



Christopher Porrino
Partner

One Lowenstein Drive
Roseland, New Jersey 07068

T: (973) 597-6314
F: (973) 597-6315
E: cporrino@lowenstein.com

January 25, 2024

VIA EMAIL, FEDEX, AND CERTIFIED MAIL

ATTN: Sherri L. Golden, Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue
Post Office Box 350
Trenton, NJ 08625-350
Sherri.golden@bpu.nj.gov

RECEIVED
MAILROOM

JAN 26 2024

BOARD OF PUBLIC UTILITIES
TRENTON, NJ

Re: *Notice of Claims or Circumstances that May Give Rise to Claims Under New Jersey's Contractual Liability Act, N.J.S.A. 59:13-1 to -10*

Dear President Guhl-Sadovy:

This firm represents Ørsted A/S and its affiliates, including Ørsted Wind Power North America LLC and Ocean Wind LLC ("Ocean Wind") (collectively, "Ørsted"). We write to inform you that the "Parent Company Guaranty" filed by Ocean Wind with the New Jersey Board of Public Utilities ("BPU") in In the Matter of Ocean Wind LLC Compliance Filing Pursuant to P.L. 2023, c. 99, BPU Docket No. QO23090671 ("Board Compliance Filing Matter") is unenforceable; that Ørsted is entitled to the funds in the escrow account at TD Bank, National Association bearing Account Number 760837013 ("Escrow Account"); and that Ørsted may be entitled to damages in excess of \$200 million. Please accept this letter as Ørsted's notice of claim ("Notice of Claim") pursuant to Section 5 of the Contractual Liability Act, N.J.S.A. 59:13-1 to -10 ("CLA").

On July 6, 2023, the State of New Jersey enacted L. 2023, c. 99 ("Tax Credit Law"), to further "Congress' intention to provide tax credits to support and bolster the offshore wind industry and the production of offshore wind energy in the United States" and in response to "high rates of inflation and unprecedented macroeconomic challenges" that arose after the BPU had approved Ørsted's Ocean Wind 1 qualified offshore wind project ("Ocean Wind 1"). N.J.S.A. 48:3-87.2a. The Tax Credit Law permitted Ocean Wind "to elect to retain the benefit of the federal tax credits that were not in existence at the time" Ocean Wind 1 was approved "in exchange for pledged assurances that [Ocean Wind 1] would proceed to construction and that it would make additional investments in New Jersey offshore wind manufacturing facilities." N.J.S.A. 48:3-87.2a(h).

The Tax Credit Law imposed obligations on Ocean Wind *and* the BPU to complete this "exchange." Within sixty days of the Tax Credit Law's enactment, Ocean Wind was to submit to the BPU a corporate-officer affidavit and a "milestone" schedule for investments to be made in

qualified wind energy facilities. N.J.S.A. 48:3-87.2d(a)(1)-(2). Within ninety days of the Tax Credit Law's enactment, Ocean Wind was to make a \$200 million escrow deposit to be available for such investments and to provide a \$100 million performance security in the form of a parent company guaranty that Ocean Wind 1 would reach commercial operation within twelve months of "the date approved by the [BPU]." N.J.S.A. 48:3-87.2d(a)(3)-(4). For its part, the BPU was required to determine whether Ocean Wind satisfied these conditions. N.J.S.A. 48:3-87.2c(a) (providing that a qualified offshore wind project "that satisfies the requirements in section 4 . . . *as determined by the board*, may elect to retain any incremental federal tax benefits that the project receives . . ." (emphasis added)); N.J.S.A. 48:3-87.2d(a) (requiring a compliance filing to be made "in a form and manner *as determined by the board* . . ." (emphasis added)); N.J.S.A. 48:3-87.2d(b) (providing that the BPU "shall not unreasonably delay or condition *its acceptance* of the compliance filings" (emphasis added)).¹

