COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT
DEPARTMENT OF THE TRIAL COURT
BUSINESS LITIGATION SESSION
CIVIL ACTION NO. _____

VINEYARD WIND 1, LLC,

Plaintiff,

v.

GE RENEWABLES US LLC,

Defendant.

REQUEST FOR HEARING

SERVICE VIA E-MAIL

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MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S EMERGENCY MOTION FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER

Dated: April 8, 2026

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INTRODUCTION[1]

Plaintiff Vineyard Wind 1 LLC ("VW" or the "Project") is the developer of a large commercial-scale wind project located off the coast of Massachusetts, which is on the verge of bringing online 806 megawatts of renewable energy to Massachusetts in furtherance of the Commonwealth's renewable energy mandate. VW brings this urgent motion to prevent its most important contractor, turbine supplier GE Renewables US LLC ("GER"), from abandoning the Project on the eve of completion, dooming the Project to failure. GER has sent a "Termination Notice" asserting that there are "amounts owed" to GER for Milestone Payments under the parties' Turbine Supply Agreement, dated June 4, 2021 (the "TSA"), and threatening termination of the TSA and the companion Service and Maintenance Agreement, also dated June 4, 2021 ("SMA" and together with the TSA, the "Contracts"), on April 28, 2026. GER's claim is frivolous and defies the plain language of the Contracts.

GER has no right to terminate and seeks to do so at the Project's most vulnerable stage. Commercial operation is due to begin and the Project's financing is due to convert, which depend on GER performing as promised. The VW Project can only succeed if GER continues to use its unique and irreplaceable proprietary technology and tools so the GER wind turbine generators ("WTGs") can produce power at a commercially viable level. The Project's success depends on GER standing behind its critical "yield warranty," which guarantees the commercial performance of the GER WTGs, a commitment central to the commercial arrangements in the Contracts. GER walking away threatens the Project's very survival. The Project's failure would

[1] Unless otherwise indicated, emphasis has been added to quotations, and internal quotations, brackets, citations, and footnotes have been omitted. "Møller Decl." and "Iglesias Decl." respectively refer to the declarations of Klaus Skoust Møller and Ignacio Gonzalez Iglesias.

deprive the ratepayers of Massachusetts of low-cost renewable energy and leave behind a dormant wind farm graveyard. There is no viable replacement.

VW has simultaneously filed an action seeking (1) a judgment declaring GER's Termination Notice invalid under the TSA and SMA and (2) a permanent injunction to enjoin GER from terminating the Contracts. VW hereby seeks relief on or before April 27 to maintain the status quo and prevent GER from abandoning the Project until a final determination of whether GER has the right to terminate the TSA and SMA.

GER's purported termination fails at each step. GER's claim that it is owed "amounts due" for Milestone Payments is contrary to the plain language of the TSA. Put simply, VW owes nothing to GER because the TSA allows VW to withhold amounts the Project Engineer determines that GER owes VW from Milestone Payments otherwise due under the Contract. Those setoff amounts are substantial because GER caused catastrophic injury to VW by installing 68 defective blades on 24 WTGs, resulting in two years of delay and over a billion dollars of damages. In July 2024, one of the GER offshore blades collapsed and fell into the waters off Nantucket, necessitating a massive environmental cleanup,[2] and requiring a six-month construction hiatus during which GER performed a "root cause" analysis concluding that ***68 of the 72*** GER blades installed at the Project (nearly all manufactured by GER in Gaspé, Canada) were also defective because they were inadequately bonded together. (Møller Decl. ¶ 5; Iglesias Decl. ¶ 12.) The original blades were so poorly made that they were beyond repair. Indeed, the federal government required GER to remove ***all*** of the blades and to replace all Gaspé blades with others manufactured at a different facility in Cherbourg, France. (Iglesias Decl. Ex. 1.)

[2] Nick Stoico, *Southern Nantucket beaches closed, Vineyard Wind shuts down over turbine damage*, The Boston Globe (Jul. 16, 2024), https://www.bostonglobe.com/2024/07/16/metro/wind-turbine-damage-nantucket-beaches/.

The process of removing and replacing the blades took the Project backward, putting it nearly two years behind schedule. (Møller Decl. ¶ 5.) GER has admitted full responsibility for its poor manufacturing and nonexistent quality assurance. Scott Strazik, the CEO of GER's parent company, GE Vernova, Inc. ("GE Vernova"), acknowledged immediately after the blade failure that, "we have identified a material deviation, or a manufacturing deviation, in one of our factories that through the inspection or quality assurance process, we should have identified. Because of that, we're going to use our existing data and reinspect all of the blades that we have made for Offshore wind and for context in this factory in Gaspé, Canada where the material deviation existed."[3] After that review, GE Vernova fired more than 40 employees at the Gaspé factory,[4] and the Gaspé press reported that GE Vernova's own investigation revealed that employees had been instructed to falsify data from the critical quality assurance process.[5]

GER's admittedly poor performance has caused catastrophic delays and financial harm to the Project, giving rise to substantial claims by VW against GER under the TSA, including $394 million in delay liquidated damages, the full contractual amount.

