NOTIFY

56

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 MOTIONS FOR RECONSIDERATION OF INJUNCTION AND TO STAY PROCEEDINGS PENDING ARBITRATION

In mid-April, I enjoined GE Renewables US LLC ("GER"), the principal turbine contractor on the wind power project off the coast of Martha's Vineyard ("the Project"), from giving effect to its February 27, 2026 notice of termination ("the Termination Notice") to Vineyard Wind 1, LLC ("VW"). In the Termination Notice, GER sought to end its involvement in the Project by terminating GER's Turbine Supply Agreement ("TSA") and Service and Maintenance Agreement ("SMA"). See Memorandum and Order on Motion for Preliminary Injunction ("April Memorandum" or "Mem.") (Apr. 17, 2026) (Docket #30).

GER now moves for reconsideration of the injunction based on VW's declaration of an anticipated milestone in its Power Purchase Agreements ("PPAs") and a few statements made by Gov. Maura Healey and VW's parent after I issued the injunction. In a separate motion, which was filed as a cross-motion to the initial motion for a preliminary injunction and which now has been fully briefed, GER moves to stay the case and compel plaintiff to arbitrate this dispute. For the reasons described below, I must deny both motions. I address both motions, in turn, assuming familiarity with the April Memorandum.

DISCUSSION

I. The Motion for Reconsideration

A motion for reconsideration may be based on "changed circumstances," like "newly discovered evidence or information" or "a development of relevant law;" or on "a particular and demonstrable error in the original ruling or decision." Commonwealth v. Charles, 466 Mass. 63, 84 (2013), quoting Audubon Hill South Condominium Ass'n v. Community Ass'n Underwriters of Am., Inc., 82 Mass. App. Ct. 461, 470 (2012). See also Kauders v. Uber Technologies, Inc., 486 Mass. 557, 568-570 (2021) (trial court abused discretion by reconsidering prior ruling); J.C. v. J.C., 2025 WL 3640685 at * 3 (Mass. App. Ct. Dec. 16, 2025) (Rule 23.0 decision) ("The standard for granting a motion for reconsideration is stringent." (Emphasis added)).

In seeking reconsideration of the motion for a preliminary injunction, GER does not argue that I made a demonstrable error in my original ruling (although GER disagrees with it) or that the law has evolved in the weeks since I issued the April Memorandum. Instead, it points to so-called "newly discovered evidence" as the basis for its motion for reconsideration, and only in connection with my earlier findings of irreparable harm.

In discussing irreparable harm in the April Memorandum, I found that the project "is at a critical phase," that GER's termination "would set the project back immeasurably and threaten VW's financing," that the requirements "to bring the project into commercial viability is highly dependent on GER's capabilities, personnel and technology," and that "[t]o 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." Mem. at 4-5. Nothing has been brought to my attention that would alter any of these conclusions.

Instead, GER points to the following three things (together, "the New Information") that occurred after the injunction, which GER contends justify setting the injunction aside:

1. On April 24, 2026, VW announced the project had reached the "Commercial Operation Date" ("COD") under VW's PPAs with third parties, obligating distributors to purchase electricity generated by the Project.

2. On April 27, 2026, Gov. Maura Healey issued a public statement based on VW's declaration of the COD, "announcing the activation of the Vineyard Wind contracts, which ensure stable, affordable prices for 20 years." According to Gov. Healey's statement, "[t]hroughout one of the coldest winters in recent history, Vineyard Wind turbines powered our homes and businesses at a low price and now that price goes even lower with the activation of these contracts."

3. On April 29, 2026, during a Q1 2026 earnings call, VW's parent company, Iberdrola S.A. stated: "In practical terms, the wind farm is completed. . . . [W]e finished the construction of all the positions. The level of availability we expect to be in line with other offshore wind farm [sic] in operation. . . . [M]any of the positions have been exporting power for many months." In addition, Iberdrola listed the VW project in its portfolio of "sustainable financing."