To comply with the Tax Credit Law's "60-day" deadline, on September 5, 2023, Ocean Wind submitted a compliance filing ("September 5th Compliance Filing") in the Board Compliance Filing Matter. The September 5th Compliance Filing included a corporate-officer affidavit and "milestone" schedule. On October 4, 2023, Ocean Wind submitted a second compliance filing in the Board Compliance Filing Matter to comply with the Tax Credit Law's "90-day" deadline ("October 4th Compliance Filing," and together with the September 5th Compliance Filing, the "Compliance Filing"). The October 4th Compliance Filing included an "Escrow Agreement" and a "Parent Company Guaranty." Contemporaneously with the October 4th Compliance Filing, Ocean Wind deposited \$200,000,000 into the Escrow Account.

On November 1, 2023, Ocean Wind informed the BPU that, due to changed circumstances, it no longer wished to pursue the relief available to it under the Tax Credit Law and withdrew the Compliance Filing. A copy of the withdrawal letter that Ocean Wind filed in the Board Compliance Filing Matter is enclosed as **Exhibit 1**. At the time Ocean Wind served this withdrawal letter, the BPU had not determined that Ocean Wind met the Tax Credit Law's requirements, nor issued an approval of the Compliance Filing, nor issued any other orders in the Board Compliance Filing Matter. Nothing in the Tax Credit Law (or otherwise) prevented Ocean Wind from withdrawing its Compliance Filing and foregoing its right to pursue the benefit of additional federal tax credits.

Despite Ocean Wind's withdrawal of the Compliance Filing before BPU approval, on December 19, 2023, the BPU sent a letter to the Escrow Agent enclosing a "Sole Written Direction" purportedly "authorizing" the disbursement of all funds in the Escrow Account to the BPU under Section 3 of the Escrow Agreement. The letter incorrectly claimed that Ocean Wind had "repudiated and breached its obligations under the agreements to complete and operate the Ocean Wind Qualified Offshore Wind Project by the Commercial Operation Date."²

¹ The BPU is statutorily required to act through a majority vote memorialized in a written order. N.J.S.A 48:2-40.

² It appears that the BPU may believe that Ørsted has "repudiated and breached" its obligations under the Parent Company Guaranty.

The next day, Ocean Wind sent a letter to the Escrow Agent, responding to the BPU's letter and objecting to the BPU's "Sole Written Direction." In this response letter, Ocean Wind explained that it had not repudiated or breached any of its obligations, and that, by issuing its "Sole Written Direction," the BPU had violated (1) its obligations under the Tax Credit Law and (2) the terms of the Escrow Agreement. A copy of Ocean Wind's December 20, 2023 letter (as revised) is attached hereto as **Exhibit 2**. On January 5, 2024, Ocean Wind sent the BPU a written demand that the BPU authorize the return of the funds in the Escrow Account to Ocean Wind. A copy of this demand is attached hereto as **Exhibit 3**. Despite this, the BPU has not authorized the return of the funds in the Escrow Account to Ocean Wind.

The enforceability of both the "Parent Company Guaranty" and the "Escrow Agreement" was contingent on Ocean Wind receiving its share of the statutory "exchange" – *i.e.*, the BPU's final determination to approve the Compliance Filing, thus granting Ocean Wind the right to retain the tax credits. Absent this approval, Ocean Wind's obligations under the Tax Credit Law are not binding, and the BPU has no rights related to the funds in the Escrow Account and cannot enforce the Parent Company Guaranty. This is evident from the plain language and purpose of the Tax Credit Law, Ørsted's meetings and negotiations with BPU representatives, and the Compliance Filing documents themselves. For example, the Parent Company Guaranty provides "[f]or the avoidance of doubt, this Guaranty is provided by Guarantor *in consideration of the right to retain the Incremental federal tax benefit as defined in the Tax Credit Law.*" Parent Company Guaranty, § C (emphasis added). And the Escrow Agreement provides that escrow funds may only be disbursed "*after the Board's approval of the compliance filing* made in the Board Compliance Filing Matter," and contains a termination provision that is triggered if the Compliance Filing was not approved by December 20, 2023. Escrow Agreement, ¶¶ 3, 22(v) (emphasis added).

