

STATE OF RHODE ISLAND
ENERGY FACILITY SITING BOARD

IN RE: MAYFLOWER WIND ENERGY LLC :
 APPLICATION TO CONSTRUCT : **SB-2022-02**
 A MAJOR ENERGY FACILITY :

SHOW CAUSE ORDER

I. Introduction

On May 31, 2022, Mayflower Wind Energy LLC¹ (Mayflower Wind or Applicant) filed with the Energy Facility Siting Board (EFSB or Board) an application to construct and operate transmission facilities associated with the Mayflower Wind Project, an offshore wind farm which is projected to deliver approximately 1,200 megawatts (MW) of renewable energy over Rhode Island jurisdictional transmission facilities.² The transmission facilities will interconnect the offshore wind generation to the mainland and is proposed to fulfill obligations under long-term Power Purchase Agreements (PPAs) between the Applicant and regulated utilities in Massachusetts. The PPAs and any amendments thereto are subject to approval of the Massachusetts Department of Public Utilities (MA DPU).

After public notice, a preliminary hearing was convened by the EFSB on August 18, 2022. The purpose of the preliminary hearing was “to determine the issues to be considered by the Board in evaluating the application, and to designate those agencies of state government and of political

¹ Mayflower Wind Energy LLC, a 50/50 joint venture between Shell New Energies US LLC and OW North America LLC, is a Delaware Limited Liability Company with its principal place of business in Boston, Massachusetts and is registered to do business in Rhode Island.

² While the transmission facilities are proposed to transmit approximately 1,200 MW, Mayflower states that the offshore wind generation project may eventually have the capability of generating as much as 2,400 MW. The application and all documents filed are available at the PUC offices located at 89 Jefferson Boulevard, Warwick, Rhode Island or at <https://ripuc.ri.gov/Docket-SB-2022-02>.

subdivisions of the state which shall act at the direction of the board for the purpose of rendering advisory opinions on these issues, and to determine petitions for intervention.”³

Subsequent to the preliminary hearing, the EFSB held an open meeting on October 4, 2022, and voted to commence the process of seeking Advisory Opinions. The EFSB’s written order reflecting the decisions made at the Open Meeting is pending and was expected to be issued shortly. However, on November 8, 2022, the Chairman of the EFSB – serving as presiding officer over procedural issues – learned through media reports that the MA DPU issued an interlocutory order on November 4, 2022⁴ (Interlocutory Order) relating to requests from two offshore wind developers, including Mayflower Wind, for a suspension of the contract approval proceedings relating to the offshore wind PPAs applicable to the proposed projects of Commonwealth Wind and Mayflower Wind that were pending before the MA DPU.⁵ The request was first made by Commonwealth Wind on October 22, 2022, and was subsequently supported by Mayflower Wind. The basis for the request was that the wind projects may not be economically viable with the current pricing under the contracts and that pricing adjustments might be necessary. This has given rise to questions about the economic and financial viability of the Mayflower Wind project that is before the EFSB in these proceedings.

For the reasons described in this procedural order, the Chairman of the Siting Board is issuing this procedural order, requiring Mayflower Wind to show cause why the proceedings before the EFSB should not be stayed until questions related to the economic and financial viability of Mayflower Wind’s offshore wind project are satisfactorily resolved, as specified in this Order.

³ R.I. Gen. Laws § 42-98-9(a).

⁴ <https://fileservice.eea.comacloud.net/FileService.Api/file/FileRoom/15711473> Massachusetts Department of Public Utilities, DPU 22-70, 22-71, 22-72, *Interlocutory Order on Commonwealth Wind LLC’s Motion for a One-Month Suspension of Proceedings* (November 4, 2022)(“Interlocutory Order”).

⁵ <https://commonwealthmagazine.org/energy/clock-ticking-avangrid-finds-itself-isolated/>

II. PPA Approvals in Massachusetts

Mayflower represented to the Board in its application that there were two sets of PPAs that were subject to the approval of the MA DPU, arising out of two separate bidding processes that occurred at different dates.⁶ According to Mayflower, it obtained approval of the first set of PPAs on February 10, 2020, in DPU dockets 20-16, 2-17, and 20-18.⁷ But Mayflower did not disclose to the Board that it was seeking amendments to those PPAs in order for the first phase of the project covered by the initial PPAs to use the proposed transmission facilities to be routed through Rhode Island waters. The Board only became aware of this after reading news reports and taking notice of the public filings within the MA DPU dockets. In addition, the Board was unaware that approvals for the second phase of the project relating to the sale of an additional 400 MW was being pursued in MA DPU in dockets D.P.U. 22-70, 22-71, and 22-72 which was consolidated at the MA DPU with the contract relating to Commonwealth Wind.⁸ Based on a review of the public record at the MA DPU, it is clear that both of these proceedings before the MA DPU – one seeking the amendments and the other seeking approval of the 400 MW increment – are pending. It was in those two parallel proceedings before the MA DPU that the requests to delay the proceedings were filed as a result of concerns expressed about the economic and financial viability of the projects.⁹

III. Filings by Mayflower Wind Calling into Question Financial Viability

The Board is taking administrative notice of the referenced proceedings and associated public filings at the MA DPU. The factual assertions relied upon by Mayflower Wind to support the request for a delay in the Massachusetts proceedings suggest that its project may not be

⁶ Application of Mayflower Wind, at 3-8 (“Application”).

