



State of New Jersey
DIVISION OF RATE COUNSEL
140 EAST FRONT STREET, 4TH FL
P. O. Box 003
TRENTON, NEW JERSEY 08625

PHIL MURPHY
Governor

TAHESHA L. WAY
Lt. Governor

BRIAN O. LIPMAN
Director

July 11, 2024

Via Electronic Mail

Hon. Sherri Golden, Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue,
9th Floor P.O. Box 350
Trenton, New Jersey 08625
Board.Secretary@bpu.nj.gov

**Re: In the Matter of the Board of Public Utilities Offshore Wind Solicitation for 1,100 MW - Evaluation of the Offshore Wind Applications
BPU Docket No. QO18121289**

**In the Matter of the Petition of Ocean Wind, LLC Pursuant to N.J.S.A. 48:3-87.1(f) for a Determination that Easements Across Green Acres-Restricted Properties and Consents Needed for Certain Environmental Permits in, and with Respect to, the City of Ocean City Are Reasonably Necessary for the Construction or Operation of the Ocean Wind 1 Qualified Offshore Wind Project
BPU Dkt. No. QO22020041**

**In the Matter of the Petition of Ocean Wind LLC Pursuant to N.J.S.A. 48:3-87.1(f) for a Determination that Certain Easements and Consents Needed for Certain Environmental Permits in, and with Respect to, the County of Cape May Are Reasonably Necessary for the Construction or Operation of the Ocean Wind 1 Qualified Offshore Wind Project
BPU Dkt. No. QO22050347**

Dear Secretary Golden:

On July 1, 2024, Ocean Wind LLC (“Ocean Wind”) filed a motion to vacate (hereinafter, “the Motion”) four Board Orders: (1) the June 21, 2019 Order in BPU Docket No.

QO18121289; (2) the September 28, 2022 Order in BPU Docket No. QO22020041; (3) the November 2, 2022 Order in BPU Docket No. QO22020041; (4) the February 1, 2023 Order in BPU Docket No. QO22050347; and (5) the March 24, 2023 Order in BPU Docket No. QO22050347.¹ Please accept this response on behalf of the New Jersey Division of Rate Counsel (“Rate Counsel”). According to the Motion, Ocean Wind asserts that, on May 25, 2024, “Orsted A/S, Orsted North America Inc., Orsted Wind Power North America LLC, Ocean Wind LLC, and Ocean Wind II, LLC, the State of New Jersey and the Board entered into a settlement agreement”² (hereinafter, referred to as the “Settlement Agreement”). Notwithstanding this assertion, the Settlement Agreement was not attached to the Motion.³ The Motion further purports to claim that the Settlement Agreement requires “Orsted” to move to vacate the “Ocean Wind Orders and the Board Orders granting easements to certain real property owned by Ocean City and Cape May County”⁴ The Motion further purports to claim that the Settlement Agreement states “the State consents to such vacation and agrees to take all action reasonably necessary to effectuate such vacation.”⁵

The Settlement Agreement states that it is between “the State of New Jersey and the New Jersey Board of Public Utilities” and “Ørsted A/S, Orsted North America Inc., Orsted Wind Power North America LLC,¹ Ocean Wind LLC, and Ocean Wind II, LLC” which are collectively referred to as “Orsted” throughout the document.⁶ The Settlement Agreement lists a number of Board Order and agreements between the parties including a “standstill Agreement”

¹ Ocean Wind Motion to Vacate at 1 (Jul. 1, 2024).

² Id. at 2.

³ Rate Counsel only received the Settlement Agreement after requesting it from the Attorney General’s Division of Law.

⁴ Ibid.

⁵ Ibid.

⁶ Settlement Agreement at 1.

dated April 24, 2024. The Settlement Agreement provides that Orsted will pay \$125 million to the State and that “[i]n the absolute sole discretion of the Board” the payment shall be used for clean energy programs “including, but not limited to, additional investments in qualified wind energy facilities, investments in one or more offshore wind component manufacturing facilities, and other clean energy programs to encourage meeting the State's clean energy goals under the State’s Energy Master Plan.”⁷ In return for this payment, the State agrees to release “actions, causes of action, suits, debts, damages, liabilities, obligations, and demands whatsoever, in law or equity, of whatever kind or character, whether known or unknown, fixed or contingent, which against . . .” the other.

