



Bess. B. Gorman
Assistant General Counsel & Director

July 15, 2019

BY E-FILING Kathleen.Mignanelli@puc.ri.gov
and OVERNIGHT MAIL

Kathleen Mignanelli
Coordinator
Rhode Island Energy Facility Siting Board
Attn: Docket SB-2019-02
89 Jefferson Boulevard
Warwick, Rhode Island 02888

Re: Docket No.SB-2019-02, In re: Petition of Energy Storage Resources, LLC for
a Jurisdictional Determination Pursuant to R.I. Gen. Laws § 42-35-8

Dear Ms. Mignanelli:

Enclosed please find comments of the Narragansett Electric Company, d/b/a National Grid to the Petition of Energy Storage Resources, LLC for a declaratory order pursuant to Chapter 42-35-8 of the Rhode Island General Laws. Also enclosed please find a Certificate of Service.

Please call me if you require further assistance with respect to this matter.

Thank you for your consideration.

Very truly yours,

Bess B. Gorman, Assistant General Counsel
National Grid USA Service Company, Inc.
d/b/a National Grid

Enclosures

cc: George W. Watson, III (by email: gwatson@rc.com), Counsel for Petitioner Energy Storage Resources, LLC

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
ENERGY FACILITY SITING BOARD**

In re: Petition of Energy Storage :
Resources, LLC for a Jurisdictional : **Docket No. SB-2019-02**
Determination Pursuant to :
R.I. Gen Laws § 42-35-8 :

**COMMENTS OF THE NARRAGANSETT ELECTRIC COMPANY d/b/a NATIONAL
GRID ON THE PETITION OF ENERGY STORAGE, LLC FOR A JURISDICTIONAL
DETERMINATION PURSUANT TO R.I. GEN LAWS § 42-35-8**

The Narragansett Electric Company d/b/a National Grid (“National Grid” or “the Company”) offers the following comments in response to the above-referenced Petition of Energy Storage Resources, LLC for A Jurisdictional Determination (“Petition”) and the Rhode Island Energy Facility Siting Board’s (“EFSB” or “Board”) Notice to Accept Comments (“Notice”). National Grid is taking a leadership role in developing innovative approaches like energy storage to accelerate the decarbonization of the electric sector and help states meet their renewable energy goals. The Company is committed to supporting effective solutions for a cleaner energy future that are essential to achieving our carbon reduction goals, specifically the reduction of greenhouse gas (GHG) emissions in developed countries by approximately 80% below 1990 levels by 2050 (“80x50”). Energy storage has a role to play in optimizing the utilization of existing networks and enabling the deployment of renewable energy technologies.

In this response, National Grid addresses: (1) distinctions between energy storage systems (“ESS”) and generating facilities; (2) relevant statutory and regulatory provisions; (3) the potential jurisdiction of other federal, state and local agencies over ESS proposed in Rhode Island; and (4) permitting and siting of large-scale ESS in other states. In summary, the Company concludes that

ESS can be clearly distinguished from generating facilities based on their technical characteristics; that ESS are not “major energy facilities” as defined by the Energy Facility Siting Act, R.I. Gen. Laws § 42-98-3(d), because ESS do not generate electricity; and that, therefore, ESS are not subject to the jurisdiction of the EFSB.

I. Technical Characteristics Distinguish ESS from Electric Generation Facilities.

The Notice seeks comments, in relevant part, on Petitioner’s assertion that the proposed ESS is not a “major energy facility” as defined by R.I Gen. Laws § 42-98-3(d) because it will not generate electricity. While National Grid cannot comment on the specifics of Petitioner’s proposed project, the Company generally agrees that ESS and electric generation can be clearly distinguished from a technical perspective. ESS rely on chemical (*e.g.*, lithium-ion batteries), thermal (*e.g.*, freezing/melting ice) or mechanical processes (*e.g.*, flywheel systems) to store electric energy that has already been generated elsewhere and discharge it when needed. ESS experience efficiency losses, so the electric energy discharged will always be a smaller quantity than was initially delivered to the ESS. Notably, ESS can both inject electric energy into the network (discharging) *and* withdraw electric energy from the network (charging), while generation systems only inject power into the network. Thus, the technical characteristics of an ESS (namely the ability to store electricity generated elsewhere and to charge and discharge that electricity) differentiate it from electric generation, which produces electricity from fuels like coal, natural gas, uranium, sun, wind, or oil for injection into the electric transmission and/or distribution system.

