

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

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

**DECISION ON SHOW CAUSE ORDER**

On May 31, 2022, SouthCoast Wind LLC (formerly Mayflower Wind Energy LLC)<sup>1</sup> filed with the Energy Facility Siting Board (EFSB or Board) an application to construct and operate transmission facilities associated with the SouthCoast Wind Project (Facilities or Project), an offshore wind farm which is projected to deliver approximately 1,200 megawatts (MW) of renewable energy over Rhode Island jurisdictional transmission facilities.<sup>2</sup> The transmission facilities are proposed to interconnect a yet-to-be constructed offshore wind farm to the mainland. The Project was identified in the application to the EFSB (Application) as fulfilling obligations under long-term Power Purchase Agreements (PPAs) between the Applicant and regulated utilities in Massachusetts.<sup>3</sup> The PPAs and any amendments thereto were subject to approval of the Massachusetts Department of Public Utilities (MA DPU).

On November 10, 2022, the Chairman of the EFSB issued a Show Cause Order after reading media reports regarding filings that were made by the Applicant with the MA DPU. These filings called into question the financial viability of the Project.

The Show Cause Order directed the Applicant to appear before the EFSB,

“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

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<sup>1</sup> Throughout this Order, SouthCoast Wind LLC is referred to as either SouthCoast, SouthCoast Wind, or Applicant.

<sup>2</sup> 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>.

<sup>3</sup> Mayflower Wind Siting Report at 10-11 (May 31, 2022).

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.”

Prior to the Show Cause hearing, the Applicant informed the EFSB, in prefiled testimony, that it would be terminating the PPAs that were referenced in the Application and intended to seek new PPAs through a new Request for Proposals (RFP), expected to be issued by in the Commonwealth of Massachusetts.

For the reasons described in this Order, the EFSB stays these proceedings until the Applicant provides confirmation to the EFSB that it has been awarded a bid for new Power Purchase Agreement(s) which the Applicant certifies to the EFSB is sufficient to support the commercial viability and financeability of the Project, as more specifically set forth and conditioned in this Order below.

#### **I. TRAVEL OF THE CASE**

SouthCoast Wind’s Application was docketed on June 24, 2022, and the EFSB held preliminary hearings in August of 2022.<sup>4</sup> Before the Board issued a Preliminary Order to solicit Advisory Opinions from certain designated agencies, which is the ordinary sequence of EFSB proceedings, events occurred in Massachusetts that implicated a material change in circumstances affecting the financing of the SouthCoast Wind project. This led to the issuance of the referenced Show Cause Order on November 10, 2022. The events occurring in Massachusetts proceedings

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<sup>4</sup> The Town of Portsmouth filed a Notice of Intervention and is a party to the proceeding as a matter of statutory right. The Town of Middletown and the Town of Little Compton (being treated as one party under the designation of the “Coastal Communities”) were granted intervenor status limited to the local economic impacts of those activities that occur on the surface of the Sakonnet River during periods of construction, maintenance, and decommissioning.

which led up to the issuance of the Show Cause Order are included in that order and will not be restated here. Instead, the content of the Show Cause Order is incorporated herein by reference.<sup>5</sup>

After the Show Cause Order was issued by the EFSB, the MA DPU approved the PPAs and applicable amendments on December 30, 2022, effectively satisfying the first condition of the Show Cause Order.<sup>6</sup> On January 27, 2023, the Applicant filed the prefiled testimony of Daniel Hubbard. The Show Cause hearing was scheduled for February 27, 2023, but SouthCoast filed a request for continuance which was granted. The matter was then rescheduled for June 12, 2023. On June 2, 2023, the Applicant filed the prefiled testimony of Francis Slingsby. In the June 2 testimony, SouthCoast informed the EFSB that it was terminating the original PPAs, but still requested the EFSB to move forward with the licensing proceedings. The prefiled testimony of each of the witnesses is summarized below.

On June 12, 2023, the Show Cause Hearing was held. Following the hearing, post-hearing briefs were filed by SouthCoast Wind and the Coastal Communities. The EFSB held an open meeting to render its decision regarding the Show Cause Order on July 13, 2023.<sup>7</sup>

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<sup>5</sup> Order No. 160; [https://ripuc.ri.gov/sites/g/files/xkgbur841/files/2022-11/Order160\\_SB-2022-02.pdf](https://ripuc.ri.gov/sites/g/files/xkgbur841/files/2022-11/Order160_SB-2022-02.pdf).

