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June 21, 2023

*Via Hand Delivery and Electronic Mail ([emma.rodvien@puc.ri.gov](mailto:emma.rodvien@puc.ri.gov))*

Emma Rodvien  
Coordinator  
Energy Facility Siting Board  
RI Public Utilities Commission  
89 Jefferson Boulevard  
Warwick, RI 02888

Re: SouthCoast Wind Energy LLC– Application to Construct Major Energy Facility  
Docket No. SB-2022-02

Dear Ms. Rodvien:

Enclosed herewith please find an original and six copies of SouthCoast Wind Energy LLC's Legal Memorandum on Need Standard and Project Viability.

Please feel free to contact me if you have any questions.

Respectfully,



Christian F. Capizzo

CFC:nah  
Enclosure

cc: Service List Updated March 1, 2023

**Certificate of Service**

I hereby certify that a copy of the cover letter and any materials accompanying this certificate was electronically transmitted to the individuals listed below.

The paper copies of this filing are being hand delivered to the Rhode Island Energy Facility Siting Board.

Dated: June 21, 2023



Christian F. Capizzo

**Docket No. SB-2022-02 – SouthCoast Wind Energy LLC’s Application for a License to Construct Major Energy Facilities (Portsmouth, RI)  
Service List – Updated March 1, 2023**

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**STATE OF RHODE ISLAND  
ENERGY FACILITY SITING BOARD**

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**IN RE: SOUTHCOAST WIND  
ENERGY LLC’S APPLICATION TO  
CONSTRUCT A MAJOR ENERGY  
FACILITY**

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**Docket No. SB-2022-02**

**SOUTHCOAST WIND ENERGY LLC LEGAL MEMORANDUM  
ON NEED STANDARD AND PROJECT VIABILITY**

**I. Introduction and Summary**

This Legal Memorandum follows the June 12, 2023 Show Cause Hearing in this proceeding. For several reasons, SouthCoast Wind Energy LLC (SouthCoast Wind) submits that it has shown that consideration of its Application to Construct a Major Energy Facility (Application) should not be stayed and should be allowed to proceed at this time notwithstanding SouthCoast Wind’s recent decision to exercise its right to terminate its existing power purchase agreements (PPAs) and pay a penalty.

First, the governing statute, the Energy Facility Siting Act (EFSA),<sup>1</sup> does not require that an applicant have a PPA or any other commercial offtake arrangement in place at the time its Application is processed.

Second, rather than requiring specific evidence of need at the time of an Application, the EFSA promotes and allows for a broad approach to a demonstration of need. This broad approach can include: (i) demonstrating state and/or regional need for the type of energy to be delivered by the project through public policy requirements; (ii) a consideration of the need for the facilities in relation to the overall impact of the facilities upon public health and safety, the environment and the economy of the state; and (iii) a consideration of studies and forecasts showing a need for the type of energy to be delivered by the project.

Third, the EFSA does not define project viability but instead allows the Siting Board to consider a range of factors, including indicators of development progress in assessing project viability. This approach to assessment of need and project viability is a practical approach, and is used by the Massachusetts Energy Facilities Siting Board (MA EFSB) in instances where only the transmission connector project, not the generation resource, is jurisdictional to the siting board (as is typically the case with offshore wind).<sup>2</sup> In this proceeding, SouthCoast Wind has submitted evidence of its significant development commitment and progress.

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<sup>1</sup> R.I. Gen. Laws § 42-98-1 *et seq.*

<sup>2</sup> See *Cape Wind Associates, LLC and Commonwealth Electric Company d/b/a NSTAR Electric*, EFSB02-2, at 16-17 (2005). In that decision, the MA EFSB found that need can be demonstrated for transmission lines to connect new or expanded generation in cases where the generation is not subject to the MA EFSB’s jurisdiction through a showing that the existing transmission system is inadequate to interconnect the new generator and that the new generator is likely to be available to contribute to the regional energy supply. Entities can show that the generator is likely to be available to contribute to the regional energy supply by indicators of project progress such as progress in permitting or obtaining project financing.

Finally, processing SouthCoast Wind's Application now, even in the absence of PPAs, would be in the public interest and administratively efficient. These offshore wind facilities are urgently needed by the region and major permit approvals, including from this Siting Board, together with commercially acceptable PPAs, are needed before SouthCoast Wind and its sponsor companies can make a final investment decision to invest and move forward with construction of this important public policy project. To the extent that the Siting Board is concerned that it would authorize a project to construct without a PPA and that construction might be commenced and then abandoned if no PPA materializes, there is a remedy to that concern available to the Siting Board that is well within its authority. That remedy is to process the Application now so that the applicant can be ready to construct in a timely way, but in the approval require *as a condition to commencement of construction* that Southcoast Wind have one or more PPAs in place prior to commencement of construction.

For all of these reasons, and as discussed further below, SouthCoast Wind respectfully requests that the Siting Board issue an order allowing the Application to proceed at this time.

