

The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 21-08

May 28, 2021

Petition of Vineyard Wind 1 LLC pursuant to G.L. c. 40A, § 3 for Individual Exemptions and a Comprehensive Exemption from the Zoning Ordinance of the Town of Barnstable, Massachusetts.

APPEARANCES:

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Boston, MA 02110-2600
FOR: Vineyard Wind 1 LLC
Petitioner

I. INTRODUCTION

A. Description of Proposed Project

On May 11, 2020, Vineyard Wind LLC filed a Notice of Project Change (“NOPC”) regarding proposed changes to the as-yet unbuilt onshore substation (“Substation”) approved in the Energy Facilities Siting Board’s (“Siting Board”) Final Decision issued on May 10, 2019. Vineyard Wind LLC, EFSB 17-05/D.P.U. 18-18/18-19 (2019) (“Final Decision”).¹ The proposed 220 kV/115 kV Substation, as approved in the Final Decision, would be constructed on a leased 6.35-acre site within a 13.1-acre parcel on the former Cape Cod Times (“CCT”) property in the Town of Barnstable, including placement of certain Substation equipment within the eastern portion of the former CCT building (Exhs. VW-1, at 2, 4; VW-1, exh. A at 2).

After the Siting Board approved the Project,² the Company received preliminary engineering, procurement, and construction (“EPC”) bids indicating significant challenges with installing the Substation’s synchronous condensers in the CCT building (Exh. VW-1,

¹ Vineyard Wind LLC was the petitioner in the Final Decision and the applicant in the NOPC (Exhs. VW-1, exh. D, at 1; VW-1, exh. A, at 1). After the filing of the petition in the present case, Vineyard Wind LLC created a new entity: Vineyard Wind 1 LLC (Exh. VW-2, at 1). Vineyard Wind 1 LLC will construct, own, and operate the facility approved in the Final Decision (*id.*). At the request of counsel, Vineyard Wind 1 LLC has been substituted for Vineyard Wind LLC as the petitioner in the present case. To avoid confusion, this Order uses “Vineyard Wind” to refer to both entities.

² The Project refers to the Vineyard Wind Connector approved by the Siting Board on May 10, 2019, consisting of the onshore and offshore transmission lines and the Substation. Final Decision at 1-3.

exh. A at 2-3 & n.5). The EPC contractor proposed a different design, whereby separate enclosures would be constructed to house the 35-40 foot-high synchronous condensers (Exhs. VW-1, at 5, 17; VW-1, exh. A at 3). The Company stated that these enclosures, as well as the associated transformers and fan decks, would require additional land beyond the 6.35-acre leased site (Exh. VW-1, exh. A at 3). The Company's NOPC presented a reconfigured Substation design that would require leasing an additional 2.2 acres on the west side of the 13.1-acre parcel, of which approximately one acre would consist of the enclosures housing the synchronous condensers and related equipment ("Substation Expansion") (id.).³ The Company explained that the primary elements of the original Substation design, such as the main transformers, shunt reactors, switch gear, and the control building would remain generally situated as approved in the Final Decision (id.; Exh. VW-1, exh. B at 5).

In its NOPC filing, Vineyard Wind asserted that "the proposed change to the substation design is necessary to allow the Vineyard Wind Connector to be constructed, [and] . . . the change will not substantially alter the assumptions or conclusion of the Siting Board in approving the Vineyard Wind Connector in the Final Decision" (Exh. VW-1, exh. A at 7). With respect to zoning, Vineyard Wind asserted in the NOPC that the "refinement to the substation design presented here does not change any of the zoning analysis or zoning-related

³ Vineyard Wind has executed an option to lease the additional 2.2 acres, which also includes 13,000 square feet within the existing CCT building (Exhs. VW-1, at 5; VW-1, exh. B at 7).

conclusion reached by the Siting Board in the Final Decision” and that “the refined design involves a small expansion into and adjacent area that is part of the same parcel” (id. at 6).