<sup>6</sup> [https://fileservice.eea.comacloud.net/FileService.Api/file/FileRoom/16898041\\_Order D.P.U. 22-70/D.P.U. 22-71/D.P.U. 22-72](https://fileservice.eea.comacloud.net/FileService.Api/file/FileRoom/16898041_Order%20D.P.U.%2022-70/D.P.U.%2022-71/D.P.U.%2022-72) (Dec. 30, 2022).

<sup>7</sup> After the briefs were filed with the EFSB, the Coordinator of the Board received an email from a member of the staff of CRMC on June 29, 2023. Because the email communication went beyond procedural matters by addressing issues that related to the Application, and shared information which related to testimony that was given by the Applicant during the show cause proceedings, the email was disclosed to the parties involved in this proceeding and the Chairman sent a letter to the Executive Director and Chair of the CRMC for clarification. The Executive Director responded in a letter on behalf of the CRMC, stating that the email was not an authorized communication from the CRMC. The Executive Director's response also clarified the status of the CRMC permitting processes. The letter from the CRMC indicated no concerns with the manner in which SouthCoast Wind has proceeded with the permitting processes at the CRMC. The letter indicates that SouthCoast Wind has been exchanging information cooperatively with the CRMC. The Board expresses its appreciation to the CRMC for promptly clarifying the situation.

## II. THE PREFILED TESTIMONY

### A. Daniel Hubbard

The prefiled testimony of Mr. Hubbard, SouthCoast Wind’s Director of External Affairs and General Counsel, was filed on January 27, 2023. It provided context to the events and filings in Massachusetts that gave rise to the Show Cause Order. In the Massachusetts proceedings, the MA DPU was reviewing various PPAs for approval which related not only to SouthCoast Wind’s project, but also an offshore wind project of Commonwealth Wind, another offshore wind developer. Mr. Hubbard explained SouthCoast Wind’s reaction to a motion that was filed by Commonwealth Wind in which the developer sought to suspend the proceedings. SouthCoast Wind filed a motion in support of the request to pause the Massachusetts proceedings so that the parties could examine whether changes should be made to its PPAs to address concerns about the economics and financeability of its project, in light of current macroeconomic conditions. It noted rising interest rates and the impact of extraordinary inflation and supply chain disruption on project costs. Mr. Hubbard expressed SouthCoast Wind’s apology for not notifying the Board of its Massachusetts filings which he stated was because the Company fully intended to continue development of its project and had withdrawn its request for a pause shortly thereafter.<sup>8</sup>

Mr. Hubbard described SouthCoast Wind’s project. He referred to the portion of the project being located wholly in federal-jurisdictional waters as the “Clean Energy Resource.” He also described the Facilities that will travel through Rhode Island waters and across the Town of Portsmouth before connecting to the regional transmission grid at Brayton Point in Massachusetts. He noted that the Massachusetts proceedings to site the transmission connector facilities within

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<sup>8</sup> Hubbard Prefiled Test. at 1-4, 9 (Jan. 27, 2023); On October 27, 2022, SouthCoast Wind filed an Answer Supporting the Motion to Suspend filed by Commonwealth Wind to suspend the Massachusetts proceedings for one month. On November 7, 2022, SouthCoast Wind filed an Amended Answer withdrawing its support of Commonwealth Wind’s Motion for a One-Month Suspension.

the state of Massachusetts are currently occurring. He explained that the Clean Energy Resource is being developed and that it is needed to address public policy issues related to climate change and to enhance grid reliability and energy security.<sup>9</sup>

Mr. Hubbard maintained that the EFSB's proceeding is a key part of the many permitting and approval processes that SouthCoast is currently undergoing. He stated that SouthCoast Wind had approved PPAs with the Massachusetts electric distribution companies for 1,200 MW of its planned 2,400 MW of clean energy, but maintained that approved PPAs are not necessary to meet the need standard set forth in the Siting Act. He explained the filings made with the MA DPU and the reason for requesting a pause in proceedings in Massachusetts was because of SouthCoast Wind's concerns about economics and financeability due to current macroeconomic conditions. Mr. Hubbard asserted that SouthCoast Wind never indicated that its project was not viable if the MA PPAs were not renegotiated but merely expressed concerns which have not hindered development efforts. He provided a series of prior statements made by the Company to support his assertion.<sup>10</sup>

Mr. Hubbard detailed SouthCoast Wind activities to move the project forward, including the pursuit of all necessary permits. He noted that all proceedings to obtain these permits have continued to move forward, highlighting specifically the timeline and events occurring before the Massachusetts EFSB. He reiterated that both the Clean Energy Resource and the Facilities associated with it are viable development assets and noted the financial strength and global project development experience of the Company's two sponsor companies, Shell New Energies and Ocean Winds North America. He provided an update on the status of the federal permit proceedings. He explained that it would be imprudent and unrealistic for SouthCoast Wind not to have addressed

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<sup>9</sup> *Id.* at 4-7.