As preliminary matter, Rate Counsel notes that it was a party to all the Board Orders upon which Ocean Wind requests relief in the Motion. The Offshore Wind Economic Development Act, under N.J.S.A. 48:3-87.1, unequivocally states that “[a]n order issued by the board pursuant to this subsection shall not be modified by subsequent board orders, unless the modifications are jointly agreed to by the parties.” Moreover, in considering settlements, the Appellate Division has held that “it is important that most of the active parties participate in negotiating the settlement and that the non-consenting parties be given an opportunity to argue against the stipulations.”⁸ Nonetheless, Rate Counsel was not invited to any “settlement discussions” that led to the Settlement Agreement. Rate Counsel was never served with a copy of the Settlement Agreement. At no time did any party seek Rate Counsel’s consent to modify these Board orders. On this basis alone, the motions are premature.

⁷ Settlement agreement at 4.

⁸ In re Pub. Serv. Elec. & Gas Co., 304 N.J. Super. 247, 254, certif. denied 152 N.J. 12 (1997).

Despite these procedural deficiencies, Rate Counsel does not object to the relief sought by Ocean Wind, but has a number of concerns regarding the Motion. Procedurally, Rate Counsel questions the basis on which the Board could consider the Motion. Indeed, the Board has plainly held that its “regulations do not provide for such a request after the issuance of a Final Decision.”⁹ Rather, the Board has chosen to treat such motions as requests for rehearing, reargument, or reconsideration under N.J.A.C. 14:1-8.6. The Board should be clear that pursuant to existing precedent, this motion shall be treated as a motion under N.J.A.C. 14:1-8.6. While the motion does not in fact comport with the requirements of N.J.A.C. 14:1-8.6, Rate Counsel is willing to consent to a waiver of those requirements pursuant to N.J.A.C. 14:1-1.2(b). Even with this procedural fix, it is unclear how the Settlement Agreement is before the Board, or how the Board is a party to this Settlement Agreement, when it has never approved the Settlement Agreement. While subsequent Board ratification of a stipulation has occurred, the Board cannot be bound to a stipulation of settlement without its formal approval. That did not happen in this instance, so reliance on the Settlement Agreement as the basis for the motion is inappropriate. Moreover, it is unclear how such a consequential act under N.J.S.A. 48:3-87.1 could be subdelegated to the Office of the Attorney General without it ever appearing on the Board’s agenda for an open meeting or allowing the named parties to those orders an opportunity to comment on the terms of the Settlement Agreement.

Notwithstanding the questionable status of the Settlement Agreement, Rate Counsel is an independent agency tasked with representing the public interest.¹⁰ As noted above, Rate Counsel was not involved in the negotiation of the terms of settlement, nor was it ever invited to become

⁹ Louis L. Anderson v. Verizon New Jersey, BPU Docket No. TC07060428U (Jun. 7, 2007).

¹⁰ See 52:27EE-46 and -48.

a signatory. Despite being a party in all of these matters, Rate Counsel is not a party to the Settlement Agreement. Accordingly, Rate Counsel does not deem itself bound by the terms of the Settlement Agreement and reserves all rights to bring any action in law or equity it deems appropriate.¹¹

The Board should treat this Motion as what it is, a request from Ocean Wind to reconsider the Board's orders in four separate matters. The Settlement Agreement in this matter is a red herring and should be disregarded by the Board for purposes of this request. Based upon that motion, and the public record that Ocean Wind is unable or unwilling to comply with the terms of those prior orders, the Board should grant the motions and reverse its decision in all four orders. Moreover, the Board should direct Ocean Wind to immediately advise the Appellate Division and any other Court considering enforcement of those orders of the Board's decision and that those pending matters are now moot. Rate Counsel does not object to the Board proceeding in this manner.