The TSA sets forth a process for claims to be brought by the parties during the construction of the Project, which are heard and "determined" by a Project Engineer (the "Engineer") appointed by the Project under the TSA to impartially resolve claims by both VW and GER. (TSA Sub-Clause 3.5 (Møller Decl. Ex. 1.)) When claims are "determined" by the

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[3] GE Vernova, Q2 2024 GE Vernova Inc Earnings Call Edited Transcript, https://www.gevernova.com/sites/default/files/2025-04/gev_webcast_transcript_07242024.pdf.

[4] *See* Andrew Lee, *GE Vernova confirms staff were fired after Vineyard Wind blade factory probe*, Recharge (Nov. 19, 2024), https://www.rechargenews.com/wind/ge-vernova-confirms-staff-were-fired-after-vineyard-wind-blade-factory-probe/2-1-1741254.

[5] *See, e.g.*, Toby Germain, *Falsification possible de données chez LM Wind Power*, Radio Gaspésie (Oct. 24, 2024), https://www.radiogaspesie.ca/nouvelles/actualite/falsification-possible-de-donnees-chez-lm-wind-power/.

Engineer in VW's favor, the TSA allows VW to "with[o]ld" those "determined" amounts from "***payments that would otherwise be due to the Contractor***," including amounts under Milestone Payment Certificates. (TSA Sub-Clause 2.4.8 (Møller Decl. Ex. 1.)) To date, the Engineer has determined approximately $853 million in claims in favor of VW, nearly all of them resulting from the GER blade defects. (Iglesias Decl. ¶ 18; Exs. 2–10.)

For more than a year, VW has exercised this setoff right, withholding approximately $308 million of the Engineer-determined amounts in favor of VW to setoff "payments that would otherwise have been due" to GER under Payment Certificates. (TSA Sub-Clause 2.4.8 (Møller Decl. Ex. 1)); (Iglesias Decl. ¶ 24; App'x 1.)

Amount of Unpaid GER Payment Certificates	**Amount of VW Withholdings**
$308,051,124	$308,051,124

Even after application of these setoffs, ***GER continues to owe VW approximately $545 million***, between Engineer-determined amounts and other amounts GER agreed to but has not paid. (Iglesias Decl. ¶ 26.) That is precisely how the TSA was designed to work.

Disregarding VW's setoff rights under Sub-Clause 2.4.8, and the fact that ***GER owes VW vastly more than VW owes GER***, GER has issued a Notice of Termination under TSA Sub-Clause 16.2.1(b) on the grounds that it has not "receive[d] the amount due under a Payment Certificate" based on Payment Certificates that were satisfied by withholding rights VW exercised under Sub-Clause 2.4.8. (Iglesias Decl. Ex. 17 at 1; TSA Sub-Clause 2.4.8 (Møller Decl. Ex. 1.))

VW meets this Court's standard for preliminarily enjoining GER's invalid termination.

Likelihood of Success. VW is overwhelmingly likely to succeed on the merits of its challenge to GER's termination. The issue for the Court is simple and straightforward. Sub-Clause 16.2.1(b) allows GER to terminate if:

> the Contractor does not receive the ***amount due*** under a Payment Certificate within thirty (30) days after the Due Date for Payment (except for when the Employer is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6) and the amount due is in excess of the sum equivalent to five per cent (5%) of the Contract Price;

(TSA Sub-Clause 16.2.1(b) (Møller Decl. Ex. 1.))

According to GER, the withholdings allowed by Sub-Clause 2.4.8 are not counted to reduce the "***amount due***" under Sub-Clause 16.2.1(b). This position is contrary to black-letter law,[6] which makes clear that valid setoffs by a contractual party reduce the "amount due" to the counterparty as a matter of law.[7] As a result, there are presently no "amounts due under a Payment Certificate" to GER as a function of the setoffs VW has properly exercised under Sub-Clause 2.4.8, negating GER's claimed right to termination.

Irreparable Harm. VW will face imminent and potentially fatal irreparable harm in the absence of an injunction. As multiple courts have held in the last four months alone, contractors for offshore wind farms are irreplaceable and their threatened loss constitutes irreparable harm. As detailed in the Møller Declaration, those harms are particularly acute here. GER's WTGs, the most important part of the Project, require substantial work, and will require regular specialized

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[6] Both Contracts are governed by New York law. (TSA Sub-Clause 1.4.1 (Møller Decl. Ex. 1); SMA Sub-Clause 2.2.1 (Møller Decl. Ex. 2.))

