

**STATE OF RHODE ISLAND  
ENERGY FACILITY SITING BOARD**

In re: Petition of Quonset Development :  
Corporation for a Jurisdictional : Docket No. SB-2024-  
Determination Pursuant to :  
R.I. Gen. Laws § 42-35-8 :

**PETITION FOR DECLARATORY ORDER**

**Quonset Development Corporation**

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Dated: April 17, 2024

## I. INTRODUCTION

In accordance with R.I. Gen. Laws § 42-35-8, Quonset Development Corporation (“QDC”) petitions the Rhode Island Energy Facility Siting Board (“EFSB”) for a declaration that a proposed battery energy storage system (the “Project”) at the Quonset Business Park (“Business Park”) in the Town of North Kingstown, Rhode Island is not subject to the jurisdiction of the EFSB. QDC is seeking this declaratory judgment for its site readiness program so it can offer a pre-permitted site to a battery storage facility.

The EFSB’s jurisdiction is limited to licensing the construction or alteration of major energy facilities. *See* R.I. Gen. Laws § 42-98-4. The EFSB already has determined that it does not have jurisdiction over battery energy storage systems, and this previous determination directs the same finding here: that the EFSB does not have jurisdiction over the Project. The EFSB does not have jurisdiction over the Project because a battery energy storage system is not a “major energy facility” as defined by the Energy Facility Siting Act. The Project is not a major energy facility because it does not generate electricity. *See* R.I. Gen. Laws § 42-98-3; 445-RICR-00-00-1.3(A)(16). Moreover, when the Legislature enacted the Energy Facility Siting Act in 1986, the words “energy facility” could not have included battery energy storage systems because they were not a common form of energy infrastructure at that time.<sup>1</sup> Accordingly, the plain meaning of “energy facility” in 1986 indicates that battery energy storage systems, like the Project, fall outside EFSB jurisdiction.

For these reasons, QDC requests that the EFSB issue a declaration that the proposed Project is not subject to the EFSB’s jurisdiction.

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<sup>1</sup> *See* <https://visualizingenergy.org/watch-the-history-of-battery-storage-in-the-united-states>.

## II. OVERVIEW OF THE PROJECT

QDC is a quasi-state agency responsible for the development and management of the Business Park, located in North Kingstown, Rhode Island. *See* R.I. Gen. Laws § 42-64.10-2(a). QDC is statutorily authorized to improve, develop, and lease property at the Quonset Business Park. *See* § 42-64.10-3(b); § 42-64-3(20).

QDC proposes to allow a 200-plus megawatt battery energy storage system to be sited at the Business Park. QDC has been successful in developing the Business Park by taking the extra steps of fully permitting sites for development. In this matter, QDC has identified a site for a battery energy storage system – or Project – and wants to permit it for this use so a developer may come in and build the Project. The Project will be connected to a substation that will be interconnected to the local utility system. The Project will charge and discharge power to the electrical power system. The Project will not generate any additional electricity.<sup>2</sup>

## III. STANDARD OF REVIEW

Section 42-35-8(a) of the Administrative Procedures Act entitles “[a] person [to] petition an agency for a declaratory order that interprets or applies a statute administered by the agency.” Upon petition, the EFSB can issue a declaratory order determining whether it has jurisdiction over a certain project. *See, e.g., Order, In re: Petition of Energy Storage Resources, LLC for a Jurisdictional Determination Pursuant to R.I. Gen. Laws § 42-35-8, Docket No. SB-2019-02, (Order No. 144, Mar. 10, 2020).*

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<sup>2</sup> The Project will occupy about a ten acre site at the Business Park off of Callahan Road. The Project will interconnect to the Rhode Island Energy L190-2 transmission line near the Davisville 115kV substation. The infrastructure for the Project will include an approximately 2500 foot underground 115kV generator tie line using the existing utility right of way along Callahan Road. As required under the EFSB Rules of Practice and Procedure, applicable filings will be made, to the extent applicable, for the interconnection loop lines and any other infrastructure that falls under the EFSB.

