

STATE OF RHODE ISLAND

SUPREME COURT

SOUTHCOAST WIND ENERGY LLC

Petitioner,

v.

No.

RHODE ISLAND ENERGY
FACILITY SITING BOARD,

Respondent.

**MEMORANDUM OF LAW IN SUPPORT OF
PETITION FOR ISSUANCE OF A WRIT OF CERTIORARI**

SouthCoast Wind Energy LLC (“SouthCoast Wind”), respectfully submits this memorandum of law in support of its petition for a writ of certiorari to review the written decision of the Rhode Island Energy Facility Siting Board (“EFSB”) issued on July 18, 2023 (the “Decision”).

I. INTRODUCTION AND SUMMARY

As set forth more fully below, the Decision is contrary to law and should be vacated for the following reasons.

First, the EFSB’s governing statute, the Energy Facility Siting Act (“EFSA”), does not require that an applicant have a power purchase agreement (“PPA”) or any other commercial offtake arrangement in place at the time its siting application is processed as a prerequisite to a demonstration of need.

Second, rather than requiring a PPA as a prerequisite to a demonstration of

need at the time the EFSB reviews a siting application, the EFSA promotes and allows for a broad and flexible approach to a demonstration of need. This broad and flexible approach can and should include consideration of: (i) indicators of project progress and development commitment; (ii) public policy requirements in the form of legislation and executive orders driving the need for the type of energy to be delivered by the project; (iii) 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 (iv) 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 EFSB 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 the case with offshore wind projects in federal waters). In this proceeding, SouthCoast Wind has submitted evidence of its significant development commitment and progress.

Finally, vacating the Decision would be in the public interest. Offshore wind facilities are urgently needed by the region and major permit approvals,

including from the EFSB, 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.

II. BACKGROUND FACTS AND TRAVEL

On May 31, 2022, SouthCoast Wind filed an Application with the EFSB for a license to construct a major energy facility in Rhode Island (“Application”). As reflected in the Application, SouthCoast Wind’s overall project includes both: (i) offshore wind generation facilities in federal waters with a capacity currently estimated at approximately 2,400 megawatts (MW), and (ii) the transmission connector project that will deliver the energy from the offshore facility to the regional transmission system. A portion of the planned connector traverses Rhode Island waters and the Town of Portsmouth before landing at Brayton Point in Somerset, Massachusetts. That portion in Rhode Island is the only portion of the overall project that is jurisdictional to Rhode Island; the rest is either in federal waters or is jurisdictional to Massachusetts.

Prior to the submission of the Application, Massachusetts utility companies had awarded SouthCoast Wind two sets of competitively bid long-term PPAs for 1,209 MW of renewable clean energy to be generated by SouthCoast Wind’s offshore generating facility. The PPAs were awarded pursuant to Massachusetts

law mandating the procurement of a total of 5,600 MW of renewable offshore wind energy by 2027. *See* Section 83C of c. 169 of the Acts of 2008 *et seq.*, as amended by the Energy Diversity Act, c. 188 of the Acts of 2016 and the Act Driving Clean Energy and Offshore Wind, c. 179 of the Acts of 2022 (“Section 83C”). The PPAs were reviewed and approved in final form on December 30, 2022 by the Massachusetts Department of Public Utilities (“DPU”).

In October, 2022, SouthCoast Wind publicly and in filings with the DPU expressed concern that macroeconomic factors affecting all offshore wind projects generally, and including SouthCoast Wind specifically, had materially adversely affected the economics of the SouthCoast Wind PPAs. SouthCoast Wind nevertheless expressed its commitment to moving its project forward as it reviewed its options, such as renegotiation of the existing PPAs. SouthCoast Wind was not alone in these concerns as other developers with PPAs awarded under the Massachusetts solicitation and solicitations in other states explored similar paths.

In Order No. 160 dated November 10, 2022 (the “Show Cause Order”), the EFSB directed SouthCoast Wind to appear and show cause why proceedings on the Application “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.”
Petition Exhibit 1, Show Cause Order at 8.

The EFSB 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.

Petition Exhibit 1, 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) with the EFSB on January 27, 2023. Petition Exhibit 2. Mr. Hubbard’s testimony provided information on the then-current status of the existing SouthCoast Wind PPAs and on why the generator and the transmission connector facilities are needed independent of the current status of the PPAs.

On May 2, 2023, the Massachusetts Department of Energy Resources announced a new procurement of up to 3,600 MW of offshore wind energy to meet the need established by public policy requirements (the “Section 83 C IV” procurement).¹ After the draft RFP for the Section 83 C IV procurement was released, and taking into account further analysis that showed that SouthCoast Wind’s existing PPAs and the pricing under them had become uneconomic due to inflation, rising interest rates and other substantial cost increases, SouthCoast Wind made the decision to initiate the process of terminating its existing PPAs as the last choice under the circumstances.