On November 3, 2020, the Director of the Siting Board issued a letter stating that, in accordance with the Siting Board’s standard of review for evaluating project changes, the proposed changes would not alter in any substantive way either the assumptions or conclusions reached by the Siting Board in its analysis of the Project’s impacts in the underlying proceeding (Exhs. VW-1, at 2; VW-1, exh. C at 3). The November 3 Letter cited Vineyard Wind’s updated noise analysis that showed predicted sound level increases would remain the same at original receptors and were minimal at one additional residential receptor (Exh. VW-1, exh. C at 2). The November 3 Letter noted that the additional leased area required by the Project Change involves a previously disturbed area of the CCT parcel, and there would be no impacts to wetlands, water resources, or rare species habitat (id. at 3). Finally, the November 3 Letter noted that the new design would result in a small reduction in impervious surface, and that runoff from new areas will continue to be routed to the previously proposed stormwater treatment and detention system (id. at 3). Accordingly, the Siting Board did not conduct further inquiry regarding the NOPC.⁴

⁴ The Company correctly noted that the November 3 Letter “did not explicitly extend [the Siting Board’s] previous grant of individual and comprehensive zoning exemptions to the Project” (Exh. VW-1, at 3). The Siting Board’s original grant of zoning exemptions applied to the land identified by the Company in its petition to construct (i.e., 6.35 acres). Final Decision at 107. The NOPC notified the Siting Board that the Company intended to construct the Substation, in part, on 2.2 acres of land that were not part of the original notice or public comment hearing, nor was the land the subject of the Siting Board’s grant of zoning exemptions (Exh. VW-1, exh. A). Rather than seeking a zoning exemption as part of the NOPC for the redesigned

On January 11, 2021, Vineyard Wind filed with the Department of Public Utilities (“Department”) a Zoning Petition to request both individual and comprehensive zoning exemptions necessary for the changes to the Substation reflected in the NOPC (“Zoning Petition”) (Exh. VW-1, at 1). Vineyard Wind states that the additional 2.2-acre parcel would require the same zoning relief the Company received for the Substation as approved in the Final Decision (id. at 3). The Company in this proceeding seeks zoning exemptions for the 2.2-acre Substation Expansion only (id. at 3, 9).

B. Procedural History

On April 7, 2021, counsel for Vineyard Wind LLC and Vineyard Wind 1 LLC requested that Vineyard Wind 1 LLC be substituted for Vineyard Wind LLC as the petitioner (Exh. VW-2). This request has been granted in this Order (see footnote 1, supra). On April 15, 2021, the Department conducted a duly noticed remote public comment hearing.⁵ Only one person spoke at the public comment hearing: Charles McLaughlin, counsel for the Town

substation and its use of the additional 2.2 acres, the Company instead stated that “No new or additional zoning requirements are implicated and no different exemptions are requested” (Exh. VW-1, exh. A at 6). In order for the Department to grant zoning exemptions applicable to the additional land to be used for the redesigned substation, a petition requesting such exemptions, which complies with the procedural and substantive requirements of the statute, is required. See G.L. c. 40A, §§ 3, 11. Accordingly, such zoning exemptions were not, and could not have been, appropriately granted by the Siting Board (nor the Department) pursuant to the NOPC, as filed by the Company. With the filing of the Zoning Petition, the Company appropriately sought the zoning relief it eventually concluded is necessary for the NOPC.

⁵ Based on a linguistic analysis of the area around the Substation Expansion, the Department required the Company to provide notice in English and Portuguese to all mailboxes within one quarter mile from the new 2.2-acre parcel.

of Barnstable (Tr. at 13-14). Mr. McLaughlin reiterated Barnstable's support for the Petition (id.). The Department did not receive any petitions to intervene or written comments by the April 29, 2021, deadline.

The Petition includes as attachments documents that are relevant to the Petition itself and documents relating to the NOPC (Exh. VW-1, exhs. A through I). The Petition also incorporates by reference the entire record in the original proceeding leading to the Final Decision: Vineyard Wind LLC, EFSB 17-05/D.P.U. 18-18/18-19.⁶ Due to the voluminous nature of the already-existing record, the Department determined that it did not need to conduct discovery or evidentiary hearings.

II. REQUEST FOR INDIVIDUAL ZONING EXEMPTIONS PURSUANT TO G.L. C. 40A, § 3

A. Standard of Review

G.L. c. 40A, § 3 provides, in relevant part, that

Land or structures used, or to be used by a public service corporation may be exempted in particular respects from the operation of a zoning ordinance or by-law if, upon petition of the corporation, the [Department] shall, after notice given pursuant to section eleven and public hearing in the town or city, determine the exemptions required and find that the present or proposed use of the land or structure is reasonably necessary for the convenience or welfare of the public

Thus, a petitioner seeking exemption from a local zoning bylaw under G.L. c. 40A, § 3 must meet three criteria. First, the petitioner must qualify as a public service corporation.