<sup>10</sup> *Id.* at 8-12.

its concerns regarding project economics and financing in light of current macroeconomic conditions and that it has a responsibility to its sponsor companies to do so. He alleged that to delay the Board proceedings would be imprudent and harmful to project development and public policy requirements. He committed to sharing materially relevant information with the Board in a timely manner.<sup>11</sup>

### **B. Francis Slingsby**

To supplement Mr. Hubbard's testimony and update the information provided to the Board regarding the current status of the MA PPAs, SouthCoast Wind filed the direct testimony of Francis Slingsby. Mr. Slingsby is the Chief Executive Officer of SouthCoast Wind. Attached to Mr. Slingsby's testimony was the "US Offshore Wind Industry Analysis" which had been prepared for SouthCoast by the Wood Group, which is dated February 3, 2023 (Wood Report). Mr. Slingsby's testimony focused on 1) the current status of the MA PPAs and SouthCoast Wind's intent with respect to the PPAs, 2) its commitment to develop a viable project, and 3) the need for the project. Additionally, his testimony addressed the economic and environmental need for the project.<sup>12</sup>

Mr. Slingsby stated that during the time between his testimony and that of Mr. Hubbard, SouthCoast Wind had initiated discussions to terminate the MA PPAs, which he noted was in line with the Commonwealth of Massachusetts' decision to issue a new Request for Proposals (RFP) for offshore wind energy. He stated that the current PPAs which were approved by the MA DPU in December of 2022 were not economic in light of the significant inflation, and supply chain and finance costs increasing. He maintained that the current PPAs would not be able to attract financing, because the pricing was too low.<sup>13</sup>

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<sup>11</sup> *Id.* at 12-20.

<sup>12</sup> Slingsby Test. at 1-3 (Jun. 2, 2023).

<sup>13</sup> *Id.* at 3-5.

Mr. Slingsby testified that the Wood Report provided details about inflation, rising interest rates, and supply chain issues, all of which have been driven by the war in Ukraine and the pandemic. He stated that SouthCoast Wind is prepared to participate in the newly announced Massachusetts offshore wind solicitation, a draft of which was submitted to the MA DPU on May 2, 2023 for up to 3,600 MW of offshore wind energy. The procurement amount referenced in the RFP far surpassed the previous solicitation for 1,600 MW. He noted that bids are due January 31, 2024. He attached a copy of the draft RFP that had been filed with the MA DPU by the Massachusetts Department of Energy Resources. The RFP indicated an expected date for the selection of winning bids by June 12, 2024, and an anticipated date for executing contracts on August 14, 2024. The schedule also assumed the filing of executed PPAs with the winning bidders by September 18, 2024. No date was estimated for the approval of the PPAs.<sup>14</sup>

With this new solicitation, Mr. Slingsby asserted that the state will still be able to reach its long-term goal for 5,600 MW of offshore wind by 2027 even absent the contractual amounts from the previous solicitation that SouthCoast Wind is seeking to terminate. He noted that the new solicitation will allow for alternative indexed pricing proposals to account for inflation that was absent from the previous solicitation.<sup>15</sup>

Mr. Slingsby testified that SouthCoast Wind did not bid into the Rhode Island solicitation because the amount – between 600 and 1,000 MW – was too small to be economic for its plans. He noted that SouthCoast Wind may be able to offer capacity to Rhode Island in the future as its plans are to deliver up to 2,400 MW to the regional grid.<sup>16</sup>

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<sup>14</sup> *Id.* at 5-7; Addendum 3 at 5.

<sup>15</sup> Slingsby Test. at 5-7.

<sup>16</sup> *Id.* at 8-9.

