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 SECOND SUPPLEMENTAL MEMORANDUM IN SUPPORT OF ITS PETITION FOR DECLARATORY ORDER

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I. Introduction

After the Rhode Island Energy Facility Siting Board's ("EFSB") July 11, 2024, evidentiary hearing on Quonset Development Corporation's ("QDC") Petition for Declaratory Order – which seeks a declaration that a proposed battery energy storage system (the "Project") at the Quonset Business Park is not subject to the jurisdiction of the EFSB – the EFSB sent the following items to undersigned counsel: (1) two articles published by the United States Energy Information Administration ("EIA") of which the EFSB will take administrative notice; (2) a memorandum requesting a legal response relating to whether the Project's 115kV Gen-Tie Line is jurisdictional to the Board; ; and (3) the EFSB's Fourth Set of Data Requests, which included a request for legal "analysis of the implications, if any, of the L[arge]G[enerator]I[nterconnection]P[rocedures] when considering whether the Generator Tie Line that Green Development has chosen to build is a transmission facility that is FERC jurisdictional."

As more fully explained below and throughout this proceeding, the EFSB does not have jurisdiction over the Project. To start, the Project is not a generation facility. Rather, it is a facility that converts, transforms, receives, stores, and discharges electric energy and, as set forth in the EIA articles, is actually a net consumer of electricity, not a generator of electricity. Thus, the EFSB does not have jurisdiction over the Project because it is not a "facility for the generation of electricity." *See* 445-RICR-00-00-1.3(16).

In addition, the EFSB does not have jurisdiction over the 115kV Gen-Tie Line because it is not a "transmission line" as that term is used in the electric utility industry and related areas. Undoubtedly, the 115kV Gen-Tie Line conveys electricity from one place to another. However, and critically, the 115kV Gen-Tie Line does not transmit electrical energy from a generating facility and does not provide "transmission services." Instead, it is an interconnection facility;

transmission to and from the facility occurs along the 115 kV loop lines, over which the EFSB has jurisdiction. Accordingly, the EFSB does not have jurisdiction over the 115kV Gen-Tie Line, nor any aspect of the Project, and QDC requests that the EFSB issue a declaration that the proposed Project is not subject to the EFSB's jurisdiction.

II. The EIA Articles of which the EFSB has Taken Administrative Notice Reinforce That the Project Is Not a Generation Facility Subject to the EFSB's Jurisdiction.

Each EIA article of which the EFSB has taken administrative notice supports the conclusion that battery energy storage systems like the Project are net-consumers of electricity and, therefore, are not generation facilities. Specifically, the October 31, 2023 article entitled "How electricity is generated" confirms that energy storage facilities do not – and cannot – generate electricity:

> These energy storage systems use electricity to charge a storage facility or device, and the amount of electricity they can supply is less than the amount they use for charging. Therefore, the net electricity generation from storage systems is counted as negative in EIA reports[.]

How electricity is generated, U.S. Energy Information Administration (Oct. 31, 2023) at 3.

The July 16, 2024 article entitled "Electricity generation, capacity, and sales in the United States" likewise recognized that "[e]nergy storage facilities generally use more electricity than they generate and have negative net generation." *Electricity generation, capacity, and sales in the United States*, U.S. Energy Information Administration (July 16, 2024) at 5.

A facility that is a net consumer of electricity is not a "facilit[y] **for the generation** of electricity." R.I. Gen. Laws § 42-98-3(d) (emphasis added). Thus, the EFSB does not have jurisdiction over energy storage systems, like the Project, because they do not generate electricity.

III. The 115kV Gen-Tie Line is Not Jurisdictional to the Board Because it is Not a Transmission Line Under R.I. Gen. Laws § 42-98-3(d).