Respectfully,

BRIAN O. LIPMAN
DIRECTOR, DIVISION OF RATE COUNSEL

By: /s/ T. David Wand
T. David Wand, Esq.
Deputy Rate Counsel

C: Service List

¹¹ See 52:27EE-48.

**Offshore Wind Solicitations
BPU Docket Nos. QO18121289,
QO22020041 and QO22050347**

SERVICE LIST

Sherri Golden, Secretary
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
P.O. Box 350
Trenton, NJ 08625
Board.Secretary@bpu.nj.gov

Robert Brabston, Esq.
Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625
Robert.Brabston@bpu.nj.gov

Stacy Peterson
Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625
Stacy.Peterson@bpu.nj.gov

Carol Artale, Esq.
Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625
Carole.Artale@bpu.nj.gov

Taryn Boland
Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625
Tarryn.Bolland@bpu.nj.gov

Henry Gajda
Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625
Henry.Gajda@bpu.nj.gov

Kim Diamond
Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625
Kim.Diamond@bpu.nj.gov

Charles Gurkas
Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625
Charles.Gurkas@bpu.nj.gov

Ben Witherell, Ph.D.
Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625
Benjamin.Witherell@bpu.nj.gov

Kelly Mooij
Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625
Kelly.mooij@bpu.nj.gov

Farhana Rahman
Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625
Farhana.Rahman@bpu.nj.gov

Veronique Oomen
Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625
Veronique.Oomen@bpu.nj.gov

Stacy Richardson
Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625
stacy.richardson@bpu.nj.gov

Kira Lawrence
Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625
Kira.Lawrence@bpu.nj.gov

Earl Thomas Pierce
Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625
Earl.Pierce@bpu.nj.gov

Kevin Dillon
Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625
Kevin.Dillon@bpu.nj.gov

Bailey Wild
Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625
Bailey.Wild@bpu.nj.gov

Jack Streppone
Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625
Jack.Streppone@bpu.nj.gov

Katharine Perry
Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625
kira.lawrence@bpu.nj.gov

Jim Ferris
Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625
Jim.Ferris@bpu.nj.gov

Genevieve DiGiulo
Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625
genevieve.digiulio@bpu.nj.gov

Paul Youchak
Board of Public Utilities
44 South Clinton Avenue
P.O. Box 350
Trenton, NJ 08625
paul.youchak@bpu.nj.gov

Daren Eppley, DAG
Department of Law & Public Safety
Division of Law
R.J. Hughes Justice Complex
25 Market Street, P.O. Box 112
Trenton, NJ 08625
Daren.Eppley@law.njoag.gov

Pamela Owen, DAG
Department of Law & Public Safety
Division of Law
R.J. Hughes Justice Complex
25 Market Street, P.O. Box 112
Trenton, NJ 08625
Pamela.Owen@law.njoag.gov

Terel Klein, DAG
Department of Law & Public Safety
Division of Law
R.J. Hughes Justice Complex
25 Market Street, P.O. Box 112
Trenton, NJ 08625
Teren.Klein@bpu.nj.gov

David Apy, DAG
Department of Law & Public Safety
Division of Law
R.J. Hughes Justice Complex
25 Market Street, P.O. Box 112
Trenton, NJ 08625
Steven.Chaplar@law.njoag.gov

Brian Lipman
Division of Rate Counsel
140 East Front Street, 4th Fl.
Trenton, NJ 08625
blipman@rpa.nj.gov

T. David Wand, Esq.
Division of Rate Counsel
140 East Front Street, 4th Fl.
Trenton, NJ 08625
dwand@rpa.nj.gov

Maura Caroselli, Esq.
Division of Rate Counsel
140 East Front Street, 4th Fl.
Trenton, NJ 08625
mcaroselli@rpa.nj.gov

Megan Lupo, Esq.
Division of Rate Counsel
140 East Front Street, 4th Fl.
Trenton, NJ 08625
mlupo@rpa.nj.gov

Robert Glover, Esq.
Division of Rate Counsel
140 East Front Street, 4th Fl.
Trenton, NJ 08625
rglover@rpa.nj.gov

Debora Layugan
Division of Rate Counsel
140 East Front Street, 4th Fl.
Trenton, NJ 08625
dlayugan@rpa.nj.gov

