STATE OF RHODE ISLAND
ENERGY FACILITY SITING BOARD

IN RE:	**QUONSET DEVELOPMENT CORPORATION'S PETITION FOR DECLARATORY ORDER**	**:**	**SB-2024-01**

QUONSET DEVELOPMENT CORPORATION'S SUPPLEMENTAL MEMORANDUM IN SUPPORT OF ITS PETITION FOR DECLARATORY ORDER

Quonset Development Corporation

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Dated: July 29, 2024

I. Introduction

On April 17, 2024, Quonset Development Corporation ("QDC") filed its Petition for Declaratory Order, seeking a declaration from the Rhode Island Energy Facility Siting Board ("EFSB") 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. The EFSB conducted an evidentiary hearing on the Petition on July 11, 2024, during which the Board raised certain issues regarding the jurisdictional determination before it. These issues included whether the Project is one of the "Rhode Island economic development corporation" as set forth in the definition of "major energy facility" in R.I. Gen. Laws § 42-98-3(d). Following the evidentiary hearing, the EFSB sent a memorandum to undersigned counsel stating that the EFSB was taking administrative notice of an August 28, 2023 article published by the United States Energy Information Administration ("EIA"), entitled "Energy Storage for Generation" and inviting QDC to comment on the article in writing. The EFSB also issued its First Set of Data Requests relating to whether the Project's 115kV Gen-Tie lie is jurisdictional to the Board. This memorandum responds to the issues raised at the evidentiary hearing, comments on the EIA article, and provides a legal response to the EFSB's First Set of Data Requests.

II. The Project is Not a Project of the Rhode Island Economic Development Corporation n/k/a Rhode Island Commerce Corporation.[1]

The Project is not one of QDC or the Rhode Island Commerce Corporation (the "Commerce Corporation"). Here, as with many other parcels in the Business Park, QDC is engaging in its routine and limited predevelopment actions to present developers with permitted

[1] The Rhode Island Port Authority and Economic Development Corporation is now known as the Rhode Island Commerce Corporation. *See* § 42-64-1.1.

"shovel ready" real estate to lease and then develop their own projects that QDC does not own or operate (the "Site Readiness Program"). To conclude that this predevelopment process turns the Project – or any other project for that matter – into one of QDC or the Commerce Corporation would not be a logical approach and may create unpredictable and unintended consequences. Concluding that such pre-development activities constitute QDC projects also would also have a chilling effect on QDC's Site Readiness Program and preparing "shovel ready" sites for its developers.

At base, it would be incongruent for the EFSB to conclude that a battery energy storage facility is not a major energy facility under the other categories set forth in § 42-98-3(c), but to then take jurisdiction over the Project merely because QDC is the petitioner. *See McCain v. Town of N. Providence ex rel. Lombardi*, 41 A.3d 239, 243 (R.I. 2012) (reciting "the longstanding principle that statutes should not be construed to achieve meaningless or absurd results" (citation omitted)). To do so would not only completely frustrate the purpose of the Site Readiness Program, but also impermissibly expand the jurisdiction of the EFSB to QDC's pre-permitting activity related to battery energy storage facilities, in direct contravention of § 42-98-3(d), which limits the EFSB's jurisdiction to energy facility projects **of** the Commerce Corporation.

Moreover, although QDC has determined that it would like this ruling so that, if the proposed Project with Green Development does not come to fruition, then another developer can develop a battery energy storage facility, it does not follow that QDC is "siting" the battery storage facility on these parcels. QDC's desire for the construction of a battery energy storage facility is location agnostic. Right now, the parcels that have been identified for the Project are the selected parcels, but the requested ruling that there is no jurisdiction over the development of such facilities

is not location specific.[2] In fact, this very Project already has moved parcels from its initial conception. Thus, to the extent that the EFSB might consider the Project an energy facility project of QDC because QDC is "siting" the Project, such a conclusion should not follow because QDC is not selecting the site for the Project or mandating that a battery energy storage facility be constructed in any particular location.

Further, QDC's own enabling legislation shows why the Project is not an energy facility project of the "Rhode Island economic development corporation," and the EFSB should give deference to this interpretation pursuant to established principles of agency deference under Rhode Island law. Because the Energy Facility Siting Act fails to define what constitutes a "project" of the "Rhode Island economic development corporation," to discern the meaning of this phrase one must "consider the entire statute as a whole," *Ryan v. City of Providence*, 11 A.3d 68, 71 (R.I. 2011), and look to the broader statutory scheme in title 42 of the General Laws concerning State Affairs and Government, *see In re Brown*, 903 A.2d 147, 150-51 (R.I. 2011).