[7] *See e.g.*, *Citizens Bank of Maryland v. Strumpf*, 516 U.S. 16, 18 (1995) ("The right of setoff (also called 'offset') allows entities that owe each other money to apply their mutual debts against each other, thereby avoiding 'the absurdity of making A pay B when B owes A.'"); *Norwalk Cove Marina, Inc. v. S/V ODYSSEUS*, 64 F. App'x 319, 321 (2d Cir. 2003) ("By definition, a setoff is a reduction from an amount otherwise owed.").

maintenance for the entirety of their time in operation. The need for the designer, manufacturer, and installer of those WTGs to be in place to service them is at the very heart of the success of the Project. No other contractor can replace GER, and permitting it to terminate the Contracts would imperil—and potentially destroy—VW's ability to complete and operate the Project and leave the wind farm unfinished. (Møller Decl. ¶¶ 25–37.)

Balance of the Equities. Injunctive relief is necessary to prevent these harms because, as multiple courts have found and GER itself has asserted in other litigation, there is an overwhelming public interest in the success of this Project, which easily tips the balance of the equities strongly in favor of an injunction. GER can point to no countervailing harm from finishing the work it contracted to do while this dispute is resolved. In fact, GER agreed under the TSA to continue to perform during any dispute resolution process—an agreement that survives termination in any case. (TSA Sub-Clause 20.9.1(b) (Møller Decl. Ex. 1.))

VW respectfully requests that this Court enjoin GER's invalid termination.

BACKGROUND

On June 4, 2021, VW entered into the TSA with GER, by which GER agreed to "design, manufacture, supply, install[], commission[], and test[]" the WTGs for the VW Project at a Contract Price of more than $1.3 billion. (Møller Decl. ¶ 17.) On the same day, and as an integral part of the commercial arrangement, the parties entered into the SMA, by which GER agreed to maintain and service the WTGs for the first five years of operation of the Project, and guaranteed that the WTGs will operate at 97% of production availability. (Møller Decl. ¶¶ 6, 22-23.) This guarantee is a central component of the commercial viability of the VW Project. (Møller Decl. ¶ 6.)

At present, all the WTGs on the project have been installed. (Møller Decl. ¶ 5.) However, the WTGs are not yet fully operational and are able to produce power only at levels well below those intended under the Contracts fundamental to the project's commitment to Massachusetts. (Møller Decl. ¶ 5.) To achieve full commercial operations, the Project requires repair, commissioning, and maintenance of GER's 62 proprietary WTGs and their component parts, work that only GER knows how to perform. (Møller Decl. ¶¶ 27–28.) GER's obligations under the TSA will not be complete until all 62 WTGs operate in accordance with the performance standards dictated in the TSA, and even then, GER retains certain continuing obligations under the TSA and must address any future defects discovered on the WTGs.

Pursuant to the TSA, GER is required to execute its performance pursuant to a set schedule of Project Milestones. (Iglesias Decl. ¶ 22.) When a Project Milestone is met, GER can apply to the Engineer for a Payment Certificate, and if the Engineer determines that the Milestone has been met, the Engineer will issue a Payment Certificate for the amount earned. (TSA Sub-Clauses 14.3–14.5 (Møller Decl. Ex. 1.))

Prior to the July 2024 blade failure, GER invoiced VW for Engineer-granted Payment Certificates and other amounts under the TSA in a total amount of approximately $660 million, which was timely paid by VW.[8] (Iglesias Decl. ¶ 23.) Following the July 2024 blade failure, GER has invoiced VW for approximately $308 million, timely satisfied by VW's withholding of amounts owed to VW by GER in Engineer determined claims pursuant to Sub-Clause 2.4.8. (Iglesias Decl. ¶ 23.) VW's claims and withholdings have strictly followed the TSA.

[8] The Engineer subsequently issued a determination that GER had wrongfully procured Payment Certificates by falsely claiming that applicable Payment Milestones were met, ordering VW to be refunded a total of $185,438,534, and directing GER to reapply for new Payment Certificates when these Payment Milestones were, in fact, achieved. (Iglesias Decl. ¶ 23; Ex. 4.)

The Parties are required to give effect to each of the Engineer's "determinations unless and until revised under Clause 20 [Claims, Disputes and Arbitration]," the TSA's dispute resolution provision. (TSA Sub-Clause 3.5.2 (Møller Decl. Ex. 1.)) GER has never noticed a dispute under Clause 20 challenging ***any*** of the Engineer determinations of VW's claims. (Iglesias Decl. ¶ 19.) Importantly, even if GER had disputed the Engineer determinations—which it has chosen not to do—the TSA is clear that "Performance of the Works under the Contract shall continue during any dispute resolution process referred to in Sub-Clauses 20.3 [Negotiation of Relevant Disputes] to 20.8 [Injunctive or declaratory relief]." (TSA Sub-Clause 20.9.1 (Møller Decl. Ex. 1.)) The purpose of this provision, along with Sub-Clause 3.5.2, is to ensure that disputes between the parties do not jeopardize project completion, which the parties agreed to prioritize above any disputes between them until after the Project is complete.

