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February 12, 2019  
VIA ELECTRONIC MAIL

The Honorable Neil Chatterjee, Chairman  
The Honorable Cheryl LaFleur, Commissioner  
The Honorable Richard Glick, Commissioner  
The Honorable Bernard McNamee, Commissioner

Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, D.C. 20426

Dear Chairman Chatterjee, and Commissioners McNamee, LaFleur and Glick,

The Office of the Attorney General of the Commonwealth of Massachusetts (“MassAGO”) respectfully submits this letter concerning the Federal Energy Regulatory Commission’s (“Commission”) failure to act on Vineyard Wind LLC’s (“Vineyard Wind”) request for a waiver allowing it to participate in the Independent System Operator for New England Inc.’s (“ISO-NE”) Thirteenth Forward Capacity Auction (“FCA 13”) as a Renewable Technology Resource (“RTR”).<sup>1</sup> The Commission’s inaction will cost New England customers tens of millions of dollars and hinder our state’s ability to promote our clean energy policies.

As the Commonwealth’s Ratepayer Advocate, the MassAGO is authorized by statute to represent the interests of Massachusetts customers before state and federal courts, and before the Commission.<sup>2</sup> Because the Commission failed to act, Vineyard Wind was ineligible to qualify for FCA 13 under the RTR exemption. As a result, forward capacity prices increased, costing New England customers tens of millions of dollars. The Commission’s failure to act also introduced unnecessary uncertainty in the market for new renewable resources which could negatively affect the results of future state renewable procurements. It also directly harmed the first offshore wind facility selected for a long-term contract under the Massachusetts off-shore wind procurement process.

Under the Federal Power Act states are the entities primarily responsible for shaping the electric generation mix.<sup>3</sup> In Massachusetts, we are committed to moving towards a more diverse and

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<sup>1</sup> *Vineyard Wind LLC*, Docket. No. ER19-570.

<sup>2</sup> Massachusetts General Law, c. 12 § 10; *Feeney v. Commonwealth*, 373 Mass. 359, 366 N.E.2d 1262, 1266 (1977); *Secretary of Administration and Finance v. Attorney General*, 367 Mass. 154, 163, 326 N.E.2d 344, 348 (1977); Massachusetts General Law, c. 12, § 11E.

<sup>3</sup> 16 U.S.C. § 824(b) (2012); *Hughes v. Talen Energy Mktg., LLC*, 136 S. Ct. 1288, 1292 (2016); *see also Pacific Gas & Elec. Co. v. State Energy Resources Conservation & Development Comm’n*, 461 U.S. 190, 205 (1983)

cleaner energy portfolio. Our Clean Energy and Climate Plan for 2020 calls for an increase in clean energy and we have passed laws to procure this clean energy, including a large amount of offshore wind.<sup>4</sup> Offshore wind facilities offer New England a non-fossil fuel approach to help address regional energy concerns, including winter fuel security. Indeed, a recent ISO-NE report shows that offshore wind could decrease energy prices and contribute to fuel security in the region by reducing generators' need to burn onsite oil and liquefied natural gas supply during cold winter periods.<sup>5</sup> The Commission's failure to act on a significant matter concerning the region's fuel security and the Commonwealth's state clean energy policies is inconsistent with the Commission's stated objective to address fuel security and the Commonwealth's prerogative to shape our electric generation mix.

In a recent dissent, Commissioner Glick noted that ISO-NE, supported by a majority of the Commission, "has exhibited what can fairly be described as a preference for retaining traditional generation resources rather than exploring other approaches that might more effectively address the ISO's fuel security concerns."<sup>6</sup> The Commission's failure to afford Vineyard Wind RTR status in FCA 13 appears to be another example of Commission action that hinders rather than supports state policies, the entry of new renewable resources, and renewable based approaches to addressing fuel security. The success of the region's competitive markets will ultimately depend on the successful integration of clean and renewable energy resources. The Commission's failure to facilitate this integration will, over time, erode the efficacy and relevance of our markets.

The Commission's inability to act demonstrates, at best, an indifference to the Commonwealth's clean energy policies and the customers who will pay tens of millions of dollars in higher electricity bills. At worst, it betrays a bias and resolve in favor of retaining traditional resources to the detriment of new, renewable resources, regardless of the extra costs to customers. The Commonwealth respectfully requests that the Commission help facilitate our state policy preferences that will lower prices for customers. The MassAGO would like the opportunity to speak with Chairman Chatterjee's staff and will reach out to his office to set up a telephone call.

Sincerely,



Maura Healey

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(recognizing that issues including the "[n]eed for new power facilities, their economic feasibility, and rates and services, are areas that have been characteristically governed by the States").

<sup>4</sup> See *Global Warming Solutions*, G.L. c.21N, c. 30, § 61 (2008), *An Act Relative to Green Communities*, St.2008, c. 169, *An Act to Promote Energy Diversity*, St.2016, c. 188.

<sup>5</sup> Memorandum from ISO-NE (Dec. 17, 2018) available at [https://www.iso-ne.com/static-assets/documents/2018/12/2018\\_iso-ne\\_offshore\\_wind\\_assessment\\_mass\\_cec\\_production\\_estimates\\_12\\_17\\_2018\\_public.pdf](https://www.iso-ne.com/static-assets/documents/2018/12/2018_iso-ne_offshore_wind_assessment_mass_cec_production_estimates_12_17_2018_public.pdf).

<sup>6</sup> *ISO New England Inc. and New England Power Pool Participant Committee*, 166 FERC ¶ 61,061 (2019) (Glick, dissenting), at 2.