The BPU did not issue a final determination approving the Compliance Filing before Ørsted decided – within its rights – that it no longer wished to pursue the relief available under the Tax Credit Law. The requirements of the Tax Credit Law were never satisfied; Ocean Wind never received the right to retain the tax credits; and therefore, both the "Escrow Agreement" and the "Parent Company Guaranty" are not – and never were – binding agreements.

Even if the "Escrow Agreement" and the "Parent Company Guaranty" were valid and enforceable agreements, the BPU has no right to any funds under those documents. As mentioned above, the terms of both documents make the approval of the Compliance Filing a condition precedent to performance. See Escrow Agreement, ¶¶ 3, 22(v); Parent Company Guaranty, § C. The BPU did not satisfy this condition.

Further, the BPU has materially breached its obligations under the Tax Credit Law, excusing Ørsted's performance. Section 4(b) of the Tax Credit Law states that the BPU "shall not unreasonably delay or condition its acceptance of the compliance filings." The BPU violated this obligation. Ocean Wind submitted the corporate-officer affidavit and milestone schedule on September 5, 2023. Nearly a month later, the BPU returned both documents with edits and comments, and sought to impose extraneous and unwarranted conditions on Ørsted. For example, during a September 2023 meeting, BPU representatives told representatives of Ørsted that they

must consult with the New Jersey Economic Development Authority *and* Rate Counsel even though the Tax Credit Law does not impose such a requirement. These additional demands significantly delayed the BPU's acceptance of the Compliance Filing, which was never ultimately given, thus rendering both the "Escrow Agreement" and "Parent Company Guaranty" void.

Simply put, the BPU is not entitled to the funds in the Escrow Account and cannot enforce the Parent Company Guaranty. By refusing to authorize the release of those funds and asserting a breach of the Parent Company Guaranty, the BPU is in violation of its obligations and has caused, and will continue to cause, Ørsted significant damage in excess of \$200 million.

Ørsted looks forward to discussing these matters with the BPU and hopes that the parties can reach a consensual resolution within the 90-day statutory waiting period under the CLA. However, if the BPU is unable or unwilling to remedy the above dispute, Ørsted will have no alternative but to take action to protect its rights, which may include, but may not be limited to, instituting appropriate legal action seeking a declaratory judgment that the Parent Company Guaranty is unenforceable and that Ørsted is entitled to the funds in the Escrow Account, and asserting claims for, among other things, breaches of contract and the Tax Credit Law.

This Notice of Claim is sent without prejudice to Ørsted's rights, remedies, or arguments, all of which are expressly reserved, and nothing in this demand is intended to or shall be construed as a waiver of any rights, remedies, or arguments.

Very truly yours,

/s/ Christopher Porrino

Christopher Porrino, Esq.

cc: David C. Apy (David.Apy@law.njoag.gov)
Robert Brabston, BPU Executive Director (Robert.Brabston@bpu.nj.gov)
Christine Guhl-Sadovy, BPU President (Christine.Guhl-Sadovy@bpu.nj.gov)
Michael Beck, Esq., BPU General Counsel (Michael.Beck@bpu.nj.gov)

EXHIBIT 1

November 1, 2023

Gregory Eisenstark

Direct Phone 973-200-7411

Direct Fax 973-200-7465

geisenstark@cozen.com

VIA E-MAIL (BOARD.SECRETARY@BPU.NJ.GOV)

Ms. Sherri Golden
Board Secretary
NJ Board of Public Utilities
44 South Clinton Street, 9th Floor
P.O. Box 350
Trenton, New Jersey 08625

**Re: Ocean Wind LLC Compliance filing pursuant to P.L. 2023, c. 99
BPU Docket No. QO23090671**

Dear Secretary Golden:

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

On September 5, 2023, Ocean Wind submitted a compliance filing ("September 5 Compliance Filing") to the Board of Public Utilities ("Board") pursuant to P.L.2023, c. 99 regarding the Ocean Wind 1 qualified offshore wind project ("Ocean Wind 1"). The purpose of the compliance filing was for Ocean Wind 1 to qualify to retain certain federal tax incentives pursuant to recent amendments to New Jersey law. The Compliance Filing included 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.