ARGUMENT

Where, as here, the plaintiff has shown that it will suffer "immediate and irreparable injury, loss, or damage" absent issuance of an order, a temporary restraining order should be entered. Mass. R. Civ. P. 65(a). In addition, a preliminary injunction is justified where the plaintiff shows: "(1) a likelihood of success on the merits; (2) that irreparable harm will result from denial of the injunction; and (3) that, in light of the moving party's likelihood of success on the merits, the risk of irreparable harm to the moving party outweighs the potential harm to the nonmoving party in granting the injunction." *Loyal Ord. of Moose, Inc., Yarmouth Lodge #2270 v. Bd. of Health of Yarmouth*, 439 Mass. 597, 601 (2003). Each factor heavily favors VW.

I. VW Is Likely to Succeed on the Merits of its Claims

VW is likely to succeed on its claim that GER's purported termination under Sub-Clause 16.2.1(b) of the TSA is invalid. Sub-Clause 16.2.1(b) permits termination only when GER:

> does not receive the ***amount due*** under a Payment Certificate within thirty (30) days after the Due Date for Payment (except for when the Employer is entitled to undisputed amounts in accordance with Sub-Clause 2.4.6) and the amount due is in excess of the sum equivalent to five per cent (5%) of the Contract Price.

According to GER, more than $271 million in Payment Certificates remains "due," which exceeds 5% of the Contract Price (approximately $66 million), and thus, GER argues that it may terminate even though VW has properly satisfied those Payment Certificates through valid withholdings under Sub-Clause 2.4.8. The defects in GER's reading are legion.

A. VW Has Not Failed to Pay Amounts Due in Excess of 5% of the Contract Price.

i. No Amount is "Due" to GER Because VW Has Validly Withheld Amounts Owed By GER

GER's termination rests entirely on the legally and logically flawed argument that amounts are "due" to GER. In fact, the opposite is true, and VW has discharged any payment obligations ***to*** GER by withholding amounts the Engineer has determined are owed ***by*** GER.

To date, the Engineer has issued determinations that VW is entitled to more than $813 million in payments from GER pursuant to Sub-Clause 3.5.1. (Iglesias Decl. ¶¶ 16–18.) VW has accordingly issued an invoice for each Engineer determined amount, which is to "be paid within thirty (30) days." (TSA Sub-Clause 2.4.8 (Møller Decl. Ex. 1); Iglesias Decl. ¶¶ 20–21.) To date, GER has not disputed any of the Engineer determinations under Clause 20, as the TSA contemplates if GER disagrees, and has not paid any of the invoices. Of the $853 million determined by the Engineer, VW has exercised its right under Sub-Clause 2.4.8 to withhold approximately $308 million from amounts "otherwise due" to GER under Payment Certificates, and thereby reduce to zero the amounts that VW owes to GER.[9] (Iglesias Decl. ¶ 24.)

[9] GER also claims that VW has improperly offset amounts that the Engineer refunded on the basis that GER falsely represented that the applicable Payment Milestones were met, arguing that

The bargained-for terms of the TSA allow VW to reduce the amount due under any Payment Certificate by withholding from the payment owed to GER any amounts that GER owes to VW pursuant to an Engineer determination. VW may "with[old] from any payments that would ***otherwise be due to the Contractor***" any "amount which the Employer is entitled to be paid by the Contractor, as . . . determined by the Engineer in accordance with Sub-Clause 3.5." (TSA Sub-Clause 2.4.8 (Møller Decl. Ex. 1.)) This withholding right is only granted to VW. GER has no reciprocal right. This dichotomy was expressly negotiated for as an integral part of the commercial terms of the TSA, and GER's attempt to undo it conflicts with the TSA.

First, under the plain language of the TSA, the amount withheld is no longer owed, and thus not "due" to either party. By the word's very definition, an amount can be "due" only if it is owed. *See* Due, Black's Law Dictionary (12th ed. 2024) ("due" as "[o]wing or payable; constituting a debt."). The ***purpose*** of a setoff is to reduce the amounts due to both sides. Setoff, Black's Law Dictionary (12th ed. 2024) ("A debtor's right to reduce the amount of a debt by any sum the creditor owes the debtor; the counterbalancing sum owed by the creditor."); *see also Citizens Bank of Maryland v. Strumpf*, 516 U.S. 16, 18 (1995) ("The right of setoff (also called 'offset') allows entities that owe each other money to apply their mutual debts against each other, thereby avoiding 'the absurdity of making A pay B when B owes A.'"); *Consumer Prot. Restoration, LLC v. Hickory House Tenants Corp.*, 236 A.D.3d 744, 748 (2d Dep't 2025)

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those Milestones have since been achieved. GER overlooks that the Engineer invalidated those Payment Certificates. Consistent with Sub-Clause 14.3, the Engineer made clear in the determination that if GER believes it has achieved those milestones, it should reapply for new Payment Certificates. It has not yet done so, and no amounts are "due" to GER until Payment Certificates are, in fact, issued, and GER then issues "a proper and valid invoice for the sum stated as being due for payment on the Payment Certificate." (*See* TSA Sub-Clause 14.3 (Møller Decl. Ex. 1.))