⁷ Application at 11, n. 11. The MA DPU docket can be found at:

<https://eeaonline.eea.state.ma.us/DPU/Fileroom/dockets/bynumber/20-16>

⁸ Application at 3-8. The MA DPU docket can be found at:

<https://eeaonline.eea.state.ma.us/DPU/Fileroom/dockets/bynumber/22-70>

⁹ See <https://fileservice.eea.comacloud.net/FileService.Api/file/FileRoom/15117566;>

<https://fileservice.eea.comacloud.net/FileService.Api/file/FileRoom/15089254.>

economically and financially viable, and that there may be a need to renegotiate the power purchase price. Specifically, when Mayflower Wind filed a pleading supporting Commonwealth Wind’s request in that MA DPU docket 22-70, it asserted: “A suspension at this time is needed and appropriate because, under the current PPAs, the resource may no longer be economic and financeable without adjustments to the PPAs.”¹⁰

The MA DPU’s Interlocutory Order denied Commonwealth Wind’s request for a suspension, along with a motion that had been made by Commonwealth Wind to reopen evidentiary hearings.¹¹ Subsequent to the issuance of that Interlocutory Order by the MA DPU, Mayflower filed an Amended Answer withdrawing its support for the one-month suspension.¹² However, the withdrawal filing contained the following statement: “Lastly, Mayflower will seek to resolve with the Petitioners and the Commonwealth the issues discussed above, beginning by providing Petitioners and the Department with detailed third-party analysis demonstrating challenges to financeability, with the goal of finding solutions that provide value to ratepayers.”¹³

In reviewing the public documents available on the MA DPU website, the Board also discovered that Mayflower Wind made a similar filing in the other pending docket before the MA DPU on October 27, 2022 relating to the original PPAs that had been approved in 2020 for the first phase of the project.¹⁴ In Mayflower’s own motion seeking a one-month suspension, Mayflower argued that “[a] one month suspension would enable the parties to consider potential approaches to help ensure that the Clean Energy Resource is economic and financeable under the

¹⁰ <https://fileservice.eea.comacloud.net/FileService.Api/file/FileRoom/15681866>. *Answer of Mayflower Wind Energy LLC in Support of Motion for a One-Month Suspension*, at 3 (October 27, 2022)

¹¹ Interlocutory Order at 13.

¹² <https://fileservice.eea.comacloud.net/FileService.Api/file/FileRoom/15719032>

¹³ *Amended Answer of Mayflower Wind Energy LLC Regarding Motion for a One-Month Suspension & Response to Interlocutory Order*, at 2 (November 7, 2022).

¹⁴ *Motion of Mayflower Wind Energy LLC for a One Month Suspension in the Proceedings* (October 27, 2022)(“Motion of Mayflower”). <https://fileservice.eea.comacloud.net/FileService.Api/file/FileRoom/15681885>

PPAs.”¹⁵ Mayflower Wind also identified various approaches to address the apparent financeability problem, including “an appropriate increase in the PPA prices to help establish sound economics and financeability for the Clean Energy Resource.”¹⁶

Other statements made in Mayflower’s filing of October 27 included:

- “A suspension at this time is needed and appropriate because, under the current PPAs, the Clean Energy Resource may no longer be economic and financeable without adjustments to the PPAs.”¹⁷
- “Mayflower Wind has concerns regarding the economics and financeability of the Clean Energy Resource given the macroeconomic conditions described above.”¹⁸
- “[I]t would be appropriate to pause this proceeding to: . . . help ensure sound economics and financeability of the Project. . . .”¹⁹
- “No one will benefit from a Department decision concerning PPAs that do not allow the Project to be economic and financeable. . . .”²⁰

Mayflower later filed a withdrawal of its motion for the suspension, but in doing so, added the following comment in its conclusion, mirroring the statement made in the other DPU docket:

Lastly, Mayflower looks forward to approval of the PPA amendments and will seek to resolve with Petitioners and the Commonwealth the issues discussed above, beginning by providing Petitioners and the Department with detailed third-party analysis demonstrating challenges to financeability, with the goal of finding solutions that provide value to the ratepayers.²¹

While the comments made in both proceedings suggest that the projects are unlikely to be financeable without renegotiated pricing, the utilities that are parties to the PPAs have provided an

¹⁵ Motion of Mayflower at 2.

¹⁶ *Id.*

¹⁷ *Id.* at 3.

¹⁸ *Id.* at 6.

