



**SECOND AMENDMENT TO POWER PURCHASE AGREEMENT PHASE II, TERMINATION AGREEMENT AND RELEASE**

This SECOND AMENDMENT TO POWER PURCHASE AGREEMENT PHASE II, TERMINATION AGREEMENT AND RELEASE (this “**Amendment and Termination Agreement**”) is made and entered into as of the 28<sup>th</sup> day of August 2023, by and between FITCHBURG GAS AND ELECTRIC LIGHT COMPANY d/b/a UNITIL (“**Buyer**”) and SOUTHCOAST WIND ENERGY LLC f/k/a MAYFLOWER WIND ENERGY LLC (“**Seller**”) and together with Buyer, the “**Parties**” and each a “**Party**”).

**RECITALS**

A. Buyer and Seller are parties to that certain Offshore Wind Generation Unit Power Purchase Agreement for Phase II dated as of January 10, 2020 as amended by the First Amendment to Offshore Wind Generation Unit Power Purchase Agreement Phase II dated as of May 23, 2022 (the “**Agreement**”). Terms not otherwise defined herein have the meanings assigned to such terms in the Agreement.

B. Seller entered into that certain Voluntary Agreement Commitment Agreement dated as of January 10, 2020 for the benefit of Buyer (the “**Voluntary Commitment Agreement**”).

C. Seller has requested that the Agreement and the Voluntary Commitment Agreement be terminated because the Facility is no longer economically financeable with the Agreement in place, as described in Section 10(a) hereof.

D. The Parties have agreed to amend the Agreement to provide for the consensual termination of the Agreement and the Voluntary Commitment Agreement as provided in this Amendment and Termination Agreement.

E. The Parties have further agreed to resolve all open issues related to the Agreement and the Voluntary Commitment Agreement and to terminate the Agreement and the Voluntary Commitment Agreement, as provided in this Amendment and Termination Agreement.

**AGREEMENT**

In consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Amendment of Agreement.** Subject to Sections 3 and 4 hereof, the Agreement is amended as follows:

a. The following defined term is added in the appropriate place in Section 1 of the Agreement:

**“Amendment and Termination Agreement”** shall mean that certain Second Amendment to Power Purchase Agreement Phase II, Termination Agreement and Release dated as of August 28, 2023 between Buyer and Seller.

b. Section 2.2(d) is added to the Agreement, immediately following Section 2.2(c), reading as follows:

(d) Notwithstanding the other provisions of this Section 2.2 and in addition to any other right of either Party to terminate this Agreement as provided herein, this Agreement and the Commitment Agreement shall terminate upon the satisfaction of the “Termination Conditions,” as defined in the Amendment and Termination Agreement, subject to the survival of those provisions of the Agreement expressly stated to survive in the Amendment and Termination Agreement.

2. **Termination of Agreement.** The Agreement and the Voluntary Commitment Agreement will be terminated effective as of the first date (the **“Effective Date”**) on which Buyer has received both the Final DPU Approval and the full Termination Payment, each as defined below (the **“Termination Conditions”**). This Section 2 will be self-executing on the Effective Date, and the Agreement and the Voluntary Commitment Agreement will be terminated on the Effective Date without need for further documentation.

3. **Termination Payment.** In consideration for Buyer’s agreement to terminate the Agreement and the Voluntary Commitment Agreement as provided herein, Seller shall pay Buyer a termination payment in the amount of \$211,200.00 (the **“Termination Payment”**). Such Termination Payment will be due within fifteen (15) Business Days after Buyer has received the Final DPU Approval. If the Termination Payment is not received within fifteen (15) Business Days after the Final DPU Approval, this Amendment and Termination Agreement shall be null and void and the Agreement and the Voluntary Commitment Agreement shall remain in full force and effect, unaffected by this Amendment and Termination Agreement. Seller shall disburse the Termination Payment to Buyer by wire transfer of immediately available funds to an account provided in writing by Buyer within five (5) Business Days after the date hereof.