The EFSB has siting jurisdiction over "major energy facilities," which include "transmission lines of sixty-nine (69) [kV] or over[.]" R.I. Gen. Laws § 42-98-3(d). "Transmission line" is a term of art in the electric utility industry and refers to the lines that connect power generation facilities to distribution systems to facilitate the final delivery of electricity to customers. *See Electricity Transmission: What is the Role of the Federal Government*, Congressional Research Service, R47862 (Dec. 4, 2023) (https://crsreports.congress.gov/product/pdf/R/R47862) ("Electric transmission systems are the lines, towers, transformers, and other equipment connecting power generation facilities to distribution systems that make final delivery of electricity to most customers"); *see also* N.J. Admin. Code § 14:5-1.2 (defining "transmission line" as a line that "transmits electricity from a generating plant to electric substations of switching stations"). As QDC has explained throughout this proceeding, the Project is not a generation facility. As such, the 115kV Gen-Tie Line does not act as a "transmission line" because it does not connect a generation source to electric customers.[1]

In a colloquial sense, the 115kV Gen-Tie Line will "transmit" electric energy for purposes of making sales of electric energy and capacity in the regional power markets. *See* Merriam-Webster Online Dictionary (retrieved Aug. 9, 2024, from https://www.merriam-webster.com/dictionary/transmit) (defining "transmit" as "to send or convey from one . . . place to another"). It is not, however, a "transmission line" subject to EFSB jurisdiction because it does

[1] This is unlike the loop lines, which QDC presumes are jurisdictional to the EFSB because they are part of the transmission system that transmits electricity "through the loop lines, into the switchyard, across the point of common coupling[.]" July 11, 2024 Hr'g Tr. 40:20-21.

not perform a transmission function, as that term is used in relevant laws, regulations, and industry standards.

The Federal Energy Regulatory Commission ("FERC") defines "transmission" as:

> Moving bulk energy products from where they are produced or generated to distribution lines that carry the energy products to customers.

Glossary, FERC (Aug. 31, 2020) (https://www.ferc.gov/about/what-ferc/about/glossary). As explained above, the 115kV Gen-Tie Line does not move energy from where it was generated to customers. Rather, it is an interconnection facility connecting a non-generating facility to the bulk power system; it does not provide distribution or transmission services.

Indeed, FERC's Large Generator Interconnection Procedures ("LGIP") would classify the 115kV Gen-Tie Line as an interconnection facility, not a transmission facility. The LGIP defines "Interconnection Facilities" as:

> **Interconnection Facilities** shall mean the Interconnecting Transmission Owner's Interconnection Facilities and the Interconnection Customer's Interconnection Facilities. Collectively, Interconnection Facilities include all facilities and equipment between the Generating Facility and the Point of Interconnection, including any modification, additions or upgrades that are necessary to physically and electrically interconnect the Generating Facility to the Administered Transmission System. Interconnection Facilities are sole use facilities and shall not include Distribution Upgrades, Stand Alone Network Upgrades or Network Upgrades.

Thus, under the LGIP, a line that interconnects a facility to the transmission system is not considered a transmission line. Although the Project is not a generating facility, the LGIP evidences that FERC would treat a non-generating facility's equipment necessary to physically connect to the transmission system as part of an interconnection facility, and not as a transmission line.

Accordingly, here, the Project's "Interconnection Facilities" would include the 115kV Gen-Tie Line, and FERC would not consider it a transmission line. Additionally, the LGIP's Interconnection Request Form designates that a tie line is part and parcel of the interconnection facilities, and not a separate transmission line. Specifically, the Interconnection Request form seeks technical information from the Interconnection Customer regarding a tie line as part of the Interconnection Facilities, not as a separate transmission line. *See* LGIP, App. 1, Attach. B, § G.

This makes sense because the 115kV Gen-Tie Line does not provide "transmission services" under the ISO-NE Tariff. In addition to the sale of power that the battery energy storage system could discharge over the Gen-Tie Line, the Project, including the Gen-Tie Line, also could provide frequency regulation and voltage control, but these ancillary services are not "transmission services" under the ISO-NE Open Access Transmission Tariff. *See* ISO New England, Inc. Transmission, Markets, and Services Tariff, Sec. II (https://www.iso-ne.com/static-assets/documents/regulatory/tariff/sect_2/oatt/sect_ii.pdf). There are seven (7) transmission services available in New England:

- Regional Network Service (RNS) to use the pool transmission facilities to move electricity into or within the New England BAA
- Through or Out Service (T/Out) to use the pool transmission facilities to move electricity out of or through the New England BAA
- Local Transmission Service to use the non-pool transmission facilities to move electricity over a local network located within the New England BAA
- CSC Transmission Service to use the Cross-Sound Cable (CSC) tie line to move electricity into, out of, or through the New England BAA
- Phase I/II Transmission Service to use the Phase I/II tie line to move electricity into, out of, or through the New England BAA
- Generator Interconnection to connect a generator to New England's transmission system to be able to obtain service and move energy
- Transmission Upgrades to request an addition to, upgrade of, or modification of either the pool transmission facilities or the non-pool transmission facilities

