



DESAUTEL LAW

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June 28, 2023

VIA HAND DELIVERY AND ELECTRONIC MAIL

Emma Rodvien, Coordinator  
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Rhode Island Energy Facility Siting Board  
89 Jefferson Boulevard  
Warwick, 02888

**IN RE: Docket No. SB-2022-02 - SouthCoast Wind Energy, LLC's Application to Construct Major Energy Facility**

Dear Ms. Rodvien:

Enclosed herewith for filing, please find an original and 6 copies of the of the Town of Middletown and Little Compton's post-hearing memorandum, in the above-referenced docket.

Please note that an electronic copy of this filing has been sent to the service list for EFSB Docket No. SB-2022-02.

Thank you for your anticipated attention to this filing. If you have any questions, please do not hesitate to contact me.

Sincerely,

Marisa Desautel, Esq.  
enclosure

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that an original and 6 copies of the within Memorandum was mailed to Emma Rodvien, Energy Facility Siting Board Coordinator, 89 Jefferson Boulevard, Warwick, Rhode Island 02888, for filing, and a true copy of the within was served via electronic mail upon all parties set forth in the below Service List.

  
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**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**

\_\_\_\_\_ )  
**IN RE: SOUTHCOAST WIND** )  
**ENERGY, LLC’S APPLICATION TO** ) **Docket No. SB-2022-02**  
**CONSTRUCT MAJOR ENERGY FACILITY** )  
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**THE TOWN OF MIDDLETOWN AND LITTLE COMPTON’S  
POST HEARING MEMORANDUM**

**I. INTRODUCTION**

The Towns of Middletown and Little Compton (the “Coastal Communities”) hereby submit this post-hearing brief to the Show Cause Hearing held on June 12, 2023, for Energy Facility Siting Board (“EFSB”) Docket No. SB-2022-02. The EFSB’s Show Cause Order required SouthCoast Wind Energy, LLC (formally known as Mayflower Wind Energy, LLC) to 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 Coastal Communities assert that the proceedings should be stayed until SouthCoast Wind Energy LLC (“SouthCoast Wind”) secures Power Purchase Agreements (“PPAs”) that make the project economically and financially viable. First, SouthCoast Wind cannot make the prerequisite need showing without PPAs because SouthCoast cannot build the transmission project without building the offshore wind farm and cannot build the offshore wind farm without securing

financeable PPAs. Second, the project is not currently financeable because SouthCoast Wind terminated its PPAs and it remains unclear whether it will be able to obtain new agreements to make the project economically and financially viable. Third, a conditional approval does not adequately address the EFSB's interest in preserving time and resources in this case.

For all of these reasons, and as discussed further below, the Coastal Communities respectfully request that the EFSB issue an order staying the proceedings at this time.

## **II. BACKGROUND**

On May 31, 2022, SouthCoast Wind filed with the EFSB an application to construct and operate transmission facilities associated with the SouthCoast 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. The transmission facilities will interconnect the offshore wind generation to the mainland and are proposed to fulfill obligations under long-term 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. 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. On November 8, 2022, the Chairman of the EFSB learned through media reports that the MA DPU issued an interlocutory order on November 4, 2022<sup>4</sup> relating to requests from two offshore wind developers, including SouthCoast Wind, for a suspension of the contract approval proceedings relating to the offshore wind PPAs applicable to the proposed projects of Commonwealth Wind and SouthCoast Wind that were pending before the MA DPU. The request was first made by Commonwealth Wind on

October 22, 2022, and was subsequently supported by SouthCoast 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 SouthCoast Wind project that is before the EFSB in these proceedings.

On November 10, 2022, the Chairman of the EFSB issued Show Cause Order No. 160, requiring SouthCoast Wind to show cause why the proceedings before the EFSB should not be stayed until questions related to the economic and financial viability of its offshore wind project are satisfactorily resolved. On June 12, 2023, the EFSB conducted a Show Cause Hearing, and the parties were permitted to file post-hearing briefs. Accordingly, the Coastal Communities submit this post-hearing brief.

### **III. DISCUSSION**

#### **A. EFSB should stay SouthCoast Wind proceedings until the applicable MA DPU approvals of the PPAs are obtained because the need for the facilities is dependent upon obtaining PPAs.**

The Energy Facility Siting Act, R.I. Gen. Laws §42-98-1 *et seq.*, contains a necessity requirement which provides that “[t]he [EFSB] 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...” R.I. Gen. Laws 42-98-11(b)(1). Additionally, this section of law provides 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.” R.I. Gen. Laws 42-98-1(a).