On October 4, 2023, Ocean Wind submitted a compliance filing in this matter ("October 4 Compliance Filing," together with the September 5 Compliance Filing, the "Compliance Filing"). The October 4 Compliance Filing included a "Parent Company Guaranty." It also included an "Escrow Agreement." At the time of the October 4 Compliance Filing, Ocean Wind had deposited \$200,000,000 into an escrow account.

The Board has not issued a final approval of the Compliance Filing. Due to changed circumstances, Ocean Wind has determined that it no longer wishes to pursue the relief available to it under P.L.2023, c. 99. Therefore, Ocean Wind hereby withdraws the Compliance Filing.

Ocean Wind and Orsted A/S reserve all rights and remedies with respect to all issues relating to the withdrawn Compliance Filing.

Ms. Sherri Golden
November 1, 2023
Page 2

Respectfully submitted,
Cozen O'Connor



By: Gregory Eisenstark, Esq.

c: Michael Beck, Esq. Chief Counsel, BPU
Jim Ferris, BPU
Robert Brabston, BPU
Kevin Dillon, BPU
Kimberly Diamond, Esq., BPU
Daren Eppley, DAG
Paul Youchak, DAG
Brian Lipman, Esq., Director, Division of Rate Counsel
Maura Caroselli, Esq., Division of Rate Counsel
David Wand, Esq., Division of Rate Counsel
Christopher Porrino, Esq., Lowenstein Sandler LLP

EXHIBIT 2



Christopher Porrino
Partner

One Lowenstein Drive
Roseland, New Jersey 07068

T: (973) 597-6314
F: (973) 597-6315
E: cporrino@lowenstein.com

December 20, 2023

VIA EMAIL, FEDEX, AND CERTIFIED MAIL

ATTN: Tifanie Kline
TD Bank, National Association
12000 Horizon Way, 3rd Floor
Mount Laurel, NJ 08054
Tifanie.kline@td.com

**Re: OCEAN WIND LLC NJBPU ESCROW, ACCOUNT NUMBER 760837013, AND
DECEMBER 19, 2023 “SOLE WRITTEN DIRECTION”**

Dear Ms. Kline:

This firm represents Ocean Wind LLC (“Ocean Wind”). We are in receipt of David C. Apy’s letter, dated December 19, 2023, and the “Sole Written Direction” that was enclosed with it purportedly issued by the New Jersey Board of Public Utilities (“BPU”), and “authorizing” the disbursement of all funds in Account Number 760837013 (“Escrow Account”) to the BPU. By this letter, we are objecting to this inappropriate request; disputing the propriety of BPU’s “Sole Written Direction”; and confirming that TD Bank, National Association (“Escrow Agent” or “TD Bank”) (1) will not disburse any funds from the Escrow Account based on the BPU’s “Sole Written Direction” and (2) will under no circumstance disburse any funds from the Escrow Account without Ocean Wind’s prior written authorization. If our understanding is incorrect, please notify us immediately so that Ocean Wind can take all action necessary to protect its rights, up to and including seeking immediate relief against the Escrow Agent, among others.