## **II. Background**

As reflected in its Application, SouthCoast Wind's overall project includes both: (i) offshore wind generation facilities, with a capacity currently estimated at approximately 2,400 MW and referred to as the Clean Energy Resource, and (ii) the transmission connector projects that will deliver the energy from the Clean Energy Resource to the regional transmission system. The Rhode Island portion of the first of these transmission connector projects is the subject of this proceeding and is referred to as the Project. In this memorandum when SouthCoast Wind speaks of project viability, it refers to both the Clean Energy Resource and the Project. SouthCoast Wind recognizes that the Project's viability is dependent on the viability of the Clean Energy Resource.

In Order No. 160 dated November 10, 2022 (the "Show Cause Order"), the Siting Board directed SouthCoast Wind to appear and show 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."

The Board explained the reason for its focus on the financial viability of the proposed offshore wind project under the terms of approved power purchase agreements as follows:

As a matter of statutory licensing requirements, all Applicants filing for approval of a license must show that the project is needed. 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.

Show Cause Order at 7 (citing R.I. Gen. Laws § 42-98-9(d); EFSB Rule 1.13(C)(1)).

In response to the Show Cause Order, SouthCoast Wind filed the testimony of Mr. Hubbard (SouthCoast Wind's General Counsel and Director of External Affairs) on January 27, 2023. Mr. Hubbard's testimony provided information on the then-current status of the existing SouthCoast Wind PPAs. SouthCoast Wind submitted supplemental testimony of Francis Slingsby, SouthCoast Wind's Chief Executive Officer, on June 2, 2023. Mr. Slingsby's pre-filed direct testimony addressed the company's recent decision to terminate its PPAs. Mr. Slingsby also provided details regarding very substantial project development activities and anticipated opportunities for new PPAs.

On June 9, 2023, SouthCoast Wind filed its response to the Siting Board's first data request related to this proceeding. In that response, sponsored by Mr. Hubbard and Ms. Flood (SouthCoast Wind's Director of Permitting), SouthCoast Wind explained the very significant and interconnected permitting activities it has been engaged in since 2021. Those activities include the company's siting proceeding with the MA EFSB on the Massachusetts portion of its transmission connector project delivering energy at Brayton Point. That proceeding is completing the discovery phase. Hearings are scheduled for mid-July 2023, with a decision expected in or by early 2024.

On June 12, 2023, at the Show Cause Hearing, SouthCoast Wind witnesses (Mr. Slingsby, Mr. Hubbard, and Ms. Flood) appeared before the Siting Board and answered questions about the existing PPAs, the opportunities for future PPAs, project viability and project schedule. Mr. Slingsby testified that, although the existing PPAs are not commercially viable, the Clean Energy Resource and, therefore, the Project *are viable* and SouthCoast Wind is committing substantial resources to actively develop the project on numerous fronts to meet the need for these facilities.<sup>3</sup> These activities include diligently progressing permitting activities at the federal, state and local levels in multiple jurisdictions, and securing valuable interconnection rights for the project. They also include pursuing economic PPAs, including through the upcoming offshore wind generation solicitation in Massachusetts for the procurement of up to 3,600 MW to meet the need established by public policy requirements.<sup>4</sup>

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<sup>3</sup> See *In re: SouthCoast Wind Energy LLC's Application to Construct Major Energy Facilities in Portsmouth, Rhode Island*, Docket No. SB-2022-02, Show Cause Hearing Transcript at 64:1-8 (June 12, 2023) (Show Cause Hearing Transcript) ("...these projects are absolutely viable. And more than that, they are very much needed if we are going to meet the greenhouse gas reductions. And SouthCoast Wind is a front runner project. And we are very-well placed to deliver on those targets.")

<sup>4</sup> This upcoming Massachusetts offshore wind generation solicitation is referred to herein as the "83C IV" solicitation and was established pursuant to Section 83C of Chapter 169 of the Acts of 2008. See Addendum 3 of Mr. Slingsby's pre-filed testimony.

### **III. Discussion**

#### **A. The EFSA Does Not Require a PPA or Any Commercial Offtake Arrangements as a Prerequisite to a Demonstration of Need**

The EFSA and its implementing regulations<sup>5</sup> do not mandate that an applicant have a PPA to demonstrate that a project is needed at the time the Siting Board makes its required finding on need. Instead, the EFSA allows for a broad approach to both a demonstration of need by the applicant and a finding of need by the Siting Board. R.I. Gen. Laws § 42-98-11.

Section 11 of the EFSA sets forth the “need” standard for approval to construct a major energy facility. Section 11 states:

The board shall issue a decision granting a license only upon finding that the applicant has shown that:

(1) Construction of the proposed facility is necessary to meet the needs of the state and/or region for energy of the type to be produced by the proposed facility.

(2) The proposed facility is cost-justified, and can be expected to produce energy at the lowest reasonable cost to the consumer consistent with the objective of ensuring that the construction and operation of the proposed facility will be accomplished in compliance with all of the requirements of the laws, rules, regulations, and ordinances, under which, absent this chapter, a permit, license, variance, or assent would be required, or that consideration of the public health, safety, welfare, security and need for the proposed facility justifies a waiver of some part of the requirements when compliance cannot be assured.<sup>6</sup>

(3) The proposed facility will not cause unacceptable harm to the environment and will enhance the socio-economic fabric of the state.