Asserting that public policy establishes the need for the Clean Energy Resource and Facilities, Mr. Slingsby stated that the benefits will include substantial reductions in greenhouse gas emissions, enhanced reliability and energy security especially during winter months, and significant economic stimulus to the region. He listed a number of ongoing development activities showing SouthCoast Wind's commitment to developing the Clean Energy Resource.<sup>17</sup>

Mr. Slingsby stated that the Board's approval of the transmission facilities is a necessary condition to its proceeding with the project and that in order to proceed to financial close, both a long-term revenue stream and major permit approvals are necessary. He asserted that the need for the Clean Energy Resource and Facilities can be established by public policy requirements, project development activities and commitments, and studies and forecasts showing the need for it. He cautioned that further delay of the proceedings would materially delay and jeopardize the development of the Clean Energy Resource and be counter to public policy. Mr. Slingsby maintained that even if it terminates the existing MA PPAs, SouthCoast Wind's project is still viable as evidenced by the Company's investment of money, time, effort, and other resources, and SouthCoast Wind is confident that it will be successful in obtaining acceptable PPAs. He reiterated that permit approvals and acceptable offtake agreements are a prerequisite to an affirmative final investment decision.<sup>18</sup>

### **III. SHOW CAUSE HEARING**

The Board conducted a Show Cause Hearing on June 12, 2023. Mr. Slingsby, Mr. Hubbard, and Jennifer Flood, SouthCoast Permitting Director, sat as a panel to respond to questions posed by the Board and the parties.

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<sup>17</sup> *Id.* at 9-13.

<sup>18</sup> *Id.* at 13-16.

Mr. Slingsby explained that SouthCoast Wind will finance the entire project, including the Clean Energy Resource and the transmission facilities, with a combination of shareholder equity and nonrecourse financing from a group of banks that specialize in project finance. He testified that it would be difficult for SouthCoast Wind to secure debt on the existing PPAs that were approved by the MA DPU because its shareholders will not want to deploy equity if they do not believe they will get a satisfactory return on their investment. Noting that the return on investment is significantly lower than the typical 9-11% for a utility filing, he described how the return on investment is calculated.<sup>19</sup>

Citing the Wood Report, which showed more than a 20% increase in supply chain costs and a greater than 10% increase in finance costs, Mr. Slingsby testified that these increases, which are not unique to SouthCoast Wind, drove SouthCoast Wind's decision to terminate the PPAs and to rebid capacity in Massachusetts' new solicitation. He testified that investors weigh what is the best investment for their capital, that the existing PPAs do not present the opportunity for responsible investment considering what is occurring around the world with offshore wind, and that the return on investment with the current PPAs is not satisfactory to investors.<sup>20</sup>

Mr. Slingsby acknowledged that the transmission facility, which is not a merchant line, is completely dependent on the Clean Energy Resource being financed and constructed. Until there is a revenue stream from PPAs, he testified the Clean Energy Resource cannot be financed and built and an investment decision will not be made without PPAs. He discussed being aware of the economic challenges of going forward with the existing PPAs and that attempts were made to negotiate with the parties and the administration to find a path forward which was why SouthCoast Wind procured the Wood Report. With the issuance of the May 2, 2023 draft RFP, he testified

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<sup>19</sup> Hr'g Tr. at 21-29 (Jun. 12, 2023).

<sup>20</sup> *Id.* at 33-37.

that SouthCoast Wind was able to terminate the PPAs for the previously awarded capacity and will rebid once the RFP is approved. He represented that until May 2, 2023, the Company was committed to going forward with the previously approved PPAs.<sup>21</sup>

Mr. Slingsby testified that when Mr. Hubbard's testimony was filed on January 27, 2023, the Company did not believe the economics justified moving forward with the existing PPAs, but SouthCoast Wind was looking at other opportunities like the potential for renegotiation with the EDCs, federal tax incentives, and other solutions with the Massachusetts administration and at that time no decision to terminate had been made. The decision to terminate was made on May 2, 2023 with the release of the draft RFP, when it became clear that the prudent path forward for SouthCoast Wind was to terminate the existing PPA, pay a penalty, and rebid in the new solicitation. He testified that the Wood Report corroborated the conclusion that the project could not be financed with the existing PPAs.<sup>22</sup>

Mr. Slingsby testified that SouthCoast Wind is part of a core group of highly competitive offshore wind developers and will be a forerunner because it has certain state and federal permits. It was his opinion that SouthCoast Wind will not be negatively affected or precluded from being competitive if it is downgraded as a result of its decision to terminate the existing PPAs, because there are three other developers that are also terminating or renegotiating their PPAs that will also be downgraded. He offered his opinion that it was more likely than not that South Coast Wind would be awarded a contract in the Massachusetts solicitation.<sup>23</sup>

Ms. Flood testified that the proceedings before the EFSB do not have a direct impact on other proceedings. She also testified that SouthCoast Wind will have to obtain a submerged lands

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<sup>21</sup> *Id.* at 38-54.

<sup>22</sup> *Id.* at 56-66.