The BPU’s demand is baseless and at best incomplete. The BPU has not satisfied the preconditions to the disbursement of funds that exist under both P.L.2023, c. 99 (the “Tax Credit Law”) and the language of the Escrow Agreement, including the approval of the compliance filing Ocean Wind made in In the Matter of Ocean Wind LLC Compliance Filing Pursuant to P.L. 2023, c. 99, BPU Docket No. QO23090671 (“Board Compliance Filing Matter”).¹ For example, Section 3 of the Escrow Agreement, cited by the BPU in its “Sole Written Direction,” expressly provides that the

¹ Ocean Wind made its compliance filings in the Board Compliance Filing Matter on September 5, 2023, and October 4, 2023 (collectively, the “Compliance Filing”). Ocean Wind withdrew its Compliance Filing on November 1, 2023. There is nothing in the Tax Credit Law or the Escrow Agreement that prevented Ocean Wind from doing so, and Ocean Wind has not repudiated or breached any obligations that it may have under the Tax Credit Law or the Escrow Agreement.

BPU may only issue a Sole Written Direction *after* the BPU's approval of Ocean Wind's Compliance Filing:

Subject to the terms of this Escrow Agreement, Escrow Agent shall make the first disbursement of Escrow Funds and/or Escrow Earnings upon receipt of, and in accordance with, a Sole Written Direction issued by the Board (the "Initial Disbursement"), ***which the Board agrees shall only be issued by the Board after the Board's approval of the compliance filing made in the Board Compliance Filing Matter.*** (emphasis added).²

The BPU *has not* approved the Compliance Filing (which Ocean Wind withdrew on November 1, 2023). Nor has there been any agreement between Ocean Wind, the BPU, and a "qualified offshore wind energy facility" on "milestones and commercial terms" as required before a disbursement may be made under N.J.S.A. 48:3-87.2d(a)(3). By issuing this "Sole Written Direction," the BPU has violated (1) its obligations under the Tax Credit Law and (2) the terms of the Escrow Agreement.

The BPU failed to disclose the above in connection with its "Sole Written Direction." We are providing this information so that you will not be misled into wrongfully disbursing over \$200 million dollars. We trust that you share this concern. To be clear, should TD Bank disburse any funds in connection with the "Sole Written Direction," our client intends to hold it responsible for each and every dollar disbursed.

We look forward to your cooperation. In the event that the Escrow Agent plans to disburse any funds from the Escrow Account based on the BPU's "Sole Written Direction" or without Ocean Wind's prior written authorization, we expect at least 14 days' notice so that our client may protect its rights.

Nothing in this letter is intended to or shall be construed as a complete statement of Ocean Wind's rights, remedies, or arguments, all of which are expressly reserved, and nothing in this demand is intended to or shall be construed as a waiver of any rights, remedies, or arguments.³

Very truly yours,

/s/ Christopher Porrino

Christopher Porrino, Esq.

² Similarly, N.J.S.A. 48:3-87.2d(a)(3) only permits the disbursement of escrow funds in "accordance with milestones and commercial terms agreed to by the qualified offshore wind project and the qualified offshore wind energy facilities and the board."

³ Ocean Wind expects to send further correspondence to both the Escrow Agent and the BPU in the near future about the disposition of the funds in the Escrow Account.

December 20, 2023

cc: David C. Apy (David.Apy@law.njoag.gov)
Christine Guhl-Sadovy, BPU President (Guhl-Sadovy@bpu.nj.gov) (via email, FedEx,
Certified Mail)
Robert Brabston, BPU Executive Director (Robert.Brabston@bpu.nj.gov)
Michael Beck, Esq., BPU General Counsel (Michael.Beck@bpu.nj.gov)

EXHIBIT 3



Christopher Porrino
Partner

One Lowenstein Drive
Roseland, New Jersey 07068

T: (973) 597-6314
F: (973) 597-6315
E: cporrino@lowenstein.com

January 5, 2024

VIA EMAIL, FEDEX, AND CERTIFIED MAIL

ATTN: Christine Guhl-Sadovy, President
New Jersey Board of Public Utilities
44 South Clinton Avenue
Post Office Box 350
Trenton, NJ 08625-350
Christine.Guhl-Sadovy@bpu.nj.gov

Re: OCEAN WIND LLC/NJBPU ESCROW AT TD BANK, NATIONAL ASSOCIATION, ACCOUNT NUMBER 760837013, REQUEST FOR AUTHORIZATION TO DISBURSE FUNDS