II. Rhode Island Statutes, Regulations, and Case Law Indicate that Energy Storage Systems such as the Petitioner's are not EFSB-Jurisdictional

A. Statutory and Regulatory Framework

The EFSB's jurisdiction is established by statute and regulations, none of which reference energy storage. The legislature granted the EFSB jurisdiction to review projects involving the siting, construction or alteration of a "major energy facility." R.I. Gen. Laws, § 42-98-4. "Major Energy Facility" is defined as follows:

"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 liquified natural and liquified 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.

Rhode Island Gen. Laws, § 42-98-3(d) (Definitions). Rhode Island Siting Board Regulations define "major energy facility" in a materially identical manner. See 445 R.I. Admin. Code 00-00-1.3(A)(16).

"Alteration" is defined by statute to mean "a significant modification to a major energy facility which, as determined by the board, will result in a significant impact on the environment, or the public health, safety, and welfare. Conversion from one type of fuel to another shall not be considered to be an 'alteration.'" Rhode Island Gen. Laws, § 42-98-3(b). The regulatory definition

of “alteration,” below, addresses maintenance and repair, and establishes categories of review based on the length of a proposed power line construction, modification or relocation.

“Alteration” means a significant modification to a major energy facility which, as determined by the Board, will result in a significant impact on the environment or the public health, safety and welfare. Conversion from one fuel to another shall not be considered an “alteration”. Maintenance, repair or replacement of poles or transmission components by an electric utility to maintain the integrity of its transmission system shall not constitute an alteration, provided that such construction does not increase the normal carrying capacity of the transmission line. The construction, modification or relocation of a power line of 69 kV or more which are less than 1000 feet in length shall not be treated as an alteration; however, any additional extension shall constitute an alteration. The construction of a new power line which is more than 1,000 but less than 6000 feet in length or the modification or relocation of an existing power line shall not be an alteration unless the Board determines that the project may result in a significant impact on the environment or the public health, safety and welfare. As used herein “modification” includes reconductoring and rebuilding an existing power line.

445 R.I. Admin. Code 00-00-1.3(A)(4).

Energy storage is not directly addressed in any of the above-referenced definitions. The term “generation” is defined neither in the Energy Facility Siting Act nor EFSB regulations. Where the term can be found in the Rhode Island General Laws, “[g]eneration unit” is defined to mean “a facility that converts a fuel or an energy resource into electrical energy.” R.I. Gen. Laws § 39-26-2(11) (definitions associated with the Renewable Energy Standard). The associated definition of “renewable energy resource” contemplates a process of transforming a fuel or other source of energy, such as solar or wind, into electricity. See R.I. Gen. Laws § 39-26-5.

B. It would exceed the EFSB’s authority to expand the definition of “major energy facility” to include ESS.

As articulated by the Petitioner, Rhode Island case law establishes that an agency may not impart terms that are not in the statute. In the absence of any indication that the legislature intended to confer jurisdiction over energy storage systems, it would be improper for the EFSB to find that

its jurisdiction so extends. See, e.g., Caithness v. Malachowski, 619 A.2d 833, 836 (R.I. 1993) (holding that the 1988 Energy Facility Siting Act’s language was “plain and unambiguous,” and therefore the Siting Board was without authority to interpret the term “generation of electricity” to include the energy value of steam, when determining whether a cogeneration facility fell within its jurisdiction as a “major energy facility”). Similarly, the Rhode Island Supreme Court “refuse[d] to resort to a strained interpretation in order to find” that a company was a “public utility” subject to the jurisdiction of the Public Utilities Commission “when the plain language of the statute reveal[ed] that it is not.” East Providence v. Pub. Util. Comm’n, 566 A.2d 1305, 1308 (R.I. 1989).