When reviewing its enabling legislation and any other relevant statutes, the EFSB must “determine and effectuate the Legislature’s intent.” *Ricci v. R.I. Com. Corp.*, 276 A.3d 903, 906 (R.I. 2022) (citation omitted). In carrying out this task, if the language of the statute is clear and unambiguous, the EFSB must give the statute “its plain and ordinary meaning.” *Freepoint Solar LLC v. Richmond Bd. of Rev.*, 274 A.3d 1, 6 (R.I. 2022) (citation omitted). “The Legislature is presumed to have intended each word or provision of a statute to express a significant meaning, and the [EFSB] will give effect to every word, clause, or sentence whenever possible.” *Koback v. Mun. Employees’ Ret. Sys. of R.I.*, 252 A.3d 1247, 1251 (R.I. 2021) (citation omitted).

The same rules of construction apply to interpreting regulations. *See Reynolds v. Town of Jamestown*, 45 A.3d 537, 542 (R.I. 2012). If the regulatory language is clear and unambiguous, the EFSB must interpret the regulation literally and give the words of the regulation their plain and ordinary meanings. *See id.*

#### IV. ANALYSIS

##### A. **The EFSB’s Enabling Legislation Limits the EFSB’s Jurisdiction to Major Energy Facilities**

The EFSB is “a product of the enabling legislation that creates” it. *In re Advisory Opinion to the Governor*, 627 A.2d 1246, 1248 (R.I. 1993). Accordingly, the Energy Facility Siting Act defines the jurisdictional limits of the EFSB. *See* R.I. Gen. Laws §§ 42-98-1, *et seq.* The EFSB’s actions are valid only “when the agency acts within the parameters of the statutes that define[its] powers.” *In re Advisory Opinion to the Governor*, 627 A.2d at 1248.

The EFSB has jurisdiction to license “a major energy facility.” R.I. Gen. Laws § 42-98-4. The EFSB’s regulations define a “Major energy facility” as

any facility for the extraction, production, conversion and processing of coal; any facility for the generation of electricity capable of operating at a gross capacity of 40 megawatts or more;

any transmission line with a design rating of 69 kV or over; facilities for the conversion, gasification, treatment, transfer or storage of liquefied natural and liquefied petroleum gases; any facility for the processing, enrichment, storage or disposal of nuclear fuels and nuclear byproducts; any facility for the refining of oil, gas or other petroleum products; any facility of 10 megawatts or greater capacity for the generation of electricity by water power; any facility associated with the transfer of oil, gas or coal via pipeline and any energy facility project of the Rhode Island Port Authority and Economic Development Corporation.

445-RICR-00-00-1.3(16).<sup>3</sup>

QDC's petition for a declaratory order should be granted for the following reasons: (1) the EFSB already has found that it does not have jurisdiction over battery energy storage systems and there is no change in circumstances supporting deviation from this precedent; (2) a battery energy storage system is not a "major energy facility" because it does not generate electricity, it converts and transforms already existing electricity; (3) the statutory language circumscribes the EFSB's jurisdiction to major energy facilities and does not list battery energy storage systems as a category over which the EFSB has jurisdiction; and (4) at the time the EFSB's enabling act was enacted an "energy facility" of the Rhode Island Port Authority and Economic Development Corporation (n/k/a the Rhode Island Commerce Corporation)<sup>4</sup> would not have included a battery energy storage system and, regardless, the Project is not a project of the Rhode Island Commerce Corporation or

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<sup>3</sup> The definition of major energy facility in the EFSB's regulations largely tracks the statutory definition, *see* R.I. Gen. Laws § 42-98-3(d).

<sup>4</sup> The Rhode Island Port Authority and Economic Development Corporation is now known as the Rhode Island Commerce Corporation. *See* § 42-64-1.1. QDC is a quasi-state agency, established as a special-purpose subsidiary of the Rhode Island Commerce Corporation. *See* § 42-64.10-2. QDC, which is responsible for the development and management of the Business Park, was created by the Rhode Island General Assembly on July 1, 2004, and became effective through a transfer of powers on January 1, 2005. *See* <https://quonset.com/about-qdc>.

QDC, but rather will be developed by another entity at the fully permitted, pad ready site at the Quonset Business Park.