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<sup>5</sup> See 445 RICR-00-00-1.

<sup>6</sup> As described in Mr. Slingsby’s testimony, SouthCoast Wind intends to bid into the 83C IV offshore wind solicitation in Massachusetts, and expects that its bid will be competitive and that its prospects for success are good. Show Cause Hearing Transcript at 52 (“This [is] 83C4, the next round. And that specifically enabled the structure whereby previously awarded capacity may be terminated and that capacity may be rebid.”); at 76-77 (Mr. Gerwatowski: “...On a scale of 1 to 10, Number 1 meaning not confident at all and Number 10 meaning virtual certainty, what is your degree of confidence that you’ll get a contract under this next RFP in Massachusetts? Mr. Slingsby: I would say more likely than not, probably a six or a seven.”) In that case, with Massachusetts PPAs, there will be no costs to Rhode Island consumers, as was contemplated in the Application. Moreover, future 83C IV PPAs for SouthCoast Wind will have gone through the rigorous approval process by the Massachusetts Department of Public Utilities (DPU). Under An Act Driving Clean Energy and Offshore Wind (St. 2022 c. 179), the DPU “shall consider both the potential costs and benefits of [the PPAs] and shall approve a contract only upon a finding that it is in the public interest and is a cost-effective mechanism for procuring beneficial, reliable, Offshore Wind Energy Generation, on a long-term basis, taking into account the factors outlined in Section 83C...” Additionally, SouthCoast Wind has the responsibility for development costs related to the Project. SouthCoast Wind therefore submits that there will not be a circumstance under which its PPAs are not “cost-justified.”

In the Siting Board’s decision on Revolution Wind’s siting application, the Siting Board noted the testimony that the Rhode Island Public Utilities Commission’s (PUC) Advisory Opinion “provided that the proposed Facilities meet the need requirement of the statute because they will ‘(1)...provide substantial amounts of energy to meet the expected demand of customers in Rhode Island and Connecticut, and (2)...provide clean energy from renewable resources that is necessary for Rhode Island and Connecticut to meet their renewable energy goals.’”<sup>7</sup> This broad view of need is consistent with the EFSA.

The PUC Advisory Opinion on the Revolution Wind project also noted that the position of the Division of Public Utilities and Carriers was that prior approval of a PPA for the offshore wind generation “was tantamount to a determination that there is a need for the generating facility which in turn creates the need for the proposed transmission facilities to transmit the power from the offshore windfarm to the regional electric transmission system.”<sup>8</sup> While SouthCoast Wind agrees that having a PPA is “tantamount” or equivalent to a demonstration of need, *that is not the same as a PPA being a prerequisite to a demonstration of need*. The Advisory Opinion did not state that having a PPA is the only way to demonstrate need for this type of a project.

**B. The “Need” Standard in Section 11 of the EFSA is Broadened by Other Provisions of the EFSA, Which Support the Need for the Project**

Other sections of the EFSA make clear that a broad approach to meeting the need standard is allowed and expected under Section 11 of the EFSA. Section 1 of the EFSA instructs that the Siting Board should evaluate the need for projects in relation to the overall impact of the facilities on public health and safety, the environment and the economy of the state. This approach logically includes an evaluation of the public policies of the state favoring the type of energy at issue. Section 2 of the EFSA requires examination of state and/or regional energy need forecasts. Both of these sections contribute to support the position that the SouthCoast Wind Project is needed to provide substantial amounts of renewable energy to meet the demand of consumers in New England and to help the region meet its renewable clean energy and climate mandates.

**1. Evaluation of Need Should Broadly Consider the Overall Impact of the Facilities Upon Public Health and Safety, the Environment and the Economy of the State**

In Section 1 of the EFSA, the General Assembly’s legislative findings demonstrate a clear intent that the evaluation of proposals “must” consider the “overall impact” of the proposed facilities:

The general assembly recognizes that reasonably priced, reliable sources of energy are vital to the well-being and prosperity of the people of this state; that there are major issues of public health and safety and impact upon the environment related to the technologies and energy sources used in some facilities; that some energy facilities require a major commitment of funds and resources and require many years to build that the decision to permit or

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<sup>7</sup> Siting Board Decision and Order, Revolution Wind Docket No. SB-2021-01, at 12 (June 23, 2022).

<sup>8</sup> *Id.* at 13. See *Public Utilities Commission Advisory Opinion*, Docket No. 5151, at 4 (Aug. 26, 2021).



deny their construction will have long term impact on the economy of the state; that these decisions will affect the availability and cost of the energy; and that *the evaluation of proposals must recognize and consider the need for these facilities in relation to the overall impact of the facilities upon public health and safety, the environment and the economy of the state;* (Emphasis added.)

R.I. Gen. Laws § 42-98-1 (emphasis added).