The correct approach is to “presume that the language of the statutes has been carefully adopted by the General Assembly so as to be deliberate....” East Providence, 566 A.2d at 1308-1309. The definition of “major energy facility” at Title 42, Chapter 98-3(d) of the Rhode Island General laws enumerates categories of facilities to be within EFSB jurisdiction and does not include energy storage.

In several instances throughout the General Laws, the Rhode Island legislature has expressly referenced “energy storage” where relevant to the statutory section, carefully relating it to other terminology. Most notably, within the statutory definition of “major energy facility,” the legislature expressly used the term “storage” when setting forth the categories of liquified natural gas, liquified petroleum gases, and nuclear facilities that would fall within the RI EFSB’s jurisdiction. R.I. Gen. Laws 42-98-3(d) (“facilities for the conversion, gasification, treatment, transfer of storage of liquified natural...gas[]; facilities for the processing, enrichment, storage, or disposal of nuclear fuels...”) (emphasis added).¹ Within the state tax code, energy “storage” is

¹ This definition is essentially mirrored in the EFSB’s regulatory definition of “major energy facility.” 445 R.I. Adm. Code 00-00-1.3(A)(16).

enumerated as an activity for which the tax exemption is available (separate and apart from the “produc[tion] and transmi[ssion]” of such energy).

Notwithstanding any provision of the general laws to the contrary, the gross receipts from the sale, storage, use or other consumption of electricity, steam and thermal energy which is produced, transmitted and/or sold by the Rhode Island Economic Development Corporation are exempt from the taxes imposed by this chapter.

R.I. Gen. Laws § 44-18-40.1 (emphasis added). Elsewhere in the General Laws, the term “energy storage” is used as follows:

(a) For the purposes of this section, “electric vehicle charging station” means a public or private parking space that is served by charging equipment that has as its primary purpose the transfer of electric energy to a battery or other energy storage device in an electric vehicle.

R.I. Gen. Laws § 31-21-18 (electric vehicle parking).

The legislature has had ample opportunity either to explicitly incorporate the storage of electricity into the definition of “major energy facility” in R.I. Gen. Laws § 42-98-3, or to recognize ESS as a new kind of energy facility subject to the EFSB’s jurisdiction. It has not pursued either course.² The Legislature’s silence on ESS within the definition of “major energy facility” indicates that currently it does not intend that ESS be subject to EFSB review and approval.

The Energy Facility Siting Act provides that the EFSB “may promulgate regulations to further define ‘major energy facility; to the extent further definition is required to carry out the purpose of [the Act]. R.I. Gen. Laws, § 42-98(3)(d). The Board has taken the opportunity to issue regulations

² The definitions relative to Energy Facility Siting (Title 42, Section 98-3 of the Rhode Island General Laws) were amended three times since 1986, most recently in 2001. Meanwhile, the legislature has responded to more recent technological evolutions affecting public utilities by updating and amending other sections of the general laws, where it has seen fit to do so. For example, Title 39, Chapter 1-2 of the Rhode Island General Laws, defining the term “public utility,” was amended in 2013 to clarify that the definition of “public utility” did not include any company “providing wireless service.” 2013 R.I. Session Laws Ch.13-135, §2 (West).

that define “alteration,” creating varying application procedures for categories of transmission line projects meeting the statutory threshold of 69 kV or over, and addressing maintenance and repair of such lines. See 445 R.I. Adm. Code 00-00-1.3(A)(4). However, the EFSB cannot unilaterally expand its jurisdiction by regulation.