The Quonset Development Corporation Act, R.I. Gen. Laws §§ 42-64.10-1, *et seq.*, readily provides a definition of what constitutes a "project," and QDC's interpretation of this definition is entitled to great deference. *See In re Advisory Opinion to the Governor*, 732 A.2d 55, 76 (R.I. 1999); *Health Mgmt. Co. v. Rhode Island Dep't of Env't Mgmt.*, No. P.C. 05-3232, 2006 WL 1321274, at *4 (R.I. Super. May 15, 2006) (affording "great deference" to an agency's interpretation of its own rules or regulations). QDC's enabling legislation establishes and authorizes QDC "[t]o undertake projects as defined in § 42-64-3(20)." R.I. Gen. Laws § 42-64.10-3(b). In turn, § 42-64-3(20) defines "project" as the:

> acquisition, ownership, operation, construction, reconstruction, rehabilitation, improvement, development, sale, lease, or other disposition of, or the provision of

[2] Other than that it would be on some land that QDC would lease to a third-party developer.

> financing for, any real or personal property (by whomever owned) or any interests in real or personal property, including . . . any . . . energy facility[.]

As QDC's Chief Operating Officer credibly testified, QDC distinguishes between merely ground leasing land for a potential energy facility versus leasing an actual energy facility: the former, which is at issue here, is not a project of QDC. *See* Tr. 101:19-102:18. This interpretation is accorded great deference. *See, e.g.*, *In re Lallo*, 768 A.2d 921, 926 (R.I. 2001).

Ms. Siefert testified that pursuant to QDC's interpretation of its enabling legislation, "if QDC owned a building and [it] leased that building, then that would be a project of the corporation." Tr. 102:14-16. Conversely, "[j]ust leasing the ground under whatever is built on top of it, [QDC does not] consider to be a project of the corporation." Tr. 102:16-18. Accordingly, the Project is not a project of QDC nor the "Rhode Island economic development corporation," and the EFSB does not have jurisdiction over the Project on this basis.

III. The EIA Article Reinforces That the Project Is Not A Generation Facility Subject to the EFSB's Jurisdiction.

The EFSB's licensing jurisdiction is limited to facilities "for the generation of electricity capable of operating at a gross capacity of 40 megawatts or more." 445-RICR-00-00-1.3(16). As fully explained in QDC's opening Petition, the Project does not generate electricity. The EIA article reinforces this, and a federal agency's passing reference to energy storage systems as secondary generation sources has little bearing on whether, under Rhode Island law, the EFSB has jurisdiction over the Project.

The article specifically states that energy storage systems, like the Project, "**are not** primary electricity generation sources." EIA art. at 2 (emphasis added). To operate, the Project "must use electricity supplied by separate electricity generators or from an electric power grid to charge the storage system[.]" *Id.* This process does not result in the Project bringing electricity

into existence. *See Generation*, Merriam-Webster Online Dictionary (retrieved Mar. 1, 2024, from https://www.merriam-webster.com/dictionary/generation) (defining "generation" as "the process of coming or brining into being," or "origination by a generating process"). Rather, the "stored and discharged electricity" already existed before reaching the Project. EIA art. at 4.

The article also makes clear that energy storage systems like the Project cannot be considered facilities "for the generation of electricity," 445-RICR-00-00-1.3(16), because they "use more electricity for charging than they can provide when discharging and supplying electricity." EIA art. at 2. Accordingly, the net output of battery energy storage systems is always negative, *see* EIA art. at 2, and the Project is actually a net consumer of electricity. For these reasons, the EFSB does not have jurisdiction over the Project because the Project stores and converts electricity generated elsewhere.

IV. SB-2-2021-01 and SB-2017-01 Reconcile with QDC's Position that the 15kV Gen-Tie Line Is Not Jurisdictional to the Board Because They Do Not Constitute Jurisdictional Determinations and Are Factually Distinct from This Matter.

In its First Set of Data Requests the Board identifies two purported instances of the EFSB exercising jurisdiction over transmission lines, SB-2-21-01, *In re Revolution Wind, LLC Application to Construct a Major Energy Facility*, and SB-2017-01, *In re The Narragansett Electrical Company d/b/a National Grid and Clear River Energy LLC (Burrillville Interconnection Project)*. However, the supposition that the EFSB determined that it had jurisdiction over the lines at issue in these matters is an overstatement.