**B. The EFSB Already Determined that it Does Not Have Jurisdiction Over Battery Energy Storage Systems.**

In 2020, the EFSB determined that it does not have jurisdiction over battery energy storage systems. *See In re: Petition of Energy Storage Resources, LLC for a Jurisdictional Determination Pursuant to R.I. Gen. Laws § 42-35-8 (“Energy Storage Resources, LLC”)*, Docket No. SB-2019-02, (Order No. 144, Mar. 10, 2020). In *Energy Storage Resources, LLC*, the petitioner proposed to construct a 180-megawatt battery energy storage system in South Kingstown, Rhode Island. *Id.* at 1. The EFSB received comments and input from multiple parties, including the Division of Public Utilities and Carriers (the “Division”), each of which concluded that the Energy Facility Siting Act does not give the EFSB jurisdiction over battery energy storage systems. *See id.* at 1-2. Specifically, the Division “asserted that battery storage facilities cannot be construed as a major energy facility because they are not electrical generating facilities” and are not otherwise contemplated in the definition of “major energy facility.” *Id.* at 1-2.

After deliberation, the EFSB found that the statutory definition of “major energy facility” “is absent of any reference to energy storage facilities.” *Id.* at 3. Based on this absence of statutory language and the persuasive arguments of the Division, the EFSB ordered that the proposed project “is not a major energy facility . . . and is not subject to Board jurisdiction.” *Id.*

The *Energy Storage Resources, LLC* order directs the same conclusion and entry of a declaratory order in this proceeding that the EFSB does not have jurisdiction over the Project. “An administrative agency must respect its own precedent, and cannot change it arbitrarily without explanation, from case to case.” *Mendez-Barrera v. Holder*, 602 F.3d 21, 26 (1st Cir. 2010). Nothing relevant to the analysis has changed since 2020 when the EFSB ordered that it does not

have jurisdiction over battery energy storage systems. The relevant provisions of the Energy Facility Siting Act have not been amended, nor have the EFSB's regulations been amended. The EFSB should follow its precedent and conclude that QDC's proposed Project is not a major energy facility and that the EFSB does not have jurisdiction over the Project. *See Rhode Island Hosp. v. Sebelius*, 670 F. Supp. 2d 148, 155 (D.R.I. 2009) (noting that “[a]n administrative action that parts with established policy may be entitled to considerably less deference”) (citation and internal quotation marks omitted).

**C. The EFSB Does Not Have Jurisdiction Over the Project Because it Does Not Generate Electricity.**

The EFSB does not have jurisdiction over the Project for the same reasons it did not have jurisdiction over the proposed project in *Energy Storage Resources, LLC*. The EFSB has jurisdiction to license “any facility for the generation of electricity capable of operating at a gross capacity of 40 megawatts or more.” 445-RICR-00-00-1.3(16). Although the Project is capable of operating at more than 40 megawatts, it does not generate electricity. Instead, it stores electricity generated elsewhere.

Because the Energy Facility Siting Act and the EFSB's regulations fail to define “generation,” the EFSB must give that word its plain and ordinary meaning. *See Freepoint Solar LLC*, 274 A.3d at 6 (giving words their plain and ordinary meaning “particularly true where the Legislature has not defined or qualified the words used within the statute”). “Generation” is defined as “the process of coming or brining into being,” or “origination by a generating process.” Merriam-Webster Online Dictionary (retrieved Mar. 1, 2024, from <https://www.merriam-webster.com/dictionary/generation>). “Generate,” in turn, is defined as “to bring into existence.” Merriam-Webster Online Dictionary (retrieved Mar. 1, 2024, from <https://www.merriam-webster.com/dictionary/generating>).

The Project does not bring electricity “into existence.” The electricity stored in the batteries and later shifted to the grid already exists before reaching the Project. Storing energy and converting energy is different from generating energy. *See* Merriam-Webster Online Dictionary (retrieved Apr. 17, 2024, from <https://www.merriam-webster.com/dictionary/store> & <https://www.merriam-webster.com/dictionary/convert>) (defining “store” as “to place or leave in a location . . . for preservation or later use or disposal” and defining “convert” as “to change from one form or function to another”).