These overall impacts include the environmental, reliability and energy security,<sup>9</sup> and economic benefits that a major offshore wind facility will have not only in Rhode Island but throughout the region.

In this case, the Project and Clean Energy Resource will provide numerous benefits to public safety and health, to the environment and to the economy, as described in part in the Application in this proceeding and supporting materials, as well as in the testimonies of Mr. Hubbard and Mr. Slingsby. These benefits include: (i) *providing clean energy in large amounts to reduce GHG emissions* in New England by approximately four million metric tons annually;<sup>10</sup> (ii) *bolstering energy reliability and energy security* by adding to the diversity of the energy supply mix from a resource that is likely to have a high capacity factor relative to other renewable energy resources, especially in the winter months, when energy security for New England is of greatest concern; and (iii) being a first-mover project in the nascent offshore wind industry and thereby *helping to establish the billions of dollars of investment that will flow into the region from an established offshore wind industry* off the South Coast of New England.

The significance of these benefits is reflected in the strong public policy requirements that call for such benefits, in the form of legislation, regulations and executive orders in Rhode Island and its neighboring coastal states. The public policy requirements regarding response to climate change and decarbonization of the electric industry, supply of clean energy from offshore wind and promotion of the offshore wind industry as a cornerstone of the energy supply for the region for decades to come all establish the need for the Project.

For example, the 2022 *Affordable Clean Energy Security Act*, R.I. Gen. Laws § 39-31 and the 2014 *Resilient Rhode Island Act*, R.I. Gen. Laws § 42-6.2, as amended by the 2021 *Act on Climate*, demonstrate the commitment by the State of Rhode Island to powering the state from clean, renewable energy and to reducing greenhouse gas emissions in part by reducing the amount

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<sup>9</sup> See RI EFSB Order No. 154, In Re: Revolution Wind, LLC Application To Construct A Major Energy Facility, at 13 (2022) “The Board takes administrative notice of the warnings that have been given by ISO New England, who is responsible for managing the bulk power system. The ISO has identified significant winter fuel security risks facing New England due to its dependency upon natural gas and liquified natural gas (LNG) during peak winter periods. As the ISO has stated, “Offshore wind...will help with our winter issues, but these projects remain years away from completion and face challenges in their development.” See also, e.g., ISO New England’s 2021-22 Winter Outlook, found at: [https://www.iso-ne.com/static-assets/documents/2021/12/20211206\\_winteroutlook2122\\_pressconference.pdf](https://www.iso-ne.com/static-assets/documents/2021/12/20211206_winteroutlook2122_pressconference.pdf).

<sup>10</sup> See SouthCoast Wind Energy LLC, Application for License to Construct Major Energy Facilities, Docket No. EFSB 2022-02 at 8 (May 31, 2022).

of fossil fuels.<sup>11</sup> The passage of these pieces of legislation advances the state’s goal to have 100 percent renewable energy by 2033 and codifies the goal to have net zero emissions by 2050.<sup>12</sup>

Rhode Island Executive Order Nos. 23-06, 17-06, 15-17 and 17-10 also highlight the state’s climate priorities and demonstrate that Rhode Island is strongly committed to working towards a “cleaner, more affordable, reliable, and equitable clean energy future.”<sup>13</sup>

In addition, Siting Board Chairman Gerwatowski recently stated that “without question, in order for the New England states to meet their clean energy goals, additions to regional transmission will be necessary in the future” and “Rhode Island policy in place today will require transmission in Rhode Island” and “Rhode Island is confident that offshore wind will play a critical role in our clean energy future.”<sup>14</sup> In addition, at the close of the Show Cause Hearing, Chairman Gerwatowski acknowledged “the fact that policy makers across New England will be relying upon offshore wind to meet important emissions production targets and to maintain regional electric reliability during the winter.”<sup>15</sup>

Rhode Island’s neighboring New England coastal states of Massachusetts and Connecticut have also established strong public policy requirements regarding response to climate change and need for clean energy from offshore wind. In Massachusetts, several pieces of legislation, including *An Act Driving Clean Energy and Offshore Wind* (c. 179 of the Acts of 2022), *An Act Creating a Next Generation Roadmap for Massachusetts Climate Policy* (c. 9 of the Acts of 2021), the *Green Communities Act* (c. 169 of the Acts of 2008), and the *Global Warming Solutions Act* (c. 298 of the Acts of 2008), among others, codify these public policy requirements (specifically calling for clean energy from offshore wind)<sup>16</sup> and establishing a requirement goal to have net zero GHG emissions by 2050.

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<sup>11</sup> See also, PUC Docket No. 22-01-NG, In Re: Investigation Into the Future of the Regulated Gas Distribution Business In Rhode Island In Light of the Act On Climate, which is examining the extent to which the requirements of the Act impact the conduct, regulations, ratemaking, and the future of gas supply and gas distribution within Rhode Island including strategies to comply with the state’s climate law including but not limited to a moratorium on new natural gas service, transitioning to cleaner or alternative fuels, or even abandoning the gas distribution system.

