

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

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

**ORDER DENYING PETITION FOR DECLARATORY ORDER**

On April 17, 2024, the Quonset Development Corporation (“QDC” or “Petitioner”) filed a Petition with the Energy Facility Siting Board (“Board”) requesting a declaration that a proposed battery energy storage system project (“Project”), to be located in the Quonset Business Park in North Kingstown, is not jurisdictional to the Board.<sup>1</sup>

For all of the reasons set forth in this Order, the request for the declaration is denied.

**I.       Project Description**

The “Project” to which the Petition pertains has many components which include:

- (i) An outdoor lithium iron phosphate battery energy storage facility with the nameplate capacity to discharge up to 210 megawatts DC of electric power.<sup>2</sup> The facility spans a length of over 1,200 feet and width of 450 feet (“Battery Storage Facility”);<sup>3</sup>
- (ii) a substation with one main station transformer which serves to step down power received at the Battery Storage Facility from the transmission system at 115 kV voltage to 34.5 kV voltage when the Battery Storage Facility is charging, and to

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<sup>1</sup> *Petition for Declaratory Order, Quonset Development Corporation* (“Petition”)(April 17, 2024).

<sup>2</sup> Hr’g Tr. at 39 (Jul. 11, 2024); Ex. QDC-1.

<sup>3</sup> Exhibit QDC-1.

step up power delivered into the transmission system from the Battery Storage Facility from 34.5 kV voltage to 115 kV voltage when the Battery Storage Facility is discharging (“Substation”);<sup>4</sup>

- (iii) approximately 2,500 feet of underground 115 kV high voltage circuits traveling from the Substation through conduits along Callahan Road to flow power to and from the Battery Storage Facility. These circuits are referred to by the Petitioner as a “generator tie line” (“Generator Tie Line”);<sup>5</sup>
- (iv) a switchyard which transfers the power to and from the 115 kV above-ground circuits and 115 kV underground circuits and provides a demarcation point that can protect and electrically separate the Battery Storage Facility project and the 115 kV transmission system should there be a system failure (“Switchyard”);<sup>6</sup> and
- (v) above-ground 115 kV high voltage circuits referred to by Petitioner as loop lines (“Loop Lines”) to be owned by The Narragansett Electric Company d/b/a Rhode Island Energy (RIE or utility), approximately 500 feet in length, which would serve to complete the interconnection of the Battery Storage Facility to the existing transmission lines owned by RIE,<sup>7</sup> which transmission lines are a part of the regional transmission system that is operated and managed by the regional transmission system operator, ISO New England.<sup>8</sup>

The Battery Storage Facility is proposed by QDC to be located on approximately ten acres of land off Callahan Road in North Kingstown within the Quonset Business Park, over contiguous

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<sup>4</sup> Hr’g Tr. at 37-40; Attachment to EFSB 3-1 at 11 (Feasibility Study).

<sup>5</sup> Ex QDC-1.

<sup>6</sup> Hr’g Tr. at 36, 59-60; Ex. QDC-1.

<sup>7</sup> Hr’g Tr. at 35; Ex QDC-1.

<sup>8</sup> Hr’g Tr. at 34, 64, 91. Petitioner has conceded that the Board has jurisdiction over the Loop Lines. Hr’g Tr. at 35.

parcels, one of which currently includes the location of a North Kingstown fire station which will need to be demolished and relocated.<sup>9</sup> The parcels are owned by QDC and are proposed to be leased to a developer for the construction and operation of the Battery Storage Facility and other components.<sup>10</sup>

As created under Rhode Island law, QDC is a subsidiary of the Rhode Island Commerce Corporation (formerly known as the Economic Development Corporation), and has control and authority over the Quonset Business Park pursuant to statutory law.<sup>11</sup> QDC states that it is permitting the Project as a part of its “Site Readiness Program” to make it ready for construction and operation by whomever the developer turns out to be.<sup>12</sup> QDC identifies Green Development as the likely owner of the Battery Storage Facility and has already granted Green Development an option for that developer to construct, own, and operate the Battery Storage Facility once it is fully permitted.<sup>13</sup>

## **II. Legal Issues**

While the facts of the case include issues of engineering complexity, the legal question that needs to be answered in this case is rather straightforward. Specifically, does the Board have jurisdiction over the Project or any component thereof? Whether the Board has jurisdiction depends upon whether the Project itself or any component thereof falls within the definition of a “major energy facility,” as defined by the Energy Facility Siting Act (“Siting Act”).<sup>14</sup> If an energy facility falls within the definition, it triggers an obligation on the part of the proponent to obtain a

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<sup>9</sup> Petition at 3 fn. 2; Hr’g Tr. at 21-22.

<sup>10</sup> Hr’g Tr. at 22.

<sup>11</sup> R.I. Gen. Laws § 42-64.10-1 *et seq*

<sup>12</sup> Hr’g Tr. at 25-28.

<sup>13</sup> Hr’g Tr. at 8, 22-23.

<sup>14</sup> R.I. Gen. Laws § 42-98-3(d).

license from the Board before any such energy facility, or jurisdictional component thereof, is sited, constructed, or altered. Specifically, R.I. General Laws § 42-98-4 contains a directive with one sentence: “No person shall site, construct, or alter a major energy facility within the state without first obtaining a license from the siting board pursuant to this chapter.”<sup>15</sup>

Through the Petition, QDC essentially is seeking a declaration from the Board that it does not have to file such an application with the Board and obtain such a license. In that context, it is important to point out that a decision of the Board that finds jurisdiction does not mean that the Project cannot move forward. Rather, it only means that an application must be filed with the Board and a license granted before construction can proceed.

As a matter of legal interpretation, whether the proponent of an energy facility must file an application for a license from the Board effectively depends on whether the energy facility is a “major energy facility” as defined by the Siting Act. The definition of “major energy facility” is long and contains many clauses which capture different types and sizes of energy facilities. The entire definition is quoted in a corresponding footnote below,<sup>16</sup> but for ease of review, the definition quoting only the clauses relevant to the Board’s determination in this case is as follows:

“Major energy facility” means . . .

facilities for the generation of electricity designed or capable of operating at a gross capacity of forty (40) megawatts or more;

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<sup>15</sup> R.I. Gen. Laws § 42-98-4.

<sup>16</sup> “‘Major energy facility’ means facilities for the extraction, production, conversion, and processing of coal; facilities for the generation of electricity designed or capable of operating at a gross capacity of forty (40) megawatts or more; transmission lines of sixty-nine (69) kV or over; facilities for the conversion, gasification, treatment, transfer, or storage of liquefied natural and liquefied petroleum gases; facilities for the processing, enrichment, storage, or disposal of nuclear fuels or nuclear byproducts; facilities for the refining of oil, gas, or other petroleum products; facilities of ten (10) megawatts or greater capacity for the generation of electricity by water power, and facilities associated with the transfer of oil, gas, and coal via pipeline; any energy facility project of the Rhode Island economic development corporation; the board may promulgate regulations to further define “major energy facility” to the extent further definition is required to carry out the purpose of this chapter, provided that any waste to energy facility shall not be deemed a major energy facility for the purposes of this chapter.” R.I. Gen. Laws § 42-98-3(d).

transmission lines of sixty-nine (69) kV or over; . . . [and]  
any energy facility project of the Rhode Island economic development corporation.  
. . .

The Petition requests a very broad ruling from the Board that “the Project” is not jurisdictional, including the Battery Storage Facility, the Substation, the Generator Tie Lines, and the Switchyard.<sup>17</sup> In this case, the Board must consider whether the Project, as defined as a whole or any component thereof, falls within one of the three categories called out above.

### **III. The Petition**

#### *A. The Project as Described in the Petition*

In the Petition, QDC represents that it is seeking the declaratory judgment for its “site readiness program” through which it could offer “a pre-permitted site to a battery storage facility.”<sup>18</sup> The Petition requests the Board 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.*<sup>19</sup> QDC represents that it wants to permit the site itself in order to provide a pre-permitted location for a developer (not identified within the Petition itself).<sup>20</sup>

The Petition contains this brief description of the “Project:”

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

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<sup>17</sup> Petition at 3, fn. 2. While the Petition drew no distinction among all the components of the Project, the Petitioner conceded that the Board has jurisdiction over the Loop Lines. Hr’g Tr. at 35.

<sup>18</sup> Petition at 2.

<sup>19</sup> *Id.* at 12.

<sup>20</sup> *Id.* at 3. QDC later disclosed that the developer likely to develop the Project was Green Development. Hr’g Tr. at 22-23.

and discharge power to the electrical system. The Project will not generate additional electricity.<sup>21</sup>

In a footnote associated with this quoted text, the Petition states that the Project will occupy a ten-acre site and interconnect to a 115 kV substation.<sup>22</sup> The footnote further states that the Project will include a 2,500-foot underground “115 kV generator tie line” using the existing utility right of way on Callahan Road. The footnote also makes the statement that “applicable filings will be made, to the extent applicable, for the interconnection loop lines and any other infrastructure that falls under the EFSB.”<sup>23</sup>

Other than the paragraph quoted above and the associated footnote, the Petition provided no further details regarding the Project. The Petition did not disclose that QDC anticipated Green Development to construct, own, and operate the facility or that an option to lease had already been executed with that developer for the Project – facts that later were disclosed during the evidentiary hearing.<sup>24</sup>

Most of the remainder of the Petition contained legal arguments in support of the Petitioner’s position that the Board lacked jurisdiction over the “Project.”

#### *B. QDC’s Basis for Supporting the Declaratory Ruling*

QDC first noted that the Board’s jurisdiction over the Project depends upon whether the Project falls under the definition of “major energy facility,” citing the Energy Facility Siting Act, R.I. Gen. Laws § 42-98-4.<sup>25</sup> The Petition quotes the definition of a “major energy facility” as

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<sup>21</sup> Petition at 3.

<sup>22</sup> *Id.* at fn. 2 (the substation is referred to as the “Davisville substation.” While the Petition does not provide any details about the substation, the Board is aware that the Davisville substation is owned by Rhode Island Energy.)

<sup>23</sup> Petition at 3, fn 2.

<sup>24</sup> Hr’g Tr. at 8 & 22-23.

<sup>25</sup> Petition at 4. The cited section of the law states: “No person shall site, construct, or alter a major facility within the state without first obtaining a license from the siting board pursuant to this chapter.”

found in the Board’s Rules of Practice and Procedure.<sup>26</sup> The Petition maintains that the Project does not fall within the meaning of the quoted provision based on the following assertions:

- (1) that the Board already ruled in another case that a battery energy storage system was not jurisdictional,
- (2) that a battery energy storage system does not “generate electricity,”
- (3) that the referenced definition of major energy facility does not explicitly mention battery energy storage systems,
- (4) that when the Board’s enabling Act was passed, an “energy facility” of the Rhode Island Port Authority and Economic Development Corporation (a/k/a the Rhode Island Commerce Corporation) would not have included a battery energy storage system, and
- (5) that the “Project” is not a project of the Rhode Commerce Corporation or QDC, but will be developed by another entity “at the fully permitted, pad ready site.”<sup>27</sup>

The remainder of the Petition set forth three general legal arguments in support of the request for the blanket ruling to declare that the Project is not jurisdictional.

*C. The Argument Regarding a 2019 Board Decision on Battery Storage as Precedent*

The first argument made by QDC relies upon a prior decision of the Board arising out of a petition that was filed with Board in May of 2019 by an energy storage developer – Energy Storage Resources, LLC – seeking a declaratory ruling that energy storage was not a “major energy

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<sup>26</sup> The definition contained in the Board’s rules is nearly word-for-word taken from the statute, with a few non-substantive wording differences. *Compare* EFSB Rules of Practice and Procedure, 445-RICR-00-00-1.3(16) and R.I. Gen. Laws § 42-98-3(d).

<sup>27</sup> Petition at 5-6. The Petition includes a clarifying footnote explaining that the name of the Rhode Island Port Authority and Economic Development Corporation was changed by statute to the “Rhode Island Commerce Corporation” and that QDC is a quasi-state agency, established as a special-purposes subsidiary of the Rhode Island Commerce Corporation. *See* Petition at 5, fn. 4.

facility” as defined in the Siting Act (“*Energy Resources , LLC*” case).<sup>28</sup> In that case, a majority of the Board (i.e., a 2-1 vote) declared that the proposed 180-megawatt energy storage facility was not jurisdictional to the Board. QDC points out that the Board’s order in *Energy Resources, LLC* reasoned that the definition of “major energy facility” does not refer to energy storage facilities.<sup>29</sup> QDC then argues that the Board’s 2019 *Energy Resources, LLC* order “directs the same conclusion and entry of a declaratory order in this proceeding.”<sup>30</sup> According to QDC, since neither the Siting Act nor the Board’s regulations have been amended, the Board should follow the *Energy Resources, LLC* as precedent for its case.<sup>31</sup>

#### D. *The Argument that Battery Energy Storage Does Not Generate Electricity*

The Petition then argues that the reasoning applied in the *Energy Resources, LLC* decision applies in this case. QDC also argues that the Project does not “generate electricity.”<sup>32</sup> According to QDC, “[a]lthough the Project is capable of operating at more than 40 megawatts, it does not generate electricity. Instead, it stores electricity generated elsewhere.”<sup>33</sup>

The Petition supports the assertion that the Project would not be generating electricity with references to the Merriam-Webster Online Dictionary, arguing that the Board must give the terms of the statute its plain meaning.<sup>34</sup> Since the statute does not specifically define the term “generation,” QDC relies on the dictionary. Quoting the referenced dictionary, QDC quotes the

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<sup>28</sup> *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. The 2-1 decision was made at an Open Meeting on December 17, 2019, and was reflected in the written order issued March 10, 2020. The Chairperson of the Board (Curran) dissented and wrote a separate dissent. The Order and dissent can be found at: [https://ripuc.ri.gov/sites/g/files/xkgbur841/files/efsb/2019\\_SB\\_02/Order144\\_SB-2019-02.pdf](https://ripuc.ri.gov/sites/g/files/xkgbur841/files/efsb/2019_SB_02/Order144_SB-2019-02.pdf)

<sup>29</sup> Petition at 6.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 7.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*



definition of “generation,” stating: “‘Generation’ is defined as ‘the process of coming or bringing into being,’ or ‘origination by a generating process.’ . . . ‘Generate,’ in turn, is defined as ‘to bring into existence.’”<sup>35</sup> The Petition continues:

The Project does not bring electricity “into existence.” The electricity stored in batteries and later shifted to the grid already exists before reaching the Project. Storing energy and converting energy is different from generating energy.<sup>36</sup>

The Petition then quotes the definition of “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.”<sup>37</sup>

The Petition then cites decisions from two other jurisdictions (New York in 2014 and Massachusetts in 2023). QDC refers to a New York siting decision which asserted that the terms “generation” and “storage” are viewed in the electric power industry as different concepts.<sup>38</sup> Then the Petition refers to a conclusion drawn in Massachusetts by a siting board that storage facilities store and transform energy generated elsewhere.<sup>39</sup> QDC argues that the same reasoning should apply in Rhode Island to conclude that the Board has no jurisdiction over the Project.