Dear President Guhl-Sadovy:

This firm represents Ocean Wind LLC (“Ocean Wind”). We write with regard to a certain escrow account at TD Bank, National Association (“Escrow Agent”) bearing Account Number 760837013 (“Escrow Account”) in the original principal balance of \$200,000,000. As you know, in accordance with our joint letter of December 22, 2023, the New Jersey Board of Public Utilities (“BPU”) and Ocean Wind have agreed that the Escrow Agent shall not disburse the funds in the Escrow Account. At this time, for the reasons set forth in this letter, Ocean Wind is requesting that the BPU approve of the release of the funds in the Escrow Account to Ocean Wind.

On September 5, 2023, Ocean Wind submitted a compliance filing (“September 5th Compliance Filing”) to the BPU pursuant to P.L.2023, c. 99 (“Tax Credit Law”) regarding the Ocean Wind 1 qualified offshore wind project (“Ocean Wind 1”) in In the Matter of Ocean Wind LLC Compliance Filing Pursuant to P.L. 2023, c. 99, BPU Docket No. QO23090671 (“Board Compliance Filing Matter”). On October 4, 2023, Ocean Wind also submitted a compliance filing to the BPU pursuant to the Tax Credit Law in the Board Compliance Filing Matter (“October 4th Compliance Filing”) (October 4th Compliance Filing and September 5th Compliance Filing together, the “Compliance Filing”). The October 4th Compliance Filing included an “Escrow Agreement”. Contemporaneously with the October 4th Compliance Filing, Ocean Wind deposited \$200,000,000 in the Escrow Account.

On November 1, 2023, Ocean Wind informed the BPU that, due to changed circumstances, it no longer wished to pursue the relief available to it under the Tax Credit Law and withdrew the Compliance Filing. A copy of the withdrawal letter Ocean Wind filed in the Board Compliance

January 5, 2024

Filing Matter is enclosed as **Exhibit A**.¹ At the time Ocean Wind served this withdrawal letter, the BPU had not issued an approval of the Compliance Filing or any other orders in the Board Compliance Filing Matter. Despite Ocean Wind's withdrawal of the Compliance Filing, the escrow funds have not been returned to Ocean Wind and remain in the Escrow Account.

Further, as provided in the Escrow Agreement, if the BPU failed to issue an order in the Board Compliance Filing Matter, either accepting or rejecting the compliance filing, by December 20, 2023, all funds in the Escrow Account, including any accrued interest, were to be released to Ocean Wind. The BPU has not issued an order accepting or rejecting the Compliance Filing – or any other orders – in the Board Compliance Filing Matter.

Accordingly, Ocean Wind requests that the BPU authorize the Escrow Agent to release the funds in the Escrow Account to Ocean Wind.²

Nothing in this letter is intended to or shall be construed as a complete statement of Ocean Wind's rights, remedies, or arguments, all of which are expressly reserved, and nothing in this demand is intended to or shall be construed as a waiver of any rights, remedies, or arguments.

Very truly yours,

/s/ Christopher Porrino

Christopher Porrino, Esq.

cc: David C. Apy (David.Apy@law.njoag.gov)
Tifanie Kline (Tifanie.kline@td.com) (via email, FedEx, Certified Mail)
Robert Brabston, BPU Executive Director (Robert.Brabston@bpu.nj.gov)
Michael Beck, Esq., BPU General Counsel (Michael.Beck@bpu.nj.gov)

Enclosure(s)

¹ As discussed in our December 20, 2023 letter, enclosed as **Exhibit B**, there is nothing in the Tax Credit Law or the Escrow Agreement that prevented Ocean Wind from withdrawing the Compliance Filing, and Ocean Wind has not repudiated or breached any obligations that it may have under the Tax Credit Law or the Escrow Agreement.