<sup>12</sup> See also, Statement by Governor McKee upon signing the 2022 Affordable Clean Energy Security Act (July 6, 2022) (“Adding offshore wind clean energy capacity is essential for meeting our new 100 percent renewable energy by 2033 goal and our Act on Climate emissions reductions target. It will not only be beneficial for the environment, but also create hundreds of jobs as we position Rhode Island as an economic hub of this growing offshore wind industry on the Atlantic Coast.”).

<sup>13</sup> Executive Order 23-06 (May 9, 2023).

<sup>14</sup> New England States Committee on Electricity, Submission Regarding Transmission Needs Driven by State and Federal Public Policy Requirements including Concurrence with NESCOE’s Response Regarding State and Federal Policy Requirements Identified as Driving Transmission Needs and Additional Comment on Rhode Island Policy at PDF pages 13-18 (Apr. 28, 2023) available at [https://www.iso-ne.com/static-assets/documents/2023/05/nescocoe\\_order\\_1000\\_transmittal\\_2023.pdf](https://www.iso-ne.com/static-assets/documents/2023/05/nescocoe_order_1000_transmittal_2023.pdf).

<sup>15</sup> Show Cause Hearing Transcript at 124:11-16.

<sup>16</sup> The 2022 Act Driving Clean Energy and Offshore Wind codified the state’s goal to procure 5,600 MW of offshore wind by 2027.

Massachusetts has declared that offshore wind “*will be a cornerstone of the Massachusetts energy supply in the next three decades*, through to 2050, enabling the Commonwealth to meet its decarbonized energy demand while sustaining economic growth.”<sup>17</sup> Massachusetts has made significant commitments to respond to climate change through the reduction of GHG emissions and greater commitment to zero-carbon energy sources. These commitments are evident in, among other legislation, the *Global Warming Solutions Act* (c. 298 of the Acts of 2008) as amended by *An Act Creating a Next-Generation Roadmap for Massachusetts Climate Policy* (c. 8 of the Acts of 2021). The 2021 Act officially codified the goal of net zero statewide GHG emissions by 2050.

Similarly, in Connecticut, Executive Orders and laws demonstrate a commitment to offshore wind and to mitigating the impacts of climate change. For example, Executive Order 21-03 directed Connecticut executive branch agencies to take significant actions to adapt to climate change. *An Act Concerning Climate Change Adaptation*, Public Act 21-115, *An Act Concerning Climate Change Planning and Resiliency*, Public Act 18-182 and *An Act Concerning Connecticut’s Energy Future*, Public Act 18-50 all clearly show the state’s commitments to a clean energy future.

Although not a matter of legislation, the New England states and the Federal Energy Regulatory Commission (FERC) have also increased their focus on the need for energy security, given issues with natural gas pipeline constraints and dependence on LNG, especially in the winter months. This increased focus has been expressed in several forums, including in an ongoing proceeding, in FERC Docket No. AD22-9-000, on New England energy security issues. The FERC just held its second New England Gas-Electric forum in Portland, Maine on June 20, 2023, to discuss issues related to winter energy security for New England.<sup>18</sup> The SouthCoast Wind Clean Energy Resource and the related Project, and others like it, will help meet the regional need for energy security, especially in the winter months when offshore wind has a relatively high capacity factor among other types of renewable energy.

## **2. The Clean Energy Resource and the Project Are Needed Based on State and/or Regional Energy Need Forecasts**

Section 2 of the EFSA, on the policies of Rhode Island, emphasizes the importance of timely decisions and construction of new energy facilities being justified *by state and/or regional energy need forecasts*:

It shall be the policy of this state to assure that: (1) The facilities required to meet the energy needs of this and succeeding generations of Rhode Islanders are planned for, considered, and built in a timely and orderly fashion; (2) Construction, operation, and/or alteration of major energy facilities shall only be undertaken when those actions are justified by long term state and/or regional energy need forecasts;

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<sup>17</sup> Massachusetts Clean Energy and Climate Plan for 2050 at 68 (Dec. 2022) available at <https://www.mass.gov/doc/2050-clean-energy-and-climate-plan/download>. (Emphasis added.)

<sup>18</sup> Information regarding this FERC proceeding is available here: <https://www.ferc.gov/news-events/events/2023-new-england-winter-gas-electric-forum-06202023>.

This policy is consistent with the EFSA need standard, which requires that the facility be “necessary to meet the needs of the state *and/or region* for energy of the type to be produced by the proposed facility.” R.I. Gen. Laws § 42-98-11(b)(1) (emphasis added).

As seen from this portion of Section 2, the General Assembly focused on need-related policy by making sure that facilities required to meet the needs of Rhode Islanders (or that meet the regional need) *are built in a timely way and that the building of such facilities is justified by long-term state and/or regional energy need forecasts*. There are numerous studies and forecasts specific to the New England region showing need for the type of energy to be delivered by the Project and Clean Energy Resource. Most or all of the studies cited below include as a fundamental assumption that all of the climate change, clean energy and energy efficiency-related legislation in the New England states currently in effect will be implemented in the timeframes spelled out in the legislation, including out to 2050.