An agency’s grant of authority is limited to that which is delegated by the legislature. Malachowski, 619 A. 2d at 836 (definition of “major energy facility”). This principle has informed consideration of agency jurisdiction in a number of other contexts. In O’Neil v. Interstate Navigation Co., the Rhode Island Supreme Court considered whether ratemaking authority for a passenger ferry service rested with the Public Utilities Commission or the Division of Public Utilities and Carriers. 565 A.2d 530, 533 (R.I. 1989). After reviewing provisions in Title 39 in which the legislature had expressly delegated “some of the commission’s rate-making authority [over common carriers] to the division,” the court held:

“[t]his delegation of rate-making authority is not absolute; it is limited to those specifically enumerated by the Legislature. Had the Legislature intended to delegate rate-making authority over ferries to the division, it would have done so in a similar manner.

O’Neil, 565 A.2d at 533 (R.I. 1989); accord In re SeaStreak, LLC, 2016 WL 9650048, at *1 (R.I.P.U.C Docket No. D-16-35). See Providence Bd. of Licenses, 2013 WL 6149323 at *5-6 (R.I. Super.) (holding that the board’s authority to license sale of bottled alcohol was limited to the categories of beverages listed in the statute).

Based upon the above-referenced statutory and regulatory provisions, jurisdiction over “major energy facilities” is clearly defined and does not include energy storage. Where the Rhode Island Legislature has intended energy storage to be treated in a certain manner, the term “storage” has been expressly stated. It would be improper in this instance for the Siting Board to impart the term where the Legislature has not included it.

C. The Rhode Island Public Utilities Commission has implicitly distinguished energy storage from generation.

The Rhode Island Utility Restructuring Act of 1996 (“RI Restructuring Act”) required electric distribution companies like National Grid (operating as The Narragansett Electric Company in Rhode Island) to sell their electric generating assets to unregulated affiliates. R.I. Gen. Laws §§ 39-1-27(a). Moreover, electric distribution companies are “prohibited from...owning, operating, or controlling generating facilities.” *Id.* at § 39-1-27(d).³ Notwithstanding the RI Restructuring Act, the Company agreed to implement an Energy Storage Demonstration program in which the Company will own and operate at least one energy storage system as part of the Amended Settlement Agreement in the Company’s general rate case, which the Rhode Island Public Utilities Commission (“RIPUC”) approved in Docket No. 4770 on August 24, 2018. The Narragansett Electric Co., d/b/a National Grid, Settlement Agreement Docket Nos. 4770 and 4780, at 60-61, R.I. Pub. Util. Comm’n (June 6, 2018). Also, as part of the Amended Settlement Agreement, the RIPUC approved a system efficiency performance incentive mechanism, which includes, among other resources, incremental installed energy storage capacity as an eligible resource for the incentive in each of 2019-2021, and may include both utility-scale and behind-the-meter storage regardless of ownership. The Narragansett Electric Co., d/b/a National Grid, Settlement Agreement Docket Nos. 4770 and 4780, at 70-71, R.I. Pub. Util. Comm’n (June 6, 2018). By allowing National Grid to own and operate ESS, the RIPUC has arguably implicitly determined that ESS are not generation facilities.⁴

³ “Generating facilities” or “Generating facility” are not defined in the Rhode Island Restructuring Act. However, Chapter 26 of Title 39 (Renewable Energy Standard) defines “Generation Unit” as “a facility that converts a fuel or an energy resource into electrical energy.” R.I. Gen. Laws § 39-26-2(11).

⁴ While no legal analysis on this point by the PUC is evident in the record in Docket Nos. 4770-4780, the logical inference is that this issue was considered, and the distinction between storage and other forms of generation (e.g. solar) recognized. The Company’s initial filing expressly proposed “Utility-Owned Energy Storage and Solar Demonstration Projects.” The Narragansett Electric Company d/b/a National Grid Testimony and Schedules of: Power Sector Transformation Panel Book 1 of 3, at 16, R.I. Pub Util. Comm’n Docket No. 4770 (Nov. 27, 2017) (emphasis

III. Other Federal, State and Local Authorities Have Jurisdiction Over the Construction, Operation, and Maintenance of Utility-Scale ESS.