⁶ The Department hereby incorporates by reference the record of the EFSB 17-05/D.P.U. 18-18/18-19 proceeding. 220 CMR 1.10(3). In addition, the Department hereby moves all exhibits marked for identification on the May 13, 2021 exhibit list into the record of this proceeding.

NSTAR Electric Company d/b/a Eversource Energy, D.P.U. 18-155, at 11 (2020) (“Oak Bluffs”); NSTAR Electric Company d/b/a Eversource Energy, D.P.U. 18-21, at 4 (2019) (“Westfield”); Save the Bay, Inc. v. Department of Public Utilities, 366 Mass. 667 (1975) (“Save the Bay”). Second, the petitioner must demonstrate that its present or proposed use of the land or structure is reasonably necessary for the public convenience or welfare. Oak Bluffs at 11; Westfield at 5-6; Boston Gas Company, D.T.E. 00-24, at 3 (2001) (“Boston Gas”). Finally, the petitioner must establish that it requires exemption from the zoning ordinance or bylaw. Oak Bluffs at 11; Westfield at 6-7; Tennessee Gas Pipeline Company, D.T.E. 01-57, at 4 (2002) (“Tennessee Gas”).

1. Public Service Corporation

In determining whether a petitioner qualifies as a “public service corporation” for the purposes of G.L. c. 40A, § 3, the Massachusetts Supreme Judicial Court (“SJC”) has stated:

among the pertinent considerations are whether the corporation is organized pursuant to an appropriate franchise from the State to provide for a necessity or convenience to the general public which could not be furnished through the ordinary channels of private business; whether the corporation is subject to the requisite degree of governmental control and regulation; and the nature of the public benefit to be derived from the service provided.

Save the Bay, 366 Mass. at 667, 680; see also Oak Bluffs at 11-12; Boston Gas at 3-4.

The Department interprets this list not as a test, but rather as guidance to ensure that the intent of G.L. c. 40A, § 3 will be realized, *i.e.*, that a present or proposed use of land or structure that is determined by the Department to be “reasonably necessary for the convenience or welfare of the public” not be foreclosed due to local opposition. See Berkshire Power Development, Inc., D.P.U. 96-104, at 30 (1997) (“Berkshire Power”); Save

the Bay, 366 Mass. at 685-686. The Department has interpreted the “pertinent considerations” as a “flexible set of criteria which allow the Department to respond to changes in the environment in which the industries it regulates operate and still provide for the public welfare.” Oak Bluffs at 12; Westfield at 4; see also Dispatch Communications of New England d/b/a Nextel Communications, Inc., D.P.U./D.T.E. 95-59-B/95-80/95-112/96-113, at 6 (1998) (“Nextel”). The Department has determined that it is not necessary for a petitioner to demonstrate the existence of “an appropriate franchise” in order to establish public service corporation status. See Berkshire Power at 31.

2. Public Convenience or Welfare

In determining whether the present or proposed use is reasonably necessary for the public convenience or welfare, the Department must balance the interests of the general public against the local interest. Save the Bay, 366 Mass. at 680; Town of Truro v. Department of Public Utilities, 365 Mass. 407 (1974). Specifically, the Department is empowered and required to undertake “a broad and balanced consideration of all aspects of the general public interest and welfare and not merely [make an] examination of the local and individual interests which might be affected.” New York Central Railroad v. Department of Public Utilities, 347 Mass. 586, 592 (1964) (“New York Central Railroad”). When reviewing a petition for a zoning exemption under G.L. c. 40A, § 3, the Department is empowered and required to consider the public effects of the requested exemption in the Commonwealth as a whole and upon the territory served by the applicant. Save the Bay, 366 Mass. at 685; New York Central Railroad, 347 Mass. at 592.

With respect to the particular site chosen by a petitioner, G.L. c. 40A, § 3, does not require the petitioner to demonstrate that its preferred site is the best possible alternative, nor does the statute require the Department to consider and reject every possible alternative site presented. Rather, the availability of alternative sites, the efforts necessary to secure them, and the relative advantages and disadvantages of those sites are matters of fact bearing solely upon the main issue of whether the preferred site is reasonably necessary for the convenience or welfare of the public. Martarano v. Department of Public Utilities, 401 Mass. 257, 265 (1987); New York Central Railroad, 347 Mass. at 591.

