (the "Ocean Wind 1 Prepayments"), and thereby the \$200,000,000 escrow deposit required under Paragraph

4a(3). The first disbursement of Escrow Funds from the Escrow Account shall be the payment of Ocean Wind 1 Prepayments to Ocean Wind 1 pursuant to a written direction issued by the BPU authorizing the Escrow Agent to release such amounts from the Escrow Funds and payable directly to Ocean Wind 1.

11. [REDACTED]

12. In compliance with Paragraph 4a(4) of P.L. 2023, c. 99, Ørsted A/S will post a performance security in the amount of \$100,000,000 for the completion of the Ocean Wind 1 Project. The performance security shall be provided to the BPU by or before October 4, 2023. For purposes of clarity, recovery of such performance security shall constitute the sole remedy of the BPU and the State of New Jersey in the event that Ocean Wind 1, for any reason, does not complete the Ocean Wind 1 Project.

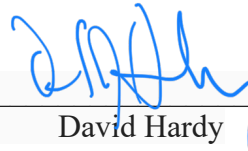
13. The completion of the Ocean Wind 1 Project is subject to Ocean Wind 1's receipt of all necessary permits and authorizations required to construct and operate the Ocean Wind 1 Project. In the event that Ocean Wind 1 does not receive all necessary permits and authorizations required to construct and operate the Ocean Wind 1 Project, the BPU shall promptly cancel and return Ocean Wind 1's \$100,000,000 performance security described above.

14. The BPU shall be entitled to use any interest earned with respect to the Escrow Account for costs and expenses associated with any technical expert that the BPU elects to retain

to support its review of compliance and satisfaction of Milestones and the Phase II Investment Schedule.

15. If P.L. 2023, c. 99 is modified to change Ocean Wind 1's receipt of tax credits in accordance with that legislation, or if P.L. 2023, c. 99 is repealed or invalidated, in part or in whole, or if BPU approval is modified to change Ocean Wind 1's receipt of tax credits pursuant to P.L. 2023, c. 99, Ocean Wind 1 retains the right to opt-out of its "election" under P.L. 2023, c. 99 without penalty, and forgoing its commitments to the performance security for commercial operations.

DATED: September 5, 2023



David Hardy

Sworn to and subscribed electronically this 5th day of September, 2023



Gregory Eisenstark
Attorney-at-Law,
State of New Jersey

The undersigned attorney, Gregory Eisenstark, certifies that the affiant electronically acknowledged the genuineness of the signature.



Gregory Eisenstark, Esquire

EEW AMERICAN OFFSHORE STRUCTURES, INC.

CONCURRENCE STATEMENT

I, Lee Laurendeau, Chief Executive Officer of EEW American Offshore Structures, Inc. ("EEW AOS"), hereby confirm that I have the authority to issue this Concurrence Statement on behalf of EEW AOS and to submit the executed Concurrence Statement to the New Jersey Board of Public Utilities ("BPU") and Ocean Wind, LLC ("Ocean Wind"). In accordance with Section 4.a.(2) of New Jersey P.L. 2023, c. 99, I further hereby confirm on behalf of EEW AOS that:

1. EEW AOS is developing that certain monopile manufacturing facility project in Paulsboro, New Jersey and is a qualified offshore wind energy facility for purposes of New Jersey P.L. 2023, c. 99; and
2. EEW AOS agrees to the milestones and commercial terms set forth in the compliance filing of Ocean Wind to be submitted to the BPU pursuant to New Jersey P.L. 2023, c. 99 in a form substantially similar to that attached hereto as Exhibit A.

IN WITNESS WHEREOF, this Concurrence Statement has been executed as of the date first written above.

EEW American Offshore Structures, Inc.



Lee Laurendeau
Chief Executive Officer EEW AOS

AFFIDAVIT OF COMPLIANCE

I, **DAVID HARDY**, of full age, being duly sworn according to law, upon my oath says as follows:

1. I am the Chief Executive Officer of Ørsted North America, Inc. (“Ørsted NA”), 399 Boylston St., 12th Floor, Boston, Massachusetts 02116, which is an indirect subsidiary of Ørsted A/S and is the indirect parent company of Ocean Wind LLC (“Ocean Wind 1”). I have personal knowledge of the facts contained herein. I submit this Affidavit in connection with Paragraph 4a(1) of P.L. 2023, c. 99 and Ocean Wind 1’s compliance filing submitted concurrently herewith in accordance with Paragraph 4a of P.L. 2023, c. 99 (the “Compliance Filing”).

2. Upon acceptance of the Compliance Filing by the New Jersey Board of Public Utilities (the “BPU”), I can affirm that Ocean Wind 1 shall complete and operate the Ocean Wind 1 approximate 1,100-megawatt Qualified Offshore Wind Project (“Ocean Wind 1 Project”) within the Bureau of Ocean Energy Management (“BOEM”) Lease Area OCS-A 0498. The Ocean Wind 1 Project will be connected to the New Jersey electric transmission grid and will contribute to the renewable energy goals set by Governor Murphy’s Executive Order 8.