On June 2, 2023, SouthCoast Wind submitted supplemental testimony in response to the Show Cause Order. Petition Exhibit 3. Francis Slingsby, SouthCoast Wind’s Chief Executive Officer addressed the company’s recent decision to terminate its existing Section 83C PPAs and to participate in the upcoming Section 83C IV procurement. Mr. Slingsby also explained how the SouthCoast Wind transmission connector project could meet the EFSA need standard, including through public policy requirements driving the need for offshore wind and through substantial indicators of project progress and development commitment and anticipated opportunities for new PPAs.

¹ The upcoming Massachusetts offshore wind generation solicitation referred to herein as the “Section 83 C IV” solicitation was established pursuant to Section 83C of Chapter 169 of the Acts of 2008.

On June 9, 2023, SouthCoast Wind responded to a data request from the EFSB. In that response, SouthCoast Wind explained the significant, well-advanced and interconnected permitting activities it has been engaged in since 2021 at the federal and state level. 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. Notwithstanding SouthCoast Wind's termination of its existing PPAs, those MA EFSB proceedings have continued. The MA EFSB recently completed approximately five days of hearings on SouthCoast Wind's siting application, with only one more day of hearings scheduled. A MA EFSB siting decision is expected in or by early 2024.

On June 12, 2023, at the Show Cause Hearing, SouthCoast Wind witnesses appeared and answered questions related to SouthCoast Wind's decision to terminate its existing PPAs; the opportunities for future PPAs; project viability; project schedule; and the various reasons why the offshore wind generator is needed and will be available, even if the existing PPAs are terminated and new PPAs are not yet in hand. SouthCoast Wind offered evidence that it is committing substantial resources to actively develop the project on numerous fronts to meet the public policy driven need for these facilities.² These activities include diligently

² See Petition Exhibit 5, Show Cause Hearing Transcript at 64:1-8 (June 12, 2023) (Show Cause Hearing Transcript) (“...these projects are absolutely viable. And

progressing permitting activities at the federal, state and local levels in multiple jurisdictions, and securing valuable interconnection rights for the project that will enable the offshore wind generation facility to deliver clean energy to the regional transmission system. 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, and potentially through other New England state offshore wind generation procurements, such as in Rhode Island.³

After deliberating at an Open Meeting held on July 13, 2023, the EFSB issued a written Decision on July 18, 2023. Petition Exhibit 7. The Decision stayed further proceedings on SouthCoast Wind’s siting application until such time as SouthCoast Wind can demonstrate to the EFSB that it has been awarded a “bid for the negotiation of power purchase agreements.” Decision at 21. Upon receiving such an award, SouthCoast Wind may make a filing with the EFSB to lift the stay and reopen the proceedings. *Id.*

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.”)

³ The very terms of the Massachusetts Section 83CIV solicitation contemplate and allow for rebidding of previously awarded capacity from prior rounds, recognizing the circumstances in place guiding SouthCoast’s intent to terminate its earlier PPAs.

The filing must include an affidavit from SouthCoast Wind’s CEO

confirming:

- (a) that the Applicant has been awarded a bid and the right to negotiate power purchase agreement(s); and
- (b) that the pricing upon which the bid was awarded supports the financing of the non-jurisdictional offshore wind farm and the jurisdictional transmission facilities.

The Decision further provides that 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. Decision at 21.

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 regulations⁴ do not mandate that an applicant have a PPA to demonstrate that a project is needed at the time the EFSB makes its required finding on need. Instead, the EFSA allows for a broad and flexible approach to both a demonstration of need by the applicant and a finding of need by the EFSB.

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

⁴ See 445 RICR-00-00-1.

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.⁵

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

⁵ 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. Petition Exhibit 5, 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. 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" as required by the EFSA.

R.I. Gen. Laws § 42-98-11.

In the EFSB’s decision on an earlier offshore wind project siting application,⁶ the EFSB noted testimony that the Rhode Island Public Utilities Commission’s (“RIPUC”) Advisory Opinion regarding that project “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.’”⁷ This broad view of need is consistent with the EFSA.

The RIPUC 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.”⁸ While

⁶ EFSB Decision and Order, Revolution Wind Docket No. SB-2021-01 (June 23, 2022).

⁷ *Id.* at 12.

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

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.