("There was no amount due since the award on the unjust enrichment cause of action was used as a setoff reducing Hickory House's damages.").

Second, if there were any doubt about the effect of a withholding under Sub-Clause 2.4.8 to reduce the amounts "due" under the TSA, it would be eliminated by that clause's direction that VW may withhold Engineer determined amounts owed to VW from amounts that "would *otherwise be due* to" GER. Courts in New York and beyond have made clear that the phrase "otherwise due" refers to amounts that would have been due, but are *no longer due* on account of a reduction in the amount, discharging any payment obligation. *Sorenson v. Sec'y of Treasury of U.S.*, 475 U.S. 851, 857 (1986) (statute that allowed the Treasury Secretary to withhold refunds "otherwise due" to a taxpayer discharged both the amount due by the taxpayer for income tax obligations and the IRS's obligation to pay the refund to the taxpayer); *see also Ameritel Mobile LLC v. Wireless Connection*, 977 N.Y.S.2d 665 (Table), 2013 WL 5411705 at*4, 8 (N.Y. Sup. Ct. 2013) (enforcing a clause that permitted party to withhold "any amounts otherwise due" to discharge amount due from the counterparty); *Salazar v. King*, 822 F.3d 61, 67 (2d Cir. 2016) ("Imposing an offset allows an administrative agency to withhold government funds otherwise due to an individual . . . to pay an outstanding debt owed to the government" thus discharging part of the mutual debt.).

The principle is neither complicated nor controversial: "By definition, a setoff is a reduction from an amount otherwise owed." *Norwalk Cove Marina, Inc. v. S/V ODYSSEUS*, 64 F. App'x 319, 321 (2d Cir. 2003).

ii. GER's Attempt to Limit Offsets to Amounts Under Sub-Clause 2.4.6 is Contrary to the TSA's Plain Language and Nonsensical

Apparently recognizing the weakness of its argument, GER relies on a nonsensical reading of the TSA. GER takes an express exemption in Sub-Clause 16.2.1(b), which prevents

GER from terminating the TSA when VW is "entitled to undisputed amounts in accordance with Sub-Clause 2.4.6," and twists it to mean something it does not say—that ***only*** amounts withheld under Sub-Clause 2.4.6 reduce the "amount due" to GER for purposes assessing GER's right to terminate the TSA. That argument is atextual and contrary to New York law.

First, nothing in the parenthetical limits VW's withholding rights. It does not mention setoffs or withholdings at all. The right of setoff and withholding appears in both Sub-Clause 2.4.6 (for undisputed amounts) and Sub-Clause 2.4.8 (for other amounts determined by the Engineer), and in neither provision is there any mention of a cap or limitation on that right. If the parties had intended to cap VW's right to withhold under Sub-Clause 2.4.8, they would have said so expressly, as they did repeatedly elsewhere in the TSA.[10] This Court "should be extremely reluctant to interpret" the TSA "as impliedly stating something which the parties have neglected to specifically include." *Vt. Teddy Bear Co. v. 538 Madison Realty Co.*, 1 N.Y.3d 470, 475 (2004). Nor does the parenthetical address how the "amounts due" in Sub-Clause 16.2.1(b) should be calculated. "[C]ourts may not by construction add or excise terms, nor distort the meaning of those used and thereby make a new contract for the parties under the guise of interpreting the writing." *Reiss v. Financial Performance Corp.,* 97 N.Y.2d 195, 199 (2001).

Second, the parenthetical addresses a separate circumstance where VW is "entitled to undisputed amounts" under Sub-Clause 2.4.6, in which case GER is prevented from terminating. The parenthetical cannot be referring to a withholding right, because if amounts had already been

[10] *See, e.g.*, TSA Sub-Clause 5.8.3 (certain Contractor indemnification obligations "[s]ubject to a cap of five (5%) per cent of the Contract Price"); TSA Sub-Clause 5.12.1(e) (certain Contractor compensation obligations subject "to a cap of three point five per cent (3.5%) of the Contract Price"); TSA Sub-Clause 8.7.3 (Delay LDs subject to "thirty per cent (30%) maximum aggregate cap"); TSA Sub-Clause 12.4.4 (setting cap at "thirty per cent (30%) of the Contract Price"); TSA Sub-Clause 17.6.3 (setting cap at "one hundred and fifty per cent (150%) of the Contract Price").

invoiced and withheld, VW would not remain "entitled" to any amounts. Instead, the parenthetical refers to the second half of Sub-Clause 2.4.6, which grants VW the alternative right to immediately "claim[]" undisputed amounts "as a debt for which payment ***will be due***" within 14 days of a ***future*** Engineer determination. In that circumstance (which cannot arise under Sub-Clause 2.4.8), VW would be "entitled to undisputed amounts" under Sub-Clause 16.2.1(b). The parenthetical certainly does not limit *sub silentio* VW's right to withhold under Sub-Clause 2.4.8.