*E. The Arguments that the Project is Not a Project of QDC, nor is it an Energy Facility*

The Petition shifts focus to the clause contained in the definition of “major energy facility” which jurisdictionally captures “any project of the economic development corporation.”<sup>40</sup> The Petition indirectly acknowledges in footnote 4 of the Petition that when interpreting the statutory reference to the “economic development corporation,” it is appropriate to interpret this as applying

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<sup>35</sup> *Id.* at 7.

<sup>36</sup> *Id.* at 8.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 8-9.

<sup>40</sup> *Id.* at 9.

the reference to the QDC which is “a special purpose subsidiary” of the Rhode Island Commerce Corporation.<sup>41</sup> This is because the name of the “Economic Development Corporation” was changed to the Rhode Island Commerce Corporation. When that occurred, QDC also was created as a subsidiary of the entity.<sup>42</sup> But the Petition itself does not elaborate.<sup>43</sup> Nevertheless, the Petition implicitly follows this understanding when arguing that the Project is not a project of either QDC or the Rhode Island Commerce Corporation.<sup>44</sup>

QDC first argues that the Project is not a project of the QDC because it will ultimately be developed by another entity.<sup>45</sup> QDC argues:

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 tenants.<sup>46</sup>

Therefore, QDC maintains the Board does not have jurisdiction.

QDC then argues that “the Project” is not even an “energy facility” within the meaning of the Siting Act because the Legislature did not list battery energy storage as a category of facility within the Board’s jurisdiction.<sup>47</sup> QDC counts only nine categories of energy facilities and relies upon the fact that the definition of “major energy facility” does not list it. QDC argues that the Board is bound by the fact that nothing in the definition refers to battery energy storage.<sup>48</sup> QDC further elaborates by claiming that there was no such thing as battery energy storage technology

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<sup>41</sup> *Id.* at 5, fn. 4.

<sup>42</sup> *Id.*

<sup>43</sup> Hr’g Tr. at 95. While the Petition was somewhat vague on this point, counsel for QDC did not dispute the interpretation during the hearing. (The transcript erroneously references “EDC” at line 14. It should have recorded “QDC”.)

<sup>44</sup> Petition at 9.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 9-10.

<sup>48</sup> *Id.* at 10.

as a significant type of electrical infrastructure in 1986. Therefore, according to QDC, the Legislature could not have intended that battery energy storage systems would fall within the definition of “energy facility.”<sup>49</sup>

QDC further observes that in 1986, the Legislature would have understood that electricity flows in only one direction on the electric grid.<sup>50</sup> Thus, according to QDC, the Legislature could not have intended to capture battery energy storage because “[t]his 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 the electricity out to the grid.”<sup>51</sup> The foundation for this argument appears to be QDC’s claim that the Board must apply the meaning of “energy facility” in the context of what was commonly known in 1986 and since battery energy storage was not developed as it is today, the Board cannot interpret the term “energy facility” in the year 2024 to include it within the definition today.

#### *F. No Arguments Regarding Jurisdiction Over the Generator Tie Line*

While the Petition offered arguments regarding the question whether the Board has jurisdiction over the Battery Storage Facility itself, it did not distinguish among any components. Thus, it did not address the question of how the Generator Tie Line, Substation, and Switchyard each would avoid the jurisdiction of the Board under the clause of the definition of “major energy facility” which captures “transmission lines of 69 kV or over.”<sup>52</sup>

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<sup>49</sup> *Id.*

<sup>50</sup> *Id.* at 11.

<sup>51</sup> *Id.*

<sup>52</sup> QDC later made arguments after the Board raised the issue at the evidentiary hearing and in follow-up discovery questions. *See* Hr’g Tr. at 99; Response to EFSB 1-1; EFSB4-1; Supp. Mem at 5-8 (Jul. 29,2024); Sec. Supp. Mem. at 3-8 (Aug. 14, 2024).

#### **IV. Travel of the Case**

The Petition was filed on April 17, 2024. On June 20, 2024, the Board issued a Notice of Hearing, notifying the Petitioner and the public that an evidentiary hearing would be held on July 11, 2024. No other parties filed any motions to intervene in the proceedings.

The purpose of the hearing was for the Board to obtain further information from Petitioner regarding the facts upon which the request for a Declaratory Order was based – details of which were noticeably absent from the Petition – including details regarding the components of the proposed Project, and testimony or other technical evidence to support the factual assertion that the Project “will not generate electricity.”<sup>53</sup> Prior to the evidentiary hearing, the Board requested Petitioner to provide diagrams of the entire Project, and a map or diagrams showing the Project location in the Quonset Business Park. Maps and diagrams were provided by the Petitioner and posted on the Board’s website.

#### **V. Evidentiary Hearing on July 11**

At the July 11 hearing, Petitioner sponsored two witnesses. Each testified separately, then answered questions from the Board as a panel. Before presenting the witnesses, counsel for Petitioner clarified that Petitioner was seeking a declaratory judgment that the Board did not have jurisdiction “over its entire facility, including the battery itself, as well as the inverters and converters, and the gen-tie line that runs from the facility to the switchyard, at which point it would reach the point of common coupling.”<sup>54</sup>

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<sup>53</sup> Petition at 3.

<sup>54</sup> Hr’g Tr. at 9 (Jul. 11, 2024).

The first witness was Chelsea Siefert, the Chief Operating Officer of QDC.<sup>55</sup> Ms. Siefert explained how QDC prepares sites for new development under its program which it refers to as the “Site Readiness Program.”<sup>56</sup> According to Ms. Siefert, QDC’s role has been to manage the business park for new business activity. As a part of this endeavor, QDC engages in “pre-permitting” sites within the park, including any environmental permits that may be required.<sup>57</sup> She gave examples of how QDC used the program for other site development, and explained that QDC does not do any construction for the development of projects in the park.<sup>58</sup>

Ms. Siefert testified regarding the development of the Battery Storage Facility, explaining how the project was identified and its location.<sup>59</sup> She identified Green Development as the developer of the project, stating that “we expect that Green Development will construct the facility.” She described a “lengthy process” that had taken place with Green Development that reached a point where an “option to lease agreement” was entered into with the developer.<sup>60</sup> Ms. Siefert also referred to the QDC corporate management process involving the QDC board of directors and committee involvement. She also identified the fact that the battery storage project would need to comply with QDC regulations and have permits in place with DEM and CRMC.<sup>61</sup> Ms. Siefert testified that while they expect Green Development to be the developer for the battery storage project, if Green Development does not follow through with the project, QDC expects another developer “would come and build the battery system.”<sup>62</sup>

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<sup>55</sup> *Id.* at 13.

<sup>56</sup> *Id.* at 15-16.

<sup>57</sup> *Id.* at 15.

<sup>58</sup> *Id.* at 18-20.

<sup>59</sup> *Id.* at 21.

<sup>60</sup> *Id.* at 22.

<sup>61</sup> *Id.* at 25-26.

<sup>62</sup> *Id.* at 27-28.

When answering questions from the Board regarding the 2023 Annual Statutory Report, Ms. Siefert acknowledged many “QDC projects” were in development, but she maintained that “[t]hose aren’t projects that QDC considers to be projects of the corporation. They’re projects of whichever business wants to come and do business in the park.”<sup>63</sup> She confirmed that QDC sites a project for its location, then transfers the project to a developer.<sup>64</sup> Later, she clarified further that QDC does not consider the battery storage project to be a “QDC project.” She maintained that if QDC owned a building or leased a facility owned by QDC to someone else, it would be a QDC project. But since QDC is only granting a ground lease, QDC did not consider it to be a QDC project.<sup>65</sup>

The second witness sponsored by Petitioner was Matthew Ursillo, Vice President of Project Management and Construction for Green Development.<sup>66</sup> Mr. Ursillo has worked for Green Development since 2017. Prior to that time, he worked as a project manager for various other energy industry entities. He has a degree in mechanical engineering, a Master’s degree in business administration, and is certified as a “Project Manager Professional.”<sup>67</sup> Mr. Ursillo sponsored several maps and diagrams relating to the Project and all of its main components.<sup>68</sup>

He began his testimony by defining certain terms. He defined “primary energy” as “raw fuel that’s not been subjected to human intervention.”<sup>69</sup> He also referred to “voltage” which he said he might refer to as “potential.”<sup>70</sup> He then defined “electricity” as “the presence of voltage

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<sup>63</sup> *Id.* at 80-81; Exhibit EFSB-2at 18.

<sup>64</sup> *Id.* at 81.

<sup>65</sup> *Id.* at 101-103.

<sup>66</sup> *Id.* at 29.

<sup>67</sup> *Id.* at 29-31.

<sup>68</sup> QDC-1, QDC-2, QDC-3, and QDC-4.

<sup>69</sup> *Id.* at 33.

<sup>70</sup> *Id.*

and current.”<sup>71</sup> Finally, he defined “energy” as “the amount of power over a period of time.”<sup>72</sup> He indicated that he wanted to differentiate between the terms “power” and “energy.”<sup>73</sup>

Mr. Ursillo sequentially described diagrams of the entire Project which showed all of the components of the Project from the existing utility-owned transmission line referred to as the L190 and G185 lines, to the Loop Lines, Switchyard, Generator Tie Line, the main station transformer at the Substation, and the transformers and battery modules within the Battery Storage Facility.<sup>74</sup> He testified regarding the operational characteristics of the systems, including a description of the purpose of the “station transformer.” He stated that the “[s]tation transformer is stepping the voltage up higher, rather than at the generator. We are stepping bulk power up.”<sup>75</sup> He described the batteries used in the Battery Storage Facility as “lithium iron phosphate.”<sup>76</sup> Mr. Ursillo continued his description of the function of the transformer at the Substation, stating: “The voltage is . . . not going to be different whether it’s charging or discharging. The voltage is a function of either a current going in or current going out.”<sup>77</sup>

Mr. Ursillo was asked about what term he would use to describe what is flowing through the Rhode Island Energy-owned transmission lines. He answered: “It would be power. So it would be the presence of both voltage and current.”<sup>78</sup> He traced the flow of the power during the charging process from the transmission lines owned by Rhode Island Energy all the way down to the point when electricity reaches the station transformer, and then onto the battery units.<sup>79</sup> He then

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<sup>71</sup> *Id.* at 33-34.

<sup>72</sup> *Id.* at 34.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* at 34-46.

<sup>75</sup> *Id.* at 38.

<sup>76</sup> *Id.* at 39.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.* at 41.

<sup>79</sup> *Id.* at 41-44.

explained that there were “Generator Step-Up transformers” along with bidirectional inverters at each unit, which he referred to as “power conversion units,” or PCUs.<sup>80</sup> Mr. Ursillo later confirmed that the process for discharging follows the same path as he described for charging, except in reverse.<sup>81</sup>

During his explanation of how the battery units functioned, Mr. Ursillo was asked about the storage of power: “Now we’re talking about the storage of power. Are we storing power? Are we storing voltage plus current, or something else?”<sup>82</sup> He responded that the batteries were “storing energy,” creating a “potential difference.”<sup>83</sup> Upon further questioning, he described what was being stored:

Q. Your previous testimony about storing power, or even transmitting power, power is not something you can hold or put anywhere. It’s energy you will be transmitting?

A. Yes.

Q. Power is just a rate.

A. Power is the instantaneous rate.

Q. So the other thing you’re describing is you’re saying potential. There is going to be a charge stored in the battery. So you’re storing potential electric energy, right?

A. That is correct.

Q. Not electromotive energy.

A. No. It’s electrochemically.

Q. Earlier you also testified that electricity itself is the transfer of voltage and current?

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<sup>80</sup> *Id.* at 43-44.

<sup>81</sup> *Id.* at 55.

<sup>82</sup> *Id.* at 46.