These studies show that, for the New England states to meet their various climate change-related goals, large amounts of renewable clean energy, much of it from offshore wind generation, will need to be developed in the next several years, with assumptions that there will be corresponding transmission infrastructure to support such energy supply. It is clear from the amount of economic and transmission planning for vast amounts of renewable energy in New England that these decarbonization goals and clean energy targets are being taken seriously and that the region, including ISO New England Inc. (ISO-NE) and the policy-makers for the New England states, are preparing for a future decarbonized grid with large amounts of renewable clean energy.

Some of the relevant studies of note include:

- **Brattle Group, *Achieving 80% GHG Reduction in New England by 2050*** (September 2019): finding that “between 2019 and 2050, between 3.5 GW and 6.6 GW of renewable capacity, including 2-5 GW of solar and 2-3 GW of wind, will need to be added each year on average.”<sup>19</sup> The Report also argues that if the New England region wants to meet its aggressive GHG reduction goals, it needs to accelerate the development of clean energy resources.<sup>20</sup>
- **Rhode Island Department of Environmental Management, *2019 Greenhouse Gas Inventory*** (December 2022): finding that Rhode Island has so far met its GHG emissions reduction goals, but further more aggressive goals are on the horizon.<sup>21</sup>

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<sup>19</sup> Brattle Group, *Achieving 80% GHG Reduction in New England by 2050* at 6 (September 2019) available at [https://www.brattle.com/wp-content/uploads/2021/05/17233\\_achieving\\_80\\_percent\\_ghg\\_reduction\\_in\\_new\\_england\\_by\\_20150\\_september\\_2019.pdf](https://www.brattle.com/wp-content/uploads/2021/05/17233_achieving_80_percent_ghg_reduction_in_new_england_by_20150_september_2019.pdf).

<sup>20</sup> *Id.*

<sup>21</sup> Rhode Island Department of Environmental Management, *2019 Greenhouse Gas Inventory* (Dec. 2022) available at <https://dem.ri.gov/sites/g/files/xkgbur861/files/2022-12/ridem-ghg-inventory-2019.pdf>.

- **ISO-NE, NEPOOL 2021 Economic Study: Future Grid Reliability Study Phase 1** (July 29, 2022): assuming large amounts of offshore wind to meet public policy requirements will be an integral feature of the future grid in New England.<sup>22</sup>
- **The Analysis Group, Pathways Study: Evaluation of Pathways to a Future Grid** (April 2022): analyzing the upgrades and system impacts to high amounts of renewable energy to meet the New England states decarbonization goals, including assuming that large amounts of offshore wind to meet public policy requirements will be an integral feature of the future grid in New England.<sup>23</sup>
- **ISO-NE, Economic Planning for the Clean Energy Transition Pilot Study** (most recent presentation, June 15, 2023): modeling the future New England grid with an assumption, among others, of large amounts of installed offshore wind to meet New England states public policy requirements.<sup>24</sup>
- **ISO-NE, 2050 Transmission Study** (most recent presentation, posted April 14, 2023): examining the need for transmission in the New England area based on assumptions that include that the current public policy requirements of the New England states regarding decarbonization and clean energy supply will be met.<sup>25</sup>

In sum, while the existence of a PPA may be considered by the Siting Board as evidence of need under the EFSA, it is not the only way for a project proponent to show that its Project is needed. The EFSA enables the Siting Board to take a broader approach to its assessment of need such as an applicant demonstrating that the Project is justified by: (i) benefits of the project to the public health, safety and welfare, the environment and the economy; (ii) public policy requirements establishing need for the type of energy to be delivered from the project; and (iii) long-term state/regional energy studies and forecasts showing need for the type of energy to be delivered by the project.

**C. The SouthCoast Wind Clean Energy Resource and Transmission Connector are Viable, Development Projects, Based on Project Commitment and Development Progress and Anticipated Procurements of Offshore Wind Energy**

In the text of the EFSA and in the Siting Board’s regulations, there is no definition or strict standard for “project viability,” nor is there an express requirement that a project be found to be “viable” to meet the need standard. However, SouthCoast Wind understands that the Siting Board has a duty to examine a project to ensure it approves projects that will be able to produce energy

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<sup>22</sup> ISO-NE, NEPOOL 2021 Economic Study: Future Grid Reliability Study Phase 1 (July 29, 2022) available at [https://www.iso-ne.com/static-assets/documents/2022/07/2021\\_economic\\_study\\_future\\_grid\\_reliability\\_study\\_phase\\_1\\_report.pdf](https://www.iso-ne.com/static-assets/documents/2022/07/2021_economic_study_future_grid_reliability_study_phase_1_report.pdf).

<sup>23</sup> The Analysis Group, Pathways Study: Evaluation of Pathways to a Future Grid (April 2022) available at [https://nepool.com/wp-content/uploads/2022/05/NPC\\_20220426\\_Pathways\\_FULL\\_REPORT\\_FINAL\\_v2.pdf](https://nepool.com/wp-content/uploads/2022/05/NPC_20220426_Pathways_FULL_REPORT_FINAL_v2.pdf).