Third, GER's reading gives multiple, conflicting meanings to the word "due" in different provisions in the TSA. Sub-Clause 2.4.8 unambiguously states that a withholding under that provision against an amount "that would otherwise be due" to GER will reduce "an amount due and payable under the Contract." In turn, that withholding discharges VW's obligations under Clause 14 [Contract Price and Payment] to pay to GER a "valid invoice for the sum stated as being due for payment on the Payment Certificate." (TSA Sub-Clause 14.5.1 (Møller Decl. Ex. 1.)) To find otherwise would give the withholding right under Sub-Clause 2.4.8 no purpose. GER's position that "amount due" means something different under Sub-Clause 16.2.1(b) would create an absurd result contrary to basic tenets of contract interpretation. The same word, used in multiple places in a contract, generally means the same thing. *See Giray v. Ulukaya*, 212 A.D.3d 439, 440 (1st Dep't 2023).

Finally, if there were any doubt or ambiguity as to whether Sub-Clause 16.2.1(b) *sub silentio* caps VW's withholding right, the ambiguity must be resolved in favor of VW. First, "[a] limitation of remedies will not be implied and to be enforceable must be clearly, explicitly and unambiguously expressed in a contract." *Lundy Dev. & Prop Mgmt., LLC v. COR Real Prop. Co.*, LLC, 181 A.D.3d 1180, 1181 (4th Dep't 2020). Second, New York law requires that termination provisions be strictly construed. *See A.S. Rampell, Inc. v. Hyster Co.*, 3 N.Y.2d 369,

382 (1957). In addition, because the existence of a due and unpaid amount in excess of 5% of the contract price is a condition precedent to the termination right of Sub-Clause 16.2.1(b), that term must also be strictly construed. *See Oppenheimer & Co. v. Oppenheim, Appel, Dixon & Co.*, 86 N.Y.2d 685, 692 (1995). These foundational canons of contract interpretation foreclose any reading of Sub-Clause 16.2.1(b) that would allow GER to terminate based on VW's exercise of unambiguous setoff rights.

II. Absent a Temporary Restraining Order and Preliminary Injunction, VW Will Suffer Immediate and Irreparable Harm

A temporary restraining order and preliminary injunction are warranted to prevent VW from suffering "a loss of rights that cannot be vindicated should it prevail after a full hearing on the merits." *Packaging Indus. Grp., Inc. v. Cheney*, 380 Mass. 609, 616 (1980). VW's risk of being deprived of its rights is particularly weighty because of its substantial likelihood of success on the merits of its breach of contract claim. *See, e.g., Int'l Ass'n of Firefighters, Loc. 3188 v. Town of Lakeville*, 2006 WL 4164780, at *2 (Mass. Super. Ct., Dec. 21, 2006). Allowing GER to improperly terminate the Contracts would cause at least three forms of irreparable harm to VW—each of which courts have recognized merits injunctive relief.

First, GER's improper termination would deprive VW of GER's unique services that cannot be replaced by any other contractor. The Project's 62 WTGs were designed and manufactured by GER, on its proprietary platform, and are larger, more complex, and have greater generation capacity than perhaps any WTG previously manufactured. (Møller Decl. ¶¶ 5, 13–16, 28–34.) The WTGs are in place at only one other wind farm (itself currently under construction) and have never been deployed, operated, or repaired by any other supplier. (Møller Decl. ¶¶ 5, 13–16, 28–34.) Most, if not all, troubleshooting, optimization, and repair work on the WTGs requires GER's propriety software and specialized tools and components that are not

available from any other vendor. (Møller Decl. ¶¶ 5, 13–16, 28–34.) No replacement could replicate GER's tailored expertise and know-how. (Møller Decl. ¶¶ 5, 13–16, 28–34.) In light of those realities, suppliers like GER nearly always handle works involving their own WTGs, and any kind of substitute performance would be novel within the offshore wind industry. That is precisely why VW insisted on—and GER agreed to—an SMA to ensure that the designer, manufacturer, and installer of the WTGs services and maintains them for years afterward. The offshore wind industry is exceptionally small and includes very few companies able to operate at the scale required to complete and facilitate operation of the Project. (Møller Decl. ¶¶ 5, 13–16, 28–34.) The parties foresaw precisely this potential scenario—and GER's irreplaceability—by agreeing to Sub-Clause 20.9.1 requiring GER to continue working during any dispute resolution process or related court proceedings.

Courts have frequently granted injunctive relief to suspend termination by providers of "unique" services or assets that would be difficult or impossible to replace on the open market. *See, e.g.*, *Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*, 102 F.3d 12, 19 (1st Cir. 1996) (affirming preliminary injunction prohibiting termination of agreement for "unique[]" product without "simpl[e] replace[ment]"); *Rex Med. L.P. v. Angiotech Pharms. (US), Inc.*, 754 F. Supp. 2d 616, 622 (S.D.N.Y. 2010) (granting preliminary injunction prohibiting termination of distribution agreement because terminating party was only source of distribution for non-terminating's party product and pause to its distribution to find a new partner would likely cause it to lose customers permanently); *Eastman Kodak Co. v. Collins Ink Corp.*, 821 F. Supp. 2d 582, 588 (W.D.N.Y. 2011) (granting preliminary injunction prohibiting termination of supply contract for product that was "not easily replaceable"). That is the case here.