<sup>83</sup> *Id.*



A. Electricity is the presence of voltage and current.<sup>84</sup>

Mr. Ursillo testified in detail regarding the operation of batteries, and how they create a sine wave which ultimately results in AC power being discharged.<sup>85</sup> He acknowledged that the operation as used with the batteries is functionally no different than what happens with solar generation. However, he stated that the solar inverter is getting energy from the solar modules, which get energy from the photons of the sun, which he later explained is a primary fuel source.<sup>86</sup> He distinguished the battery as not receiving energy from a “primary fuel source,” indicating that the energy was “created by a primary fuel source elsewhere.”<sup>87</sup>

Mr. Ursillo explained how the battery system is controlled. He testified that the operator issues commands to either charge or discharge and specifies the power rate at which the charging or discharging occurs.<sup>88</sup> He testified regarding the configuration of the various components of the Project.<sup>89</sup> He then disclosed the status of the project review that has been taking place through the ISO New England study processes, indicating that Green Development had submitted an application through the ISO New England open access transmission tariff.<sup>90</sup>

Upon questioning from the Board, Mr. Ursillo testified that if the facility was not a battery facility – but was another type of energy facility such as natural gas or solar – the facilities used to interconnect to the transmission system would be the same, with the same purpose and function as what was shown on the diagram for the Battery Storage Facility.<sup>91</sup>

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<sup>84</sup> *Id.* at 47-48.

<sup>85</sup> *Id.* at 49-51. Mr. Ursillo later explained the difference in terminology among converters, inverters, and bidirectional inverters. The term “bidirectional inverters” is intended to describe both converters and inverters. *Id.* at 55-56.

<sup>86</sup> *Id.* at 53-55.

<sup>87</sup> *Id.* at 54.

<sup>88</sup> *Id.* at 56-57.

<sup>89</sup> *Id.* at 57-61.

<sup>90</sup> *Id.* at 64-65.

<sup>91</sup> *Id.* at 65-66.

Upon further questioning from the Board, Mr. Ursillo clarified what he meant by the energy associated with the batteries:

Q. . . . Are you agreeing that within the battery it's electrochemical energy?

A. Stored as electrochemical energy, yes.

Q. I want to ask, it seemed like you got a lot of questions about energy, but you agree that electricity itself is voltage and current?

A. Yes.

Q. Your facility creates voltage and current, as you just said?

A. Uses the potential within the battery that will, yes, create voltage and current. But I wouldn't say create as in it's not there already. The potential is there all right. We have potential energy. We're releasing that electrochemical energy.<sup>92</sup>

Both witnesses then answered other general questions from the Board, and the Board asked questions of counsel relating to legal issues associated with the request for the declaratory ruling.

## **VI. Supplemental Information Provided in Response to Follow-Up Questions**

### *A. Questions Related to the ISO New England Review Process*

During the evidentiary hearings, Mr. Ursillo disclosed that Green Development was involved with an ISO New England process that was studying the impact of the Battery Storage Facility.<sup>93</sup> The Board followed up with an information request asking for more details and a timeline regarding what had occurred with the study process.<sup>94</sup> In the response, Green Development disclosed that it had submitted a request for interconnection to ISO New England in accordance with ISO New England's Open Access Transmission Tariff ("OATT").<sup>95</sup> The response

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<sup>92</sup> *Id.* at 84-85.

<sup>93</sup> Hr'g Tr. at 64-65.

<sup>94</sup> EFSB 2-1.

<sup>95</sup> *Id.* at 1.

indicated that the request was made under Schedule 22 of the OATT, referred to as the Large Generator Interconnection Procedures (“LGIP”).<sup>96</sup> The response also referenced a recent order issued by the Federal Energy Regulatory Commission (“FERC”) approving amendments to the LGIP.<sup>97</sup> It also described the steps involved in the study process and provided a timeline of events that have taken place in the on-going process.<sup>98</sup> The timeline indicated that the request was initiated by Green Development on September 13, 2021.<sup>99</sup> The response also indicated that Green Development filed application that was intended to allow it to participate in the New England energy markets.<sup>100</sup> The explanation also stated that it would be following up with an additional interconnection application that would allow the project to participate in ISO New England’s forward capacity auctions.<sup>101</sup>

A copy of the interconnection request was provided as an attachment to the response. On the form, Green Development checked the item labeled “A proposed Generation Facility.” The form also had a question: “Will the Generating Facility include electric storage capacity?” The item was answered “yes.” Another section requested “Generating Facility Fuel Type(s),” listing numerous types of generation sources, including a box for “Battery Storage,” which was checked.<sup>102</sup>

During the evidentiary hearing, Mr. Ursillo also disclosed that a Feasibility Study had already been completed in the ISO New England Process.<sup>103</sup> The Board requested a copy of the

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<sup>96</sup> *Id.*

<sup>97</sup> *Id.* at 1-2.

<sup>98</sup> *Id.* at 3-4.

<sup>99</sup> *Id.* at 3.

<sup>100</sup> *Id.* at 5.

<sup>101</sup> *Id.*

<sup>102</sup> Attachment EFSB 2-1 at 2.

<sup>103</sup> Tr. at 65.

study which was provided as a response to an information request.<sup>104</sup> The Feasibility Study refers in several places to the Battery Storage Project as generation, including a sentence which describes it as “the Battery based Generation Project.”<sup>105</sup>

*B. Questions Related to the Generator Tie Line*

(1) Comparison of Revolution Wind Transmission to ODC

At the evidentiary hearing, Petitioner described all the components of the Project. One of the components was the 115 kV Generator Tie Line. During the hearings, Petitioner maintained that the 115 kV Generator Tie Line was not jurisdictional to the Board. The Board, however, was aware of other proceedings involving generator tie lines in which the Board had exercised jurisdiction, one of which was Docket SB--2021-01 – a case involving an application for a license for transmission facilities that interconnected the offshore wind project of Revolution Wind to an interconnection facility and substation in Quonset Point.<sup>106</sup> The Board also was aware that counsel for Revolution Wind was the same counsel representing the Petitioner in this case. In the Revolution Wind case, counsel for Revolution Wind filed an application under her signature specifically representing and essentially certifying under the Board’s rules that the 275 kV underground 1-mile cables labeled as the “Onshore Transmission Cable” were “transmission lines in a single duct bank.”<sup>107</sup>

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<sup>104</sup> EFSB 3-1. Petitioner requested confidential treatment for the study.

<sup>105</sup> Attachment to EFSB 3-1 at 18, 22, 29, 49.

<sup>106</sup> *See In Re: Revolution Wind, LLC Application to Construct a Major Energy Facility*, (Docket No. SB-2021-01, Order No. 154 ( Jul. 8, 2022)(“Revolution Wind Order”).

<sup>107</sup>*Application of Revolution Wind, LLC for License to Construct and Alter Major Energy Facilities*, EFSB Docket No. SB-2021-01 at 1, 12 (Dec. 30, 2020)(Revolution Wind Application). *Energy Facility Siting Board Rules of Practice and Procedure*, 1.19 (C) states: “Effect of Signature - The signature of the person, officer or attorney on any paper filed with the Board constitutes a certification by such individual that he or she has read the paper being subscribed and filed, and knows the contents thereof, that if executed in any representative capacity, the matter has been subscribed and executed in the capacity specified upon the pleading or matter filed with full power and authority to so do, that the contents are true as stated, except as to matters and things, if stated on information and belief, and that those matters and things are believed to be true.”

In the Board’s memo, the Board asked Petitioner to reconcile its position in this pending docket – in which QDC asserts that the 115 kV Generator Tie Line is not jurisdictional – with the Revolution Wind case. QDC’s response stated: “When Quonset Development Corporation determined that it would pursue a decision that the 115 kV Gen-Tie line is not jurisdictional to the Board, it did not review or consider proceedings in Docket No. SB-[2021]-01 . . . .”<sup>108</sup> The response then referred to a Supplemental Legal Memorandum.<sup>109</sup>

In the Supplemental Legal Memorandum, counsel for Petitioner argued that there was never any jurisdictional determination made by the Board in the Revolution Wind case and that “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.”<sup>110</sup> According to QDC, “[t]he jurisdictional issue 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 it had jurisdiction.”<sup>111</sup>

The Board, through counsel, sent a follow up set of questions to Petitioner in a memorandum, *specifically asking* Petitioner to indicate and explain whether it was Petitioner’s position that the power lines identified in the Revolution Wind case as transmission lines were jurisdictional to the Board or not.<sup>112</sup> Petitioner’s response simply declared that what occurred in the Revolution Wind case “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

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<sup>108</sup> EFSB 1-1. The question and response contained a typographical error identifying Docket No. SB-2021-01 as SB-21-01 (i.e., missing the full year designation of 2021).

<sup>109</sup> *Quonset Point Development Corporation’s Supplemental Memorandum in Support of its Petition for Declaratory Order* (July 29, 2024)(“Supplemental Memorandum”).

<sup>110</sup> Supp. Mem. at 6.

<sup>111</sup> *Id.* at 7.

<sup>112</sup> Lucarelli Mem. to Robin Main, Esq. and Adam Ramos, Esq, at 3 (Jul. 31, 2024).

275 kV line as relevant to the jurisdictional determination presently before the EFSB.”<sup>113</sup> Petitioner further argued that Revolution Wind submitted the entire project for review and did not carve out any components as non-jurisdictional. According to Petitioner, since the issue of jurisdiction was never briefed or addressed, the case was not relevant.<sup>114</sup> In effect, Petitioner essentially refused to answer the Board’s specific question.

(2) Argument Regarding Definition of Transmission in FERC Rulings

In the same memorandum sent by the Board to Petitioner, the Board requested Petitioner provide an explanation of why Petitioner maintains that the 115 kV Generator Tie Line is not a transmission line in light of federal law under the Federal Power Act, and FERC decisions addressing interconnections and transmission.<sup>115</sup> QDC responded in a Second Supplemental Memorandum.

There were three main points made by Petitioner in its response. First, Petitioner maintained that the 115 kV Generator Tie Line “does not act as a ‘transmission line’ because it does not connect a generation source to electric customers.”<sup>116</sup> The second main argument was the assertion that FERC does not treat “interconnection facilities” as transmission lines.<sup>117</sup> And the third was that the 115 kV Generator Tie Line is not “a transmission line subject to EFSB jurisdiction because it does not perform a transmission function.”<sup>118</sup>

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<sup>113</sup> Sec. Supp. Mem. at 8.

<sup>114</sup> *Id.* at 9.

<sup>115</sup> Lucarelli Mem. at 3.

<sup>116</sup> Sec. Supp. Mem. at 3.

<sup>117</sup> *Id.* at 4.

<sup>118</sup> *Id.* at 3-5.

With respect to the third argument, Petitioner maintained that the 115 kV Generation Tie Line does not provide “transmission services” under the ISO New England OATT.<sup>119</sup> The memorandum lists seven different transmission services under the OATT, claiming that none of them are applicable.<sup>120</sup> Within the list of seven transmission services is a service described as: “Generator Interconnection to connect a generator to New England’s transmission system to be able to obtain service and move energy.”<sup>121</sup> Petitioner maintained that this service, among all the others, is not applicable to the 115 kV Generator Tie Line.<sup>122</sup>

## **VII. Decision**

### *A. Components of the Project and the Applicable Jurisdictional Categories*

As described in this Order, there are five main components comprising the Project, including the Battery Storage Facility, the Substation, the Generator Tie Line, the Switchyard, and the Loop Lines. The Petitioner has asked for a declaration that the Board does not have jurisdiction over nearly the entire Project. The only exception is the referenced Loop Lines, over which Petitioner concedes the Board’s jurisdiction.<sup>123</sup> Given the broad scope of the request, if the Board finds it has jurisdiction over any one of the remaining components comprising the Project, the request for the broad declaration must be denied.<sup>124</sup>

To answer the question, the Board must determine if any of the components fall within the definition of a “major energy facility,” as that term is defined in the Siting Act.<sup>125</sup> As enumerated

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<sup>119</sup> *Id.* at 5.

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.* at 6.

<sup>123</sup> Petition at 3, fn. 2; Hr’g Tr. at 35.

<sup>124</sup> The Petition itself did not make any requests in the alternative. Rather, it makes one broad request for a ruling that the Project is not jurisdictional. Petition at 12.

<sup>125</sup> R.I. Gen. Laws § 42-98-3(d).

earlier in this Order, there are three clauses within the definition of a “major energy facility” which are relevant to the Board’s determination. Specifically, the question is whether the Project itself or any of its individual components constitute either:

- (1) a facility “for the generation of electricity designed or capable of operating at a gross capacity of forty (40) megawatts or more;”
- (2) a transmission line of “sixty-nine (69) kV or over;” and/or
- (3) an “energy facility project” of the QDC or the Rhode Island Commerce Corporation.<sup>126</sup>

For the reasons described below, the Board denies the Petition, as the Board finds it has jurisdiction over all the referenced components of the Project.

*B. Whether the Battery Storage Facility is a “Facility for the Generation of Electricity”*

(1) The Question Whether the Battery Storage Project is Generating Electricity

The primary focus of the Petition addressed the question whether the Battery Storage Facility is a facility “for the generation of electricity designed or capable of operating at a gross capacity of forty (40) megawatts or more.” The Petition argues that the facility does not meet this definition, asserting that the facility does not generate electricity, but rather “stores electricity.”<sup>127</sup> The converse, of course, is present. In another words, if the Battery Storage Facility is, in fact, generating electricity, a license for its construction is required because the capacity exceeds the 40-megawatt threshold.

When considering the request in the Petition for the declaratory ruling, the Board has focused not only on the review of the technical assertions made by Petitioner, but also the general

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<sup>126</sup> *Id.*

<sup>127</sup> Petition at 7.



understanding of energy storage and electricity within the industry, the operational characteristics of the Battery Storage Facility, the role of generation in the industry, and the purpose of the Siting Act itself. Each of these considerations are addressed below.