Carlena Morrison
Division of Rate Counsel
140 East Front Street, 4th Fl.
Trenton, NJ 08625
cmorrison@rpa.nj.gov

Elizabeth Lange
NJ Department of Environmental
Protection
P.O. Box 420
Trenton, NJ 08625
elizabeth.lange@dep.nj.gov

Megan Brunatti
NJ Department of Environmental
Protection
P.O. Box 420
Trenton, NJ 08625
megan.brunatti@dep.nj.gov

Katherine Nolan
NJ Department of Environmental
Protection
P.O. Box 420
Trenton, NJ 08625
katherine.nolan@dep.nj.gov

Phil Passanante, Esq.
Atlantic City Electric Co. –
89KS Post Office Box 231
Wilmington, DE 19899
philip.passanante@pepcoholdings.com

Joseph Janocha
Atlantic City Electric Co. –
63ML38 5100 Harding Highway
Atlantic Regional Office Mays
Landing, NJ 08330
joseph.janocha@pepcoholdings.com

Yongmei Peng
Jersey Central Power & Light Co.
300 Madison Ave. Morristown, NJ 07962
ypeng@firstenergycorp.com

John L. Carley, Esq.
Consolidated Edison Co. of NY
Law Dept., Room 1815-S
4 Irving Place
New York, NY 10003
carleyj@coned.com

Margaret Comes, Sr.
Consolidated Edison Co. of NY Law
Dept., Room 1815-S
4 Irving Place
New York, NY 1000
comesm@coned.com

Joseph A. Shea, Esq.
PSEG Services Corporation
Post Office Box 570 80 Park Plaza, T-5
Newark, NJ 07101
Joseph.shea@pseg.com

Cara Lewis, Esq.
PSEG Service Corp.
80 Park Plaza, T5
Newark, NJ 07101
cara.lewis@pseg.com

Ana Murteira, Esq.
PSEG Service Corp.
80 Park Plaza, T5
Newark, NJ 07101
Ana.Murteira@pseg.com

Melissa Rasner
Municipal Clerk
City of Ocean City
861 Asbury Avenue
Ocean City NJ 08226
mrasner@ocnj.us

Dorothy F. McCrosson, Esq.
City Solicitor
McCrosson & Stanton, P.C.
200 Asbury Avenue
Ocean City, New Jersey 08226
dmccrosson@ocnj.us

Hon. Jay Gillian, Mayor
City of Ocean City
861 Asbury Avenue
Ocean City, NJ 08226
mayor@ocnj.us

Bobby Barr
Council President
118 Roosevelt Boulevard
Ocean City, NJ 08226
rbarr@ocnj.us

Karen Bergman
City Council Member
39 Bayview Place
Ocean City, NJ 08226
kbergman@ocnj.us

Tony Polcini
City Council Member
2 Valmar Court
Ocean City, NJ 08226
tpolcini@ocnj.us

Tomaso Rotondi
Council Vice President
407 Bay Avenue
Ocean City, NJ 08226
trotondi@ocnj.us

Peter V. Madden
City Council Member
47 Bay Road
Ocean City, NJ 08226
pmadden@ocnj.us

Terrence Crowley Jr.
City Council Member
123 Bay Avenue
Ocean City, NJ 08226
tcrowley@ocnj.us

Jody Levchuk
City Council Member
2 Bayonne Place
Ocean City, NJ 08226
jlevchuk@ocnj.us

Jennifer B. Barr, Esq.
Cooper Levenson, P.A.
1125 Atlantic Avenue
Atlantic City, NJ 08401
jbarr@cooperlevenson.com

Kevin Lare, Acting Administrator
Board of County Commissioners,
Cape May County
4 Moore Road
Cape May Courthouse, NJ 08210
kevin.lare@co.cape-may.nj.us

Gerald M. Thornton, Commissioner
Board of County Commissioners, Cape
May County
4 Moore Road
Cape May Courthouse, NJ 08210
gerald.thornton@co.cape-may.nj.us

Rita M. Rothberg
County Clerk County of Cape May
7 N Main Street
P.O. Box 5000
Cape May Court House, NJ 08210-
5000
coclerk@co.cape-may.nj.us