Therefore, when making a determination as to whether a petitioner's present or proposed use is reasonably necessary for the public convenience or welfare, the Department examines (1) the present or proposed use and any alternatives or alternative sites identified; (2) the need for, or public benefits of, the present or proposed use; and (3) the environmental impacts or any other impacts of the present or proposed use. The Department then balances the interests of the general public against the local interest and determines whether the present or proposed use of the land or structures is reasonably necessary for the convenience or welfare of the public. Boston Gas at 2-6; Tennessee Gas at 5-6.

3. Exemptions Required

In determining whether exemption from a particular provision of a zoning bylaw is "required" for purposes of G.L. c. 40A, § 3, the Department looks to whether the exemption is necessary to allow construction or operation of the petitioner's project as proposed. Oak Bluffs at 14; Westfield at 6; Tennessee Gas at 5. It is the petitioner's burden to identify the

individual zoning provisions applicable to the project and then to establish on the record that exemption from each of those provisions is required:

The Company is both in a better position to identify its needs, and has the responsibility to fully plead its own case The Department fully expects that, henceforth, all public service corporations seeking exemptions under c. 40A, § 3 will identify fully and in a timely manner all exemptions that are necessary for the corporation to proceed with its proposed activities, so that the Department is provided ample opportunity to investigate the need for the required exemptions.

New York Cellular Geographic Service Area, Inc., D.P.U. 94-44, at 18 (1995).

B. Public Service Corporation Status

In the Final Decision, the Siting Board found that Vineyard Wind qualified as a Massachusetts public service corporation for the purposes of G.L. c. 40A, §3. Final Decision at 136. The Department likewise finds that Vineyard Wind qualifies as a Massachusetts public service corporation for the purposes of G.L. c. 40A, §3.

C. Public Convenience and Welfare

1. Need for or Public Benefit of Use

With respect to the need for, or public benefits of, the Project, of which the Substation Expansion is a part, the Siting Board found in the Final Decision, there is a need for additional transmission resources to interconnect Vineyard Wind's offshore windfarm to the regional transmission grid. Final Decision at 139. The Department confirms the Siting Board's finding that there is a need for additional transmission resources to interconnect Vineyard Wind's offshore windfarm to the regional transmission grid.

2. Alternatives Explored

In the Final Decision, the Siting Board analyzed a number of different project approaches that the Company might use to meet the need and concluded that the proposed approach is superior to other approaches. The Siting Board also reviewed the Company's site and route selection process and found that the Company had demonstrated that it examined a reasonable range of practical siting alternatives and that the proposed facilities are sited in locations that minimize cost and environmental impacts. Final Decision at 34. The Department confirms the findings of the Siting Board regarding alternatives explored for the Substation Expansion.

3. Impacts of the Proposed Use

The Company described the additional 2.2 acres as consisting of a wooded area along Independence Drive, the eastern end of the former CCT building, and an area occupied by paved parking, circulation roads and landscaped dividers (Exhs. VW-1, at 5; VW-1, exh. A at 3). Approximately two-thirds of the one-acre equipment footprint would be located within the paved portion of the new parcel, with the remaining new configuration located on the original 6.35-acre parcel (Exh. VW-1, exh. A at 4). The new synchronous condenser enclosures would continue to be screened by the 30-foot high perimeter wall along the eastern property line (id. at 5). The existing 50-foot buffered wooded area along Independence Drive would be unchanged to the south, and views to the south would also be buffered by the existing CCT building (id.; Exh. VW-1, exh. B at 4). In addition, the CCT building and the wooded areas along both sides of Communication Way would screen views to the west (Exh. VW-1, exh. A at 5).

The Company's updated noise analysis showed that the predicted sound level increases at all of the original receptors would remain the same as the original equipment configuration (Exhs. VW-1, at 2; VW-1, exh. B at 2-3). Further, the Company modeled the sound level impacts at an additional residential receptor identified southwest of the new enclosures, and the results showed an increase of only one dBA over ambient noise levels (Exhs. VW-1, at 2; VW-1, exh. B at 3).

Given the location of the new design within a previously disturbed area of the CCT parcel, the Company indicated that there would be no impacts to wetlands, water resources, or rare species habitat (Exhs. VW-1, at 2-3; VW-1, exh. A at 4). The new design will result in a small reduction in impervious surface, and runoff from new areas of impervious surface will continue to be routed to the proposed stormwater treatment and detention system (Exhs. VW-1, at 3; VW-1, exh. A at 5).