## (2) Industry Definition of Electricity

In making the argument in its Petition that the Battery Storage Facility does not generate electricity, Petitioner cited a common dictionary definition for the term “generating.” However, the Petition itself stated nothing about the definition of “electricity.” The Board finds the Petitioner’s analysis to be missing a critical component. In order to make the determination of whether the facility is generating electricity, one must first explore what electricity is in the first instance.

In that regard, it is critical to recognize that electricity is not a “thing” that can be stored in the electric system. It is a phenomenon reflecting the presence of current and voltage. The common understanding of “electricity” in the electric utility industry is that “electricity” is “the flow of electrical power or charge.”<sup>128</sup> ISO New England defines it as “[a] form of energy characterized by the flow of electrons and other charged particles through material.”<sup>129</sup> Even the Merriam-Webster dictionary defines it in terms of motion: “a fundamental form of energy observable in positive and negative forms that occurs naturally (as in lightning) or is produced (as in a generator) *and that is expressed in terms of the movement and interaction of electrons.*”<sup>130</sup> This definition also defines it as “electric current or power.”<sup>131</sup> In fact, during the evidentiary hearings, the Petitioner’s main technical witness did not disagree with that principle, defining

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<sup>128</sup> <https://www.eia.gov/energyexplained/electricity/>

<sup>129</sup> <https://www.iso-ne.com/participate/support/glossary-acronyms#electricity>

<sup>130</sup> <https://www.merriam-webster.com/dictionary/electricity> (emphasis added)

<sup>131</sup> *Id.*

electricity as “the presence of voltage and current.”<sup>132</sup> The term “current,” of course, connotes the activity of electron (or charge) flow and rate.<sup>133</sup> Given that the current (caused by the flow of charge) must be present for electricity to be present, it follows that electricity cannot be stored. Various forms of “energy” can be stored that contain the potential to be converted to electricity, but current – and, therefore, electricity itself – cannot be stored.<sup>134</sup> Forms of potential energy can be stored, but not electricity itself.

### (3) Publications of the U.S. Energy Information Administration Defines Storage

When considering whether the Battery Storage Facility is “generating electricity,” the Board also took administrative notice of publications of a federal agency called the U.S. Energy Information Administration, also known as “EIA.” EIA is a highly regarded and reliable source of data and information about the energy industry in the United States.<sup>135</sup> It has published informational articles on electricity, generation, and storage. One publication entitled “How Electricity is Generated,” defines the basics of generating electricity, stating that “[a]n electric generator is a device that converts a form of energy into electricity.”<sup>136</sup> The same article identifies different types of generators, and includes “energy storage systems for electricity generation” as a “type” of electric generation. The article also lists generation technologies across the United States, including “storage systems” which include the use of “electrochemical batteries” – the technology of the Battery Storage Facility in this case.<sup>137</sup>

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<sup>132</sup> Hr’g Tr. at 33-34.

<sup>133</sup> Hr’g Tr. at 49-50 (describing the generation of AC (alternating current) power).

<sup>134</sup> Often times, battery energy storage is referred to as “storing electricity,” but this is a shorthand misnomer when the actual laws of physics are considered. The potential exists, but not electricity itself.

<sup>135</sup> See <https://www.eia.gov/about/>

<sup>136</sup> “How Electricity is Generated,” at 1, U.S. Energy Information Administration (EIA). See <https://www.eia.gov/energyexplained/electricity/how-electricity-is-generated.php>

<sup>137</sup> Hr’g Tr. at 84-85.

Similarly, EIA published an article entitled “Electricity Generation, Capacity, and Sales in the United States.”<sup>138</sup> The article refers to “terms” used in the industry, including the term “generation,” stating:

“*Generation*: a measure of electricity produced over time. Most electric power plants use some of the electricity they produce to operate the power plant. *Net generation* excludes the electricity used to operate the power plant. Energy storage systems for electricity generation have negative-net generation because they use more energy to charge the storage system than the storage system generates.”<sup>139</sup>

After describing more traditional generation facilities, the same article lists “additional categories of electricity generators,” and includes the following: “Energy storage systems for electricity generation use electricity (or some other energy source, such as solar-thermal energy) to charge an energy storage system or device that is discharged to supply (generate) electricity when needed.”<sup>140</sup>

EIA also published an article addressing storage, entitled “Energy Storage for Electricity Generation.”<sup>141</sup> The article refers to storage systems as “secondary generation sources,” stating: “[Energy storage systems] are not primary electricity generation sources. They may use electricity supplied by separate electricity generators or from an electric power grid to charge the storage system, which makes [energy storage systems] secondary generation sources.”<sup>142</sup> The article addresses energy storage systems across the spectrum of the industry, including the technology proposed for the Battery Storage Facility in this case, which EIA classifies as “generation.”<sup>143</sup>

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<sup>138</sup> “Electricity Generation, Capacity, and Sales in the United States.” U.S. Energy Information Administration (EIA). See <https://www.eia.gov/energyexplained/electricity/electricity-in-the-us-generation-capacity-and-sales.php>

<sup>139</sup> *Id.* at 1.

<sup>140</sup> *Id.* at 4.

<sup>141</sup> “Energy Storage for Electricity Generation,” U.S. Energy Information Administration (EIA). See <https://www.eia.gov/energyexplained/electricity/energy-storage-for-electricity-generation.php>

<sup>142</sup> *Id.* at 2.

<sup>143</sup> *Id.* at 1.

After the Board notified Petitioner that it would be taking administrative notice of the EIA articles, Petitioner argued in one of its memoranda to the Board that the article entitled “How electricity is generated” confirms Petitioner’s position that it is not a generation facility. Petitioner relies upon the operational fact that the amount of electricity supplied by the storage facility is less than the amount of electricity used for charging.<sup>144</sup> According to Petitioner, since the facility is “a net consumer of electricity,” it cannot be a generation facility.<sup>145</sup>

This assertion, however, collides with common sense. First, when the Battery Storage Facility is discharging, it is supplying power into the transmission system in a manner that flows exactly in the same way as any traditional generator. When it is charging, the facility becomes a consumer, but that does not change the nature of what the battery storage system is doing when it is discharging. When it is discharging, it is a generator. Moreover, the entire purpose of charging is to create the ability of the Battery Storage Facility to generate. Otherwise, the installation is useless.

Second, Petitioner’s assertion is contradicted by an analogous industry example. One merely needs to consider what happens with roof top solar across the United States. Utility customers across the nation put solar generation on the roofs of their homes or businesses. There are many installations where the amount of electricity consumed by the customer, measured across a month or the entire year, is always more than the amount of electricity generated by the solar power.<sup>146</sup> Just because a customer consumes more on site than what the customer is generating

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<sup>144</sup> Sec. Supp. Mem. at 2.

<sup>145</sup> *Id.*

<sup>146</sup> *See In Re: The Narragansett Electric Company d/b/a Rhode Island Energy Tariff Advice to Amend the Net Metering Provision – Proposal for Administration of Excess Net Metering Credits*, Docket No. 23-05-EL, Order No. 25052 at 13-14 (May 10, 2024); <https://ripuc.ri.gov/sites/g/files/xkgbur841/files/2024-05/2305-RIE-NM-Ord15052%205-10-24.pdf>

behind the utility meter does not transform the solar generation into a different “thing” that is not generation. Similarly, just because the Battery Storage Facility consumes more electricity on site than it supplies, does not transform the Battery Storage Facility into a different “thing” that is not generation.

#### (4) Witness Testimony Does Not Support Assertions in the Petition

While there was a factual assertion in the Petition that the Battery Storage Facility in this case would not be “generating electricity” – along with an assertion that the facility would be “storing electricity” – it is important and notable that the Petitioner’s main technical witness never confirmed those assertions that had appeared in the Petition itself. Specifically, Petitioner’s counsel never asked the witness to opine on whether the Battery Storage Facility was or was not designed to generate electricity.

The witness gave testimony about many features of the facility. He gave straightforward answers to difficult questions, answering them directly. But he was never asked and, therefore, never offered an opinion that the Battery Storage Facility would not be “generating electricity.” Similarly, Petitioner’s counsel never asked the witness whether the facility would be storing electricity. During questioning by staff of the Board, however, the witness testified that the batteries would be storing “potential energy,”<sup>147</sup> but he never asserted that the batteries would be storing electricity. Instead, he stated that what was being stored was “potential electric energy.”<sup>148</sup> When describing the process of how electricity results from the battery process, he described how the lithium iron battery system functioned, storing the potential for energy which would be converted to electricity through the operation of the battery system when called upon by the

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<sup>147</sup> Hr’g Tr. at 46-49.

<sup>148</sup> *Id.* at 48-49.

operator.<sup>149</sup> But no testimony was given that specifically asserted that the facility was not generating electricity from the potential energy sitting in its stored state.

One point that the witness appeared to be making is that electrochemical energy being stored in the batteries came from a primary energy or fuel source, alluding to an unspecified definition of raw fuels from EIA.<sup>150</sup> The Board is aware that the electricity would be received off the regional transmission system and such electricity would be originating from distant generation resources. But that fact has no relevancy to the functional purpose of the battery system, compared to other generation resources. The Battery Storage Facility will consist of plant and equipment that will be tapping into the energy source potential contained in the batteries and converting that energy potential into electricity to be sold in the regional market, presumably during peak hours. Except for the fact that electricity is used to create the energy potential within the batteries, the Battery Storage Facility is converting electrochemical potential energy into electricity when discharging.<sup>151</sup> Whether the origin of the energy potential is described as “primary” (like natural gas, oil, or coal), or occurs from charging the battery system to create an electrochemical energy potential, that distinction does not change the ultimate functional outcome associated with the operation of the storage system. As the EIA has defined it: “An electric generator is a device that converts a form of energy into electricity.”<sup>152</sup> When discharging occurs from the batteries, the storage system is converting potential energy into electricity (i.e., generating electricity).

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<sup>149</sup> *Id.* at 48-52, 56-57.

<sup>150</sup> *See id.* at 53-54, 62-64; *see also* Supp. Mem, at 4-5.

<sup>151</sup> Hr’g Tr. at 48.

<sup>152</sup> “How Electricity is Generated” *supra*.

In sum, to the extent Petitioner is relying upon a factual assertion that the Battery Storage Project will not be “generating electricity,” the Board finds that Petitioner never met its evidentiary burden.

(5) Regional and Federal Practice Defines Storage as Generation

There are other clear indicators in the national and regional levels that support a finding that the Battery Storage Facility is a facility for the generation of electricity. In particular, there is significant federal precedent.

In July of 2023 and March of 2024, FERC issued related Orders designed to improve the interconnection rules for various types of generating facilities, including electric storage resources.<sup>153</sup> It is important to note that in both the original 2023 Order and the 2024 Order on rehearing that followed, FERC defined electric storage resources: “An electric storage resource is *a generating facility* capable of receiving electric energy from the grid and storing it for later injection of electricity.”<sup>154</sup> In the Orders, FERC approved changes to the “Large Generator Interconnection Procedures” (LGIP) that would be applied across the country when generators connect to the transmission system. The approved LGIP also contained a definition of “Generating Facility.” It states: “Generating Facility shall mean Interconnection Customer’s device(s) for the production and/or storage for later injection of electricity identified in the Interconnection Request, but shall not include Interconnection Customer’s Interconnection Facilities.”<sup>155</sup> In the March 2024

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<sup>153</sup> *Improvements to Generator Interconnection Procedures and Agreements*, Order No. 2023, 184 FERC ¶ 61,054 (Issued Jul. 28, 2023); *Improvements to Generator Interconnection Procedures and Agreements*, Order No. 2023-A, 186 FERC ¶ 61,199 (Issued Mar. 21, 2024).

<sup>154</sup> 186 FERC ¶ 61,199, at P 563, n. 1041. (Energy Resources Case) (emphasis added) This was not the first time that storage was defined as generation. FERC had included storage in the definition in prior rulemakings. *See* Notice of Proposed Rulemaking, *Improvement to Generator Interconnection Procedure and Agreements*, 179 FERC ¶ 61,194 (Jun. 16, 2022) at P 13, n. 43.

<sup>155</sup> 186 FERC ¶ 61,199, Appendix C: Changes to the pro forma LGIP, Section 1, Definitions, “Generating Facility.”

Order on rehearing, FERC also addressed the need for transmission providers to make special accommodation in modeling assumptions when performing studies for certain “non-synchronous generating facilities.” The FERC expressly defined those non-synchronous generating facilities to include “wind, solar, and electric storage facilities.”<sup>156</sup>

The significant “take-away” from these FERC Orders is that there is unchallenged federal recognition that energy storage resources are a type of generation facility. This FERC rule has application across the entire country in situations where large-scale storage is interconnecting to the transmission system. These federal rules also apply to the Battery Storage Facility of Petitioner to the extent it is interconnecting to the transmission system, as acknowledged by Petitioner.<sup>157</sup> It is apparent that the definition used by FERC is based on factual assumptions about the operational characteristics of energy storage.

Given the FERC rules, it would be illogical for the state and federal definitions to collide with each other, especially when the energy industry is inherently interstate in nature and Rhode Island is inextricably dependent upon the regional electric system for continuous reliable service.<sup>158</sup> Making a factual finding that energy storage is not “generation” while the federal rules broadly governing the industry unambiguously recognize storage as a generating resource would be illogical and conflict with the evidence set forth in the record of this case.

Further, the information obtained by the Board from Petitioner regarding its application with ISO New England under the LGIP – which by its title alone – is a set of rules that facilitates

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<sup>156</sup> *Id.* at P 17.