Even if the EFSB determines that ESS are not “major energy facilities,” utility-scale ESS are still generally subject to myriad federal, state and local permits, design codes, building codes and fire codes. The precise combination of requirements to which each facility is subject will vary based on its design and location vis-à-vis zoning districts, neighboring properties, and protected resource areas. Thus, National Grid cannot comment on the specific permits and approvals required for Petitioner’s proposed project.

ESS in Rhode Island are potentially subject to numerous environmental permits, approvals and compliance requirements at the federal, state and local level. For example, depending on its location, an ESS may require a permit from the United States Army Corps of Engineers to fill in wetlands and other federal waters. Alternatively, an ESS could require a Section 401 Water

added). The proposed solar demonstration project was later withdrawn, however the legal issue of utility ownership of solar was addressed in testimony.

Q. “IS NATIONAL GRID ALLOWED TO OWN SOLAR IN RHODE ISLAND?”

A. Yes. R.I. Gen. Laws § 39-26-6(g) authorizes utility ownership of up to 15 megawatts of renewable generation demonstration projects, so long as a portion of projects reduces the electric bills of customers of nonprofit affordable housing projects. However, the aforementioned statute does not relieve the Company of the obligation to demonstrate that utility ownership of solar is in the public interest.

Direct Testimony of Nathan Phelps, at 37, R.I. Pub Util. Comm’n Docket No. 4780 (April 25, 2018). The absence of a similar discussion in the record relative to energy storage can be taken as an indication that storage was not viewed as generation.

The “renewable generation demonstration projects” referred to in the above testimony are authorized by Chapter 39-26 of the Rhode Island General Laws, titled Renewable Energy Standard. In that chapter, “renewable energy resources” are defined to include sources of energy such as the sun, wind, movement or heat of the ocean, geothermal heat, small hydro facilities, certain biomass facilities, and fuel cells using the above-referenced renewable resources. See R.I. Gen. Laws § 39-26-5. The listed resources are all forms of generation, and ESS are not listed. It should be noted that fuel cells function differently from ESS. A fuel cell converts energy from another source into electrical energy (generation) whereas an ESS stores already-generated electrical energy for later release. See Merriam Webster Dictionary, defining fuel cell as follows: “a device that continuously changes the chemical energy of a fuel (such as hydrogen) and an oxidant directly into electrical energy.” (Online version, available at <https://www.merriam-webster.com/dictionary/fuel%20cell>.) (Last accessed July 11, 2019).

Quality Certification from the Rhode Island Department of Environmental Management. Moreover, ESS are subject to local zoning bylaws and ordinances that regulate land use and development, and the location, height, bulk and dimensions of buildings and structures. If a Special Permit or Site Plan Review is required, the local Zoning Board of Appeals and/or Planning Board may undertake a comprehensive evaluation of the project's impacts on neighboring properties and the surrounding area with respect to impacts such as noise, lighting, landscaping, aesthetic appearance, and safety. Overlay districts such as watershed protection and historic districts may impose additional requirements in portions of a municipality. Municipal ordinances and bylaws also may regulate noise from a property during construction or operation; landscaping or screening between neighboring uses; earth removal; and construction hours.

Certain ESS (particularly those with an enclosed design incorporating a control building, control house, or interior office) also may be subject to the state building code and require a building permit issued by the municipal Building Inspector. Further, lithium ion ESS are regulated by the 2018 International Fire Code⁵ and by the National Fire Protection Association Code NFPA 1-2015, Chapter 52. Code amendments are contemplated at NFPA 855 specifically addressing "Installation of Stationary Energy Storage Systems."

In addition to local and environmental regulations, utility-scale ESS are generally subject to regulation by the Federal Energy Regulatory Commission ("FERC") and by ISO-New England ("ISO-NE"). FERC regulates the participation of ESS in the wholesale energy markets.⁶ FERC

⁵ See specifically: 2018 IFC Sections 107.7.2, 601.2 (Permit Required); 202 (Definitions: Battery System, Stationary Storage); 907.2.22 (smoke detection for battery rooms).