Based on the New Information, GER argues that VW's earlier representations upon which the court's irreparable harm findings were based are no longer (or never were) true, and that VW can no longer show that it will be irreparably harmed absent the injunction. I disagree.

First, the New Information is not really new. In its earlier submissions, VW represented that, although VW had been withholding GER payments as set-off for monies that GER owed to VW for upwards of a year, VW chose to serve its Termination Notice only "[r]ight when" VW was "negotiating loan conversion and funding under its capital structure (which is required to maintain project financing)" and when VW "is on the cusp of declaring the [COD] under the [PPAs] (in order to mitigate delay damages)." Reply Memorandum of Law in Support of Plaintiff's Emergency Motion for Preliminary Injunction and Temporary Restraining Order at 1 (Apr. 16, 2026) (Docket #25). The fact that VW declared the COD after the court's injunction, as

it earlier stated it was "on the cusp" of doing, is entirely consistent with my findings regarding irreparable harm in the April Memorandum. Klaus Skoust Møller, a member of VW's Executive Committee and, until recently, the Chief Executive Officer of VW, has submitted an unrebutted affidavit representing that, had the injunction not issued, VW would not have been able to make the certifications necessary to declare the COD. See Declaration of Klaus Skoust Møller ¶ 16 (May 7, 2026). Given my understanding of the status of the Project, this representation is entirely credible.

Moreover, the fact that VW declared the COD – or that Gov. Healey and VW's parent commented on it – does not change the reality on the ground. It does not change the fact that the Project requires GER's expertise and proprietary know-how to bring the turbines up to operational capacity. It does not suggest that the substantial delays, irreparable loss of expertise, and possible loss of financing that would be occasioned by GER walking off the job would be compensable through money damages. The New Information is not materially different from what was presented earlier. Even GER admits that nothing has materially changed since I issued the injunction. See Supplemental Declaration of Sebastian Mertens ¶ 3 (Apr. 30, 2026). GER continues to have upwards of 200 of its employees and its subcontractors working on the Project to correct defects in installation and improve performance of the wind turbine generators ("WTGs"). And VW continues to be at risk of losing financing for the Project.

Finally, the New Information does not change any of my earlier findings. The fact that VW declared a particular milestone under the PPAs does not mean that the WTGs are functioning at capacity, as designed, or without substantial need for repair and improvement; or that GER does not have specialized expertise needed to bring about timely repair and improvement to VW's operational capacity.

If anything, the fact that VW's declaration of the COD under the PPAs got the attention of Gov. Healey and resulted in her public statement underscores the important public interest there is in the Project coming on-line, at a minimum, at a commercially viable operational capacity; and it underscores the Commonwealth's interest in the energy VW is expected to generate once the WTGs are functioning properly and as designed by GER. The motion for reconsideration of the injunction must be denied.

II. Motion to Stay and Compel Arbitration

"'[A]rbitration is a matter of contract.'" McCarthy v. Azure, 22 F.3d 351, 354 (1st Cir. 1994), quoting AT&T Technologies, Inc. v. Communications Workers of Am., 475 U.S. 643, 648 (1986). "[A] party cannot be required to submit to arbitration any dispute which he has not agreed so to submit.'" Id. See Rae F. Gill, P.C. v. DiGiovanni, 34 Mass. App. Ct. 498, 501 (1993). "The question of arbitrability is ordinarily for a court to decide, and courts will not defer that issue to arbitration absent 'clea[r] and unmistakabl[e] evidence' that the parties agreed to do so." Merrimack Coll. v. KPMG LLP, 88 Mass. App. Ct. 803, 808 (2016) (brackets in original), quoting Massachusetts Highway Dept. v. Perini Corp., 83 Mass. App. Ct. 96, 100-101 (2013).