<sup>157</sup> *See* Response to EFSB 2-1. In September of 2021, Green Development submitted an “Interconnection Request” to ISO New England in accordance with ISO New England interconnection processes in place for large-scale generation facilities in New England.

<sup>158</sup> The Siting Act itself recognizes regional need as a means to satisfy the need criteria for the issuance of licenses under the Siting Act R.I. Gen. Laws 42-98-11(b)(1). Any collision between federal and state law also could implicate issues of federal preemption, to the extent inconsistent interpretations give rise to conflicting results.



generators interconnecting to the transmission system, belies Petitioner’s claims. That is, at the same time that Petitioner claims that its facility is not a generator, Green Development has been processing forms and engaging with ISO New England as a generator under the federal rules.<sup>159</sup>

*(6) Siting Decisions from Other Jurisdictions*

The Petitioner cited decisions from other energy facility siting authorities in two other states to support its argument that the Board does not have jurisdiction.<sup>160</sup> We note that the Massachusetts siting board (MA EFSB) reached a different conclusion regarding whether the Massachusetts statutory provisions conferred jurisdiction over a battery storage facility.<sup>161</sup> However, the Massachusetts agency was interpreting language from its own enabling statute. The facilities over which the MA EFSB has jurisdiction was defined as: “generating units 100 MW or more; certain new transmission lines and ancillary structures which are integral parts of the operation of any transmission line; certain structures for the manufacturing or storage of gas; and certain new gas pipelines.”<sup>162</sup> The agency noted that the term “generating unit” was not defined, so it looked to other definitions to discern legislative intent, including statutory definitions in other sections of the laws not pertaining to the siting authority.<sup>163</sup> Based on a review of all of the statutory provisions that the agency viewed relevant under Massachusetts law, including definitions that explicitly addressed energy storage, it concluded that the legislature did not intend to confer jurisdiction over battery storage to the Massachusetts siting authority.<sup>164</sup> While there are similarities in the roles of the Board in Rhode Island and the siting authority in Massachusetts,

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<sup>159</sup> See the Response to EFSB 2-1.

<sup>160</sup> Petition at 8-9.

<sup>161</sup> *Petition of Cranberry Point Energy Storage, LLC*, Docket No. EFSB 21-02 (May 11, 2023).

<sup>162</sup> *Id.* at 14.

<sup>163</sup> *Id.* at 16-18.

<sup>164</sup> *Id.* at 19-20.

jurisdiction under Rhode Island law arises from different statutory provisions. Thus, the similarities stop there.<sup>165</sup> We have no basis to disagree with what the Massachusetts legislature may or may not have intended to capture when establishing the jurisdiction of the Massachusetts siting authority. We have simply concluded, based upon the evidence and information before us in this case, that the Battery Storage Facility proposed here generates electricity during its discharging process and, as a consequence, is jurisdictional to the Board under Rhode Island law.

Petitioner also cited a New York decision that was decided in 2014.<sup>166</sup> A review of the 8-page order indicates that no evidentiary hearings were held and the New York agency relied solely upon comments filed by the Petitioner and other parties. The Petitioner itself made an assertion that the facilities would not generate any “new electricity.”<sup>167</sup> Other parties made assertions in the comments filed with the agency that the facility would not generate electricity at all.<sup>168</sup> But this New York decision was made ten years ago when development of large-scale energy storage was still in its infancy.

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<sup>165</sup> The conclusion from the Order provides a succinct summary of how the MA EFSB addressed the statutory questions, which was distinct from how the Board in this case addressed the issue under our own statutory scheme:

“The Siting Board looks to its enabling statutes to determine whether the Legislature has provided it with the authority necessary to exercise jurisdiction over BESS. Review of these statutes indicates that the Legislature did not provide express authority to do so. BESS is not explicitly included in the list of facilities that are subject to Siting Board jurisdiction. The Siting statutes do not provide clear guidance as to whether a BESS is a “generating facility” and therefore, subject to Siting Board jurisdiction. The Siting statutes do not define “generating” or “generating unit” nor do they provide clear guidance on whether “generating unit” includes BESS. Review of other statutes governing the Siting Board, including statutes governing generating facilities, also do not provide clear guidance on Siting Board jurisdiction over a BESS. To the extent there is any guidance provided by the definitions of “energy storage system”, “generation” and “generation facility” in G.L. c. 164, § 1, they seem to reflect a legislative intent that “generation” and “storage” are distinct energy processes. Given the lack of explicit authority, and different energy processes involved in generating and storing energy, the Siting Board finds that the Legislature did not grant jurisdiction over BESS to the Siting Board.” *Id.* at 23.

<sup>166</sup> *Petition of AES Energy Storage LLC for a Declaratory Ruling that Battery-Based Storage Facilities are not Subject to Article 10 of the PSL*, Case No. 13-F-0287 (January 24, 2014).

<sup>167</sup> *Id.* at 2 (Based on the laws of physics, it is not clear what was meant by “new electricity.”)

<sup>168</sup> *Id.* at 5.

Regardless of what transpired in those jurisdictions, the Board in our case has examined a substantial amount of new information about storage and drawn a different conclusion based on the evidence, supported by substantial industry information which this Board has concluded requires a different conclusion under our own statutory scheme.

(7) The Argument that Energy Storage Does Not Expressly Appear in the Statute

Petitioner argues that the statutory language defining a “major energy facility” does not list battery storage systems as a category over which the Board has jurisdiction. Therefore, according to Petitioner, the Board does not have jurisdiction.<sup>169</sup> At the same time, Petitioner argues elsewhere in the Petition that the term “energy facility” within the definition could not have included a battery storage system in 1986 because “battery storage technology was not a significant type of electrical infrastructure” when the Siting Act was enacted.<sup>170</sup> But Petitioner cannot logically argue this both ways without self-contradiction. The argument that the legislature intentionally excluded the term “battery storage” implies a conscious decision on the part of the General Assembly to exclude it from Board jurisdiction in 1986. In contrast, the argument that the General Assembly could not have contemplated energy storage because it did not exist implies that the General Assembly had no knowledge of such a facility being possible. Both of these scenarios could not have been present at the same time.

In any event, Petitioner’s argument misses the point of the clause which captures all facilities “for the generation of electricity capable of operating at a gross capacity of forty (40) megawatts or more.” Once it is established that energy storage is a form of generation, the absence of the technical word “energy storage” from the definition is not relevant. The General Assembly

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<sup>169</sup> Petition at 5, 10.

<sup>170</sup> *Id.*

was clearly concerned that facilities for the generation of electricity at 40 megawatts or more triggered the need for Board review, regardless of the technology used for generating. Further, the idea that the statute locked in only those technologies that were in existence at the time of enactment over 35 years ago is an unreasonably constraining way to construe the law. Absent specific language to limit the definition to the energy technologies in 1986, it would be inappropriate to assume such an intention of the General Assembly. Industries evolve and innovate. The notion that the General Assembly intended to ignore evolution and innovation in technology is not reasonable in the context of the intent of the Siting Act.

(8) Considerations Relating to the Purposes of the Siting Act

The Siting Act contains a proviso providing a principle to guide the Board in interpreting the Act in ways that are not rigid or constraining. Specifically, R.I. General Laws § 42-98-18 states in the first sentence: “The provisions of this chapter shall be construed liberally to effectuate its purposes.”

The Siting Act also opens with legislative findings,<sup>171</sup> two of which are pointedly relevant to the Board’s considerations in this case:

. . . that there are major issues of public health and safety and impact upon the environment related to the technologies and energy sources used in some facilities; [and]

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<sup>171</sup> R.I. Gen. Laws § 42-98-1(a): “The general assembly recognizes that reasonably priced, reliable sources of energy are vital to the well-being and prosperity of the people of this state; that there are major issues of public health and safety and impact upon the environment related to the technologies and energy sources used in some facilities; that some energy facilities require a major commitment of funds and resources and require many years to build that the decision to permit or deny their construction will have long term impact on the economy of the state; that these decisions will affect the availability and cost of the energy; and that the evaluation of proposals must recognize and consider the need for these facilities in relation to the overall impact of the facilities upon public health and safety, the environment and the economy of the state.”

... that the evaluation of proposals must recognize and consider the need for these facilities in relation to the overall impact of the facilities upon public health and safety, the environment and the economy of the state.<sup>172</sup>

Similarly, within the declarations of policy within the Siting Act, there is a proviso that declares an objective:

[T]he objective of ensuring that the construction, operation, and decommissioning of the facility shall produce the fewest possible adverse effects on the quality of the state's environment; most particularly, its land and its wildlife and resources, the health and safety of its citizens, the purity of its air and water, its aquatic and marine life, and its esthetic and recreational value to the public.<sup>173</sup>

And the Siting Act is designed to assure that major facilities are constructed in way that is consistent with the state's policy objectives:

The construction, operation and/or alteration of major energy facilities shall be consistent with the state's established energy plans, goals, and policy.<sup>174</sup>

The Board is mindful of these core observations and objectives. The General Assembly was concerned that certain energy facilities, some of which were considered to be very large and potentially impactful to both the environment and the health and safety of the public, need to be reviewed and approved by a single state agency and not left to the local communities to evaluate alone.

The Board has considered the recent advancements of energy storage facilities across the country, regionally, and locally. What may have started as small-sized, unique projects involving facilities designed to store energy and convert it to electricity for special purposes, has grown to become an important policy initiative tied to transitioning the electric energy sector and the clean energy economy, with substantial generation capacity. Very large projects are now at the forefront

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<sup>172</sup> *Id.*

<sup>173</sup> R.I. Gen. Laws § 42-98-2(3).

<sup>174</sup> R.I. Gen. Laws § 42-98-2(6).

of innovative advancements to solve important issues in the regional electric system upon which citizens across multiple states will rely. In addition, during the last legislative session, the General Assembly passed a law to advance energy storage, establishing a very aggressive target to install up to 600 megawatts of energy storage by 2033.<sup>175</sup>

In that context, the Board observes that the Battery Storage Facility proposed for Quonset Point is massive in size. It will have the capability of injecting power at 210 megawatts during peak hours. That is more than one-third of the entire 600 MW legislative target. Given the fact that the summer peak load of the entire state of Rhode Island has been approximately 2,100 megawatts, it also means that this one facility will be capable of producing approximately 10% of the entire peak load of Rhode Island, as such peak load is measured today.<sup>176</sup> Moreover, the Board is aware that technologies using lithium-ion type batteries, and covering an area larger than three contiguous football fields, can present issues of public safety which must be carefully considered and mitigated in its design and planning. The 5-day long fire that occurred at a large facility in California is one example.<sup>177</sup> It also is indisputable that a battery energy storage facility of this size will produce an output and effect on the transmission facilities and transmission system that is identical to that which is produced by a traditional generator serving a function to shave peaks.

The Board also is mindful of the implications of any decision that might continue to disavow Board jurisdiction over large-scale energy storage. Given the potential fire hazards and other impacts that can occur when a large-scale project of this magnitude is sited, it is very likely

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<sup>175</sup> R.I. Gen. Laws § 39-26.1-10. See [2024-S 2499A](#), [2024-H 7811aa](#) ; P.L. 2024, Chapters 404 & 405, enacted Jun. 6, 2024.

<sup>176</sup> See data for 2022 reported by EIA, found at: <https://www.eia.gov/electricity/state/rhodeisland/>

<sup>177</sup> See “Fire burns for five days at huge lithium-ion energy storage facility,” *Recharge News.Com* (May 20, 2024). The article can be found at: <https://www.rechargenews.com/energy-transition/fire-burns-for-five-days-at-huge-lithium-ion-energy-storage-facility/2-1-1646389>

that local opposition would emerge at any location outside of Quonset Point for projects in the future. While there are no local permits that are needed in this instance for locating a project in the industrial park, to the extent other large-scale storage projects might be proposed with a capacity of 40 megawatts or greater in areas outside of Quonset Point, the absence of Board jurisdiction could have a dilatory effect on development or could create an insurmountable obstacle. The Board is aware that in several places across the country and elsewhere, local opposition has emerged against projects of this type.<sup>178</sup>

The General Assembly took into account the effects of local opposition to major energy facilities when it passed the Siting Act, giving the Board the authority to consider local issues and essentially override negative decisions of local authorities if a proposed major energy facility otherwise meets all the requirements of the Siting Act relating to need, safety, and avoidance of unacceptable impacts to the environment.<sup>179</sup> In that regard, a decision here which finds jurisdiction and requires a license, in no way should be construed to mean that the development of large-scale energy storage would be impeded. Rather, to the extent large-scale projects meet the requirements, the Board sits as a state agency required to support the advancement of the policies enacted by the General Assembly which implicate not only the new storage law, but also the Act on Climate. For these additional reasons, the Board believes that our finding of jurisdiction is consistent with the policies inherent in the Siting Act, “construed liberally to effectuate its purposes.”