<sup>23</sup> *Id.* at 71-77.

lease from the Rhode Island Legislature.<sup>24</sup> Ms. Flood also testified regarding SouthCoast Wind's estimate of the timeline for approvals that were needed from the Coastal Resources Management Council (CRMC). She was questioned about the estimates which appeared to be very optimistic and stated that estimate was based on their review of lessons learned from another developer who needed similar approvals from CRMC.<sup>25</sup>

Finally, Mr. Slingsby maintained that the Clean Energy Resource and associated transmission facilities are economically and financially viable projects because SouthCoast continues to pay employees and move forward. However, he testified that it must also be financially and economically viable to move forward with construction. He specified that SouthCoast Wind needs to secure milestones prior to a financial investment decision and securing financing. He stressed that it was important that the pieces of the project, including project design and procurement, grid, permits, and PPA, all come together so the Company can make economic viability determinations. It is important that all of these pieces move forward in sync.<sup>26</sup>

#### **IV. BRIEFS FILED BY THE PARTIES**

##### **A. SouthCoast Wind's Post Hearing Brief**

In support of its argument that the matter should not be stayed, SouthCoast Wind argued: 1) that the Energy Facility Siting Act does not require that an applicant have a PPA or any other offtake arrangement at the time that its application is before the Board; 2) that the Energy Facility Siting Act allows for a broad approach for the demonstration of need that can include public policy requirements, such as the impact of the facilities on the public health, safety, environment, and economy of the state, and consideration of studies and forecasts that show the need for the type of

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<sup>24</sup> *Id.* at 89-90.

<sup>25</sup> *Id.* at 90-91.

<sup>26</sup> *Id.* at 97-98.

energy the project will deliver; 3) that the Energy Facility Siting Act does not define project viability; and 4) that not staying the proceedings is in the public interest and is administratively efficient.

The first argument made by SouthCoast Wind was that the Energy Facility Siting Act does not require a PPA or other offtake arrangement in order to establish that a project is needed. It argues that the statute allows for a broad demonstration of need by an applicant and finding by the Board. Citing the PUC's Advisory Opinion in the Revolution Wind docket SB-2021-01 that having a PPA was tantamount or equivalent to a demonstration of need, SouthCoast Wind asserted that this was not the only way that need can be demonstrated or found nor was having a PPA a prerequisite to a finding of need.<sup>27</sup>

SouthCoast Wind next argued that evidence that the need standard is broad is supported by other sections of the Energy Facility Siting Act. It asserts that the legislative findings instruct the Board, when evaluating applications, to consider the need in relation to the overall impact of the facilities upon public health and safety, the environment and the economy of the state which includes the benefits that the project will have on Rhode Island and the region. Among the benefits that are reflected in the public policy set forth in legislation, regulations, and executive orders are large amounts clean energy to reduce GHG emissions, increased energy reliability and security, and billions of dollars in investment that will come into the region from the offshore wind industry.<sup>28</sup>

Since 2014, with the passage of the Resilient Rhode Island Act, R.I. Gen. Laws § 42-6.2, which was amended by the Act on Climate in 2021, the state has been committed to reducing

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<sup>27</sup> SouthCoast Wind Brief at 4-5 (Jun. 21, 2023).

<sup>28</sup> *Id.* at 5-6.

reliance on fossil fuels and reducing greenhouse gas emissions by moving toward renewable energy in furtherance of 100% renewable energy by 2033 and net zero emissions by 2050. To further support its argument that its project is needed, SouthCoast Wind cited the Board Chairman's comments made during the Show Cause Hearing, noting that regional transmission is necessary for the New England states to meet their clean energy goals and that offshore wind will play a crucial role in Rhode Island's clean energy future and goals. In addition to Rhode Island, SouthCoast Wind maintained that Connecticut and Massachusetts have public policy requirements and the need for clean energy from offshore wind. Given pipeline constraints and dependence on LNG, the New England states and the Federal Energy Regulatory Commission have increased their focus on the need for energy security which will be helped by SouthCoast Wind's project especially during the winter when offshore wind has a high capacity factor.<sup>29</sup>

Lastly, SouthCoast Wind argued that its project is needed based on state and regional energy need forecasts and listed a number of studies that show that in order for the state to meet its goals, a large amount of offshore wind will need to be developed in the next several years.<sup>30</sup>

SouthCoast Wind's third argument was that there is no statutory definition of "viable" or a mandate that a project be viable to meet the need standard. It maintained that there are a number of indicators supporting the project's viability, including the progress already made. It noted that the Massachusetts EFSB has found need on a case-by-case basis when the existing transmission system is inadequate and the proposed project is likely to contribute to the regional energy supply as indicators of project progress. It listed a number of investments already made and about to be made indicating its commitment to project development including but not limited to budgeting about \$100 million in 2023, currently employing over 75 full-time employees

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<sup>29</sup> *Id.* at 7-8.