Accordingly, the environmental impacts associated with the design refinements of the Substation Expansion would be similar to the environmental impacts analyzed and determined to be minimized in the Final Decision. See Final Decision at 130. The Department concludes that with the Substation Expansion's compliance with (1) all applicable federal, state, and local laws and regulations; (2) the avoidance, minimization, and mitigation measures that Vineyard Wind has stated it will implement during Substation Expansion and Project construction and operation; and (3) the Department's conditions as set forth below and in the applicable Siting Board Conditions in the Final Decision, the impacts of the Substation Expansion will be minimized.

4. Conclusion on Public Convenience and Welfare

Based on the (1) need for or public benefit of the use; (2) alternatives explored; and (3) impacts of the proposed use, the Department finds here, consistent with findings made in the Final Decision, that the Project with the Substation Expansion is necessary for the purposes alleged; the benefits of the Project with the Substation Expansion to the general public exceed the local impacts; and the Project with the Substation Expansion is reasonably necessary for the convenience or welfare of the public, and is consistent with the public interest. See also Final Decision at 139.

D. Exemptions Required

1. Individual Exemptions

The Company seeks individual exemptions as well as a comprehensive exemption from the Barnstable Zoning Ordinance (“Zoning Ordinance”). The Company states that it seeks the same individual exemptions from the Zoning Ordinance for the Substation Expansion that it received for the Substation in the Final Decision (Exh. VW-1, at 9, citing Final Decision at 140-141). Further, the Company explains that all of the exemptions sought, with the exception of the exemption from the height requirement for the new synchronous condenser enclosures on the 2.2-acre site, relate to the Substation as a whole rather than discrete elements or structures (Exh. VW-1, at 16).⁷ Table 1, below, includes the individual zoning exemptions requested by the Company.

⁷ In addition to the enclosures for the synchronous condensers, the Company indicated that the height exemption may also pertain to the associated outdoor cooling fan decks and the two 270 MVA transformers (Exh. VW-1, at 3).

Table 1. Substation Expansion - Requested Individual Exemptions from the Town of Barnstable Zoning Ordinance: Summary of Company's Position

Section of the Zoning Ordinance	Available Relief	Why Exemption is Required: Company's Position
Use Restrictions Sections 240-33; 240-7.A; 240-35.F (2); 240-35.G (2);	Use Variance	Public utility uses are not expressly authorized in underlying districts; unclear whether the Substation Expansion would need a variance. Variances are a legally disfavored form of relief, difficult to obtain, and even if granted are subject to appeal. If required, the variance process can result in delay, burden, and undue expense.
Prohibited Uses Section 240-10.A	Use Variance	Prohibits "injurious, noxious, or offensive" emissions; Company does not believe Substation Expansion emissions will be offensive. Standard is unspecified, however, and therefore discretionary. Town has the authority under other statutes to enforce against such emissions. Variances are a legally disfavored form of relief, difficult to obtain, and even if granted are subject to appeal. If required, the variance process can result in delay, burden, and undue expense.
Height Restrictions Section 240-33.E	Dimensional Variance	Enclosures for synchronous condensers expected to be 35-40 feet high; and the associated outdoor cooling fan decks and the two 270 MVA transformers may exceed 30 feet. It is unclear whether 30-foot height restriction would apply to Substation Expansion components that will exceed 30 feet in height. Variances are a legally disfavored form of relief, difficult to obtain, and even if granted are subject to appeal. If required, the variance process can result in delay, burden, and undue expense.
Sign Restrictions Article VII Sections 240-61.D; 240-65; 240-66	Variance	Section prohibits danger and warning signs. Vineyard Wind intends to post warning and safety signs. Variances are a legally disfavored form of relief, difficult to obtain, and even if granted are subject to appeal. If required, the variance process can result in delay, burden, and undue expense.
Site Plan Review Article IX	Site Plan Approval	Site Plan approval requires compliance with all provisions of the Ordinance; Substation Expansion cannot or may not be able meet all zoning requirements. Company must be able to design Substation Expansion in