4. **DPU Approval.** The obligations of the Parties under this Amendment and Termination Agreement are conditioned upon and shall not become effective or binding until receipt by Buyer of approval of this Amendment and Termination Agreement by the Massachusetts Department of Public Utilities (the **“DPU”**), which approval shall be final and not subject to appeal or rehearing and shall be acceptable in form and substance to both Buyer and Seller, each in its sole discretion (**“Final DPU Approval”**). Buyer shall file a request that the DPU grant approval of this Amendment and Termination Agreement, together with an unredacted copy of this Amendment and Termination Agreement, within five (5) Business Days after the date hereof, and such filing shall include a request that the DPU approve this

Amendment and Termination Agreement within thirty (30) days after such filing. Buyer and Seller consent to the filing of this entire Amendment and Termination Agreement with the DPU as a public, non-confidential document.

5. Letter of Credit. Within fifteen (15) Business Days after the Effective Date, Buyer shall return the Letter of Credit of Credit Agricole Corporate and Investment Bank, dated January 10, 2020, No. 935238043 for the account of Seller in favor of Buyer (the “**Letter of Credit**”). The Letter of Credit will be returned by Buyer to the following address:

1301 Avenue of the Americas  
New York, NY 10019

Notwithstanding the foregoing, the failure by Buyer to return the Letter of Credit as provided in this Section 5 shall not affect the termination of the Agreement or the Voluntary Commitment Agreement or any other rights and obligations under this Amendment and Termination Agreement. Buyer shall not draw on the Letter of Credit after the Effective Date.

6. No Outstanding Obligations. The Parties hereby mutually agree and acknowledge that on the Effective Date and upon satisfaction of the Termination Conditions, each Party will have received all payments due from the other Party under the Agreement, and there will be no other outstanding obligations or liabilities under the Agreement or the Voluntary Commitment Agreement, except as provided in Sections 5 and 9 hereof.

7. Mutual Release

(a) Effective upon satisfaction of the Termination Conditions, Buyer releases and discharges absolutely and forever Seller and its present and former parents, subsidiaries, affiliates, divisions, stockholders, members, partners, predecessors, successors, agents, directors, sureties, officers, employees, representatives, attorneys and accountants (collectively, the “**Seller’s Released Parties**,” and each a “**Seller’s Released Party**”), from any and all claims, obligations and liabilities of every kind and nature whatsoever which now exist or heretofore have existed in favor of Buyer against any of the Seller’s Released Parties which relate in any way to the Agreement or the Voluntary Commitment Agreement or which arise out of or have been or could have been asserted with respect to the matters addressed in the Agreement or the Voluntary Commitment Agreement.

(b) Effective upon satisfaction of the Termination Conditions, Seller releases and discharges absolutely and forever Buyer and its present and former parents, subsidiaries, affiliates, divisions, members, managers, stockholders, partners, predecessors, successors, agents, directors, sureties, officers, employees, representatives, attorneys and accountants (collectively, the “**Buyer’s Released Parties**” and each a “**Buyer’s Released Party**”), from any and all claims, obligations and liabilities of every kind whatsoever which now exist or heretofore have existed in favor of Seller against any of the Buyer’s Released Parties which relate in any way to the Agreement or the Voluntary Commitment Agreement or which arise

out of or have been or could have been asserted with respect to the Agreement or the Voluntary Commitment Agreement.

(c) As used in paragraphs (a) and (b), the term “claims, obligations and liabilities” includes, but is not limited to, (i) all claims of any kind, whether known or unknown, anticipated or unanticipated, past or present, contingent or fixed, direct or indirect, secured or unsecured, (ii) all claims for alleged breach of contract, fraud, indemnification, goods or services had and received, or open account, (iii) all claims for breach of the covenant of good faith and fair dealing, interference with contract, interference with prospective business advantage, negligence, or foreclosure, or for any violation of any statute, ordinance, or regulation relating in any way to the Agreement or the Voluntary Commitment Agreement, and (iv) all claims for attorneys’ fees and costs in connection with any of the foregoing.

(d) Notwithstanding paragraphs (a) and (b) above, the releases described herein shall not affect the obligations of Buyer or Seller under this Amendment and Termination Agreement, which obligations shall survive the Effective Date to the extent provided herein.

(e) Each Party hereby covenants, warrants and represents that it will not bring suit, assert, file any action with respect to or in any way pursue against any of the other Party’s Released Parties any claims, demands, causes of action, or matters of any nature described and released herein on and after the Effective Date; and each Party hereby agrees to indemnify and hold harmless the other Party’s Released Parties against any and all liability, cost, judgment, and future costs or expenses (including interest, court costs and attorneys’ fees), resulting from any and all third-party claims, demands, or causes of action, of every nature and kind whatsoever, based upon, connected with, or arising out of the Party’s breach of any covenants, warranties, or representations stated in this Section 7.