<sup>24</sup> ISO-NE, *Economic Planning for the Clean Energy Transition Pilot Study* (June 15, 2023) available at [https://www.iso-ne.com/static-assets/documents/2023/06/a03\\_2023\\_06\\_15\\_pac\\_epcet\\_policy\\_scenario\\_results.pdf](https://www.iso-ne.com/static-assets/documents/2023/06/a03_2023_06_15_pac_epcet_policy_scenario_results.pdf).

<sup>25</sup> ISO-NE, *2050 Transmission Study: Solution Development Update* (Apr. 20, 2023) available at [https://www.iso-ne.com/static-assets/documents/2023/04/a07\\_2023\\_04\\_20\\_2050\\_transmission\\_study\\_solutions\\_update.pdf](https://www.iso-ne.com/static-assets/documents/2023/04/a07_2023_04_20_2050_transmission_study_solutions_update.pdf).

for the public (i.e., “viable” projects). To assist with this inquiry, in addition to the factors discussed above, the Siting Board should consider indicators of project development progress, which are strong evidence of project viability, as part of its examination of project need. Upon examination of its indicators of progress, including permitting and interconnection progress, it is clear that the SouthCoast Wind Clean Energy Resource and Project are viable, regardless of the current status of its PPAs, and are likely to contribute to the regional energy supply and the need for offshore wind energy.

Although not precedential for this Siting Board, the MA EFSB has adopted a practical and helpful standard for need that is specifically used in instances where the transmission connector project is jurisdictional to the Siting Board, but the generation resource is not (as is generally the case with offshore wind, with the generation facilities in federal waters and a portion of the transmission connector projects in state waters and on state-jurisdictional land). In these circumstances, the MA EFSB has found that “need” for these projects can be shown by demonstrating:

(1) that the existing transmission system is inadequate to interconnect the new or expanded generator, and (2) the new or expanded generator is likely to be available to contribute to the regional energy supply...If the generator is planned, and is not subject to the Siting Board’s jurisdiction, the showing may be made on a case-by-case basis based on indicators of project progress (e.g., progress in permitting or in obtaining project financing).<sup>26</sup>

As such, the MA EFSB takes into account the indicators of development progress as part of its overall analysis of need.

An examination of the indicators of progress would allow the Siting Board to assess a proponent’s commitment to and current state of development of the project and therefore the project’s overall viability. Additionally, consideration of public policy requirements and specific legislation requiring procurement of offshore wind generation can also help determine whether the project is likely to contribute to the regional energy supply.

As was discussed in the Testimony of Mr. Slingsby, SouthCoast Wind has made significant progress in its permitting (state and federal) and has invested and continues to invest significant time and money into the Project and the Clean Energy Resource. Some of these indicators of progress and commitments to project development include:

- SouthCoast Wind has budgeted approximately *\$100 million for development expenses in 2023*.
- SouthCoast Wind currently has over 75 full-time employees dedicated 100% to working on the Project.
- SouthCoast Wind’s federal permits are well advanced. The Bureau of Ocean Energy Management (BOEM) issued the Draft Environmental Impact Statement (DEIS) for the Project on February 13, 2023 and completed a 60-day public comment period on

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<sup>26</sup> *Cape Wind Associates, LLC and Commonwealth Electric Company d/b/a NSTAR Electric*, EFSB02-2, at 16-17 (2005).

April 18, 2023. During the public comment period, BOEM held three public meetings. BOEM will be responding to all comments and issuing the Final Environmental Impact Statement on October 27, 2023. A Record of Decision (ROD) is expected at the end of the year on or about December 8, 2023. SouthCoast Wind has also filed a number of other federal permitting applications this year including the Incidental Take Request application with the National Marine Fisheries Service; the Outer Continental Shelf Air Permit with the Environmental Protection Agency; and the Section 10/Section 404 Individual Permit with the U. S. Army Corps of Engineers.