⁶ FERC has recognized that ESS serve varied functions, and modified its definition of "generating facility" to include storage to the extent electricity is injected into the transmission system. Specifically, FERC recently amended its pro forma Large Generator Interconnection Procedures ("LGIP") and the pro forma Large Generator Interconnection Agreement ("LGIA") to ensure that large electric storage resources with a capacity above 20 MW may interconnect pursuant to the terms in the LGIP and LGIA. FERC Order No. 845, 163 FERC ¶ 61,043, at 166, Docket No. RM17-8-000 (April 19, 2018) (Reform of Generator Interconnection Procedures and Agreements). Recognizing that the existing definition of "Generating Facility" would not include electric storage resources, FERC

Order No. 841, 162 FERC ¶ 61,127, at 26-29 Docket Nos. RM16-23-000, AD16-20-000 (Feb. 15, 2018) (Electric Storage Participation in Markets Operated by Regional Transmission Organizations and Independent System Operators). ISO-NE, as the Regional Transmission Organization for New England, oversees the interconnection study process, which evaluates how a proposed energy storage system would affect the reliability of the regional electric system.⁷ To the extent an ESS is seeking to participate in regional energy markets, “RTOs/ISOs arguably always exercise some level of operational control over the resources they dispatch through their markets.” FERC Policy Statement, 158 FERC ¶ 61,051, at 19 (Jan. 19, 2017) (Electric Storage

modified it as follows (with the changes underlined): “Generating Facility shall mean Interconnection Customer’s device for the production and/or storage for later injection of electricity identified in the Interconnection Request, but shall not include the interconnection customer’s Interconnection Facilities.” *Id.*, at 166. Notably, FERC declined to further revise the definition of “Generating Facility” because the new definition “would not affect whether electric storage resources operate as transmission assets.” *Id.* at 167. Indeed, FERC “previously found that, in certain situations, electric storage resources can function as a generating facility, a transmission asset, or both.” *Id.* (internal citations omitted). FERC recently re-affirmed the concept that storage is multifunctional with its decision in Order 841-A, issued on May 16, 2019 stating in paragraph 55:

If an electric storage resource were to participate in a retail net metering program and in the RTO/ISO markets—which the Commission did not prohibit in Order No. 841— Commission jurisdiction would arise only where the electric storage resource participates in the wholesale market by making a Commission-jurisdictional sale for resale.

FERC Order 841-A at paras. 55 & 59, Docket No. RM16-23-001 (May 16, 2019).

⁷ In October 2018, ISO-NE proposed tariff revisions to facilitate electric storage resource participation in ISO-NE markets, recognizing their multiple functions on the electric system. FERC ultimately approved these revisions, noting that ISO-NE indicated it had already completed its design work on these revisions by the time FERC issued Order No. 841, and explaining that submitting the changes under Section 205 of the Federal Power Act rather than as part of its Order No. 841 compliance filing would allow implementation months sooner than the effective date in Order No. 841. 166 FERC ¶ 61,146, at 1-3, Docket No. ER19-84-000 (Feb. 25, 2019). Among other things, the Tariff revisions require “Continuous Storage Facilities” (which include utility-scale batteries) to register each physical asset as three asset-types: an alternative technology regulation resource (ATRR); a non-regulation capable generator; and a dispatchable asset-related demand (DARD) asset. *Id.* at 2. Both the ATRR and DARD categories include demand resources, which are clearly distinct from traditional generation. Moreover, FERC approved revisions that would allow electric storage resources that did not participate as described above to participate in ISO-NE markets in any manner for which they qualify. *Id.*

Participation in Markets Operated by Regional Transmission Organizations and Independent System Operators).

In summary, utility-scale ESS – like all other commercial or industrial facilities – may be subject to environmental and land use regulation at the federal, state and local levels consistent with their anticipated impacts. Lithium ion systems are subject to additional safety regulation under the fire code. And, finally, utility-scale ESS are generally subject to FERC rules regarding their participation in the wholesale energy market and must comply with ISO-NE’s interconnection process. This complex network of regulations ensures that the impacts of ESS will be adequately identified and mitigated, even in the absence of EFSB review.