Transmission Service Types, ISO-NE (https://www.iso-ne.com/markets-operations/transmission-operations-services/service-types/). As explained above, the 115kV Gen-Tie Line is not a transmission line under the LGIP. Nor does it provide any of the other services described by ISO-NE as transmission services. Accordingly, because the 115kV Gen-Tie Line does not provide any of the transmission services available by ISO-NE, it is not a transmission line.

For these same reasons, the 115kV line is not a facility for the "transmission of electric energy in interstate commerce . . .." 16 U.S.C. § 824(b)(1). Electricity transmission and distribution to consumers occurs when "[e]lectricity is generated" and then "move[d] through a complex system[.]" *How electricity is delivered to consumers*, U.S. Energy Information Administration (Apr. 16, 2024) (https://www.eia.gov/energyexplained/electricity/delivery-to-consumers.php). Because the Project does not generate electricity, the Gen-Tie Line is not serving as a transmission facility under the Federal Power Act.

For all these reasons, the 115kV Gen-Tie Line is not jurisdictional to the EFSB because it is not a "transmission line[.]" R.I. Gen. Laws § 42-98-3(d).

IV. Assuming the EFSB Asserts Jurisdiction Over the 115kV Gen-Tie Line, it Does Not Have Jurisdiction Over the Rest of the Project.

If the EFSB determines that it has jurisdiction over the 115kV Gen-Tie Line, the EFSB should not assert jurisdiction over the rest of the Project. The EFSB can assert jurisdiction only over facilities that fall within its jurisdictional grant. *See Caithness RICA Ltd. P'ship v. Malachowski*, 619 A.2d 833, 836 (R.I. 1993). Thus, even if the 115kV Gen-Tie Line falls within the EFSB's jurisdiction, that does not give the EFSB jurisdiction over the entire Project.

In the past, the EFSB has asserted jurisdiction over certain new and upgraded electric substations that it deemed "ancillary facilities integral and dedicated to the transmission of

electricity at 115 kilovolts." *In re The Narragansett Electric Company (Southern Rhode Island Transmission Project)*, Docket No. SB-2005-01, (Order No. 59, Mar. 13, 2007). The proposed battery energy storage system at issue here is not "ancillary" to the 115 kV Gen-Tie Line. Rather, the battery energy storage system is the primary and essential component of the Project.

"Ancillary" is defined as subordinate, subsidiary, auxiliary, and supplementary. *See* Merriam-Webster Online Dictionary (retrieved Aug. 7, 2024, from https://www.merriam-webster.com/dictionary/ancillary). In *In re The Narragansett Electric Company (Southern Rhode Island Transmission Project)*, the new and upgraded substations were of secondary importance, and thus ancillary, to the 115kV transmission lines because the project's principal purpose was to enable the utility to reconductor/build over 25 miles of 115kV transmission lines. *See* Docket No. SB-2005-01, (Order No. 59, Mar. 13, 2007) at 5-8. To accommodate and connect to the new transmission lines, the utility's proposal included upgrading and expanding an existing substation, and constructing of a new substation. *See id.* at 7-8. Specifically, the utility proposed to upgrade and expand the existing West Kingstown Substation "[i]n order to accommodate th[e] new" 5.3 mile 115kV transmission line. *Id.* at 7. Similarly, the utility proposed to construct a new Tower Hill Substation that would "be connected to the existing 115 kV transmission line with two new 115 kV transmission tap lines[.]" *Id.* at 8. Accordingly, the substations were "ancillary" and necessary to support the transmission line, and were not the principal purpose of the project.