3. The Ocean Wind 1 Project is a qualified offshore wind project under the Offshore Wind Economic Development Act (“OWEDA”), N.J.S.A. 48:3-87.1 et seq., as ordered by the BPU on June 21, 2019 in Docket No. QO18121289, and under P.L. 2023, c. 99.

4. Since the BPU issued its June 21, 2019 Order, Ocean Wind 1 has completed the planning and design phase of the Ocean Wind 1 Project and is currently in the permitting, production and pre-construction phase.

5. In compliance with Paragraph 4a(3) of P.L. 2023, c. 99 and upon acceptance of the Compliance Filing by the BPU, Ørsted NA or its affiliate Ocean Wind 1 will deposit \$200,000,000

into an Escrow Account subject to the execution of a written escrow agreement between Ocean Wind 1, the BPU and the escrow agent (“Escrow Agreement”) in a form that shall be mutually agreed to by Ocean Wind 1, the BPU and the escrow agent. The Escrow Agreement shall be provided to the BPU on or before October 4, 2023. Because, as explained in Paragraph 6 of this Affidavit, Ocean Wind 1 has met its obligations under Paragraph 4a(2)(a)(i) to make “all outstanding investments in qualified wind energy facilities included within the [Ocean Wind 1 Project’s] solicitation application,” Ocean Wind 1’s \$200,000,000 escrow deposit will be available to support Ocean Wind 1’s obligations under Paragraph 4a(2)(a)(ii) to make investments in qualified wind energy facilities with respect to Phase II of EEW American Offshore Structures, Inc.’s (“EEW AOS”) monopile manufacturing facility project in Paulsboro, New Jersey (“Paulsboro Project”) as described in the Compliance Filing. The specific terms and conditions governing the purpose and use of Ocean Wind 1’s \$200,000,000 escrow deposit are set forth in the Compliance Filing. For purposes of clarity, upon acceptance of the Compliance Filing by the BPU, Ocean Wind 1 affirms that it shall complete the additional investments in qualified wind energy facilities in accordance with Paragraph 4a(1) of P.L. 2023, c. 99, and the funding of the Escrow Account as set forth herein shall constitute such completion.

6. Ocean Wind 1 has made “all outstanding investments in qualified wind energy facilities included within the [Ocean Wind 1 Project’s] solicitation application” under Paragraph 4a(2)(a)(i) of P.L. 2023, c. 99. The original Ocean Wind 1 Offshore Wind Renewable Energy Certificate (“OREC”) application included a pledge to make an “investment in manufacturing” to support Phase I of the EEW AOS’ Paulsboro Project. [REDACTED]

[REDACTED]

7.

[REDACTED]

8.

[REDACTED]

[REDACTED]

4a(3). The first disbursement of Escrow Funds from the Escrow Account shall be the payment of Ocean Wind 1 Prepayments to Ocean Wind 1 pursuant to a written direction issued by the BPU authorizing the Escrow Agent to release such amounts from the Escrow Funds and payable directly to Ocean Wind 1.

11. [REDACTED]

12. In compliance with Paragraph 4a(4) of P.L. 2023, c. 99, Ørsted A/S will post a performance security in the amount of \$100,000,000 for the completion of the Ocean Wind 1 Project. The performance security shall be provided to the BPU by or before October 4, 2023. For purposes of clarity, recovery of such performance security shall constitute the sole remedy of the BPU and the State of New Jersey in the event that Ocean Wind 1, for any reason, does not complete the Ocean Wind 1 Project.

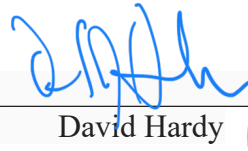
13. The completion of the Ocean Wind 1 Project is subject to Ocean Wind 1's receipt of all necessary permits and authorizations required to construct and operate the Ocean Wind 1 Project. In the event that Ocean Wind 1 does not receive all necessary permits and authorizations required to construct and operate the Ocean Wind 1 Project, the BPU shall promptly cancel and return Ocean Wind 1's \$100,000,000 performance security described above.

14. The BPU shall be entitled to use any interest earned with respect to the Escrow Account for costs and expenses associated with any technical expert that the BPU elects to retain

to support its review of compliance and satisfaction of Milestones and the Phase II Investment Schedule.

15. If P.L. 2023, c. 99 is modified to change Ocean Wind 1’s receipt of tax credits in accordance with that legislation, or if P.L. 2023, c. 99 is repealed or invalidated, in part or in whole, or if BPU approval is modified to change Ocean Wind 1’s receipt of tax credits pursuant to P.L. 2023, c. 99, Ocean Wind 1 retains the right to opt-out of its “election” under P.L. 2023, c. 99 without penalty, and forgoing its commitments to the performance security for commercial operations.

DATED: September 5, 2023



David Hardy

Sworn to and subscribed electronically this 5th day of September, 2023



Gregory Eisenstark
Attorney-at-Law,
State of New Jersey

The undersigned attorney, Gregory Eisenstark, certifies that the affiant electronically acknowledged the genuineness of the signature.



Gregory Eisenstark, Esquire