- SouthCoast Wind has secured interconnection rights into the 345 kV regional transmission system at Brayton Point in Somerset, Massachusetts with supporting land rights, all at significant financial cost. Interconnection at this location on the transmission system will allow the Project to deliver energy to key load centers, including in Rhode Island, Southeastern Massachusetts and Boston.
- SouthCoast Wind has been moving forward with other important Rhode Island state permit applications, including the submittal of the Category B Assent application and federal consistency certification to the Rhode Island Coastal Resources Management Council and the Water Quality Certificate application submitted to the Rhode Island Department of Environmental Management.
- SouthCoast Wind's petition for siting approval from the Massachusetts Energy Facilities Siting Board, in Docket No. EFSB22-04, is now in its discovery phase, with numerous responses to information requests provided by SouthCoast Wind. Hearings are scheduled for July 2023, and under the current procedural schedule, a decision on the petition is expected in or by early 2024.
- SouthCoast Wind has retained Woods Hole Oceanographic Institute (WHOI) to conduct an economic impact analysis to assist in its discussions with the Rhode Island Fisherman's Advisory Board.
- SouthCoast Wind has presented and participated in numerous local community presentations and discussions regarding the Project.
- The Project's Elective Transmission Upgrade transmission interconnection agreement with National Grid has been executed, with milestones for the construction of interconnection-related facilities.
- SouthCoast Wind has completed geotechnical, geophysical and benthic campaigns mobilizing 16 vessels and employing 875 people. This effort has resulted in 32,103 square acres of mapped seafloor and related substantial financial investments in marine science.
- In July of 2022, SouthCoast Wind established a partnership with SupplyRI, an initiative of the Rhode Island Commerce Corporation, in an effort to support local businesses in Rhode Island through the efficient and targeted procurement of Rhode Island-sourced goods and services for the Project. In May of 2023, SouthCoast Wind and SupplyRI hosted a supplier event in Providence, Rhode Island to help local businesses better understand the needs of the offshore wind supply chain, as well as how to position themselves to be considered in SouthCoast Wind's procurement processes. More than 75 individuals representing local businesses attended the event to have one-on-one meetings with SouthCoast Wind representatives and explore potential opportunities for collaboration.
- SouthCoast Wind will honor every commitment it has made to date with non-profits, educational institutions, and local businesses that is not contingent upon reaching the

final investment decision under the existing PPAs. The total package will support the building of the offshore wind supply chain, provide for education and training of an offshore wind workforce, make significant investments in local ports, business and infrastructure, as well as offer diversity, equity and inclusion measures that include the hiring of specialized firms and support for low income electric consumers, among other measures.

In addition to the above, SouthCoast Wind, as testified to by Mr. Slingsby, in this proceeding, is actively pursuing state offshore wind procurement opportunities, with a focus on the Massachusetts 83C IV solicitation, and fully expects that it will have PPAs in place in order to proceed to financial close and commence construction. As also testified to by Mr. Slingsby, SouthCoast Wind will not move forward with a final investment decision and construction until it has both major permit approvals and acceptable offtake agreements in place.<sup>27</sup>

In sum, while project “viability” is not a defined term in the EFSA, the Siting Board as part of its analysis of whether the project is needed, can appropriately consider and examine the significant indicators of development progress demonstrated by SouthCoast Wind to date in support of its Application as well as during the extensive Siting Board Review process if allowed to proceed.

#### **D. Concerns About Moving the Application Review Process Forward Now in the Absence of PPAs Can be Addressed Through a Conditional Approval**

The Siting Board’s regulations expressly allow the Siting Board to impose conditions upon a grant of licensure. The applicable regulation states, “As a precondition for the grant of a Board License, the Board may require any modification or alteration to the proposed facility and *may place conditions on the grant of the Board License.*”<sup>28</sup>

If the Siting Board is concerned about SouthCoast Wind’s ability to obtain a PPA, it could impose as a condition of the Board License that SouthCoast Wind have an executed PPA prior to commencing construction. The imposition of such a condition would not only alleviate any concerns by the Siting Board about the Project commencing construction before having a PPA, but would also be administratively efficient and would allow this important public policy project to move forward in Rhode Island now, in tandem with other important state and federal permitting processes that are already underway. Doing so would also help meet the need established by public policy requirements in the region.

There is recent precedent of the Siting Board imposing conditions on approvals of applications. Most recently, in *Revolution Wind*, the Siting Board conditioned the project’s

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<sup>27</sup> Show Cause Hearing Transcript at 88 (“The obtaining of the license from the Rhode Island EFSB is a prerequisite for us to take an FID [Final Investment Decision] [.]”; 98 (“...I think the way that for offshore wind projects and large infrastructure projects, one needs to secure particular milestones prior to FID and prior to securing the financing. The project design and the procurement piece of that is imperative. The grid piece, the permit piece, the PPA piece, it all comes together. And then ultimately you make your economic viability determinants once you have all of those pieces together. It’s really important we move those forward in sync as much as possible. If they fall out of sync, we are not able to deliver this project as quickly as we might otherwise be able to.”).

<sup>28</sup> 445-RICR-00-00-1.13(E) (emphasis added).



construction on the BOEM issuing its Record of Decision, among other conditions.<sup>29</sup> Although the Revolution Wind project has not yet received its ROD from BOEM, such a condition was entirely reasonable to impose on the project. Here, the Siting Board imposing a condition that the SouthCoast Wind Project have an executed PPA prior to construction would be an appropriate way to alleviate concerns that the SouthCoast Wind project does not currently have a PPA.

#### IV. Conclusion

For all of the foregoing reasons, SouthCoast Wind respectfully requests that the Siting Board allow this important public policy project to move forward now with its Application.

Dated: June 21, 2023

Respectfully submitted,

SOUTHCOAST WIND ENERGY LLC

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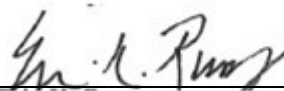
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<sup>29</sup> See RI EFSB Order No. 154, *In Re: Revolution Wind, LLC Application To Construct A Major Energy Facility*, at 26 para. 2 (2022).