The threshold question before me is whether the parties agreed to arbitrate the particular dispute in this case because "[a] court may order arbitration of a particular dispute only where the court is satisfied that the parties agreed to arbitrate that dispute." Merrimack Coll., 88 Mass. App. Ct. at 808 (emphasis in original), quoting Granite Rock Co. v. Int'l Brotherhood of Teamsters, 561 U.S. 287, 297 (2010). Although the parties agreed to a dispute resolution provision culminating in arbitration in most instances, I find that the dispute before me falls under a broad exception to arbitration in the parties' contracts that authorizes the resolution of certain disputes in a court of competent jurisdiction.

The structure of the parties' contractual dispute resolution provisions is important here. GER moves to stay this proceeding and compel arbitration under Clause 20 of the TSA and Clause 19 of the SMA. Because the dispute resolution provisions in the two agreements are virtually identical, I only discuss and cite to the relevant provisions of the TSA.

Clause 20 of the TSA sets out an elaborate procedure for resolving disputes between VW and GER. Subclause 20.2, entitled "Disputes," provides: "If a Dispute arises between the Parties before or during the progress of the Works or after their completion . . . it shall be settled in accordance with the following provisions of this Clause 20 [Claims, Disputes and Arbitration]."[1] TSA § 20.2.1. The following provisions of Clause 20 describe a multi-step procedure. The party raising the dispute must first notify the other party in writing and the responding party must respond promptly. TSA § 20.2.2. If that does not resolve the dispute, the parties' senior executives must meet "in good faith and make all reasonable efforts to reach agreement," TSA § 20.3.2, and the parties may thereafter agree to mediation. TSA § 20.4. If the dispute is not resolved through those processes, the parties must appoint a Dispute Adjudication Board ("DAB"), TSA § 20.5, to resolve the dispute in accordance with certain predetermined rules. If the dispute is still unresolved after the DAB process, the dispute "shall be finally settled by arbitration," TSA § 20.6.1, before a three-arbitrator panel in New York under the Rules of Arbitration of the International Chamber of Commerce. TSA §§ 20.6.2 – 20.6.5.

As the present situation illuminates, this can be a lengthy and time-consuming process. In this instance, although the parties have disputes about hundreds of millions of dollars dating back

[1] "Dispute" is defined to mean "a dispute (of any kind whatsoever, including claims arising in law, equity, for breach of statutory duty, contract, tort or otherwise) in connection with, or arising out of, the Contract or the execution of the Works (including any dispute as to any certificate, determination, instruction, opinion or valuation of the Engineer)." TSA § 1.1.60.

more than a year, they still have not convened a DAB or proceeded to arbitration to resolve their dispute about the Engineer's finding on these issues. See Mem. at 3 (VW's "setoff process has been going on since September 2024 . . . and [ ] GER has not meaningfully or promptly pursued a remedy under Clause 20"); 4 ("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] GER has not proceeded down that path."). Because of the seemingly anticipated delays associated with the alternative dispute procedures, Clause 20 generally requires that "[p]erformance of the Works under the Contract shall continue during any dispute resolution process" under Clause 20. TSA § 20.9.1. Subclause 20.9.1 is not separate from, but an integral part of, the dispute resolution process in Clause 20.

Clause 20 also allows recourse to the courts in "urgent" situations. Specifically, it provides:

> Without prejudice to the foregoing provisions of this Clause 20 [Claims, Disputes and Arbitration], nothing in the Contract shall restrict, limit or exclude the rights of the Parties to seek (and the Parties shall not be prevented from seeking) urgent injunctive or declaratory relief through any competent court in respect to any matter under or in connection with the Contract.

TSA § 20.8.1. The scope of disputes that may be brought to court under Subclause 20.8.1 is as broad as the Contract itself, provided the situation is "urgent" and the party filing suit seeks injunctive or declaratory relief. Moreover, the general obligation to continue working during the dispute resolution process includes the time for a court proceeding under § 20.8.1. See TSA § 20.9.1 ("[p]erformance . . . shall continue during any dispute resolution process referred to in Sub-Clauses 20.1 . . . to 20.8").