Second, permitting GER to terminate the Contracts would imperil, if not outright doom, VW's ability to complete and operate the Project. Substantial construction, repair, and commissioning work remains to be completed. There are dozens of significant nonconformities present on the WTGs, which currently face substantial operational issues curtailing performance without clear cause that GER must investigate and repair. (Møller Decl. ¶ 28.) Moreover, the commissioning phase of construction—which involves confirming the integration of components and ensuring reliability for their connection to the grid—requires a specialized vessel with a limited contract term; if GER were permitted to walk away, that vessel could leave the site with no guarantee of return or replacement. (Møller Decl. ¶ 35.) With all this work unfinished, VW would be unable to generate the electric power for which it was designed and is required to sustain its financing viability during the operational phase. (Møller Decl. ¶ 27.)

Under analogous circumstances, multiple courts in just the last several months have concluded that similar existential threats to completing wind farm projects (including VW itself) constitute irreparable harm and warrant immediate injunctive relief. In January, for example, Judge Brian E. Murphy of the District of Massachusetts determined that, unless stayed, a federal government stop work order would impose millions of dollars in daily losses on VW, and cause it to "lose access to" critical and irreplaceable vendors. Transcript of Hr'g at 53–54, *Vineyard Wind 1, LLC v. U.S. Dep't of the Interior*, No. 26-10156-BEM (D. Mass. Jan. 27, 2026) ("*Vineyard Wind* Tr."). Another court found that a different offshore wind farm would be "irreparably harmed absent a stay" if a "a specialized ship necessary to complete the project will no longer be available," making it "impossible for [wind farm] to deliver energy under its power purchase agreements" in accordance with contractual deadlines. Transcript of Prelim. Inj. Hr'g at 45, *Revolution Wind, LLC v. Burgum*, 1:25-cv-02999-RCL (D.D.C. Jan. 12, 2026)

("*Revolution Wind* Tr."); *see also* Transcript of Oral R'ling at 10, *Empire Leaseholder, LLC v. Burgum*, No. 1:26-004 (D.D.C. Jan. 15, 2026) (same) ("*Empire Leaseholder* Tr.").

Third, VW's inability to complete or operate the wind farm in a commercially viable manner without GER would imperil the Project's financing and threaten the collapse of the Project altogether. A loss which "threaten[s] the very existence of [VW's] business" warrants an injunction. *See, e.g.*, *Hull Mun. Lighting Plant v. Mass. Mun. Wholesale Elec. Co.*, 399 Mass. 640, 643 (1987) (affirming entry of preliminary injunction based on "economic loss" so extensive as to "threaten[] the very existence of [movant's] business."); *see also NACM-New England, Inc. v. Nat'l Ass'n of Credit Mgmt.*, 927 F.3d 1, 5 (1st Cir. 2019) (same). Among other things, the Project is financed in substantial part through a construction loan of approximately $2 billion provided by 27 banks, convertible at the end of July 2026 to a term loan to be serviced and repaid through future Project revenue streams. The SMA provides significant protection for those revenues: it obligates GER to compensate VW under a yield warranty for revenue shortfalls during the SMA's initial five-year term. (Møller Decl. ¶¶ 22–23.) Absent guarantees that Project construction and repair work will be fully completed under the TSA and that maintenance services and yield warranty protection will be available under the SMA to allow the Project to operate and generate revenue thereafter, the Project's financing parties will have the ability to declare an event of default, accelerate repayment of the Project's construction loan, and foreclose on the Project. Such an event would threaten the financial viability of the entire Project and, consequently, its ability to survive. (Møller Decl. ¶¶ 7, 36–37.) As courts have once again recognized in just the last few months, the significant risk of a wind farm's financial failure constitutes cognizable irreparable harm. *See, e.g.*, *Vineyard Wind* Tr. at 54 (Project would "risk[] defaulting on approximately $2 billion in loans," calling into question its "financial

viability"); *Revolution Wind* Tr. at 45 ("[T]he entire enterprise could collapse"); *see also Empire Leaseholder* Tr. at 10 (loss of access to necessary vessels "will not just cause substantial financial loss, but it will threaten [the project's] entire existence").

III. The Balance of the Equities and Public Interest Weigh in Favor of Granting Injunctive Relief

As multiple courts have found and GER has conceded, the overwhelming public interest in VW's operations favors an injunction.