IV. Several Other Northeast States Have Determined that ESS are not Electric Generation Facilities.

Several Northeast states have already considered whether ESS should be treated like electric generation for siting and permitting purposes. National Grid is aware of the following statutes, regulations, precedent and practices in other states that distinguish between utility-scale ESS and electric generation.

A. Connecticut

The Connecticut Siting Council (“CSC”) has jurisdiction over the siting of various “facilities” that include, in relevant part, “any electric generating or storage facility using any fuel...” Conn. Gen. Stat. § 16-50i(a)(3) (emphasis added). Likewise, the CSC has jurisdiction over the siting of “renewable energy facilities” which are any “electricity or storage facility using renewable energy sources.” CSC, *Application Guide for a Renewable Energy Facility*, 1 (April 2010) (<https://www.ct.gov/csc/cwp/view.asp?a=945&Q=581574&PM=1&cscNav=|55842|>), *siting* Conn. Gen. Stat. § 16-50i(a)(3). Unlike in Rhode Island, Connecticut law is clear that energy

storage facilities are not considered electric generation and the Connecticut Legislature has expressly authorized the CSC to regulate the siting of energy storage facilities.

B. Massachusetts

The Massachusetts Legislature has distinguished between ESS and generation.⁸ In defining ESS, the Legislature defines an “energy storage system” as:

a commercially available technology that is capable of absorbing energy, storing it for a period of time and thereafter dispatching the energy and which may be owned by an electric distribution company; provided, however, that an energy storage system shall: (i) reduce the emission of greenhouse gases; (ii) reduce demand for peak electrical generation; (iii) defer or substitute for an investment in generation, transmission or distribution assets; or (iv) improve the reliable operation of the electrical transmission or distribution grid; and provided further, that an energy storage system shall: (1) use mechanical, chemical or thermal processes to store energy that was generated for use at a later time; (2) store thermal energy for direct heating or cooling use at a later time in a manner that avoids the need to use electricity at that later time; (3) use mechanical, chemical or thermal processes to store energy generated from renewable resources for use at a later time; or (4) use mechanical, chemical or thermal processes to capture or harness waste electricity and to store the waste electricity generated from mechanical processes for delivery at a later time. (emphasis added)

Mass. Gen. Laws, c. 164, §1. This definition clearly treats generation as something separate and apart from an ESS. In several areas, the definition notes that the storage system will store energy generated from another source for later use. It does not contemplate or imply that an ESS is generating electric energy on its own

C. New York

The State of New York’s Board on Electric Generation Siting and the Environment (“NY Siting Board”) has jurisdiction over the siting of “major electric generating facilities,” defined as electric generating facilities with a nameplate generating capacity of 25 megawatts or more. This

⁸ In response to a similar request for a jurisdictional determination by an ESS developer, the Massachusetts EFSB opened a docket (EFSB 19-01) and solicited comments from interested parties concerning the distinctions between ESS and electric generation. This docket is still pending.

definition includes certain “ancillary features located on the facility site such as...energy storage or regulation facilities.” 16 NYCRR 1000.2(v). Thus, energy storage systems that are sited with and ancillary to a major electric generation facility would be considered part of the major electric generation facility.

In a 2014 proceeding, the NY Siting Board determined that stand-alone battery-based energy storage facilities are not “major energy generation facilities” subject to its jurisdiction. In reaching its conclusion, the NY Siting Board determined that:

Although electrical generation and storage facilities may both be capable of providing capacity, energy and/or ancillary services, the terms “generation” and “storage,” as they are commonly used and within the electric power industry are distinct concepts. Generation involves the creation or production of something. Storage involves the deposition or accumulation of an existing product for future use. Moreover, to the extent electrical energy storage involves the reconversion of another form of energy back to electricity, it is still distinguished from electrical generation by the fact that the energy stored was previously electric energy generated elsewhere.

