



Case & Project Experience

NERA Economist's Role in Commonwealth of Massachusetts Energy Facilities Siting Board Final Decision to Deny Cape Wind Associates a Two-Year Extension

The Situation

On 7 April 2015, Cape Wind Associates, LLC ("Cape Wind") requested a two-year extension ("2015 Extension Request") of two previously issued Commonwealth of Massachusetts Energy Facilities Siting Board ("Siting Board") approvals to Construct Two 115 kV Electric Transmission Lines and for a Certificate of Environmental Impact and Public Interest ("Approvals"). NERA's client, the Alliance to Protect Nantucket Sound (the "Alliance"), acted as an Intervenor in this matter, opposing the extension of Cape Wind's approvals.

NERA's Role

The Alliance retained NERA Vice President Kurt G. Strunk to provide testimony on the economics and bankability of the Cape Wind project. On 31 December 2014, Cape Wind became unable to achieve certain milestones under the Power Purchase Agreements ("PPAs") it entered into with Massachusetts Electric Company and Nantucket Electric Company d/b/a National Grid ("National Grid") and NSTAR Electric Company d/b/a Eversource Energy ("Eversource") for 50 percent and 27.5 percent, respectively, of the wind farm's output. Cape Wind asserted a Force Majeure clause defense, claiming that litigation initiated by the Alliance prevented it from achieving the milestones. Despite Cape Wind's assertions, on 6 January 2015, National Grid and Eversource terminated the PPAs with Cape Wind for failure to achieve the financing and construction milestones.

Consequently, Cape Wind found itself in a situation without a contractual arrangement in place for the power produced by the wind farm, and as such could not obtain financing and

begin construction. A renewable energy facility would not be project financed without an off-take arrangement. Mr. Strunk, testifying for the Alliance, opined that Cape Wind would require specific legislation to realize any off-take arrangements. Mr. Strunk also testified that Cape Wind was uneconomic relative to on-shore wind opportunities, and would also likely face stiff competition from other larger, more efficient off-shore developments. The Alliance relied on this analysis in its brief, stating that the Approvals should be denied because Cape Wind was unable to provide any credible evidence that the Cape Wind project could commence by 1 May 2017. Specifically, the evidence showed that not only does Cape Wind lack the necessary federal permits required to construct the wind farm, but it also has failed to show that it could acquire the permits, an off-take arrangement, or construction financing by the deadline.

The Result

The Siting Board denied Cape Wind's Extension Request, citing as one of the reasons Cape Wind's challenge of obtaining an off-take arrangement for the power generated by the wind farm, which is necessary to obtain financing. In its analysis, the Siting Board agreed with Mr. Strunk that the only way for Cape Wind to achieve an off-take arrangement is through pending legislation in the General Court. The legislation would only create an opportunity for Cape Wind to compete against other potential bidders and does not guarantee new PPAs to replace the ones no longer in effect.

About NERA

NERA Economic Consulting (www.nera.com) is a global firm of experts dedicated to applying economic, finance, and quantitative principles to complex business and legal challenges. For over half a century, NERA's economists have been creating strategies, studies, reports, expert testimony, and policy recommendations for government authorities and the world's leading law firms and corporations. We bring academic rigor, objectivity, and real world industry experience to bear on issues arising from competition, regulation, public policy, strategy, finance, and litigation.

NERA's clients value our ability to apply and communicate state-of-the-art approaches clearly and convincingly, our commitment to deliver unbiased findings, and our reputation for quality and independence. Our clients rely on the integrity and skills of our unparalleled team of economists and other experts backed by the resources and reliability of one of the world's largest economic consultancies. With its main office in New York City, NERA serves clients from more than 25 offices across North America, Europe, and Asia Pacific.

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