Section of the Zoning Ordinance	Available Relief	Why Exemption is Required: Company's Position
Sections 240- 98 through 240-105		accordance with industry standards. Site Plan approval is discretionary and, even if granted, may be appealed. If required, this process can result in delay, burden, and undue expense.
Performance Bond Section 240-124.A	Variance	Potential for delay is great, as bond amounts are within discretion of Building Commissioner. Variances are a legally disfavored form of relief, difficult to obtain, and even if granted are subject to appeal. If required, the variance process can result in delay, burden, and undue expense.
Occupancy Permit Section 240-124.B	Variance	Issuance of an Occupancy Permit requires compliance with all provisions of the Ordinance; Substation Expansion cannot or may not be able meet all zoning requirements. Variances are a legally disfavored form of relief, difficult to obtain, and even if granted are subject to appeal. If required, the variance process can result in delay, burden, and undue expense.
Off-Street Parking Article VI Sections 240-48 through 240-58	Special Permit or Variance	Number of parking spaces is within the discretion of the Building Commissioner and may be inconsistent with the Substation Expansion design. Variances are a legally disfavored form of relief, difficult to obtain, and even if granted are subject to appeal. If required, the variance process can result in delay, burden, and undue expense.

Sources: Exh. VW-1, at 11-17; Final Decision at 144.

2. Company Consultation with Local Officials and Community Outreach

Vineyard Wind states that since the issuance of the Final Decision, it has continued to engage in regular and ongoing discussions with Barnstable officials to discuss the Substation redesign and the Company's request to seek zoning relief (Exh. VW-1, at 6, 7, 11). The Company provided a letter of support from the Town of Barnstable for Vineyard Wind's requests for the zoning exemptions for the Substation Expansion (Exh. VW-1, exh. I). As

mentioned above, Charles McLaughlin, attorney for Barnstable, spoke at the public comment hearing and reiterated the Town's support for granting the Petition (Tr. at 13-14).

3. Analysis and Finding

a. Individual Exemptions

In the Final Decision, the Company received exemptions related to the Substation for use, height, signage, performance bond, occupancy permit, site plan review, off-street parking and anti-nuisance provisions. Final Decision at 152. Here, the Company requests the same exemptions for the Substation Expansion as they relate to the entire Substation, to be located on the now total 8.35-acre parcel. With regard to the request for a height exemption for the new equipment on the 2.2-acre parcel, in the underlying proceeding the Company sought an exemption from the thirty-foot height limitation in Industrial Districts, contained in Section 240-33.E of the Zoning Ordinance, and noted that without an exemption a variance would be necessary. Final Decision at 144. In the Final Decision, the Siting Board found that an exemption from Section 240-33.E of the Zoning Ordinance was required to construct and operate the Substation within the meaning of G.L. c. 40A, § 3. Id. Consistent with the Siting Board's findings in the Final Decision, the Department finds that all of the individual exemptions granted for the Substation, including the exemption from Section 240-33.E of the Zoning Ordinance for the Substation Expansion, are required.

b. Municipal Consultation

The Department continues to favor the resolution of local issues on a local level whenever possible to reduce concern regarding any intrusion on home rule. Oak Bluffs at 65; NSTAR Electric Company d/b/a Eversource Energy, D.P.U. 17-147, at 40 (2019)

(“K Street”); Russell Biomass LLC/Western Massachusetts Electric Company, EFSB 07-4/D.P.U. 07-35/07-36, at 60-65 (2009). The Department believes that the most effective approach for doing so is for applicants to consult with local officials regarding their projects before seeking zoning exemptions pursuant to G.L. c. 40A, §3. Oak Bluffs at 65; NSTAR Electric Company, D.P.U. 14-55/14-56, at 41 (2015).

The Company has continued to engage in discussions with, and maintain the support of, the Town of Barnstable. The finding of the Department in the present matter is consistent with the finding of the Siting Board in the Final Decision: the Department finds that Vineyard Wind engaged in good faith consultations with Barnstable with respect to the Company’s zoning exemption requests. See Final Decision at 151-152.

E. Conclusion on Request for Individual Zoning Exemptions

As described above, the Department finds that: (1) Vineyard Wind is a public service corporation; (2) the proposed use is reasonably necessary for the public convenience and welfare; and (3) the specifically identified zoning exemptions are required for purposes of G.L. c. 40A, § 3. Additionally, the Department finds that the Company engaged in good faith discussions with the Town of Barnstable. The same findings were made in the Final Decision; accordingly, the Department grants the same individual zoning exemptions here as set forth in the Final Decision, and in the Zoning Petition. See Final Decision at 152-153.

