



20 Park Plaza
Suite 320
Boston, MA 02116
617-904-3100
Fax: 617-904-3109
www.capewind.org

December 31, 2014

James Daly
NSTAR Electric Company
One NSTAR Way
Westwood, MA 02090

Jesse Reyes, Esq.
Assistant Attorney General
Massachusetts Office of the Attorney General
One Ashburton Place
Boston, MA 02108

Keith Goodwin
Contract Administrator
Electric and Gas Contract Administration
NSTAR Electric and Gas Corporation
One NSTAR Way
Westwood, MA 02090

Timothy N. Cronin, Esq.
Assistant General Counsel
NSTAR
800 Boylston Street
Boston, MA 02109

Anna Blumkin
Acting General Counsel
Massachusetts Department of Energy Resources
100 Cambridge Street, Suite 1020
Boston, MA 02114

RE: Power Purchase Agreement (“PPA”) dated as of March 23, 2012 between NSTAR Electric Company (“NSTAR”) and Cape Wind Associates, LLC (“Cape Wind”); Notice of Force Majeure per PPA Section 10.1.

Dear Lady and Gentlemen:

After 14 years of concerted effort, Cape Wind has continued to make excellent progress toward achieving its financial closing, including obtaining Energy Facilities Siting Board approval in mid-November 2014 for its joint application with NSTAR for the proposed interconnection facilities in Barnstable. Unfortunately, however, this latest approval is now the subject of yet another appeal. I am now writing pursuant to Section 10 to provide notice of Force Majeure that has prevented Cape Wind from achieving Critical Milestones by this date. In the PPA, the term “Force Majeure” is defined as “an unusual, unexpected and significant event: (i) that was not within the control of the Party claiming its occurrence; (ii) that could not have been prevented or avoided by such Party through the exercise of reasonable diligence; and (iii) that directly prohibits or prevents such Party from performing its obligations under this Agreement.”

As you are aware, Cape Wind has been the subject of extended, unprecedented and relentless litigation by the Alliance to Protect Nantucket Sound, Inc. (the “Alliance”) that prevents Cape Wind from achieving the remaining Critical Milestones under the PPA as of this date. Over more than a decade, the Alliance has systematically engaged in a pattern of behavior calculated to delay the development and financing of Cape Wind’s offshore wind facility. Over the past decade, they have filed over 20 administrative and judicial challenges. Just six months ago, the U.S. Federal District Court recognized the substantial adverse effects of the Alliance’s litigation strategy as follows: “... numerous courts have reviewed and approved the project and the PPA with NSTAR and have done so according to and within the confines of the law. There comes a point at which the right to litigate can become a vexatious abuse of the democratic process.” Town of Barnstable v. Berwick, 17 F. Supp. 3d 113, 124 n.28 (D. Mass. 2014).

Under Section 10(a) of the PPA, this exceptional level of litigation against Cape Wind for the purpose of delay is extraordinarily unusual, unexpected and significant. It has been completely beyond Cape Wind’s control and could not have been prevented or avoided. In fact, Cape Wind has undertaken herculean efforts to negate the impact of such litigation and, at every turn, has been successful. Despite this, the relentless litigation has undeniably slowed the development of Cape Wind’s project and interfered with the timely financing of the project, thereby prohibiting and preventing Cape Wind from achieving remaining Critical Milestone dates in the PPA.

Cape Wind fully expects that it will promptly and successfully overcome the remaining litigation hurdles caused by the Alliance’s litigation strategy and its effect of blocking Cape Wind’s ability to achieve remaining Critical Milestones; Cape Wind expects to be able to bring the Force Majeure to a close and to complete its Critical Milestones of closing of Financing pursuant to Section 3.1(a)(iii) and issuance of its full notice to proceed pursuant to Section 3.1(a)(iv) in 2015. Cape Wind will continue its efforts to promptly exercise all due diligence to effect remedial measures to overcome the Force Majeure, including efforts to expedite all remaining challenges. Pursuant to Section 10.1(b), Cape Wind’s performance of its obligations is thus “excused and suspended so long as the circumstances exist, but for no longer period”.

Accordingly, Cape Wind (i) respectfully requests that NSTAR forbear on any rights it may believe it has to terminate the PPA; and (ii) notifies NSTAR that any current milestone-related non-performance by Cape Wind is directly a function of the above-described Force Majeure. I look forward to our continued discussions as soon as possible when we can discuss possible measures of mutual benefit regarding this project, which has been repeatedly recognized by the both Commonwealth of Massachusetts and the Federal agencies to be both “cost-effective” and in the public interest.

Very truly yours,

CAPE WIND ASSOCIATES, LLC

By: James S. Gordon
Name: James S. Gordon
Title: President