<sup>30</sup> *Id.* at 8-10

working 100% on the project, the forward movement of the federal and Massachusetts permitting processes, securing interconnection and land rights at Brayton Point, and participating in community outreach. Additionally, SouthCoast Wind noted that it is actively pursuing offshore wind procurement opportunities and will participate in the Massachusetts 83C IV solicitation with the expectation of a PPA.<sup>31</sup>

The last argument made is that the Board can alleviate any concerns it has over SouthCoast Wind's ability to secure a PPA by conditioning its approval of the transmission facilities on SouthCoast Wind obtaining an executed PPA prior to the commencement of construction. It pointed to the Board's requiring a BOEM issued Record of Decision and the other conditions imposed on Revolution Wind's license in Docket No. SB-2021-01.

#### **B. Coastal Communities' Post-Hearing Brief**

The Coastal Communities made three arguments supporting a stay of the proceedings: 1) SouthCoast Wind cannot establish need without PPAs; 2) because SouthCoast Wind terminated its PPAs the project is not currently financeable; and 3) a conditional approval will not preserve the time and resources of the many agencies that are required to participate in the proceedings. Without MA DPU's approval of the PPAs, the Coastal Communities assert that there is no need for the Board to approve the transmission facilities as the need for the facilities is totally dependent on SouthCoast Wind obtaining a PPA. They maintain that Mr. Slingsby confirmed that the transmission facilities are completely dependent on the Clean Energy Resource and cannot go forward without the Clean Energy Resource. They assert that he testified "that the transmission project cannot be built unless the PPAs are financeable." And although they claim that he testified

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<sup>31</sup> *Id.* at 10-13.

other developers had proceeded without securing a PPA, he was later unable to identify any other developer that had done so.<sup>32</sup>

The Coastal Communities maintained that SouthCoast Wind cannot establish economic and financial viability without a PPA and argued that SouthCoast Wind's definition of viable is based solely on shareholder discretion. They pointed out that the Company, in particular Mr. Slingsby, acknowledged that there was a risk in not securing a PPA in Massachusetts' next solicitation, a risk that could be associated with its decision to terminate the approved PPAs. Lastly, the Coastal Communities asserted that a conditional approval will not avoid the various agencies wasting time and resources evaluating a project that may not become financially viable.<sup>33</sup>

## **V. THE BOARD'S DECISION**

Unlike other energy facilities which seek a license from the EFSB over which the Board has jurisdiction, the filing of a license relating to the interconnection of an offshore wind farm in federal waters is different. Specifically, the main component of the project which is proposed to generate electricity is not jurisdictional to the EFSB. It is only the transmission interconnection which passes through Rhode Island waters and land that is subject to the jurisdiction of the Board.

Under the Siting Act, the Board may only grant a license if the proposed project is needed.<sup>34</sup> The jurisdictional division between two components of a project which operates as one energy facility, however, makes the need determination rather unique. If the transmission project was a merchant project, whereby the transmission was being proposed to interconnect with any wind farm which is willing and able to interconnect, the analysis might be different, depending upon the financing plan. But the jurisdictional transmission facility in this instance is entirely dependent

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<sup>32</sup> Coastal Communities Brief at 1-5 (Jun. 28, 2023).

<sup>33</sup> *Id.* at 5-6.

<sup>34</sup> R.I. Gen. Laws § 42-98-11(b)(1).

upon the existence of the proposed wind farm that will be constructed and financed. Stated simply, if there is no wind farm financed and constructed, there is no need for the transmission facility – a fact that was acknowledged by SouthCoast Wind’s main witness.<sup>35</sup>

Further, the EFSB process is complicated and lengthy, taking up resources not only of the Board itself, but also several other agencies which are required to issue advisory opinions. In that context, the Board does not sit as an agency to review hypothetical projects to grant a license to any applicant in anticipation that the project may someday be needed. An Applicant is required to submit substantial support for its project, including, without limitation, information which addresses the financing for the project and complete information showing the need for the facility.<sup>36</sup> In that context, it is practical and logical to require an applicant to include facts in its Application that support an assertion that the project is needed.