III. REQUEST FOR A COMPREHENSIVE ZONING EXEMPTION

A. Standard of Review

The Department considers requests for a comprehensive zoning exemption on a case-by-case basis. Oak Bluffs at 67; Westfield at 54; Princeton Municipal Light

Department, D.T.E./D.P.U. 06-11, at 37 (2007) (“Princeton”). The Department will not consider the number of exemptions required as a sole basis for granting a comprehensive exemption. Princeton at 37. Rather, the Department will consider a request for comprehensive zoning relief only when issuance of a comprehensive exemption would avoid substantial public harm. Oak Bluffs at 67; Westfield at 54; K Street at 41.

B. Analysis and Findings

With respect to the Company’s request for a comprehensive exemption from the Zoning Ordinance, in the Final Decision, the Siting Board found that the issuance of comprehensive zoning exemption could avoid substantial public harm by serving to prevent a delay in the construction and operation of the Project, consistent with the Department’s standard of review for the granting of a comprehensive zoning exemption. Final Decision at 156. The Department finds the request for a comprehensive exemption that includes the Substation Expansion, as part of the Project, does not alter this analysis and we make the same determination that the Siting Board made. Therefore, the Department grants the Company’s request for a comprehensive zoning exemption.

IV. SECTION 61 FINDINGS

As set forth in Section II.C.3, above, the environmental impacts of the Substation Expansion would be similar to the environmental impacts analyzed and conditioned by the Siting Board in the Final Decision. In the Final Decision, in accordance with the Massachusetts Environmental Policy Act, the Siting Board found that all feasible measures have been taken to avoid or minimize the environmental impacts of the proposed Project. G.L. c. 30, § 61; 301 CMR 11.12(5). Final Decision at 159. The Department reaches the

same finding that all feasible measures have been taken to avoid or minimize the environmental impacts with respect to the Project with the Substation Expansion.

V. ORDER

Accordingly, after due notice, hearing, and consideration, it is hereby

ORDERED: That the petition of Vineyard Wind seeking the individual exemptions for the Substation Expansion set forth in Table 1 above from the operation of the Barnstable Zoning Ordinance is granted, and it is

FURTHER ORDERED: That the petition of Vineyard Wind seeking a comprehensive exemption from the operation of the Barnstable Zoning Ordinance for the Substation Expansion is granted, and it is

FURTHER ORDERED: That Vineyard Wind work cooperatively with municipal and state officials and affected property owners in Barnstable to minimize any noise, visual, traffic, or other local impacts associated with the Substation Expansion; and it is

FURTHER ORDERED: That Vineyard Wind and its contractors and subcontractors comply with all applicable state and local regulations for which Vineyard Wind has not received an exemption; and it is

FURTHER ORDERED: That Vineyard Wind obtain all other governmental approvals necessary for the Substation Expansion; and it is

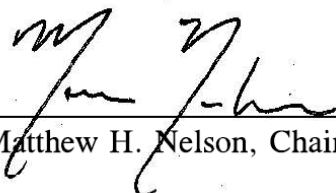
FURTHER ORDERED: That within 90 days of the Substation Expansion completion, Vineyard Wind shall submit a report to the Department documenting compliance with all conditions contained in this Order, noting any outstanding conditions yet to be satisfied and the expected date and status of such resolution; and it is

FURTHER ORDERED: That Vineyard Wind or its successors in interest shall comply with all other directives contained in the Order; and it is

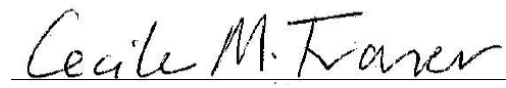
FURTHER ORDERED: That Vineyard Wind or its successors in interest notify the Department of any changes other than minor variations to the Substation Expansion so that the Department may decide whether to inquire further into a particular issue; and it is

FURTHER ORDERED: That the Secretary of the Department shall transmit a copy of this Order and the Section 61 findings herein to the Executive Office of Energy and Environmental Affairs; and that Vineyard Wind shall serve a copy of this Order on the Town of Barnstable Board of Selectmen, the Town of Barnstable Planning Board, and the Town of Barnstable Zoning Board of Appeals, within five days of its issuance; and that Vineyard Wind certify to the Secretary of the Department within ten business days of its issuance that such service has been accomplished, and that said certification be served upon the Hearing Officer to this proceeding.

By Order of the Department:


Matthew H. Nelson, Chair


Robert Hayden, Commissioner



Cecile M. Fraser, Commissioner

An appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of the twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. G.L. c. 25, § 5.