In *SouthCoast Wind Energy LLC Legal Memorandum on Need Standard and Project Viability* (“SouthCoast Memorandum”), SouthCoast Wind states that “[w]hile 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.*” SouthCoast Memorandum, p. 5. Additionally, SouthCoast Wind urges the EFSB to read the necessity requirement broadly. For the purposes of SouthCoast Wind’s application, however, no matter how broadly the necessity requirements are read, the need for transmission facilities in Rhode Island is dependent upon offshore wind generation, which is in turn dependent upon having a PPA to make the project viable.

The point that the need for the transmission facility is dependent upon securing PPAs was made clear in several exchanges between the Chairman of the EFSB and SouthCoast Wind’s Witness, Mr. Francis Slingsby, at the Show Cause Hearing as follows:

- Mr. Slingsby confirmed that the revenue needed to finance the transmission line project would come from revenue generated by clean energy resources;
- Mr. Slingsby confirmed that the transmission project cannot go forward unless the clean energy component goes forward;
- Mr. Slingsby confirmed that the transmission component, which is under EFSB jurisdiction, is completely dependent on the clean energy project, and;
- Mr. Slingsby confirmed that it is factually accurate that the transmission project is not needed unless offshore wind farm is financed and built; that the transmission project cannot be built unless the PPAs are financeable.  
<https://video.ibm.com/recorded/132841330>

Mr. Slingsby later said that he believed that other developers had not secured PPAs but who were progressing nonetheless. However, when asked to name any projects in the industry that have proceeded this way, he could not.



Without financeable PPAs to guarantee construction of the offshore wind farm, there is no need for the Board to approve the transmission facility application.

**B. SouthCoast Wind cannot demonstrate the economic and financial viability of the project under the terms of the final approved PPAs.**

As part of the EFSB's assessment of need, it considers the economic and financial viability of the applicant's project. SouthCoast Wind's testimony makes clear that its project is not economically and financially viable. Mr. Slingsby stated that when he joined the project, there was already an understanding of the deteriorating economics of the project and there was an understanding that the project economics were not satisfactory to allow the project to proceed under PPAs. <https://video.ibm.com/recorded/132841330>

Slingsby admits several times throughout the hearing that SouthCoast Wind's project is not economically and financially viable. When questioned about the specific conditions in the EFSB's Show Cause Order, Mr. Slingsby testified that the analysis of SouthCoast Wind's consultant, Wood, and SouthCoast Wind's own analysis suggests that PPAs awarded are not viable without significant "financial uplift." *Id.* The Chairman of the EFSB followed up that line of testimony with a question about what the term "viable" means to SouthCoast Wind. It became clear that SouthCoast Wind's definition of viable is based solely on the shareholders' discretion and whether they want to deploy funds for the project. *Id.*

The argument advanced by SouthCoast Wind in this case suggests that phantom shareholders, not subject to this tribunal's jurisdiction, are making determinations about project viability. With the recent news about corporate divestitures in renewable assets, shareholders could be signaling that renewable energy projects are actually not viable. As the EFSB Chairman stated at the end of the Show Cause hearing, renewable energy projects should not unfairly burden local ratepayers.



With regard to options for alternative bids, Mr. Slingsby also admitted that SouthCoast Wind stands at risk of not getting a contract in the Massachusetts RFP process. Some of this risk, Mr. Slingsby noted, is associated with SouthCoast Wind's bid score being downgraded in quality because of its decision to terminate its PPAs. *Id.*

In the SouthCoast Memorandum, SouthCoast Wind argues that the EFSB should ignore the fact that the project in its current state is not economically or financially viable and instead approve the project based on viable development. However, regardless of whether the project has viable development, the project must be economically and financially viable to proceed with development of the offshore wind farm which necessitates the transmission project. According to SouthCoast Wind's own testimony at the Show Cause Hearing, the project is not currently financeable, and SouthCoast Wind does not know when or if that will change because of a variety of factors beyond their control. Thus, the proceedings should be stayed until SouthCoast Wind secures a new contract that makes the project economically and financially viable and guarantees that the project will move forward with development.

**C. Conditional approval, as suggested by SouthCoast Wind, is not an appropriate solution.**

As stated in the Show Cause Order, the proceedings should be stayed to avoid wasting "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." *See* Show Cause Order, pg. 7. SouthCoast Wind asks the EFSB to "impose as a condition of the Board License that SouthCoast Wind have an executed PPA prior to commencing construction." This suggestion, however, does not alleviate the burden and amount of resources necessary from all of the other parties to evaluate the application before the EFSB can issue the an approval, which may be wasted if the project does not become financially viable.

#### IV. CONCLUSION

For all of the foregoing reasons, the Coastal Communities respectfully request that the EFSB stay the proceedings until SouthCoast Wind obtains PPAs that make the project economically and financially viable.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'M. Desautel', written over a horizontal line.

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