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<sup>178</sup> See e.g., “Local opposition leads to BESS project cancellations in North America – report,” *Energy Storage News* (Feb. 22, 2023), [https://urldefense.com/v3/https://www.energy-storage.news/local-opposition-leads-to-bess-project-cance-!!KKphUJtCzQ!INyATVQkFFgy9k4inp73F\\_ZI6-9sMm00I44sqbWm-gBCUn8M37CmLuUdT7WgMYTS3r2IUsZVI1A4pOyEJ8uG0-MzquUS](https://urldefense.com/v3/https://www.energy-storage.news/local-opposition-leads-to-bess-project-cance-!!KKphUJtCzQ!INyATVQkFFgy9k4inp73F_ZI6-9sMm00I44sqbWm-gBCUn8M37CmLuUdT7WgMYTS3r2IUsZVI1A4pOyEJ8uG0-MzquUS); “Resident Opposition to Battery Energy Storage Facility Intensifies,” *The Examiner News* (Jun. 4, 2024), [https://urldefense.com/v3/https://www.theexaminernews.com/resident-opposition-to-battery-energy-storage-!!KKphUJtCzQ!INyATVQkFFgy9k4inp73F\\_ZI6-9sMm00I44sqbWm-gBCUn8M37CmLuUdT7WgMYTS3r2IUsZVI1A4pOyEJ8uGegCrMKE\\$](https://urldefense.com/v3/https://www.theexaminernews.com/resident-opposition-to-battery-energy-storage-!!KKphUJtCzQ!INyATVQkFFgy9k4inp73F_ZI6-9sMm00I44sqbWm-gBCUn8M37CmLuUdT7WgMYTS3r2IUsZVI1A4pOyEJ8uGegCrMKE$)

<sup>179</sup> R.I. Gen. Laws § 42-98-11(c).

(9) Overriding the Past Decision of the Board Regarding Storage

One of the main arguments made by Petitioner is that the Board’s decision in a prior case filed in May of 2019 by an energy storage developer should be followed in this case. Specifically, in the case of *In Re: Petition of Energy Storage Resources, LLC for a Jurisdictional Determination Pursuant to R. I. Gen. Laws § 42-35-8*, the Board granted a request for a declaratory ruling that a 180 megawatt battery energy storage system was not a “major energy facility” as defined in the Siting Act (“*Energy Storage Resources, LLC*” case).<sup>180</sup> For all of the reasons stated herein, the Board declines to rely on the *Energy Storage Resources, LLC* decision as binding precedent on the Board’s decision in this case.

The Board respects the importance of following the reasoning of prior cases and adhering to settled rules. However, an agency is not bound by its prior decisions and can depart from its own precedents, as long as the agency explains why such a departure is reasonable.<sup>181</sup> The Rhode Island Supreme Court has affirmed this principle, relying on federal precedent. As the U.S. Court of Appeals for the District of Columbia stated in a case that was favorably cited by the Rhode Island Supreme Court:

An agency’s view of what is in the public interest may change, either with or without a change of circumstances. But an agency changing its course must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored, and if an agency glosses over or swerves from prior precedents without discussion it may cross the line from the tolerably terse to the intolerably mute.<sup>182</sup>

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<sup>180</sup> *Energy Storage Resources LLC*, *supra*. The 2-1 decision was made at an Open Meeting on December 17, 2019, and was reflected in the written order issued March 10, 2020. The Chairperson of the Board (Curran) dissented and wrote a separate dissent.

<sup>181</sup> *Town of Burrillville v. Pascoag Apartment Associates, LLC*, 950 A.2d 435, 451 (R.I. 2008).; *New England Tel. & Tel. Co. v. Public Utilities Commission*, 446 A.2d 1376, 1389 (R.I. 1982).

<sup>182</sup> *Greater Boston Television Corp. v. FCC*, 444 F.2d 841, 852 (D.C. Circuit 1970), cited in *New England Tel. & Tel.*, 446 A.2d at 1389.



As the Rhode Island Supreme Court has further stated,

In the context of adjudication, a presumption exists that an agency will adhere to its settled rule, and the agency must explain a departure from its prior norms. . . . The grounds for departure from the settled rule “must be clearly set forth so that the reviewing court may understand the basis of the agency’s action and so may judge the consistency of that action with the agency’s mandate.”<sup>183</sup>

Similarly, a decision from another federal court – the First Circuit – while recognizing the importance of agencies acting consistently in its decision-making – articulated the exception clearly:

This is not to say that an agency, once it has announced a precedent, must forever hew to it. Experience is often the best teacher, and agencies retain a substantial measure of freedom to refine, reformulate, and even reverse their precedents in the light of new insights and changed circumstances. . . . However, the law demands a certain orderliness. If an administrative agency decides to depart significantly from its own precedent, it must confront the issue squarely and explain why the departure is reasonable.<sup>184</sup>

Applying this standard in the case at hand, the Board has several reasons why its decision in this case draws a different conclusion than the result in the *Energy Storage Resources LLC* case.

First, since the Board’s decision in the *Energy Storage Resources LLC* case, there has been a considerable amount of attention placed on the emergence and evolution of battery energy storage nationally, regionally, and locally. Much more is known today than what was known in 2019, as discussed and cited in the preceding sections of this Order.

Second, the Board in the *Energy Storage Resources LLC* case based its decision solely upon a legal argument that was made by several parties in the case. Specifically, the parties argued that since the definition of “major energy facility” in the Siting Act did not make an explicit reference to “energy storage facilities,” the absence of such a reference meant that an energy

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<sup>183</sup> *Town of Burrillville*, 950 A.2d at 451 (citations omitted).

<sup>184</sup> *Davila-Bardales v. Immigration and Naturalization Service*, 27 F.3d 1, 5 (1<sup>st</sup> Cir. 1994).

storage facility is not a “major energy facility.” Since the Board interpreted this statutory definition as implicitly excluding “storage,” the Board never found it necessary to address any factual issues related to the proposed facility and whether it would be “generating electricity.”

The Chairperson of the Board at that time, however, took a different approach. She reviewed factual assertions made by the petitioner in that case and drew a conclusion that since “energy storage systems cannot store electric power and cannot store electrical energy,” the facility in question would be generating electricity.<sup>185</sup> Accordingly, she concluded that the energy storage facility was a “major energy facility,” as a facility for the generation of electricity<sup>186</sup> – a conclusion with which the Board now agrees based on a far more developed record about the Battery Storage Facility in this case.

Specifically, the Board has examined the evidentiary record and other information now available about the nature of battery energy storage in the industry that was not necessarily available to, or made available to, the Board in 2019. In this case, the Board has re-examined the question whether battery energy storage would be generating electricity and whether it is reasonable to conclude that the energy storage facility is a generation facility that falls within the first clause of the definition. The Board has completed this re-examination and, for all the reasons set forth in the preceding subsections of this Order, reached a different conclusion that is consistent with a liberal interpretation of the Siting Act.

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<sup>185</sup> *Energy Storage Resources, LLC*, dissent at 4.

<sup>186</sup> *Id.* at 7.

*C. Whether the 115 kV Generator Tie Line is a “Transmission Line”*

(1) Determining the Meaning of “Transmission Line”

In addition to the Battery Storage Facility, two other components of the Project, as described by Petitioner, are the 115 kV Generator Tie Line and the Loop Lines. These two components, along with the Substation and Switchyard, create the high voltage interconnection of the Battery Storage Facility to the regional transmission system. Petitioner has conceded that the Loop Lines are jurisdictional to the Board.<sup>187</sup> However, the question arises as to whether the 115 kV Generator Tie Line is a transmission line “69 kV or over.” If so, it would be jurisdictional to the Board.

Petitioner maintains that the 115 kV Generator Tie Line is a part of the “battery energy storage system” and, therefore, is not jurisdictional.<sup>188</sup> Petitioner also maintains that the Generator Tie Line is not a “transmission” line.<sup>189</sup> Many questions were asked in this proceeding about the position asserted by Petitioner regarding the meaning of “transmission” and Petitioner made arguments to support the jurisdictional-evading proposition that the 115 kV Generator Tie Line is not a transmission facility, with a rigid focus that drew highly technical distinctions.

If there is question or uncertainty regarding the technical meaning or applicability of the term “transmission line,” however, an overly rigid focus on this terminology misses the point of the Siting Act and steps over its core purposes. In contrast, the reference to the 69 kV threshold for voltage size is precise and certain.

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<sup>187</sup> Petition at 3, fn. 2; Hr’g Tr. at 60.

<sup>188</sup> Hr’g Tr. at 42, 99-101.

<sup>189</sup> *Id.* at 99-101.

When interpreting the definition of “major energy facility,” the Board is required to construe it liberally to effectuate its purposes.<sup>190</sup> It is apparent to the Board that the General Assembly included the proviso capturing transmission lines of 69 kV or over because it viewed high-voltage lines as creating levels of risk that need review by the Board for health, safety, and environmental reasons. These concerns relating to health, safety, and the environment have nothing to do with the nature of the service being provided by the particular line. Whether a 69 kV line in question is a connection to a fossil-fuel generator, a connection to a renewable resource, a connection to an energy storage facility, a connection directly to a distribution substation, a connection between two different transmission lines, a connection that both supplies and receives power, or a connection to unspecified electric loads, it makes no difference on the degree of concern that the General Assembly was attempting to cover. Therefore, it would be incongruous to the purposes of the Siting Act for the Board to determine its jurisdictional boundaries based on an overly technical interpretation of the term “transmission line,” driven entirely by the type of service being provided by the high-voltage line in question.

Further, when the Siting Act was passed in 1986, this was long before industry restructuring when the electric company was required to divest of generation and separate its “transmission business” from its “distribution business.”<sup>191</sup> During the time prior to restructuring, there was little or no reason to distinguish in state law between a power line that was providing direct service to customers and a power line that was used to transmit electricity in interstate commerce. The utility was vertically integrated (i.e., held ownership of all connected electric service elements, from generation, to transmission, to local deliveries which we now refer to as

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<sup>190</sup> R.I. Gen. Laws § 42-98-18.

<sup>191</sup> 1996 Rhode Island Laws Ch. 96-316 (96-H 8124).

“distribution”). In fact, it is clear from reviewing the changes to Title 39 which restructured the electric utility industry in 1996 that Title 39 did not make references to the classification of power lines or any other aspect of the utility business as “distribution.”<sup>192</sup> The term distribution was inserted in numerous places in Title 39 and a separation of the utility business between “distribution” and “transmission” was only implemented through the Utility Restructuring Act of 1996, ten years after passage of the Siting Act. To the extent there may have been a high-voltage line 69 kV or greater being sited and constructed, all of the same health, safety, and environmental concerns would be identical, regardless of the underlying purpose of the line. For these reasons, when evaluating a proposal to site and construct a high-voltage line, any uncertainty about whether a high voltage line 69 kV or over is a “transmission line” should be resolved in favor of jurisdiction.

(2) Comparing the Loop Lines to the 115 kV Generator Tie Line

Petitioner has conceded that the Board has jurisdiction over the Loop Lines. However, Petitioner never gave a persuasive explanation of why the Loop Lines are jurisdictional while the 115 kV Generator Tie Line is not. Petitioner argues that the 115 kV Generator Tie Line “is an interconnection facility; transmission to and from the facility occurs along the 115 kV loop lines, over which the EFSB has jurisdiction.”<sup>193</sup> Petitioner adds in a footnote that the 115 kV Generator Tie Line “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.’”<sup>194</sup> This distinction drawn by Petitioner, however, is illogically limiting. If the Loop Lines are transmission lines, then there is no engineering or common-sense reason why the service of “transmission” stops at the switchyard

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<sup>192</sup> *Id.*

<sup>193</sup> Sec. Supp. Mem. at 1-2.

<sup>194</sup> *Id.* at 3, fn. 1.

and excludes the 2,500 feet of a 115 kV power line that is transmitting power from the Battery Storage Facility that is supplying the power that flows to the transmission system.

(3) Consideration of Definition of Transmission in Title 39

Petitioner asserts that the 115 kV Generator Tie Line is not “transmission.” The Board finds the assertion, however, to be inconsistent with the facts. It is obvious that this 69 kV power line in question is serving a transmission function at a voltage that far exceeds the threshold of the definition of “major energy facility.” The purpose of the line is to connect the Battery Storage Facility to the transmission grid in order to flow power into the regional transmission system to allow the Battery Storage Facility to participate in the regional, interstate electric market. It is not connected to the distribution system, either directly or indirectly. Rather, it will be a power line used to transmit electricity in interstate commerce.

While the term “transmission” is not specifically defined in the Siting Act, there is a definition in Title 39 that guides the Public Utilities Commission, enacted in 1996 in the Utility Restructuring Act.<sup>195</sup> The definition expressly aligns the meaning of the term “transmission facility” with federal law. Specifically, it states:

“Transmission facility” means plant or equipment used for the transmission of electricity as determined by the Federal Energy Regulatory Commission pursuant to federal law as of the date of the property transfers pursuant to § 39-1-27(c).<sup>196</sup>

It is important that the Siting Act be read consistently with the terminology used in Title 39 by the Public Utilities Commission (PUC). The PUC plays a significant role during the licensing process

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<sup>195</sup> 1996 Rhode Island Laws Ch. 96-316 (96-H 8124).

<sup>196</sup> R.I. Gen. Laws § 39-1-2(25).

under the Siting Act. In R.I General Laws § 42-98-9(d) of the Siting Act, the PUC is delegated the responsibility to make a need determination in the advisory opinion process:

The public utilities commission shall conduct an investigation in which the division of planning of the department of administration, the governor's office of energy assistance and the division of public utilities and carriers shall participate and render an advisory opinion as to the need for the proposed facility.<sup>197</sup>

It would be illogical for the Board not to use the same general definition or understanding of a transmission facility that binds the PUC when the Board carries out its duties.

Further, there is another Chapter of Title 39 which relates directly to the Board and transmission lines in Chapter 25.<sup>198</sup> This Chapter is entitled "Electric Transmission Siting and Regulatory Act." The statement of policy and purpose for this Chapter provides clear direction on what the General Assembly had in mind when it addressed transmission lines. Specifically, it states in its first proviso:

The citizens of the state whose homes are in close proximity to proposed high-voltage lines have expressed concern about the possible harmful effect of electromagnetic fields that emanate from electrical utilities facilities.<sup>199</sup>

This purpose focuses on "high-voltage" lines. It is sensible because the higher the voltage, the higher the potential current, and, therefore, the higher that the potential level of electromagnetic fields may be. Stated another way, the health risk is not focused on whether the line is serving a transmission, distribution, or another function. The focus was on the level of voltage associated with the power line. This Chapter has only one directive, stating: "The energy facility siting board established under § 42-98-5 is hereby authorized and directed to establish rules and regulations

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<sup>197</sup> R.I. Gen. Laws § 42-98-9(d).