The battery energy storage facility proposed is not ancillary to the 115kV Gen-Tie Line. It is just the opposite: here, the 115kV Gen-Tie Line is ancillary to the storage facility. The 115kV Gen-Tie Line is simply a component of a non-generating storage system that the EFSB does not have jurisdiction over. Unlike in *In re The Narragansett Electric Company (Southern Rhode Island Transmission Project)* where the EFSB's exercise of ancillary jurisdiction was premised on

its primary jurisdiction over the main energy facility, the EFSB cannot exercise any ancillary jurisdiction where, as here, it does not have jurisdiction over the main energy facility in the first instance. Thus, assuming the EFSB has the authority to exercise ancillary jurisdiction as it did in *In re The Narragansett Electric Company (Southern Rhode Island Transmission Project)*, the EFSB nevertheless cannot assert jurisdiction over this otherwise nonjurisdictional battery storage facility just because it may find that it has jurisdiction over an ancillary component of the Project.[2]

V. The Revolution Wind Case is Not Relevant to the Jurisdictional Issues Presented in the Petition.

As set forth in QDC's Supplemental Memorandum, SB-2-21-01, *In re Revolution Wind, LLC Application to Construct a Major Energy Facility*, is not relevant to the jurisdictional questions presented in the Petition, and it is unwarranted to view the EFSB's *sub silentio* assumption that it had jurisdiction over the 275 kV line as relevant to the jurisdictional determination presently before the EFSB.[3] *See Burbank-Glendale-Pasadena Airport Auth. v. City*

[2] QDC questions whether the EFSB's exercising jurisdiction over "ancillary facilities integral and dedicated to the transmission of electricity at 115 kilovolts" is valid in the first instance. *See In re The Narragansett Electric Company (Southern Rhode Island Transmission Project)*, Docket No. SB-2005-01, (Order No. 59, Mar. 13, 2007). Administrative procedure in Rhode Island is sharply designed "to confine the agency's activities to the jurisdiction conferred upon it by the General Assembly." *E. Grossman & Sons, Inc. v. Rocha*, 373 A.2d 496, 501 (R.I. 1977). In this scheme there is no room for the EFSB to assume jurisdiction over components of a project unless it is explicitly authorized by the General Assembly to do so. The Energy Facility Siting Act does not grant the EFSB jurisdiction over "ancillary facilities integral and dedicated" to a facility. *See* R.I. Gen. Laws §§ 42-98-1, *et seq*.

[3] Notwithstanding, it is QDC's understanding that the Revolution Wind facility is a generation facility and, therefore, the 275 kV line would be a "transmission line" performing a transmission function and service. The 275 kV line would be moving energy from where it is generated to distribution lines that carry the energy products to customers. *See Glossary*, FERC (Aug. 31, 2020) (https://www.ferc.gov/about/what-ferc/about/glossary) (defining "transmission"). This is unlike the 115kV Gen-Tie Line, which does not move energy from a generating facility. The significance of the General Assembly's use of the word "transmission" in the jurisdictional grant to the EFSB evidences that the question of whether a line connects a generation facility to the bulk

of Burbank, 136 F.3d 1360, 1363 (9th Cir. 1998) (recognizing that where a jurisdictional issue is not directly addressed in a previous case, the assumption that a tribunal had jurisdictional is not binding on a future jurisdictional challenge). Revolution Wind submitted the entire project to the EFSB for review, and did not carve out some components as non-jurisdictional to the EFSB. The question of whether the 275 kV line running to the onshore substation was or was not jurisdictional to the EFSB was not raised, briefed, discussed, considered, or addressed in the Revolution Wind case, and there was no deliberative consideration of the issue. *See Webster v. Fall*, 266 U.S. 507, 511 (1925) (holding that the Supreme Court would not "stop to inquire whether" other cases "can be differentiated from the case now under consideration, since in none of them was the point here at issue suggested or decided"). Quite simply, the Revolution Wind matter was different from what is presently pending before the EFSB in the Petition: QDC explicitly seeks a jurisdictional determination that the Project is not subject to the EFSB's jurisdiction, including the 115kV Gen-Tie Line.

VI. Conclusion.

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

power system is relevant to whether the EFSB has jurisdiction over the line. *See* R.I. Gen. Laws § 42-98-3(d) (confining the EFSB's jurisdiction to certain "transmission lines").

Respectfully submitted,

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Dated: August 14, 2024

CERTIFICATE OF SERVICE

I hereby certify that I have on this 14th day of August 2024 I caused copies of the foregoing responses to be served upon all parties of record in this proceeding by electronic mail and First Class U.S. Mail, postage pre-paid, as follows:

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