Other energy facility siting boards have recognized the critical distinction between generation, storage, and conversion. In *Petition of AES Energy Storage, LLC for a Declaratory Ruling that Battery-Based Energy Storage Facilities are not Subject to Article 10 of the PSL* (“*AES Energy Storage, LLC*”), the New York Board of Electric Generation Siting and the Environment (“NY Board”) found that it did not have jurisdiction over 50- and 100-megawatt battery storage facilities because electrical storage facilities are not generation facilities. *See AES Energy Storage, LLC*, Case No. 13-F-0287 (N.Y. Bd. on Electric Generation Siting and the Environment Jan. 24, 2014). The NY Board found that “[a]lthough electrical generation and storage facilities may both be capable of providing capacity, energy and/or ancillary services, the terms ‘generation’ and ‘storage,’ as they are commonly used and within the electric power industry are distinct concepts.” *Id.* at 7. The NY Board recognized that although battery storage facilities “involves the reconversion of another form of energy back to electricity, it is still distinguished from electrical generation by the fact that the energy stored was previously electric energy generated elsewhere.” *Id.*

The Massachusetts Energy Facilities Siting Board (“Massachusetts EFSB”) similarly found that it did not have jurisdiction over battery energy storage systems because the facilities



store and transform energy generated elsewhere. *See Petition of Cranberry Point Energy Storage, LLC* (“*Cranberry Point Energy Storage, LLC*”), Docket No. EFSB 21-02 (Mass. Energy Facilities Siting Board May 11, 2023). In *Cranberry Point Energy Storage, LLC*, the petitioner sought to construct a 150-megawatt battery energy storage system. *Id.* at 1. The Massachusetts EFSB’s enabling legislation gives it jurisdiction over a “generating facility.” *Id.* at 16 (citing M.G.L. c. 164, § 69G). The Massachusetts EFSB concluded that generation and storage are “different types of energy processes,” and that energy stored and generated elsewhere does not fall within the relevant statutory definition of generating facility. *See id.* at 19-21.

For these same reasons, the EFSB does not have jurisdiction over the Project. The Energy Facility Siting Act gives the EFSB jurisdiction over “facilities for the generation of electricity.” R.I. Gen. Laws § 42-98-3(d); *see* 445-RICR-00-00-1.3(16). The plain language of this jurisdictional grant does not include a facility that stores and converts energy. Accordingly, the EFSB does not have jurisdiction over the Project because the Project stores and converts electricity generated elsewhere.

**D. The EFSB Does Not Have Jurisdiction Over the Project Because The Project is Not a project of the Rhode Island Commerce Corporation or QDC and, Regardless, Battery Energy Storage Systems are Not Energy Facilities.**

The Project will not be developed by QDC. Instead, QDC wants a third party, which is not part of or affiliated with QDC or the Rhode Island Commerce Corporation, to develop a battery energy storage system at the Business Park. Under QDC’s streamlined and innovative program, it presents permitted – “shovel ready” – building sites for its tenants. To accomplish this, QDC is seeking this declaratory judgment from the EFSB that it does not have jurisdiction over the Project. Moreover, and in addition to not being a facility for the generation of electricity, the Project is not an energy facility under the Energy Facility Siting Act and the EFSB’s regulations. First, the

EFSB does not have jurisdiction over battery energy storage systems because the Legislature did not list a battery energy storage system as a category of facility over which the EFSB has jurisdiction. Section 42-98-3(d) limits the EFSB’s jurisdiction to nine categories of facilities, and the Legislature’s omission of battery storage facilities as a category of facility over which the EFSB has jurisdiction is determinative. The list in § 42-98-3(d) is exhaustive, so the EFSB cannot have jurisdiction over a facility unless it is specifically enumerated in that statute. *See Finnimore & Fisher Inc. v. Town of New Shoreham*, 291 A.3d 977, 984 (R.I. 2023) (enabling legislation limiting jurisdiction to six prescribed areas exhaustive; if Legislature intended list to be non-exhaustive it would have included the phrase “including, without limitation”). The EFSB is bound by the Legislature’s choice not to include battery energy storage systems within its jurisdiction, and has no “authority to supplemental or to amend a statute enacted by the General Assembly.” *State v. Oliveira*, 882 A.2d 1097, 1117 (R.I. 2005). Accordingly, the EFSB lacks jurisdiction – as the EFSB previously determined in 2020 – over battery storage facilities and, as a consequence, the Project. *See Caithness RICA Ltd. P’ship v. Malachowski*, 619 A.2d 833, 836 (R.I. 1993) (administrative agencies cannot expand jurisdiction “through strained interpretations of unambiguous statutes”).