(f) Each Party hereby covenants, warrants and represents that it has not assigned, transferred or purported to transfer or assign and it will not assign, transfer or purport to assign or transfer, voluntarily or involuntarily, or by operation of law, any claims, demands, or causes of action described herein, or any portion or part thereof; and each Party hereby agrees to indemnify, defend, and hold harmless the other Party’s Released Parties against any and all liability, cost, judgment, and future costs or expenses (including interest, court costs, and attorneys’ fees), resulting from any and all third-party claims, demands, or causes of action, of every nature and kind whatsoever, based upon, connected with, or arising out of the Party’s breach of any covenants, warranties or representations stated in this paragraph.

(g) This Amendment and Termination Agreement is not intended to be and shall not be construed as an admission by either Party of any liability, including whether an event of default has occurred with respect to either Party.

(h) Each Party acknowledges that it has had the opportunity to be represented by counsel of its choice throughout the negotiations, which preceded the execution of this Amendment and Termination Agreement, and in connection with the preparation and execution of this Amendment and Termination Agreement. Each Party acknowledges that it has executed

this Amendment and Termination Agreement voluntarily, without coercion or duress of any kind, and on the advice of its counsel. Neither Party, nor any person acting on behalf of either Party has made any statement or representation to any other Party regarding any fact relied upon in entering into this Amendment and Termination Agreement, and neither Party relies upon any statement, representation, or promise of the other Party, or any person acting on behalf of the other Party, in executing this Amendment and Termination Agreement, or in making the releases provided for herein, except as expressly stated herein.

(i) Each Party has made such investigation of the facts pertaining to this Amendment and Termination Agreement, and of all matters pertaining hereto, as it deems necessary. Each Party has read this Amendment and Termination Agreement and understands its contents. In executing this Amendment and Termination Agreement, each Party assumes the risk of any misrepresentation, concealment, or mistake. If either Party should subsequently discover that any fact relied upon by it in entering into this Amendment and Termination Agreement was untrue, or that any fact was concealed from it, or that its understanding of the facts below is incorrect, such Party shall not be entitled to any relief in connection therewith, including without limitation on the generality of the foregoing, any alleged right or claim to set aside or rescind this Amendment and Termination Agreement. This Amendment and Termination Agreement is intended to be and is final and binding, regardless of any claims of misrepresentation, concealment of fact, or mistake of law or fact.

(j) Each Party has cooperated in the drafting and preparation of this Amendment and Termination Agreement. Hence, the same shall not be construed against either Party.

8. Disclosure. Notwithstanding the provisions of Article 12 of the Agreement (Confidentiality), each Party may disclose to and discuss with each of the DPU, the Massachusetts Governor's Office, the Massachusetts Executive Office of Energy and Environmental Affairs, the Massachusetts Attorney General's Office, the Massachusetts Department of Energy Resources, the Massachusetts Executive Office of Housing and Economic Development, ISO New England Inc. and the other Massachusetts electric distribution companies, the terms and conditions of this Amendment and Termination Agreement, including any non-public information related thereto, provided that neither Party shall have any obligation to make any such disclosure or have any such discussion. Each Party further ratifies that the provisions of this Section 8 apply equally to all disclosures and discussions occurring prior to, on and after the date hereof.

9. Survival. Except as set forth in Section 8 hereof and notwithstanding the provisions of Sections 6 and 7 hereof, Article 12 of the Agreement (Confidentiality) and Article 13 of the Agreement (Indemnification) shall survive the termination of the Agreement according to the terms thereof.

10. Representations and Warranties.

(a) Seller hereby represents and warrants that it has requested to terminate the Agreement and the Voluntary Commitment Agreement as provided herein due to its conclusion that, as of the date hereof and based on its current projections of construction and operating costs and available financing, the Facility is not economically financeable with the Agreement in place.

(b) Each Party represents and warrants to the other Party that:

(i) It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in those jurisdictions necessary to perform this Amendment and Termination Agreement.

(ii) The execution, delivery and performance of this Amendment and Termination Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms or conditions in its governing documents or any contract to which it is a party or any law, rule, regulation, order, writ, judgment, decree or other legal or regulatory determination applicable to it.