<sup>198</sup> R.I. Gen. Laws § 39-25-1 *et seq.*

<sup>199</sup> R.I. Gen. Laws § 39-25-2(1).

governing construction within the state of high-voltage transmission lines of sixty-nine (69) kV or greater.”<sup>200</sup>

Using the definition that defines transmission in Title 39, the 115 kV Generator Tie Line is a transmission facility. That is, it is plant or equipment used for the transmission of electricity, as an indispensable component for interconnecting the Battery Storage Facility to the entire regional transmission system. This transmission facility is a 115 kV power line which has the purpose of transmitting power into interstate commerce. Moreover, as will be addressed in the next section of this Order below, the power line used for interconnection to the network transmission grid is classified as a transmission facility under federal law and precedents of the Federal Energy Regulatory Commission (“FERC”).

#### (4) Consideration of Federal Law and FERC Precedents

The Board considered and evaluated Petitioner’s position in light of federal law and, for the reasons stated below, finds that the 115 kV Generator Tie Line meets the definition of a jurisdictional transmission facility under federal law and the precedents of the FERC.

During the evidentiary hearing, the Board asked counsel for Petitioner regarding this interpretation of federal law and Petitioner argued that the Generator Tie Line is not transmission:

COUNSEL: The argument here is this is not a transmission line in the sense of an ordinary transmission line. It’s an interconnection line that happens to be operating at that voltage, which is often a transmission voltage, but we’re, the argument is focused on the fact that it isn’t serving a transmission purpose necessarily.

CHAIRMAN: [The] Federal . . . regulatory commission has jurisdiction over transmission. Would you say they don’t have jurisdiction over that? I think they have jurisdiction over interconnections. That’s because it is part of the transmission.

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<sup>200</sup> R.I. Gen. Laws § 39-25-3. The Board amended its rules to comply with this proviso. *See* Energy Facility Siting Board, Rules of Practice and Procedure, 445-RICR-00-00-1.6(B)(12).



COUNSEL: I don't have an answer to that right now.<sup>201</sup>

The Board followed up on this point with a memorandum specifically identifying the issues of federal law and asked Petitioner to respond. The memo quoted a provision of the Federal Power Act at 16 U.S.C.A. § 824(b)(1).<sup>202</sup> The memo also asked a very specific question: "If QDC maintains that the 115kV Generator Tie Line is not a transmission line, please explain the legal reasoning for this conclusion and explain how it would be classified for purposes of this provision of the Federal Power Act, 16 U.S.C.A. § 824(b)(1)." When Petitioner filed its Second Supplemental Memorandum in response to the Board's request, however, Petitioner never directly answered the question about the quoted section in the Federal Power Act but made an argument that "interconnection facilities" are not transmission lines.<sup>203</sup>

The argument that interconnection facilities are not transmission lines, however, is nonsensical. The key clause in this provision of the Federal Power Act is the one that states unambiguously: "The Commission shall have jurisdiction over all facilities for such transmission or sale of electric energy." The words "such transmission" refers back to the term "transmission of electric energy in interstate commerce." Based on this statutory authority, the FERC has asserted jurisdiction over all interconnection facilities, as reflected in Schedule 22 of the ISO New England

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<sup>201</sup> Hr'g Tr. at 99-100.

<sup>202</sup> Lucarelli Mem. at 2. 16 U.S.C.A. § 824(b)(1): "The provisions of this subchapter shall apply to the transmission of electric energy in interstate commerce and to the sale of electric energy at wholesale in interstate commerce, but except as provided in paragraph (2) shall not apply to any other sale of electric energy or deprive a State or State commission of its lawful authority now exercised over the exportation of hydroelectric energy which is transmitted across a State line. The Commission shall have jurisdiction over all facilities for such transmission or sale of electric energy, but shall not have jurisdiction, except as specifically provided in this subchapter and subchapter III of this chapter, over facilities used for the generation of electric energy or over facilities used in local distribution or only for the transmission of electric energy in intrastate commerce, or over facilities for the transmission of electric energy consumed wholly by the transmitter." (emphasis added)

<sup>203</sup> Sec. Supp. Mem. at 4.

Open Access Transmission Tariff (OATT) which Petitioner acknowledges is the FERC tariff under which it has filed a request for service with ISO New England.<sup>204</sup>

To support its argument, Petitioner quotes the definition of “Interconnection Facilities” from the LGIP in Schedule 22.<sup>205</sup> Petitioner appears to be arguing that since the definition does not refer to the term “transmission line,” it means the facilities described in the definition are not transmission lines. But this makes no sense. Interconnection facilities are transmission facilities. If they were not, then FERC could not have asserted jurisdiction over them in the first instance.

Concluding that the Generator Tie Line is a transmission line, is then a matter of simple logic. The Generator Tie Line is a power line. If that power line is a part of the interconnection facilities, the power line is a transmission facility. If that power line is a transmission facility, then the power line is a transmission line. Any other conclusion defies basic logic. It also happens to collide with FERC’s decisions.

When FERC originally approved Schedule 22 of the OATT prior to the recent amendments, it declared that “interconnection is a critical component of open access transmission service.”<sup>206</sup> The notion that the interconnection facilities are not serving a transmission purpose is completely contradicted by FERC’s orders and its exercise of jurisdiction over interconnections.

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<sup>204</sup> See Response to EFSB 2-1.

<sup>205</sup> Sec. Supp. Mem. at 4. The quoted provision states: “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.”

<sup>206</sup> *Standardization of Generator Interconnection Agreements and Procedures*, 104 FERC ¶ 61,103, at P 9 (Jul. 24, 2003).

Petitioner also asserted in its Second Supplemental Memorandum that the line is not related to “transmission services” because it was not covered by any of the “transmission services” identified in the OATT. However, one of the specific services identified in the OATT, as referenced by Petitioner in its memorandum, was: “Generator Interconnection to connect a generator to New England’s transmission system to be able to obtain service and move energy.”<sup>207</sup> Petitioner maintained that this transmission service did not apply to the 115 kV Generator Tie Line because the Battery Storage Facility is “not generation.” Yet, this is factually contradicted by the process that Green Development logically followed when it applied for this service at ISO New England, identifying itself as a “Generating Facility” on the form requesting service.<sup>208</sup> According to Green Development, the project’s application was intended to “allow the Project to participate in New England Markets in accordance with the OATT.” This also is a clear reference to being able to move energy in the market within interstate commerce.<sup>209</sup>

Petitioner also asserts that the 115 kV Generator Tie Line is part of the energy storage system and, therefore, is not serving a transmission purpose.<sup>210</sup> But the argument that the Generator Tie Line is not serving a transmission purpose is contradicted by numerous decisions of the FERC addressing “Generator Tie Lines.”<sup>211</sup> In these cases, the facilities were unambiguously treated as jurisdictional transmission facilities. In some cases, they include authorizations under FERC rules to transfer ownership of the facilities.<sup>212</sup> In other cases, the petitioners were seeking waivers from the requirement to comply with certain rules of the FERC that specify reporting

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<sup>207</sup> Sec. Supp. Mem. at 5.

<sup>208</sup> Response to EFSB 2-1; Attachment EFSB 2-1-(c).

<sup>209</sup> Response to EFSB 2-1 at 5.

<sup>210</sup> Hr’g Tr. at 42, 99-101.

<sup>211</sup> One merely needs to use a Westlaw search tool to discover the cases. Using the term “Generator Tie Line” under the federal library feature, the search turns up many cases in which generation project owners have made filings with FERC regarding “generator tie lines.”

<sup>212</sup> See, e.g., *Cedar Creek Wind Energy, LLC*, 133 FERC ¶ 62,254 (December 14, 2010).

requirements under the FERC Standards of Conduct and requirements to file an Open Access Transmission Tariff.<sup>213</sup> The waivers were sought because the generator tie lines, even though they were of limited and discrete use, were nevertheless transmission facilities that are jurisdictional to FERC.<sup>214</sup> There are many of these cases, but one primary example is the case of *Transcanada Maine Wind Development Inc.* (“*Transcanada Maine Wind*”).<sup>215</sup>

In that case, a developer owned a 25-mile 115 kV “generator tie line” that connects a wind farm in Maine known as the “Kibby Facility” to the transmission system owned and operated by the Maine utility, Central Maine Power.<sup>216</sup> The generator tie line was wholly owned and solely used by the wind farm developer, Transcanada Wind Development Inc. The developer filed a request for a waiver of certain Commission rules that typically apply to transmission facilities, including requirements to file an Open Access Transmission Tariff (OATT), the requirement to establish and maintain an Open Access Same-Time Information System (OASIS), and the requirement to comply with the Commission’s Standards of Conduct Requirements. The reason given for the request was that the generator tie line in that case was “a generator interconnection facility that is ‘limited and discrete’ because it does not comprise an integrated transmission system and does not serve and is not designed for other customers.”<sup>217</sup> The filing relied upon FERC precedent that permits such waivers which are granted when facilities that are jurisdictional to FERC are “limited and discrete” or “*de minimus*.”<sup>218</sup>

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<sup>213</sup> See, e.g., *Termoelectrica U.S., LLC*, 105 FERC ¶ 61,087 (Oc. 22, 2003); *Dempsey Ridge Wind Farm, LLC*, 136 FERC ¶ 61,143 (Aug. 30, 2011); *AV Solar Ranch I, LLC*, 140 FERC ¶ 61,159 (Aug. 30, 2012); *Alta Wind VII, LLC*, 140 FERC ¶ 61,096 (Aug. 1, 2012).

<sup>214</sup> *Id.*

<sup>215</sup> *Transcanada Maine Wind Development Inc.*, 136 FERC ¶ 61,138 (Aug. 29, 2011).

<sup>216</sup> *Id.* at P 2.

<sup>217</sup> *Id.* at P 3.

<sup>218</sup> See, e.g., *Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232 (1996); *Entergy Mississippi, Inc.*, 112 FERC ¶ 61,228 (2005).

In the *Transcanada Maine Wind* case, FERC made a finding that the generator tie line was “limited and discrete,” and granted the waiver with respect to the generator tie line. While that case involved a generator tie line that was 25 miles long, and the Petitioner’s project in this case has a generator tie line which Petitioner maintains is only 2,500 feet, the classification of a power line as a transmission facility does not depend upon the length of the line. Rather, it depends upon whether it is a facility for the “transmission of electricity in interstate commerce.”<sup>219</sup> And all of the cited cases define generator tie lines as performing that function, even when there are no other entities using the line except the owner of the project from which the electricity is produced.

Given the numerous FERC cases unambiguously illustrating that generator tie lines are jurisdictional transmission facilities, the claim made by Petitioner that the 115 kV Generator Tie Line is not serving a transmission purpose is contradicted by FERC precedent and, therefore, is unsustainable. The 115 kV Generator Tie Line in this case may be of a relatively short length, rendering it *de minimus*, limited, or discrete for purposes of following certain FERC rules. But its *de minimus* length and/or “limited and discrete” utilization does not change its legal classification under federal law that it is a transmission facility and, therefore, a transmission line.

The assertion that the 115 kV Generator Tie Line in this case is not a transmission facility also is contradicted by Green Development’s disclosure that it intends to build the entire interconnection, including the Generator Tie Line, in accordance with its right to build that is granted under the Large Generator Interconnection Procedures (LGIP) of ISO New England.<sup>220</sup>

Green Development stated in response to EFSB 5-1 that it had elected to assume the responsibility

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<sup>219</sup> See 16 U.S.C.A. § 824(b)(1)(“The Commission shall have jurisdiction over all facilities for such transmission [i.e., “the transmission of electricity in interstate commerce”] . . . .”)

<sup>220</sup> Response to EFSB 2-1, EFSB 2-2, and EFSB 5-1(b).

for the design, procurement, and construction of the required interconnection upgrades.<sup>221</sup> The fact that Green Development has to affirmatively exercise that right to build the 115 kV Generator Tie Line under the FERC rules (the construction task of which otherwise would have been left to the transmission utility) contradicts Petitioner’s assertion that the 115 kV Generator Tie Line is a part of the Battery Storage Facility and, therefore, not serving a transmission purpose. Had it been a part of the storage facility, FERC would not have had jurisdiction to create rules within the OATT granting or withholding any party’s right to build them, because FERC’s jurisdiction is limited to transmission facilities.

Finally, the Feasibility Study from ISO New England also confirms that the 115 kV Generator Tie Line (as defined by Petitioner), along with the Loop Lines, are a part of the entire interconnection that spans from the main station transformer at the Substation to the “Point of Interconnection” with the pre-existing “L190-2” transmission circuit that is a part of the transmission network.<sup>222</sup> In the study performed under the authority of ISO New England, there is an estimate given for the total “cost to interconnect” to that point of interconnection.<sup>223</sup> In making that determination, the cost of the 115 kV Generator Tie Line component and Loop Lines are included together in the total cost of the interconnection.<sup>224</sup> Stated another way, the Feasibility Study of ISO New England estimates the interconnection cost as the cost associated with one

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<sup>221</sup> Response to EFSB 5-1.

