

December 21, 2023

To: Councilor John Crow

cc: Mark S. Ells, Town Manager
Karen L. Nober, Town Attorney

From: Charles S. McLaughlin, Jr., Senior Counsel

RE: Your questions on Park City Wind

I have reviewed your questions carefully and answer them roughly in the order presented. The prime focus of my comments is on the issue of intervention and I hope that the discussion of the background context will be helpful to your understanding of the matter.

“Intervening” means that the Town is a party to a proceeding. Being a party gives the Town the right to present arguments and evidence during the proceeding, which become part of the record and provide a potential basis for appeal. As a party, the Town has the right to appeal from any decision.

As the Council is now aware, the EFSB has issued its Final Decision in the PCW proceeding and denied the Town’s Amended Petition to Intervene. Accordingly, the Town is not a party to the proceeding and cannot appeal the Decision. The Town did have the opportunity to comment at the hearing, but as a member of the public and not as a party.

You can have a Host Community Agreement and also have intervenor status – you can have both.

We agree that the Town’s standard practice should be to petition for intervenor status in all EFSB proceedings involving projects to be located within the town, and that will be the Town’s practice moving forward.

However, with respect to intervention in the PCW proceeding, context is all important. The original Vineyard Wind petition proposed two projects, both landing at Covell’s Beach. The first phase now under construction leads to Independence Park. The Second Phase was to occupy the same Phase I duct bank along Craigville Beach Road and then would branch off at Strawberry Hill Road and extend to the Oak Street NSTAR substation. The Town had been granted intervenor status in the EFSB proceeding.

After weeks of intense negotiations, the Town and Vineyard Wind negotiated a Host Community Agreement (“HCA”) on the eve of hearings commencing at the EFSB. Having gained a binding settlement in the form of an HCA that achieved our two primary goals, i.e., inhibiting another repeat of the Cape Wind proposal in Nantucket Sound and creating industry-leading protection

for ground water (as well as a host of other benefits), the Town agreed not to actively participate in the EFSB proceeding, except in response to a request to do so.

In May of 2020, Vineyard Wind filed its petition to construct Phase II of its project, which, at that time, was fully covered by the existing HCA. The Town enjoyed an excellent working relationship with VW staff. In November 2021, we were informed that a corporate restructuring had occurred and that Phase II of the Vineyard Wind project (and HCA) would be assigned to an entity known as Park City Wind, eventually to be wholly owned by Avangrid Renewables (or a subsidiary). VW and PCW had the same lawyer serving as lead counsel for both projects.

At my urging and after extensive discussions, PCW agreed to enter into a second HCA for PCW so that performance and default issues, if any, could be clearly distinguished between Vineyard Wind and Park City Wind. The lawyers then exchanged drafts of a new HCA, closely modeled on the VW agreement, and the Town Manager eventually signed an HCA with Park City in May 2022 after Council approval to do so. At about the same time, EFSB hearings on Park City concluded on June 1, 2022. At all material times when negotiating the PCW HCA, our focus and direction was to continue to accept the primary content of the Vineyard Wind HCA while sharpening the content of the Park City HCA to address issues that had come up in the Vineyard Wind project.

To summarize on intervention, we achieved a binding settlement in one Host Community Document that covered two projects. The HCA achieved the Town's goals. Vineyard Wind could assign the project and HCA to another entity for Phase II; they did so under the Park City name. We eventually agreed to fine tune the HCA and during that process, Avangrid assumed sole ownership of the second project. The PCW HCA continued the commitments regarding Nantucket Sound and water protection, and provided for the mitigation that had been agreed upon for the first Phase and the Town again achieved its primary goals approved by the Council for Phase I.

In short, there was never a conscious decision made on intervention. Our focus was on honoring the binding content of the Vineyard Wind HCA and we achieved that. Given the correlation of time between finalizing the content of the PCW HCA and the completion of the EFSB hearings on the PCW petition, the matter was concluded without the Town participating at the EFSB PCW hearings.

Finally, given our experience in the exhaustive Cape Wind proceedings, and the Supreme Judicial Court's very strong affirmance of the EFSB's discretion to approve the Cape Wind project, I can offer with confidence the opinion that not participating in the EFSB's Park City hearings has not and would not have changed the result. The EFSB was expressly created to enable construction of energy facilities over the objection of municipalities and individuals. Our Cape Wind experience informed us of the need to achieve if possible a satisfactory HCA and that was accomplished.

With respect to Commonwealth Wind, as noted in the Town Manager report, the Town filed a Petition to Intervene earlier this week (Dec. 18, 2023). The Town filed early, as the standard practice for filing such petitions is after a Notice of Adjudication is issued and deadlines for filing are set. No Notice of Adjudication has been issued for the Commonwealth Wind project, so the Town has not missed any deadlines and in fact has filed early. Because we filed early, we cannot expect any decision on our petition until after the Notice of Adjudication has issued and the intervention deadline has passed. If any important facts change between now and when the Notice of Adjudication is issued, the Town will file an amended petition.