The parties dispute the scope of Subclause 20.8.1. GER contends it is limited to situations where irreparable harm is threatened; extends only to temporary relief necessary to eliminate the

threatened irreparable harm; and precludes a court from entering a permanent injunction or making a definitive interpretation of the parties' rights under the contract. I disagree with each of these contentions.

I begin with the plain language of the provision: "nothing in the Contract shall restrict, limit or exclude the rights of the Parties to seek . . . urgent injunctive or declaratory relief" in court regarding "any matter under or in connection with the Contract." The term "urgent" is not defined in the contract. In ordinary usage, the term means "very important and needing attention immediately." Urgent, Cambridge English Dictionary, available at https://dictionary.cambridge.org/dictionary/english/urgent (last viewed May 28, 2026). Accord Urgent, Merriam-Webster Dictionary (urgent means "calling for immediate attention:pressing"), available at https://www.merriam-webster.com/dictionary/urgent (last viewed May 28, 2026).

GER contends that a matter is "urgent" for purposes of subclause 20.8.1 only if a party is threatened with irreparable harm. But contrary to GER's contention, the plain meaning of the term "urgent" extends well beyond situations that threaten a party with irreparable harm. Admittedly, when "urgent" is combined with "injunctive . . . relief," the phrase suggests the potential for irreparable harm, although the phrase "urgent . . . declaratory relief" does not. I have already found that when this case was filed, VW faced – and continues to face – the possibility of irreparable harm absent an injunction. Accordingly, I need not resolve the question of the full scope of Subclause 20.8.1. It applies in this situation as there was an urgent need for injunctive or declaratory relief.

GER also argues that now that a preliminary injunction has issued, the need for further "urgent injunctive or declaratory relief" has passed. This argument is unpersuasive and disingenuous. First, subclause 20.8.1 authorizes VW to seek "urgent injunctive and declaratory

relief" from the court. A preliminary injunction is just that, preliminary; indeed, GER has already filed a motion for reconsideration of that injunction, see, supra, at 2-5, and has made it quite clear that it plans to seek further review of the injunction. GER has not agreed to abide by the preliminary injunction pending a resolution of the issues in this case before an alternative tribunal. Nor has GER taken the position that, even without the injunction, it will continue its work on the Project while the issue of the propriety of its termination notice is resolved through a DAB and arbitration process. And notably, GER takes the position that subclause 20.9.1 does not obligate it to continue working while this issue is resolved. In short, the temporary nature of the relief VW has so-far obtained is underscored by the vigor with which GER has announced its plans to try to undo the injunction the court has issued.

It is also clear from the phrase "urgent injunctive or declaratory relief" that the parties intended that if a party sought recourse in the court to resolve an urgent matter, the matter would be resolved on more than a preliminary basis. The words "preliminary" and "temporary" do not appear in subclause 20.8.1. Nor does subclause 20.8.1 state or suggest that the party seeking injunctive and declaratory relief for an urgent matter may only maintain a court action until the urgency is preliminarily resolved. As described above, preliminary injunctive relief is only temporary, it is often adjudicated at a very early stage of a proceeding to preserve the status quo, and it does not provide the type of "relief" that will resolve an "urgent" dispute. Moreover, subclause 20.8.1 allows a party to seek "urgent . . . declaratory relief," but declaratory relief is almost never granted on a preliminary basis, but after a full adjudication on the merits.

Relatedly, GER contends that the court may not issue a permanent injunction or definitively interpret the parties' rights under the contract. This argument finds no meaningful support in the language of Clause 20, and it ignores the fact that recourse to the court is expressly

authorized. In many situations the court would have to definitively construe contract provisions in order to provide the "urgent injunctive or declaratory relief" for which the parties bargained.

ORDER

GE Renewables US LLC's Cross-Motion to Compel Arbitration and Stay this Litigation (Docket #22) and Defendant's Emergency Motion for Reconsideration (Docket #35) are both **DENIED**.

Dated: May 29, 2026

Peter B. Krupp
Justice of the Superior Court