<sup>222</sup> The pre-existing transmission line (owned by Rhode Island Energy) to which the Battery Storage Facility is interconnecting and is a part of the networked transmission system, is referred to as the “L190-2” line or circuit. *See* Hr’g Tr. at 34; Attachment to EFSB 3-1 at 10.

<sup>223</sup> Attachment to EFSB 3-1 at 57.

<sup>224</sup> *See* Response to EFSB 5-1. The response of Green Development stated in pertinent part:

“It is Green Development’s understanding that the major components necessary to interconnect the Project are based on the Feasibility Study Report Figure 2.2 (Post-Project configuration). The components are marked in the segment of Figure 2-2 below, and the full figure can be viewed in the Feasibility Study Report. Those components include: (A) a new switchyard with a three-breaker 115kV ring bus, (B) a new 0.1-mile 115kV transmission loop line to connect to the existing electric power system, (C) a new 115kV Gen-Tie line connecting the switchyard to the facility, and (D) a 150 MVA Station Transformer.”

continuous interconnection from the station transformer at the Substation to the point of interconnection at the L190-2 line,<sup>225</sup> all of which are jurisdictional to FERC under federal law.

In sum, the entire continuous interconnection is a transmission facility which has power lines of 115 kV capacity. Accordingly, the power lines (i.e., the Generator Tie Line and Loop Lines) are transmission lines within the meaning of federal law.

(5) Consideration of the Implications of Petitioner’s Position

When considering novel legal arguments that interpret statutory provisions, it is common practice in jurisprudence for a court or a quasi-judicial authority to identify other analogous situations not before the tribunal in order to assess the implications of a proffered legal interpretation. The Board engaged in that type of assessment when it raised the question to Petitioner regarding a past case where a generator tie line of an offshore wind project was before the Board and the Board exercised jurisdiction. Counsel for Revolution Wind was the same counsel representing QDC in this case and, therefore, was quite familiar with the facts of both cases. This also appeared to be an important question given the Board’s expectation that it could be seeing future applications for offshore wind projects in the near future.

The Revolution Wind case involved an application filed with the Board on December 30, 2020 by Revolution Wind, LLC, an offshore wind developer.<sup>226</sup> The application was signed by counsel on behalf of Revolution Wind (“Application”).<sup>227</sup> In the introduction of the formal Application, it states: “The Applicant requests that the Board issue a license to construct and alter

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<sup>225</sup> *Id.*

<sup>226</sup> *Revolution Wind Application*; [https://ripuc.ri.gov/efsb/2021\\_SB\\_01.html](https://ripuc.ri.gov/efsb/2021_SB_01.html) .

<sup>227</sup> *Id.* at 12.

the following facilities of the Revolution Wind Project.”<sup>228</sup> What follows is a list of six “facilities” or components of the project. The first two components are described as:

Construction of the Revolution Wind Export Cable-Rhode Island . . . which consists of two new 23-mile submarine export cables co-located in a single corridor within Rhode Island State waters running from federal waters to the Onshore Transmission Cable, including two transition joint bays; [and]

Construction of the Onshore Transmission Cable, *which consists of two* new underground, 1-mile 275 kV, *high voltage alternating current transmission lines* in a single ductbank between the Quonset Business Park Landing Location and the new Onshore Substation; <sup>229</sup> (emphasis added)

It is important to note that the second component was very similar to the 115 kV Generator Tie Line in this case – high-voltage power lines in a ductbank running along the streets of Quonset Point to facilities owned by the local utility serving to interconnect the generation resource to the regional transmission network. Further, counsel for Revolution Wind represented that this component consisted of two “transmission lines.”

On page ES-2 of the Environmental Report attached as an Exhibit to the Application is an explicit legal representation as to the jurisdiction of the Board, which states:

The components of the Project within the jurisdiction of the Energy Facility Siting Board (“EFSB”) include approximately 23 miles of subsea cable, 1 mile of Onshore Transmission Cables, an Onshore Substation and an Interconnection Facility (including the associated transmission lines).

There also are other references to both the 23-mile subsea cable and the Onshore Transmission Cables as being transmission lines in the Application.

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<sup>228</sup> *Id.* at 1.

<sup>229</sup> *Id.*



Given the similarities, the Board asked Petitioner to reconcile why the “Onshore Transmission Cables” in the Revolution Wind case were transmission lines, while at the same time the 115 kV Generator Tie Line in this case was not, as argued by counsel.<sup>230</sup>

In response, counsel for Petitioner maintained that the Application in Revolution Wind merely “presupposed” that the lines were “transmission lines” and the jurisdictional issue was never reached.<sup>231</sup> The response also claimed that – unlike the project in Revolution Wind – the 115 kV Generator Tie Line in this case is not generation. Therefore, according to Petitioner, it is not a “transmission line.”<sup>232</sup> Petitioner, however, did not explain why the type of electric facility supplying electricity into the power line at the beginning of the interconnection made any difference to the classification of the power line, when both the offshore wind project and the Battery Storage Facility were supplying electricity into the respective power lines to interconnect to the transmission network.

The Board then followed up with a memorandum, asking if it was QDC’s position that the 275 kV onshore cable that was referred to a “transmission line” was not actually jurisdictional to the Board.<sup>233</sup> Instead of answering that simple question with a “yes” or “no,” Petitioner self-proclaimed that the matter was not relevant to the Petition in this case.<sup>234</sup> Petitioner cited two cases to support its refusal to answer on grounds of relevancy – *Burbank-Glendale-Pasadena Airport Authority v. City of Burbank*, 136 F.3d 1360, 1363 (9<sup>th</sup> Cir. 1998) and the U.S. Supreme Court decision of *Webster v. Fall*, 266 U.S. 507, 511 (1925). In both of these cases, however, the issue was whether other cases served as binding “precedent.” But that was not the purpose of the

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<sup>230</sup> EFSB 1-1.

<sup>231</sup> Supp. Mem. at 6-7.

<sup>232</sup> *Id.*

<sup>233</sup> Lucarelli. Mem. at 3.

<sup>234</sup> Sec. Supp. Mem, at 8-9.

Board's inquiry about the Revolution Wind case. The Board was *not* asserting that the Revolution Wind case was binding precedent here. Rather, the Board was merely exploring two similar factual circumstances in which counsel was involved to understand how Petitioner in this case would reconcile them. For that reason, citing those two cases provided no grounds for refusing to answer the Board's simple question.

The Board notes that the implications of the position asserted by Petitioner in this case cannot be ignored. The two cases cannot be logically reconciled to different jurisdictional conclusions. Either both power lines were transmission facilities and, as a result, were jurisdictional to the Board, or both power lines were not transmission facilities. Petitioner's choice to ignore the question and proclaim the matter to be irrelevant did nothing to rescue its position. In that regard, it appears obvious to the Board that answering the question created an uncomfortable conundrum between two conflicting positions that could not be reconciled. So, Petitioner chose silence instead of admitting it.

It also is puzzling that counsel for Petitioner would leave hanging a question whether a generator tie line from an offshore wind project is jurisdictional, given the experience with the Revolution Wind project. If the Board did not have jurisdiction over such interconnections, then it would mean that the Board would have no authority over any other offshore wind transmission interconnections that might traverse through local communities in Rhode Island in the future. In such case, the Board would have no authority to override any local decision which refused to grant local permits for the construction of an interconnection within the boundaries of that community. In that context, the Board is mindful that the severely strained and unsupportable interpretation urged by Petitioner, if it had been adopted by the Board, could have been devastating to the ability

of an offshore wind developer in the future to interconnect its project to the transmission system within or through Rhode Island, given the potential for local opposition.

Notwithstanding the odd position taken by Petitioner, the Board finds that the 115 kV Generator Tie Line in this case – like the “Online Transmission Cable” in Revolution Wind – is a transmission line and a “major energy facility.”

*D. Whether the Project is an “Energy Facility Project” of the QDC*

The third jurisdictional question before the Board is whether the Project meets the definition of “major energy facility” through the clause that includes “any energy facility project of the Rhode Island economic development corporation.” This clause indirectly refers to QDC even though it does not reference QDC – but rather, expressly refers to “the Rhode Island economic development corporation.” The reason can be traced back through the statutory history that commenced with the creation of the QDC in 2004. In 2004, the “Quonset Development Corporation” (or “QDC”) was created in chapter 64.10 of Title 42.<sup>235</sup> At the time of its creation, it also was deemed a subsidiary of the economic development corporation.<sup>236</sup> The same public law transferred all the powers, duties and responsibilities of the Rhode Island economic development corporation regarding the management and operation over Quonset Point/Davisville industrial park to the QDC.<sup>237</sup>

However, because the Board determines that it has jurisdiction over the Project based on the other two referenced clauses within the definition of “major energy facility” that include,

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<sup>235</sup> R.I. Gen. Laws § 42-64.10-2. *See* P.L. 2004, ch. 351, § 3; P.L. 2004, ch. 360, § 3.

<sup>236</sup> R.I. Gen. Laws § 42-64-7.1. *See* P.L. 2004, ch. 351, § 1; P.L. 2004, ch. 360, § 1.

<sup>237</sup> R.I. Gen. Laws § 42-64-7.12. *See* P.L. 2004, ch. 351, § 2; P.L. 2004, ch. 360, § 2. In 2013, the name of the Rhode Island economic development corporation was changed to the “Rhode Island Commerce Corporation.” *See* R.I. Gen. Laws § 42-64-1.1.

respectively, facilities for the generation of electricity operating at a capacity of 40 megawatts or more and transmission lines over 69 kV, the Board does not need to reach an answer to the question of whether the Project is a “project of the QDC” in this case. Therefore, we decline to address the third jurisdictional question in the context of this Petition and draw no conclusion regarding that question at this time.

*E. Findings and Conclusions of the Board*

Based on the record evidence and other relevant information identified herein, and for all the reasons stated in this Order, the Board makes the following findings:

(1) With respect to the Battery Storage Facility, the Board finds that:

- (a) electricity is the presence of current and voltage;
- (b) the Battery Storage Facility does not store electricity (i.e., “current and voltage”), but stores potential energy in the form of electrochemical energy;
- (c) when engaging in the function of discharging, the Battery Storage Facility creates current and voltage, resulting in the flow of electricity through the interconnection facilities that interconnect to the network transmission system, thus, generating electricity; and
- (d) the Battery Storage Facility will be designed and capable of operating at a capacity of over 200 megawatts.

The Board finds that Battery Storage Facility is a facility for the generation of electricity designed and capable of operating at a capacity of 40 megawatts or more and falls within the definition of a “major energy facility” in the Siting Act. Thus, the Battery Storage Facility is jurisdictional to the Board.

- (2) With respect to (i) the station transformer at the Substation, (ii) the Generator Tie Line, (iii) Switchyard, and (iv) Loop Lines, the Board finds that:
- (a) these four referenced components constitute one continuous interconnection that will interconnect the Battery Storage Facility to the network transmission system and serve a transmission service function;
  - (b) the Generator Tie Line and Loop Lines are power lines that will transmit electricity to the network transmission system when the Battery Storage Facility is discharging for sale of electricity in interstate commerce;
  - (c) the power lines identified as the Generator Tie Line and Loop Lines are “transmission facilities” that are jurisdictional under federal law to the Federal Energy Regulatory Commission (FERC), consistent with FERC precedents,
  - (d) the Generator Tie Line and Loop Lines constitute “transmission facilities” under the definition in Title 39.
  - (e) based on the preceding findings above, the Generator Tie Line and Loop Lines are transmission lines; and
  - (f) the Generator Tie Line and Loop Lines will operate at a voltage of 115 kV.

The Board finds that the Generator Tie Line and Loop Lines are transmission lines of 69 kV or more and each fall within the definition of “major energy facility” under the Siting Act. Thus, these transmission lines are jurisdictional to the Board.

Based on all of these findings and the reasons stated in this Order, the Board denies the Petition for a declaratory ruling.

*F. Content of Any Future Application*

As a result of the Board's decision on the Petition, the Board expects that an application for a license to be filed for the siting and construction of the Project. The Board notes that the Substation that houses the main station transformer necessary to step up the voltage to 115 kV, the Generator Tie Line, the Switchyard, and the Loop Lines, are indispensable parts of the transmission path and transmission facilities necessary for electricity to reach the existing 115 kV transmission system. Thus, the Board anticipates that they would be included in any jurisdictional review as a single installation. In that regard, it would be appropriate and most efficient for the designated applicant or applicants to file a consolidated application. The application should address all the components of the Project, including the Battery Storage Facility and all components of this transmission interconnection path, rather than separate applications which segment the Project.<sup>238</sup>

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<sup>238</sup> The filing made on behalf of Revolution Wind provides an appropriate model for the application.

For all the reasons stated herein, it is hereby:

**( 167 ) ORDERED:**

The Petition is denied.

DATED AND EFFECTIVE AT PROVIDENCE, RHODE ISLAND ON SEPTEMBER 23, 2024,  
PURSUANT TO AN OPEN MEETING DECISION ON SEPTEMBER 23, 2022. WRITTEN  
ORDER ISSUED OCTOBER 3, 2024.

ENERGY FACILITY SITING BOARD



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Ronald T. Gerwatowski, Chairman



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Meredith E. Brady, Member



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Terrence Gray, Member

**NOTICE OF RIGHT OF APPEAL** PURSUANT TO R.I. GEN. LAWS SECTION 42-98-12,  
ANY PERSON AGGRIEVED BY A DECISION OF THE BOARD MAY, WITHIN TEN (10)  
DAYS OF THE ISSUANCE OF THIS ORDER PETITION THE SUPREME COURT FOR A  
WRIT OF CERTIORARI TO REVIEW THE LEGALITY AND REASONABLENESS OF THIS  
ORDER.