When SouthCoast filed its Application, the main section of the Application addressing need conflated the need for the transmission facilities with the need for the Clean Energy Resource that is not jurisdictional to the EFSB, focusing solely on the need for the clean energy that would be produced by the generation.<sup>37</sup> Nevertheless, the Application in other places contained the necessary information regarding the PPAs, which would be producing the revenue needed to finance and construct the wind farm to which the jurisdictional transmission facilities would be interconnected.<sup>38</sup>

Once the PPAs have been terminated, however, focusing solely upon the need for a wind farm now misses the jurisdictional point. To meet the standard of need, the primary focus must be the need for the facility over which jurisdiction resides and, in this case, jurisdiction resides solely

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<sup>35</sup> Hr’g Tr. at 41-42.

<sup>36</sup> 445-RICR-00-00-1.6(B).

<sup>37</sup> Application, Section 3.

<sup>38</sup> Mayflower Wind Application at 10, 11; Siting Report Executive Summary at 2-10.

over the transmission facility. To be clear, the issue of need before the Board is not a question whether a wind farm is needed. Rather, the question is whether the transmission interconnection proposed for construction is needed. This is not to say that the need for the generation to which the transmission is interconnected is irrelevant in an EFSB proceeding. To the contrary, in cases where there is reasonable certainty that the Applicant will have a revenue stream to finance and build the generation to which the transmission will be connected, an examination of whether the generation itself is needed is, indeed, relevant. But, as stated above, if there is no wind farm financed and constructed, there is no need for the transmission facility – an incontrovertible fact that has been conceded by SouthCoast Wind.

SouthCoast Wind maintains that the existence of PPAs is not necessary to make a showing of need, focusing on the need for the Clean Energy Resource in federal waters to meet regional reliability and public policy objectives relating to clean energy. But SouthCoast Wind confuses the need for the specific transmission line which is jurisdictional to the EFSB in this case with general need for wind farms to be developed in New England. There may be a need for offshore wind to be built in New England, but that need is not relevant to the need for the transmission connection if the proposed offshore wind project cannot get financed and built in the first instance. Otherwise, we are hypothetically left with a transmission line connected to nothing.

Stated another way, once the PPAs, upon which the Application was based, are terminated, the foundation for the financing of the wind farm and its associated transmission interconnection is lost. In turn, once the Applicant has lost its revenue stream to finance and construct its wind farm, the need for the transmission facility vanishes.

SouthCoast Wind also relies heavily on the presence of policies throughout New England that are encouraging the development of offshore wind.<sup>39</sup> While there are policies in New England encouraging the development of offshore wind that may affect the probabilities that SouthCoast Wind could obtain a power purchase agreement at some point in the future, it does not change the fundamentals of the analysis for this specific transmission line. SouthCoast Wind maintains that there is a competitive field of project developers.<sup>40</sup> Competition among developers means that there is a risk that SouthCoast Wind will not win a bid in the next solicitation.<sup>41</sup> SouthCoast Wind also may not be able to obtain a power purchase agreement in the immediate future because higher prices for offshore wind bid today may be so high that some state procurements could be phased in over time in order to wait for supply chain and other economic conditions to change. Similarly, if SouthCoast Wind does not win a bid in the next round, it is possible that the transmission interconnection route preferred by SouthCoast Wind could be altered in the future as other developers interconnect competing projects to the regional grid which impact points of interconnection. The existence of policies supporting offshore wind development does not change the fact that the transmission facility in this case is not needed unless and until a bid has actually been won.

While the licensing proceedings contemplate the Public Utilities Commission (PUC) reviewing the issue of need and providing an Advisory Opinion on the matter, the Board has the authority over the licensing proceedings. If the EFSB already has uncontradicted evidence before it that the Applicant cannot prove need at this stage, asking the PUC to hold hearings on the matter

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<sup>39</sup> SouthCoast Brief at 8-10.

<sup>40</sup> Hr'g Tr. at 71-72.

<sup>41</sup> *Id.*

becomes a mere academic exercise.<sup>42</sup> In such case, it would be irresponsible of the Board to close its collective eyes to reality and require the advisory opinion process to proceed because it is helpful and convenient for the development timeline of the Applicant to keep the licensing process going.

Given the evidence, it is clear that the wind farm upon which the jurisdictional transmission facilities depend is not financially viable without having reasonable assurance of power purchase agreement(s) which would provide the revenue to support the financing of the wind farm. Further, SouthCoast Wind has conceded that, at this time, it lacks the necessary power purchase agreement(s) to provide such financing. As a consequence, the Application fails, at this stage, to support a case of need because the Applicant lacks a reasonable assurance of a revenue stream to finance the construction of the wind farm to which the jurisdictional transmission facilities would be connected.