Even if one were to ignore the fact that the Project will not be developed by QDC, the Legislature could not have intended to include battery energy storage systems within the definition of “energy facility” because when § 42-98-3 was enacted in 1986 battery storage technology was not a significant type of electrical infrastructure. *See* § 42-98-3(d) (““Major energy facility’ means . . . any energy facility project of the Rhode Island economic development corporation”). It is a well-established principle of statutory construction that in determining the ordinary meaning of statutory language, “it is the role of the [EFSB] to ascertain what meaning a particular word has

when the statute containing that word was enacted.” *Chambers v. Ormiston*, 935 A.2d 956, 961 (R.I. 2007). The Energy Facility Siting Act was enacted in 1986, *see* P.L. 1986, ch. 531, § 1, and the definition of “major energy facility” in § 42-98-3(d) has not been substantively amended since.<sup>5</sup>

In 1986, the Legislature would not have understood the words “energy facility” to refer to battery storage facilities. The prevailing view of the 20th century electric grid “was that, according to the laws of physics, electricity always flows instantaneously through the grid in one direction.” C. Ben Vila, *Innovating Around Regulatory Uncertainty: Contracting for Battery Energy Storage As A Transmission Asset Within Restructured Markets*, 36 TEMP. INT’L & COMP. L.J. 151, 156 (2021). This common understanding in 1986 certainly would not have included a facility that converts already existing electrical energy into chemical energy, stores that chemical energy, and later converts the chemical into electric energy and pushes electricity out to the grid. *See* Colin Wilfong, Robert Bullington, *Charging Forward: Accelerating Long-Term Energy Storage Development*, 23 VT. J. ENVTL. L. 156, 160-61 (2022) (noting that the primary form of energy storage technology from 1950 to 1995 was hydro storage projects, and that battery storage technology did not gain prevalence until well into the 21st century). For purposes of ascertaining the meaning of “energy facility” under § 42-98-3(d) it does not matter that battery storage technology are increasingly becoming a significant component of the electric grid. What matters is “the understanding of those legislators who enacted” § 42-98-3(d) in 1986. *Chambers*, 935 A.2d

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<sup>5</sup> In 1990, the definition of major energy facility was amended to change the gross operating capacity of generation facilities from 80 megawatts or more to 40 megawatts or more. *See* P.L. 1990, ch. 321, § 1. In 1992, the definition was amended to change the transmission lines design rating from over 345,000 volts to over 69kv. *See* P.L. 1992, ch. 439, § 2. After the Legislature changed the name of “the Rhode Island port authority and economic development corporation” to “the Rhode Island economic development corporation” in 2013, *see* § 42-64-1.1, the definition of major energy facility in § 42-98-3(d) was updated to reflect this change in name. However, it appears that this name update was done administratively, as there is no corresponding public law showing such amendment by the Legislature.

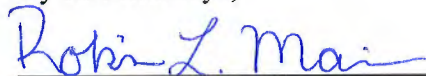
at 961. The EFSB must interpret § 42-98-3 as enacted and apply the plain meaning of “energy facility” in 1986 – some thirty-eight years ago. Doing so – plus the fact the Project is not QDC’s – leads to the conclusion that the EFSB is without jurisdiction to license the Project. *See Chambers*, 935 A.2d at 963.

V. CONCLUSION

For all the foregoing reasons, the EFSB should find that the Project is not a major energy facility, as defined by the Energy Facility Siting Act, R.I. Gen. Laws §§ 42-98-1, *et seq.*, and issue a Declaratory Order pursuant to R.I. Gen. Laws § 42-35-8 that the Project is not subject to the EFSB’s jurisdiction.

QUONSET DEVELOPMENT  
CORPORATION

By Its Attorneys,



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Dated: April 17, 2024

**CERTIFICATE OF SERVICE**

I hereby certify that on April 17, 2024, this Petition for Declaratory Order, along with seven (7) copies thereof, was mailed by first class mail, postage pre-paid to:

Coordinator  
Energy Facility Siting Board  
89 Jefferson Boulevard  
Warwick, RI 02888

Rolin L. Mai