The Decision does not directly address the statutory language discussed above. Instead, the Decision simply holds that as a matter of law an offshore wind generation project must at least be awarded a PPA in order to demonstrate need for the transmission connector facilities, even when there are ample factors demonstrating that the generation is needed and will have PPAs. This overly narrow interpretation of the EFSA is contrary to law, overlooks the plain language of the statute and is contrary to the public interest and the policies of Rhode Island, Massachusetts, and other New England states to respond to climate change and make offshore wind a cornerstone of the energy supply for the next several decades.

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 and flexible approach to meeting the need standard is allowed and expected under Section 11 of the EFSA. Section 1 of the EFSA instructs that the EFSB 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 support the conclusion 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 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.*

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

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

In this case, SouthCoast Wind’s offshore wind project will provide numerous benefits to public safety and health, to the environment and to the economy. These benefits include: (i) providing clean energy in large amounts to reduce GHG emissions in New England by up to four million metric tons annually;¹⁰ (ii) bolstering energy reliability and energy security by adding to the diversity of the energy supply; and (iii) being a first-mover project in the nascent offshore wind industry and thereby helping to draw new investment into the region.

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. *See* Petition Exhibit 6, pp 6-8. For example, the

⁹ *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.”).

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

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 of fossil fuels. 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 2050.¹¹

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;

¹¹ *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.”).

R.I. Gen. Laws § 42-98-2.

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 of the EFSA, in enacting the EFSA 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 SouthCoast Wind’s project. *See* Petition Exhibit 6, pp. 9-10.

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. .

C. The SouthCoast Wind Project Is A Viable Development Project, Based on Project Commitment and Development Progress and Anticipated Procurements of Offshore Wind Energy

In the text of the EFSA and in the EFSB’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. The EFSB has a duty to

examine a project to ensure it approves projects that will be able to produce energy for the public (*i.e.*, “viable” projects). To assist with this inquiry, in addition to the factors discussed above, the EFSB may and should consider indicators of project development progress, which are strong evidence of project viability, as part of its examination of project need.

Although not precedential in Rhode Island, the MA EFSB has adopted a practical standard for need that is specifically used in instances where the transmission connector project is jurisdictional to the EFSB, but the generation resource is not. 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).¹²

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 and development commitment,

¹² *Cape Wind Associates, LLC and Commonwealth Electric Company d/b/a NSTAR Electric*, EFSB02-2, at 16-17 (2005).

including development expenditures, interconnection status, and major permitting progress, would allow the EFSB to decline to review purely “hypothetical” projects – a concern raised by the EFSB in the Decision. Decision at 16 & 17. Additionally, consideration of public policy requirements and specific legislation requiring procurement of offshore wind generation can also help determine whether the generation project is likely to contribute to the regional energy supply and thereby create a need for the transmission connector project.

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 its planned offshore wind project. 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. On November 1, 2021, the Bureau of Ocean Energy Management (BOEM) published a Notice of Intent (NOI) to Prepare an Environmental Impact Statement (EIS) for the review of the SouthCoast Wind Construction and Operations Plan (COP).
- The BOEM issued the Draft Environmental Impact Statement (DEIS) for the Project on February 13, 2023 and completed a 60-day public comment period on April 18, 2023. A Record of Decision (ROD) is expected in late 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 (CRMC)¹³.
- SouthCoast Wind filed a Joint Application for State Water Quality Certification and Marine Dredging Application to the Rhode Island Department of Environmental Management (RIDEM) on March 17, 2023.
- SouthCoast Wind's petition for siting approval from the Massachusetts Energy Facilities Siting Board, in Docket No. EFSB22-04, is now in its hearing phase. 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 Fishermen's Advisory Board and CRMC and the Massachusetts Division of Marine Fisheries and Office of Coastal Zone Management.

¹³ The Category B Assent Application has been submitted but has not yet been formally accepted pending the submission of additional information required by CRMC.

- 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.

See Petition Exhibit 3, pp. 10-13.

In addition to the above, SouthCoast Wind, as testified to by Mr. Slingsby, is actively pursuing future state offshore wind procurement opportunities in New England, with a focus on the Massachusetts 83C IV solicitation. Decision at 7.

In sum, while project “viability” is not a defined term in the EFSA, the EFSB as part of its analysis of whether the project is needed can and should consider and examine significant indicators of development progress. The EFSB’s refusal to consider these indicators unless and until SouthCoast Wind is awarded a PPA is clearly erroneous.

IV. CONCLUSION

For all of the foregoing reasons, SouthCoast Wind respectfully requests that the Decision be vacated, with instructions to the EFSB to move forward with processing SouthCoast Wind's Application.

SOUTHCOAST WIND ENERGY LLC

By Their Attorneys,

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DATED: July 28, 2023

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of July, 2023, a copy of the foregoing document was forwarded by electronic mail addressed to the following:

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/s/ Christian F. Capizzo, Esq. _____