

COMMONWEALTH OF MASSACHUSETTS
Energy Facilities Siting Board

Initial Petition and Application of Vineyard Wind
LLC for a Certificate of Environmental Impact
And Public Interest Pursuant to G.L. c. 164, §69K

EFSB 19-05

DETERMINATION ON INITIAL PETITION FOR CERTIFICATE
OF ENVIRONMENTAL IMPACT AND PUBLIC INTEREST

I. INTRODUCTION

On July 24, 2019, Vineyard Wind LLC (“Vineyard Wind” or “Company”) filed with the Energy Facilities Siting Board (“Siting Board”) an Initial Petition (“Initial Petition”) and an Application (“Application”) for a Certificate of Environmental Impact and Public Interest (“Certificate”), pursuant to G.L. c. 164, § 69K, and 980 CMR 6.00 *et seq.* Vineyard Wind seeks the Certificate so that the Company may proceed with the construction of two new 220 kilovolt (“kV”) combined offshore and onshore underground transmission lines; a new 220/115 kV onshore substation in the Town of Barnstable, Massachusetts; and a new 115 kV underground transmission connection between the new substation and NSTAR Electric Company’s existing Barnstable Switching Station (together, the “Vineyard Wind Connector” or “Project”). For the reasons set forth below, the Siting Board will defer a decision on the merits of Vineyard Wind’s Initial Petition, and will determine the merits of the Initial Petition concurrently with its review of the Vineyard Wind’s Certificate Application.

II. THE COMPANY’S INITIAL PETITION

Pursuant to G.L. c. 164, § 69J, the Siting Board on May 10, 2019, issued a Final Decision approving Vineyard Wind’s petition to construct the Vineyard Wind Connector. Pursuant to G.L. c. 40A, § 3, the Siting Board also approved Vineyard Wind’s petition for certain exemptions from the Town of Barnstable Zoning Ordinance, and pursuant to G.L. c. 164, § 72, approved Vineyard Wind’s petition for approval of the two transmission lines.

Vineyard Wind states that two separate triggering events necessitate the filing of its Initial Petition.

First, on May 23, 2019, the Barnstable Conservation Commission issued an Order of Conditions for the Project under the Massachusetts Wetlands Protection Act and the Town’s local wetlands bylaw, Chapter 237 of the Barnstable Town Code (Initial Petition at 2, and Att. G). On June 7, 2019, Mark Akselson, as trustee of the Charles Akselrad Revocable Trust, filed an appeal of the Order of Conditions with the Massachusetts Department of Environmental Protection (“MassDEP”) (Initial Petition at 2, and Att. H). On July 18, 2019, MassDEP issued a Superseding Order of Conditions for the Project (Initial Petition at 2, and Att. P). Vineyard

Wind states that it cannot commence construction of the Project until MassDEP issues a Chapter 91 License for the Project; that MassDEP cannot do so until a Final Order of Conditions is in place; that the appeal period for the Superseding Order of Conditions has not yet expired; and, therefore, that the potential for protracted regulatory and judicial appeal remains (Initial Petition at 2; see Initial Petition, Att. P, at 3 of 4).

Second, the Company states that on July 18, 2019, the Edgartown Conservation Commission denied an Order of Conditions for the Project under the Wetlands Protection Act. Vineyard Wind states that, without an Order of Conditions, MassDEP cannot issue the Chapter 91 License for the Project and, accordingly, Vineyard cannot commence construction of the Project (Initial Petition at 3). Vineyard Wind states that it has requested a Superseding Order of Conditions from MassDEP, but that the request is still pending, and the possibility remains of further appeals and thus further delay (id. at 3).

Vineyard Wind asserts that it is important that construction and operation of the Project proceed without delay in order to attain the many societal benefits that will result from it (Initial Petition at 8-9, 28). Accordingly, Vineyard Wind requests that the Siting Board: (1) defer a decision on the merits of the Initial Petition; (2) consolidate the Initial Petition and the Application; (3) adjudicate the Initial Petition and the Application concurrently; and (4) approve the Initial Petition at that time (id. at 4).

III. APPLICABLE STATUTORY AND REGULATORY REQUIREMENTS

Pursuant to G.L. c. 164, § 69K and G.L. c. 164, § 69L, any electric, gas or oil company that proposes to construct or operate in Massachusetts an energy facility jurisdictional to the Siting Board may petition the Siting Board for a Certificate with respect to that facility, once the applicant has obtained approval to construct the facility from the Siting Board. The applicant must file an Initial Petition, asserting one or more of the enumerated grounds for a petition set forth in Section 69K and 980 CMR 6.02. Within seven days of receipt of an Initial Petition, the Siting Board or its Chairman must determine whether the Siting Board will: (1) hold a hearing on the merits of the Initial Petition and render a decision within 14 days of such hearing; or (2) accept an Application for a Certificate and defer a decision on the merits of the Initial Petition until the hearing on the Application. 980 CMR 6.02(4).

IV. DETERMINATION ON INITIAL PETITION

Pursuant to G.L. c. 164, § 69K, and pursuant to Siting Board's regulations at 980 CMR 6.00 et seq., an Initial Petition for a Certificate may be based on one or more of six grounds. 980 CMR 6.02(2). In its Initial Petition, Vineyard Wind has asserted that granting the Initial Petition "is fully supported on one or more of" these grounds (Initial Petition at 4).

It is clear that the grounds cited in the Initial Petition would also be addressed in the Application, and that adjudicating both concurrently would save time and resources. Accordingly, pursuant to 980 CMR 6.02(4), a decision on the merits of the Company's Initial Petition is hereby deferred. The Siting Board hereby accepts the Company's Certificate Application, filed with the Siting Board on July 24, 2019, and will consider the merits of the Initial Petition concurrently with a hearing on the Application.

K. Theoharides

Kathleen Theoharides
Chairperson, Energy Facilities Siting Board

Dated this 31st day of July, 2019

K. Theodorides