¹⁹ *Id.*

²⁰ *Id.* at 8.

²¹ *Withdrawal of Motion for a One Month Suspension in the Proceedings*, at 2 (November 7, 2022).
<https://fileservice.eea.comacloud.net/FileService.Api/file/FileRoom/15719041>

unequivocal response that indicate they have no intention of renegotiating. In a response letter, the utilities asserted:

With this letter, the Companies also acknowledge the respective Motions submitted by Commonwealth Wind and Mayflower Wind seeking to pause the Department's deliberations in these dockets by one month, in an effort to pursue renegotiation of key terms of the PPAs. Such a pause is unnecessary, however, given that the Companies do not intend to renegotiate the PPAs. The projects subject to the PPAs were selected by the Companies, in consultation with the DOER, pursuant to a robust competitive solicitation and thorough evaluation. Moreover, the Companies negotiated the PPAs in good faith and have supported approval of the PPAs with unchallenged substantial evidence in these proceedings. Accordingly, the Companies request that the Department approve the PPAs expeditiously.²²

Further, the MA DPU Interlocutory Order did not appear to leave any room for Mayflower Wind to negotiate a new deal. The Order states:

[T]he Companies' residents and businesses that financially support these contracts deserve certainty whether the Projects, if approved by the Department, will deliver consistent with the PPAs Commonwealth Wind and Mayflower Wind executed after a competitive solicitation. Accordingly, Commonwealth Wind and Mayflower Wind must now decide whether they intend to move forward with their contractual obligations under the PPAs or file a request to dismiss the proceedings.²³

Given the apparent status of the proceedings in Massachusetts, there exists a very real and present issue as to whether the Mayflower Wind project is economically and financially viable.

IV. Show Cause Order

Any Applicant making a filing with the EFSB has an obligation to disclose material information that could affect the outcome of the licensing proceedings. If there is a material change in circumstances, the Applicant must disclose such information to the Board, or risk that a license be either denied or later revoked. Mayflower Wind did not inform the EFSB of the pending MA DPU proceedings or the representations that were being made to that regulatory agency in

²² Letter dated Nov. 1, 2022. <https://fileservice.eea.comacloud.net/FileService.Api/file/FileRoom/15699452>

²³ Interlocutory Order at 13.

Massachusetts which called into question the economic and financial viability of the project. The EFSB should not have to rely upon news reports to learn of such material events that could substantially affect the ability of the project to obtain financing which, in turn, is relevant to the issue of need.

As a matter of statutory licensing requirements, all Applicants filing for approval of a license must show that the project is needed.²⁴ In this case, one cannot logically claim that the transmission facilities that are jurisdictional to the EFSB are needed if it is apparent that the offshore wind generation project to which the transmission facilities would be interconnected will not be economic or financially viable before the licensing proceedings examining need even commence.

Further, the approval process for a license is very intensive and complex, requiring the engagement of many state and local governmental agencies. It is not reasonable or fair to those governmental agencies, including the EFSB, to spend time and resources evaluating an Application for a project which may only be hypothetical in nature due to an admission by the Applicant that the proposed project is not going to be financially viable.

For these reasons, it is imperative that Mayflower Wind show cause why the EFSB should not stay these proceedings until the applicable MA DPU approvals of the PPAs are obtained and the Applicant can demonstrate the economic and financial viability of the project under the terms of the final approved PPAs, assuming approvals are granted.

EFSB Rule 1.15(A)(2) specifies that a hearing be scheduled within ten days of issuance of a show cause order. It is conceivable that the Applicant may need more time to respond to this

²⁴ R.I. General Laws § 42-98-9(d); EFSB Rule 1.13(C)(1).

Order, given the potential complexities of the issues. Therefore, the Applicant may avoid and waive the ten-day requirement by seeking an extension of time within five days of this Order. At such time a deadline and a hearing date could be established through counsel for the EFSB. Mayflower Wind must respond in writing to this Order within five days, indicating whether it desires an extension or prefers to respond within the time limits specified in this Order.

Accordingly, it is hereby

(160) ORDERED

That within 10 days of the issuance of this procedural Order (unless an extension of the deadline is sought and granted for a later date), Mayflower Wind shall appear before the Board, at a date to be set by the Board, showing cause why the proceedings in this docket should not be stayed until (i) the Massachusetts Department of Public Utilities issues final orders on the applicable pending Power Purchase Agreements and Amendments, and (ii) the Applicant has provided sworn testimony providing reasonable support for a conclusion that the offshore wind project to which the transmission facilities will be interconnected is economically and financially viable under the pricing and conditions of its Power Purchase Agreements, as approved by the Massachusetts Department of Public Utilities.

DATED AND EFFECTIVE AT WARWICK, RHODE ISLAND THIS 10th DAY OF NOVEMBER, 2022.

ENERGY FACILITY SITING BOARD



Ronald T. Gerwatowski, Chairman