² If the BPU authorizes this disbursement, Ocean Wind will provide a form of joint consent to the Escrow Agent to be signed by both the BPU and Ocean Wind and the appropriate wire instructions to the Escrow Agent.

EXHIBIT A

November 1, 2023

Gregory Eisenstark

Direct Phone 973-200-7411

Direct Fax 973-200-7465

geisenstark@cozen.com

VIA E-MAIL (BOARD.SECRETARY@BPU.NJ.GOV)

Ms. Sherri Golden
Board Secretary
NJ Board of Public Utilities
44 South Clinton Street, 9th Floor
P.O. Box 350
Trenton, New Jersey 08625

**Re: Ocean Wind LLC Compliance filing pursuant to P.L. 2023, c. 99
BPU Docket No. QO23090671**

Dear Secretary Golden:

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

On September 5, 2023, Ocean Wind submitted a compliance filing ("September 5 Compliance Filing") to the Board of Public Utilities ("Board") pursuant to P.L.2023, c. 99 regarding the Ocean Wind 1 qualified offshore wind project ("Ocean Wind 1"). The purpose of the compliance filing was for Ocean Wind 1 to qualify to retain certain federal tax incentives pursuant to recent amendments to New Jersey law. The Compliance Filing included 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.

On October 4, 2023, Ocean Wind submitted a compliance filing in this matter ("October 4 Compliance Filing," together with the September 5 Compliance Filing, the "Compliance Filing"). The October 4 Compliance Filing included a "Parent Company Guaranty." It also included an "Escrow Agreement." At the time of the October 4 Compliance Filing, Ocean Wind had deposited \$200,000,000 into an escrow account.

The Board has not issued a final approval of the Compliance Filing. Due to changed circumstances, Ocean Wind has determined that it no longer wishes to pursue the relief available to it under P.L.2023, c. 99. Therefore, Ocean Wind hereby withdraws the Compliance Filing.

Ocean Wind and Orsted A/S reserve all rights and remedies with respect to all issues relating to the withdrawn Compliance Filing.

Ms. Sherri Golden
November 1, 2023
Page 2

Respectfully submitted,
Cozen O'Connor



By: Gregory Eisenstark, Esq.

c: Michael Beck, Esq. Chief Counsel, BPU
Jim Ferris, BPU
Robert Brabston, BPU
Kevin Dillon, BPU
Kimberly Diamond, Esq., BPU
Daren Eppley, DAG
Paul Youchak, DAG
Brian Lipman, Esq., Director, Division of Rate Counsel
Maura Caroselli, Esq., Division of Rate Counsel
David Wand, Esq., Division of Rate Counsel
Christopher Porrino, Esq., Lowenstein Sandler LLP

EXHIBIT B



Christopher Porrino
Partner

One Lowenstein Drive
Roseland, New Jersey 07068

T: (973) 597-6314
F: (973) 597-6315
E: cporrino@lowenstein.com

December 20, 2023

VIA EMAIL, FEDEX, AND CERTIFIED MAIL

ATTN: Tifanie Kline
TD Bank, National Association
12000 Horizon Way, 3rd Floor
Mount Laurel, NJ 08054
Tifanie.kline@td.com

**Re: OCEAN WIND LLC NJBPU ESCROW, ACCOUNT NUMBER 760837013, AND
DECEMBER 19, 2023 "SOLE WRITTEN DIRECTION"**

Dear Ms. Kline:

This firm represents Ocean Wind LLC ("Ocean Wind"). We are in receipt of David C. Apy's letter, dated December 19, 2023, and the "Sole Written Direction" that was enclosed with it purportedly issued by the New Jersey Board of Public Utilities ("BPU"), and "authorizing" the disbursement of all funds in Account Number 760837013 ("Escrow Account") to the BPU. By this letter, we are objecting to this inappropriate request; disputing the propriety of BPU's "Sole Written Direction"; and confirming that TD Bank, National Association ("Escrow Agent" or "TD Bank") (1) will not disburse any funds from the Escrow Account based on the BPU's "Sole Written Direction" and (2) will under no circumstance disburse any funds from the Escrow Account without Ocean Wind's prior written authorization. If our understanding is incorrect, please notify us immediately so that Ocean Wind can take all action necessary to protect its rights, up to and including seeking immediate relief against the Escrow Agent, among others.