GER's improper termination threatens to deprive hundreds of thousands of Massachusetts ratepayers of clean energy, imperils $3.7 billion in energy-related cost savings, and hundreds of jobs. (Møller Decl. ¶¶ 10, 38, 40.) Two federal courts have recognized the overriding public interest in the development of Vineyard Wind, both to achieve the Commonwealth's goal of clean energy and through the jobs and other benefits to communities that the Project offers. *See Vineyard Wind* Tr. at 56 ("Vineyard Wind and the amici have provided evidence that the public stands to benefit . . . from this project's completion, including as a result of economic investment, jobs and the availability of new energy."); *Seafreeze Shoreside, Inc. v. U.S. Dep't of Interior*, No. 1:22-CV-11091-IT, 2023 WL 3660689, at *8 (D. Mass. May 25, 2023) (holding that public interest weighed in favor of continued construction and against enjoining construction because of the "public interest in promoting renewable energy initiatives for the public's benefit"). GER itself has fought injunctive relief on the back of these same strong public interests in the Project. *See* Br. of Gen. Elec. Co. at 13–14, *Siemens Gamesa Renewable Energy A/S v. Gen. Elec. Co.*, 2022 WL 20273674 (D. Mass. July 26, 2022) ("Disruption or delay of offshore wind projects would also frustrate the public's interest in the new jobs associated with these projects [and] increas[e] the price of clean power.").

On the other hand, GER will suffer no cognizable harm by being ordered to continue performing as it had already promised. GER now seeks to terminate the Contracts and abide by "its obligations that survive termination." (Iglesias Decl. Ex. 17 at 1.) These obligations include GER's obligation to continue to perform during any formal dispute, such as this litigation. Under Sub-Clause 20.9.1 of the TSA—which expressly survives termination—"[p]erformance of the Works under the Contract shall continue during any dispute resolution process." Such a clause, as several courts have recognized, represents a decision by the parties that the cessation of performance before adjudication of a dispute would render such adjudication meaningless. *Project Orange Assocs., LLC v. Gen. Elec. Int'l, Inc.*, 872 N.Y.S.2d 857, 862 (N.Y. Sup. Ct. 2009); *see also Steward Health Care Sys., LLC v. Aya Healthcare, Inc.*, 2021 WL 2460509, at *2–*3 (Mass. Super. Ct. Mar. 8, 2021) (noting that a party that has stopped performing under a contract is likely to have breached where "both sides [agreed] to carry out their contractual obligations while working to resolve billing disputes."). Having promised to continue to perform, GER cannot now assert that it would be harmed by being held to that promise.[11] Regardless, any work completed by GER will be fully compensated, either through payments owed or the reduction in amounts due to VW under Sub-Clause 2.4.8. If GER seeks to contest Engineer determinations, its recourse is to follow the bargained-for dispute resolution process set forth in Clause 20. (TSA Clause 20 (Møller Decl. Ex. 1.)) In short, an injunction here would not

[11] GER has performed for nearly a year under the circumstances it claims allow it to terminate. GER (wrongly) claims that it is due more than 5% of the Contract Price because VW's withholdings under Sub-Clause 2.4.8 do not reduce the "amount due" under Sub-Clause 16.2.1(b). (Iglesias Decl. ¶ 28.) But by that logic, GER has had the purported "right" to terminate the contract for more than eight months. The fact that GER has not done so until now significantly undermines the bona fides of the Termination Notice.

harm GER, and instead would preserve the status quo and the parties' agreement to prioritize the completion of the Project.

IV. No Security Should Be Required

The Court should issue the requested preliminary injunction without requiring any bond or other security. Rule 65(c) empowers this Court to exercise its discretion not to require any security and instructs that any security required should be tied to the "costs and damages" that would accrue if the defendant is "wrongly enjoined." *Petricca Constr. Co. v. Commonwealth*, 37 Mass. App. Ct. 392, 400–01 (1994), Mass. R. Civ. P. 65(c). GER will incur no such costs or damages from continued performance. It had already promised to continue performance during the resolution of any dispute, and, in any case, it will be compensated for its continued performance according to the letter of the TSA, with such compensation "secured" by the more than $500 million in unpaid amounts it owes to VW. In circumstances where the enjoined party will continue to be compensated during the pendency of the injunction, Massachusetts courts have routinely concluded that no bond is needed. *See, e.g.*, *A.R.S. Servs., Inc. v. Morse*, 2013 WL 2152181, at *15 (Mass. Super. Ct. Apr. 5, 2013); *Ethicon Endo-Surgery, Inc. v. Pemberton*, 2010 WL 5071848, at *8 (Mass. Super. Ct. Oct. 27, 2010).

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that this Court grants its motion.

Dated: April 8, 2026

Respectfully submitted,

VINEYARD WIND 1, LLC

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CERTIFICATE OF SERVICE

I, Jack W. Pirozzolo, hereby certify that a copy of the foregoing document is being served by e-mail on David Lender, Jennifer Brooks Crozier, Adam Gershenson, Amar Adam, and Audrey Pope, each at Weil, Gotshal & Manges LLP, counsel for GE Renewables US, LLC.

Date: April 8, 2026

/s/ Jack W. Pirozzolo

Jack W. Pirozzolo