Shawn M. LaTourette,
Commissioner
Department of Environmental
Protection
401 E. State St. 7th Floor
P.O. Box 402
Trenton, NJ 08625-0402
commissioner@dep.nj.gov

Sean D. Moriarty, Deputy Commissioner
Regulatory and Legislative Affairs
401 E. State St., 7th Floor
P.O. Box 402
Trenton, New Jersey 08625-0402
Sean.Moriarty@dep.nj.gov

Martha Sullivan Sapp
Director, Green Acres Program
Mail Code 501-01
P.O. Box 420
501 East State Street 1st floor
Trenton, New Jersey 08625-042
Martha.Sapp@dep.nj.gov

Gregory Eisenstark, Esq.
Cozen O'Connor
1010 Kings Highway South
Cherry Hill, NJ 08034
geisenstark@cozen.com

Michael J. Donohue, Esq.
Blaney, Donohue & Weinberg, PC
2123 Dune Drive, Suite 11
Avalon, NJ 08202
mike@blaneydonohue.com

Township of Lower
c/o Robert T. Belasco, Esq.
111 East 17th Avenue
Suite 100
North Wildwood, NJ 08260
rbelasco@sblawteam.com

City of Sea Isle City
c/o Paul L. Baldini, Esq.
Law Office of Paul J. Baldini, P.A.
4413 New Jersey Avenue
Wildwood, NJ 08260
paul@paulbaldinilaw.com

Borough of Wildwood Crest
c/o Ronald J. Gelzunas
Ronald J. Gelzunas, LLC
P.O. Box 1288
Wildwood Crest, NJ 08260
ron@gelzunaslaw.com

Aaron Bullwinkel
Orsted Offshore North America
399 Boylston St., 12th Floor
Boston, MA 02116
aarbu@orsted.com

Michael J. Connolly, Esq.
Cozen O'Connor PC
1010 Kings Highway South
Cherry Hill, NJ 08034
mconnolly@cozen.com

Erica Fisher, President
Ocean City Crew Boosters Inc.
P.O. Box 205
Ocean City, New Jersey 08226
president@ochscrew.com

Borough of Avalon
c/o Nicole J. Curio, Esq.
Blaney, Donohue & Weinberg, P.C.
2123 Dune Drive, Suite 11
Avalon, NJ 08204
nicole@blaneydonohue.com

Borough of Stone Harbor
c/o Steven A. Morris, Esq.
Karavan & Morris, P.C.
3311 New Jersey Avenue
P.O. Box 1310
Wildwood, NJ 08260
Steve@karavanMorris.com

New Jersey State League of
Municipalities
c/o Frank Marshall, Esq.
222 West State Street
Trenton, NJ 08608
league@njlm.org

Matthew Kaplan
Orsted
437 Madison Avenue, 19th floor
New York, NY-10022
MATKA@orsted.com

William Lesser, Esq.
Cozen O'Connor PC
3 WTC, 175 Greenwich Street – 55th
Floor
New York, NY 10007
wlesser@cozen.com

Township of Middle
c/o Steven A. Morris, Esq.
Karavan & Morris, P.C.
3311 New Jersey Avenue
P.O. Box 1310
Wildwood, NJ 08260
Steve@karavanMorris.com

City of North Wildwood
c/o Michael J. Donohue, Esq.
Blaney, Donohue & Weinberg, P.C.
2123 Dune Drive, Suite 11
Avalon, NJ 08204
mike@blaneydonohue.com

Township of Dennis
c/o Kyle D. Weinberg, Esq.
Blaney, Donohue & Weinberg, P.C.
2123 Dune Drive, Suite 11
Avalon, NJ 08204
kyle@blaneydonohue.com

City of Wildwood
c/o Louis A. DeLollis, Esq.
Monzo Catanese Hillegass, P.C.
211 Bayberry Drive, Suite 2A
Cape May Court House, NJ 08210
ldelollis@mchlegal.com

John G. Donnadio, Esq.
New Jersey Association of Counties
150 West State Street
Trenton, NJ 08608
jdonnadio@njac.org