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NOTIFY

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss. SUPERIOR COURT
Civil No. 26-1041-BLS1

VINEYARD WIND 1, LLC
Plaintiff

vs.

GE RENEWABLES US LLC
Defendant

MEMORANDUM AND ORDER ON MOTION FOR PRELIMINARY INJUNCTION

After review of the Emergency Motion for Preliminary Injunction and Temporary Restraining Order filed by Vineyard Wind 1, LLC ("VW"), VW's supporting papers, and the substantive opposition papers filed by GE Renewables US LLC ("GER"), and after hearing argument on the motion on April 16, 2026, the motion for a preliminary injunction shall be allowed.

BACKGROUND

VW is the developer of the $4.5 billion wind power generation project off the coast of Martha's Vineyard. GER is VW's largest contractor. GER designed, manufactured, installed and agreed to maintain the project's wind turbine generators ("WTGs"), which were built to GER's proprietary specifications and operate on GER's technology.

The project has experienced considerable delays and is two years behind schedule. Much of this delay has been caused by defects in the massive blades that GER was responsible for manufacturing and installing on the WTGs. The defects, among other things, resulted in the catastrophic failure of one of the blades, which broke off and fell into the ocean; a resulting required environmental cleanup; a halt in construction pending a root cause study to determine

the origin of the failure, including a thorough investigation of the facility in Canada that fabricated the particular turbine blades; and the replacement of virtually all of the already-installed turbine blades with blades fabricated by a different vendor in Europe.

Under § 2.4 of the parties' Turbine Supply Agreement (June 4, 2021) (the "TSA"), disputed claims for compensation by VW must be resolved in the first instance by a project engineer ("the Engineer") authorized to resolve disputes between VW and GER. If the parties do not reach agreement themselves, the Engineer is required to "make a fair and impartial determination in accordance with the Contract, taking due regard of all relevant circumstances." TSA § 3.5.1.

The Engineer has determined that GER is responsible for paying a number of claims by VW totaling more than half a billion dollars. GER has not initiated a challenge to these determinations by the Engineer under Clause 20 (Claims, Disputes and Arbitration) of the TSA, and no process under Clause 20 has revised those determinations by the Engineer. Consequently, under the terms of the TSA, VW is entitled to give effect to the Engineer's determination. As the parties agreed in § 3.5.2 of the TSA, "[e]ach Party shall give effect to each . . . determination [of the Engineer] unless and until revised under Clause 20."

Beginning in the last half of 2024, VW began offsetting amounts that it owed to GER against the amounts the Engineer found GER owed to VW. VW did so under § 2.4.8 of the TSA. That provision states:

> Any amount which [VW] is entitled to be paid by [GER], as . . . determined by the Engineer in accordance with Sub-Clause 3.5 [Determinations], pursuant to this Contract shall either (a) be paid within thirty (30) days after [GER] receives an invoice . . . or (b) may be withheld from any payments that would otherwise be due to [GER] . . . . [VW] shall only be entitled to set off against or make any deduction from an amount due and payable under the Contract.

TSA § 2.4.8 (emphasis added). VW has now withheld approximately $300 million from GER as set off for amounts the Engineer has determined GER owes to VW.

Despite the facts that (i) this setoff process has been going on since September 2024, (ii) the Engineer has found that GER owes VW far more than VW has withheld as an offset, and (iii) GER has not meaningfully or promptly pursued a remedy under Clause 20, on February 27, 2026, GER sent VW a letter providing "notice of termination of the TSA effective April 28, 2026" ("the Termination Notice").[1] GER purports to terminate the contract under § 16.2.1(b) of the TSA. Section 16.2.1 states in relevant part:

> [GER] shall . . . be entitled to terminate the Contract if . . . (b) [GER] does not receive the amount due under a Payment Certificate within thirty (30) days after the Due Date for Payment (except for when [VW] 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 § 16.2.1 (emphasis added). For its part, VW asserts that there is no "amount due" under § 16.2.1 because it is entitled with withhold those payments. Notably, the amount that VW withheld as an offset against GER's payments first exceeded 5% of GER's $1.3 billion contract price in May 2025 and since then has only continued to grow, but has not come close to exceeding the amount the Engineer has determined that GER owes to VW.

On April 8, 2026, VW filed this action for declaratory and injunctive relief focused on GER's Termination Notice and its unilateral decision to terminate the TSA imminently. Among other things, VW seeks a declaration that GER's Termination Notice is invalid and an injunction barring GER from failing to perform under its contracts on the basis of the Termination Notice.

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[1] Termination of the TSA would, in turn, terminate the parties' related Service Maintenance Agreement (June 4, 2021) (the "SMA"). Both the TSA and SMA are to be construed under the law of the State of New York.

DISCUSSION

To obtain a preliminary injunction, a plaintiff must establish (1) it is likely to succeed on the merits of its claim, (2) it will suffer irreparable harm absent the requested relief, (3) and its harm, without the injunction, outweighs the potential harm to the defendant if the injunction is issued. Packaging Indus. Group, Inc. v. Cheney, 380 Mass. 609, 617 (1980). See also 48 Mass. Practice § 11.26 (4th ed., 2021 supp.).

VW has demonstrated a reasonable likelihood of success on the merits. The TSA gives VW the right to offset amounts otherwise due to GER against sums the Engineer determines GER owes to VW. That is what VW has done. There is nothing in Clause 2 or Clause 16 that limits or sets a cap on the amount of money VW can set off against monies GER owes to VW.[2] As VW argues, because VW was entitled to withhold the payments to GER, it does not appear that there was any "amount due" within the meaning of that phrase in § 16.2.1(b), and no basis to terminate under that provision. In this context, GER's remedy was not to issue a termination notice, but to challenge the Engineer's determination that it owes VW such considerable sums. But at least as of this time, GER has not proceeded down that path.

VW has also demonstrated that it would be irreparably harmed if the injunction does not issue. GER is in a unique position with respect to the VW project. It has unique knowledge and expertise. The project is at a critical phase and the loss of VW's principal contractor would set the project back immeasurably and threaten VW's financing. The work that is required to bring the project into commercial viability is highly dependent on GER's capabilities, personnel and

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[2] Set off is a well-recognized remedy under New York law. See, e.g., Consumer Protect Restoration, LLC v. Hickory House Tenants Corp., 236 A.D.3d 744, 748 (2d Dep't 2025) ("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.") (Emphasis added).

technology. To pretend that VW could go out and hire one or more contractors to finish the installation and troubleshoot and modify GER's proprietary design without GER's specialized knowledge is fanciful.

In contrast, GER would not be irreparably harmed by an injunction. It has been subject to offset by VW since the fall of 2024, but has neither acted sooner, nor has it contested the Engineer's determination under Clause 20. Barring GER from ceasing performance based on the Termination Notice would do nothing but hold GER to its contract obligations.

ORDER

Plaintiff's Emergency Motion for Preliminary Injunction and Temporary Restraining Order (Docket #9) is **ALLOWED** and is hereby **ORDERED** as follows:

1. GE Renewables US LLC ("GER") is enjoined and restrained from giving any effect to the Termination Notice dated February 27, 2026 ("the Termination Notice"), which purports to terminate the parties' Turbine Supply Agreement (June 4, 2021) and, in turn, their Service and Maintenance Agreement (June 4, 2021) (together, the Contracts");

2. GER may not cease or alter performance of its work under the Contracts as a result of, or in connection with, the grounds cited in the Termination Notice; and

3. VW will not be required to post a bond or other security in connection with this Order.

Dated: April 17, 2026

Peter B. Krupp
Justice of the Superior Court