To start, the docket in SB-2017-01, *In re The Narragansett Electrical Company d/b/a National Grid and Clear River Energy LLC (Burrillville Interconnection Project)*, reflects that the EFSB did not exercise jurisdiction over a 6.8 mile 345 kV line. The applicant withdrew its application, and the Board did not render a final decision on the application. *See* Dkt. SB-2017-

01, Withdrawal of Application (Nov. 21, 2019). The preliminary decision and order issued in that matter (EFSB 114) does not constitute an "Order" of the Board and has no precedential value. *See* R.I. Gen. Laws § 42-35-1(13) (defining "Order" as "the whole or a part of a final disposition"); *see also* 445-RICI-00-00-1.13 (setting forth requirements for final decision). A preliminary order and decision is a tentative decision that sets forth certain mandatory and discretionary issues associated with the application and designates agencies to render advisory opinions on those issues. *See* 445-RICI-00-00-1.9(E). It does not represent the "consummation of the agency's decision-making process," is "merely tentative and interlocutory," and fails to determine any "rights or obligations." *Banki v. Fine*, 224 A.3d 88, 96 (R.I. 2020). All the preliminary order and decision does is identify issues to be considered at a final hearing and agencies to render advisory opinions on those issues, and nothing more. *See* EFSB 114 (Preliminary Order "establishes the agenda of issues for the Board's Final Hearing and designates the agencies to act at the Board's direction). Therefore, there was no jurisdictional determination in SB-2017-01.

Moreover, there was no explicit jurisdictional determination in either SB-2-21-01, *In re Revolution Wind, LLC Application to Construct a Major Energy Facility*, nor SB-2017-01, *In re The Narragansett Electrical Company d/b/a National Grid and Clear River Energy LLC (Burrillville Interconnection Project)*, and these matters should not be viewed as guiding for the issues presented in the Petition. To start, in both matters the propriety of the EFSB assuming jurisdiction over the transmission lines was not actually determined by the Board because the issue was never presented to it. Rather, the applicants specifically requested that the EFSB issue a license for the transmission lines because the applicants presupposed that those transmission lines were major energy facilities. *See Application of Revolution Wind, LLC for License to Construct and Alter Major Energy Facilities*, SB-2-21-01 (Dec. 30, 2020) (requesting that the Board issue a

license for the applicant to construct (1) 23-miles of submarine export cables and (2) 1-mile of 275 kV onshore transmission cables); *Application of The Narragansett Electric Company d/b/a National Grid and Clear River Energy LLC for License to Construct and Alter Major Energy Facilities*, SB-2017-01 (Feb. 22, 2017) (requesting that the Board issue a license for the applicant to construct a 6.8 mile 345 kV transmission line). The jurisdictional question, therefore, was never posed to the EFSB, and, consequently, the Board never analyzed and determined, in either matter, that the lines associated with those projects were, in fact, major energy facilities over which it had jurisdiction.

Thus, SB-2017-01 and SB-2-21-01 differ from the instant matter where the Petitioner, Quonset Development Corporation, has not applied for a license and is explicitly arguing that the 115kV Gen-Tie line is not a major energy facility because it is not a transmission line. Accordingly, there is no jurisdictional determination that can be gleaned from the prior proceedings and applied in this matter.

Moreover, the facilities at issue in SB-2017-01 and SB-2-21-01 are different than the 115kV Gen-Tie line. In SB-2-21-01, *In re Revolution Wind, LLC Application to Construct a Major Energy Facility*, the facilities at issue were specifically found to be transmission lines bringing "power **generated** by the offshore wind farm to shore[.]" *See* Report and Order No. 154 at 1. In contrast, the 115kV Gen-Tie line at issue in this matter is a line that connects a non-generating battery energy storage system for the purpose of storing and discharging electricity. It is not a transmission line.

The transmission line at issue in SB-2017-01 is similarly distinct from the 115kV Gen-Tie line at issue in this matter. The 6.8 mile 345 kV line was a transmission line to connect an electric generating facility with a switching station. Again, the 115kV Gen-Tie line at issue in this matter

is a line that connects a non-generating battery energy storage system for the purpose of storing and discharging electricity. It is not a transmission line.

V. Conclusion

For these reasons, along with the reasons set forth in QDC's opening Petition and the testimony and argument set forth at the July 11, 2024 evidentiary hearing, 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.

Respectfully submitted,

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