Case 13-F-0287, *Petition of AES Energy Storage, LLC, for a Declaratory Ruling that Battery-Based Energy Storage Facilities are not Subject to Article 10 of the PSL*, Order at 7 (issued Jan. 24, 2014). The Company is currently unaware of any additional legislation or regulation modifying this order.

D. Vermont

Act 53 of Vermont’s 2016-2017 legislative session directed the Department of Public Service to submit a report investigating the deployment of energy storage on Vermont’s electric transmission and distribution systems. The report acknowledged that the Vermont Public Utilities Commission reviews applications for certificates of public good to construct and operate electric generation and transmission facilities pursuant to Vt. Stat. tit. 30, § 248. However, the report concluded that, unlike generation and transmission, “Section 248 of Title 30 does not explicitly

address storage.” Indeed, “[w]ithout further statutory and regulatory guidance, storage is left to proceed unregulated [by the Vermont Public Utilities Commission], particularly small-scale storage installations.” See Vermont Department of Public Service, *Act 53 Report: A Report to the Vermont General Assembly on the Issue of Deploying Storage on the Vermont Electric Transmission and Distribution System*, 39 (Nov. 15, 2017) (<https://publicservice.vermont.gov/content/energy-storage-study>).⁹ The Company is currently not aware of any relevant legislative or regulatory changes since publication of this report.

E. Conclusion

In this response, National Grid has (1) addressed the technical distinctions between generation and ESS; (2) reviewed statutory and regulatory arguments distinguishing between ESS and electric generating facilities; (3) summarized the types of federal, state and local regulation to which utility-scale ESS may be subject; and (4) reviewed the permitting and siting practices of other states with respect to ESS. In summary, the “generation” and “storage” of electricity are distinct functions; one involves the creation of electricity, while the other involves the accumulation of already-generated electricity for future use. Rhode Island has not included ESS in the definition of “major energy facility” over which the EFSB has jurisdiction, and thus the agency has no authority to review such projects in the absence of a statutory change. Utility-scale ESS are subject to a complex network of federal, state and local environmental and land use regulation even in the absence of EFSB oversight. And, finally, other northeastern states also recognize a distinction between ESS and electric generation and generally regulate them under separate authority. For all

⁹ The Department of Public Service ultimately recommended that the Vermont Legislature revise Title 30 to “explicitly subject grid-exporting energy storage to [Vermont Public Utilities Commission] jurisdiction in a manner that acknowledges both its similarities as well as its differences from electric generation.” *Id.* at 47. Even if adopted, this recommendation still recognizes the distinction between ESS and electric generation, and defers to the Vermont Legislature to determine if the siting of ESS should be subject to the Vermont Public Utilities Commission’s jurisdiction.

these reasons, National Grid respectfully submits that ESS are not included in the definition of “major energy facility” and not subject to the jurisdiction of the EFSB.

Respectfully submitted,

**THE NARRAGANSETT ELECTRIC COMPANY
d/b/a NATIONAL GRID**

By its attorney,



Bess Beikoussis Gorman
National Grid USA Service Company, Inc.
d/b/a National Grid
40 Sylvan Road
Waltham, MA 02451
(781) 907-1834

Dated: July 15, 2019

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
ENERGY FACILITY SITING BOARD**

In re: Petition of Energy Storage :
Resources, LLC for a Jurisdictional : **Docket No. SB-2019-02**
Determination Pursuant to :
R.I. Gen Laws § 42-35-8 :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon the Energy Facilities Siting Board and the Service List in accordance with the requirements of the Board's Rules of Practice and Procedure at 445-00-00-1 of the Rhode Island Code of Administrative Regulations, and the Notice of Petition for Determination of Jurisdiction in the above-docketed proceeding.

Respectfully submitted,

**THE NARRAGANSETT ELECTRIC COMPANY
d/b/a NATIONAL GRID**

By its attorney,



Bess Beikoussis Gorman
National Grid USA Service Company, Inc.
d/b/a National Grid
40 Sylvan Road
Waltham, MA 02451
(781) 907-1834

Dated: July 15, 2019