The BPU's demand is baseless and at best incomplete. The BPU has not satisfied the preconditions to the disbursement of funds that exist under both P.L.2023, c. 99 (the "Tax Credit Law") and the language of the Escrow Agreement, including the approval of the compliance filing Ocean Wind made in In the Matter of Ocean Wind LLC Compliance Filing Pursuant to P.L. 2023, c. 99, BPU Docket No. QO23090671 ("Board Compliance Filing Matter").¹ For example, Section 3 of the Escrow Agreement, cited by the BPU in its "Sole Written Direction," expressly provides that the

¹ Ocean Wind made its compliance filings in the Board Compliance Filing Matter on September 5, 2023, and October 4, 2023 (collectively, the "Compliance Filing"). Ocean Wind withdrew its Compliance Filing on November 1, 2023. There is nothing in the Tax Credit Law or the Escrow Agreement that prevented Ocean Wind from doing so, and Ocean Wind has not repudiated or breached any obligations that it may have under the Tax Credit Law or the Escrow Agreement.

BPU may only issue a Sole Written Direction *after* the BPU's approval of Ocean Wind's Compliance Filing:

Subject to the terms of this Escrow Agreement, Escrow Agent shall make the first disbursement of Escrow Funds and/or Escrow Earnings upon receipt of, and in accordance with, a Sole Written Direction issued by the Board (the "Initial Disbursement"), *which the Board agrees shall only be issued by the Board after the Board's approval of the compliance filing made in the Board Compliance Filing Matter.* (emphasis added).²

The BPU *has not* approved the Compliance Filing (which Ocean Wind withdrew on November 1, 2023). Nor has there been any agreement between Ocean Wind, the BPU, and a "qualified offshore wind energy facility" on "milestones and commercial terms" as required before a disbursement may be made under N.J.S.A. 48:3-87.2d(a)(3). By issuing this "Sole Written Direction," the BPU has violated (1) its obligations under the Tax Credit Law and (2) the terms of the Escrow Agreement.

The BPU failed to disclose the above in connection with its "Sole Written Direction." We are providing this information so that you will not be misled into wrongfully disbursing over \$200 million dollars. We trust that you share this concern. To be clear, should TD Bank disburse any funds in connection with the "Sole Written Direction," our client intends to hold it responsible for each and every dollar disbursed.

We look forward to your cooperation. In the event that the Escrow Agent plans to disburse any funds from the Escrow Account based on the BPU's "Sole Written Direction" or without Ocean Wind's prior written authorization, we expect at least 14 days' notice so that our client may protect its rights.

Nothing in this letter is intended to or shall be construed as a complete statement of Ocean Wind's rights, remedies, or arguments, all of which are expressly reserved, and nothing in this demand is intended to or shall be construed as a waiver of any rights, remedies, or arguments.³

Very truly yours,

/s/ Christopher Porrino

Christopher Porrino, Esq.

² Similarly, N.J.S.A. 48:3-87.2d(a)(3) only permits the disbursement of escrow funds in "accordance with milestones and commercial terms agreed to by the qualified offshore wind project and the qualified offshore wind energy facilities and the board."

³ Ocean Wind expects to send further correspondence to both the Escrow Agent and the BPU in the near future about the disposition of the funds in the Escrow Account.

cc: David C. Apy (David.Apy@law.njoag.gov)
Christine Guhl-Sadovy, BPU President (Guhl-Sadovy@bpu.nj.gov) (via email, FedEx,
Certified Mail)
Robert Brabston, BPU Executive Director (Robert.Brabston@bpu.nj.gov)
Michael Beck, Esq., BPU General Counsel (Michael.Beck@bpu.nj.gov)