(iii) This Amendment and Termination Agreement constitutes a legal, valid and binding obligation of such Party enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization and other laws affecting creditor's rights generally, and with regard to equitable remedies, to the discretion of the court before which proceedings to obtain same may be pending.

(iv) There are no suits, proceedings, judgments, rulings or orders by or before any court or any governmental authority that materially adversely affect its ability to perform this Amendment and Termination Agreement.

(v) It has not assigned, transferred or granted a lien on or security interest in any of its rights and obligations in, to and under the Agreement or the Voluntary Commitment Agreement.

11. Future Procurements. Nothing herein will modify any provision of any energy procurement by Buyer issued prior to or after the Effective Date or any agreement entered into or to be entered into between the Parties other than the Agreement and the Voluntary Commitment Agreement.

12. Governing Law. This Amendment and Termination Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, without regard to the conflicts of laws rules thereof.

13. Amendment. Neither this Amendment and Termination Agreement nor any provision hereof may be amended, waived, discharged or terminated except by an instrument in

writing signed by the Parties.

14. Counterparts; Facsimile Signatures. This Amendment and Termination Agreement may be executed in any number of counterparts, and upon execution by the Parties, each executed counterpart shall have the same force and effect as an original instrument and as if the Parties had signed the same instrument. Any signature page of this Amendment and Termination Agreement may be detached from any counterpart of this Amendment and Termination Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Amendment and Termination Agreement identical in form hereto but having attached to it one or more signature pages. Facsimile and portable document format (.pdf) signatures on this Amendment and Termination Agreement shall be deemed to be original signatures and shall have the same force and effect as such original signatures.

15. Severability. In the event that any of the terms, covenants or conditions of this Amendment and Termination Agreement, or the application of any such term, covenant or condition, shall be held invalid as to any person or circumstance by any court, regulatory agency, or other regulatory body having jurisdiction, all other terms, covenants or conditions of this Amendment and Termination Agreement and their application shall not be affected thereby, but shall remain in force and effect unless a court, regulatory agency, or other regulatory body holds that the provisions are not separable from all other provisions of this Amendment and Termination Agreement.

16. Third Party Beneficiaries. Except as set forth in Section 7, this Amendment and Termination Agreement shall not be construed to create any rights in, or to grant remedies to, any other third party as a beneficiary of this Amendment and Termination Agreement, the Agreement or the Voluntary Commitment Agreement or of any duty, obligation or undertaking established herein or therein.

17. Headings. The headings contained in this Amendment and Termination Agreement are solely for the convenience of the Parties and should not be used or relied upon in any manner in the construction or interpretation of this Amendment and Termination Agreement.

18. Cooperation. The Parties will make commercially reasonable efforts to cooperate, support, and explain this Amendment and Termination Agreement in connection with the request for approval of this Amendment and Termination Agreement by the DPU or any other investigation of this Amendment and Termination Agreement by any other Massachusetts state agency. Seller will be solely responsible for responding to any inquiry into the representations in Section 10(a) hereof.

*[Signature Page Follows]*

**IN WITNESS WHEREOF**, the Parties have caused this Amendment and Termination Agreement to be executed by their duly authorized representatives as of the date first written above.

**FITCHBURG GAS AND ELECTRIC  
LIGHT COMPANY d/b/a UNITIL**

**As Buyer**

By: 

Name: *Robert S. Furino*

Title: *Vice President*

**SOUTHCOAST WIND ENERGY LLC**

**As Seller**

By: \_\_\_\_\_

Name:

Title:

*[Signature Page to 83CII Phase II Amendment and Termination Agreement]*



**IN WITNESS WHEREOF**, the Parties have caused this Amendment and Termination Agreement to be executed by their duly authorized representatives as of the date first written above.

**FITCHBURG GAS AND ELECTRIC  
LIGHT COMPANY d/b/a UNITIL  
As Buyer**

By: \_\_\_\_\_

Name:

Title:

**SOUTHCOAST WIND ENERGY LLC  
As Seller**

By: <sup>DocuSigned by:</sup>  
Francis Slingsby  
4758423DE94E469...

Name: Francis Slingsby

Title: Chief Executive Officer

<sup>DS</sup>  
DH