Based on these evidentiary findings, and pursuant to Rule 1.15 of the EFSB Rules of Practice and Procedure, the Board is suspending the consideration of the Application by issuing a stay. The Board is exercising its discretion to issue a stay, rather than dismissing the Application without prejudice to refile and start over. The Board recognizes that there is a reasonable opportunity for the Applicant to obtain a new set of PPAs that could provide the necessary financing. Thus, the Board is pausing consideration of the Application for a reasonable time,

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<sup>42</sup> In another case involving a wind farm transmission cable, the PUC made the determination of need based on the need to interconnect, declaring in its Advisory Opinion to this Board: "There is a need for the proposed Facilities for the specific purpose of connecting the proposed Revolution Wind project to the electric transmission system should its application to BOEM to site and construct the wind farm be approved." *In Re: The Issuance of an Advisory Opinion to the Energy Facility Siting Board Regarding Revolution Wind, LLC's Application to Construct and Alter Major Energy Facilities*, Docket No. 5151 (August 26, 2021) at 8. The opinion can be found at: <https://ripuc.ri.gov/sites/g/files/xkgbur841/files/eventsactions/docket/5151-PUC-AdvisoryOpinion-Ord24121-%288-26-21%29.pdf>

consistent with the Massachusetts RFP procurement schedule.<sup>43</sup> This will provide an opportunity for the Applicant to secure new PPAs and then seek to lift the stay of these proceedings.

While the Board could require the filing of PPAs that have either been fully executed and/or approved by the appropriate regulatory authorities in order to lift the stay, the Board will only require a confirmation that the Applicant has been awarded a bid for power purchase agreements that would support the financing of the wind farm and transmission connection, in addition to other related filing requirements set forth in the ordering paragraphs below.

Consistent with its review of the evidence, the Board makes the following findings:

1. That the wind farm upon which the jurisdictional transmission facilities depend is not financially viable without having reasonable assurance of power purchase agreement(s) which would provide the revenue to support the financing of the wind farm.
2. That SouthCoast Wind lacks the necessary power purchase agreement(s), at this time, to provide such financing.
3. That SouthCoast Wind's Application fails, at this stage, to support a case of need because the Applicant lacks reasonable assurance of a revenue stream to finance the construction of the wind farm to which the jurisdictional transmission facilities would be connected.

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<sup>43</sup> The Massachusetts proposed procurement schedule contemplates the award of bids in June of 2024, with the filing of executed PPAs, by September 18, 2024.

Accordingly, it is hereby

( 163 ) ORDERED

1. The proceedings are stayed until the earlier to occur of (i) October 1, 2024, or (ii) a filing by the Applicant to lift the stay and reopen the proceedings, consistent with the conditions set forth in this Order;
2. If, prior to October 1, 2024, the Applicant is awarded a bid for the negotiation of power purchase agreement(s) that clearly support the financing of the wind farm to which the jurisdictional transmission facilities are proposed to be connected, the Applicant may make a filing with the Board to lift the stay and reopen the proceedings;
3. The filing to lift the stay and reopen the proceedings must include an affidavit from the Chief Executive Officer including the following confirmations:
  - a. that the Applicant has been awarded a bid and right to negotiate power purchase agreement(s); and
  - b. that the pricing upon which the bid was awarded supports the financing of the wind farm and the jurisdictional transmission facilities;
4. The filing to lift the stay and reopen the proceedings must include amendments to the Application which update the status of the project, including an explanation of the extent to which the proposed design of the transmission facilities may need to be altered as a result of the award of the bid; and
5. If a filing to lift the stay and reopen the proceedings does not occur by October 1, 2024, the Application will be dismissed without prejudice to refile and start over, unless an extension is sought upon reasonable grounds and the Board exercises its discretion to grant the extension.

DATED AND EFFECTIVE at Warwick, Rhode Island, on July 13, 2023, pursuant to an Open Meeting decision of July 13, 2023. Written order issued July 18, 2023.

ENERGY FACILITY SITING BOARD



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Ronald T. Gerwatowski, Chairman

  
Meredith Brady (Jul 18, 2023 11:46 EDT)

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Meredith E. Brady, Member



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Terrence Gray, Member



**NOTICE OF RIGHT OF APPEAL** PURSUANT TO R.I. GEN. LAWS SECTION 42-98-12, ANY PERSON AGGRIEVED BY A DECISION OF THE BOARD MAY, WITHIN TEN (10) DAYS OF THE ISSUANCE OF THIS ORDER PETITION THE SUPREME COURT FOR A WRIT OF CERTIORARI TO REVIEW THE LEGALITY AND REASONABLENESS OF THIS ORDER.