

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

In re: Petition of Energy Storage :
Resources, LLC for a Jurisdictional : **SB-2019-02**
Determination Pursuant to :
R.I. Gen. Laws § 42-35-8 :

ORDER

On May 22, 2019, Energy Storage Resources, LLC (Company) filed with the Energy Facility Siting Board (the Board) a Petition for Declaratory Order. In the petition, the Company asked the Board to find that a proposed 180-megawatt Energy Storage System (project) in the Town of South Kingstown, Rhode Island (Town) is not a major energy facility as defined by the Energy Facility Siting Act, R.I. Gen. Laws §§ 42-98-1 to 42-98-20 (Act), specifically § 42-98-3(d), and 445-RICR-00-00-1.3(A)(16) of the Board’s Rules of Practice and Procedure (Rules).

In support of its petition, the Company filed a description of the proposed project, and identified its purpose to be an increase in the reliability of the electric grid. A tap line will connect the proposed project to a substation that will be interconnected to the regional grid. The tap line will require review by the Board. The project will store electricity generated during off-peak periods, at times when there is a surplus of low-cost energy, and dispatch it into the grid during peak hours when there is heightened demand and the electricity will provide the greatest value to the regional system. Petitioner described the proposed project as a series of storage containers containing racks of batteries that in aggregate total between 3.5 and 4.5 megawatt hours of energy each.

The Board received comments from the Division of Public Utilities and Carriers (Division) and the Narragansett Electric Company d/b/a National Grid (National Grid). Citing the Energy Facility Siting Act, the Division asserted that battery storage facilities “cannot be construed as a

major energy facility because they are not electrical generating facilities or other specifically defined facility (sic) contemplated by the relevant definition.”¹ The Division reasoned that both the law and the Board’s Rules and Regulations lack any reference to energy storage facilities, and therefore it should not be read into a law that is clear and unambiguous. National Grid provided the same reasoning stating that it would be improper for the Board to assume jurisdiction in the absence of any indication that the legislature intended to include energy storage facilities in the definition of “major energy facility.”

The Board received a letter from the Office of Energy Resources (OER) Deputy Commissioner Nicholas S. Ucci. Mr. Ucci represented that OER concurred with the Division’s assessment that the Board lacks jurisdiction over the project because it does not constitute a major energy facility as defined by R.I. Gen. Laws § 42-98-3(d). Mr. Ucci also pointed out that local jurisdictions are best suited to ensure consistency of these projects with their local ordinances. He offered the assistance of OER for technical issues and for finding subject matter experts and encouraged municipalities to ensure proper training of key stakeholders about relevant codes and safety protocols.

The Board also received a letter from the South Kingstown Town Manager, Robert C. Zarnetske indicating that the Town intended to assert jurisdiction over the proposed project.

On October 8, 2019, the Board conducted a hearing on the petition. The Board issued a number of record requests. Hearing no objection, it allowed public comment from Mr. Zarnetske, who had previously filed a written letter with the Board, and Amy Goins, another representative

¹ The Division of Public Utilities and Carriers Comments Relating to Energy Storage Resources, LLC’s Petition for Declaratory Order at 5 (Jul. 15, 2019).

of the Town of South Kingstown. Both Mr. Zarnetske and Ms. Goins asserted that the Board should have jurisdiction over energy storage facilities because it is “much better suited to do so.”²

At an open meeting on December 17, 2019, the Board deliberated on the petition. The majority found that the definition of “major energy facility” set forth in R.I. Gen. Laws § 42-98-3(d) is absent of any reference to energy storage facilities. The majority also found the arguments of the Division and the OER to be persuasive. Based on the absence in the statute of language including energy storage facilities as a major energy facility and the arguments of the Division and OER, the majority voted that the proposed energy storage facility is not a major energy facility as defined by the Energy Facility Siting Act and thus not under the jurisdiction of the Board. Chairperson Curran dissented.

Therefore, it is hereby:

(144) ORDERED:

Energy Storage Resources, LLC’s proposed 180-megawatt energy storage facility is not a major energy facility as defined by the Energy Facility Siting Act, R.I. Gen. Laws § 42-98-3(d), and is not subject to Board jurisdiction.

DATED AND EFFECTIVE at Warwick, Rhode Island pursuant to an Open Meeting decision of December 17, 2019. Written order issued March 10, 2020.



ENERGY FACILITY SITING BOARD

Margaret E. Curran, Chairperson*

Janet Coit, Member

Meredith Brady, Member

² Tr. at 49 (Oct. 8, 2019).

*Chairperson Curran dissented.

DISSENT

I respectfully dissent. I believe that the 180 megawatt (MW) standalone energy storage system that Petitioner, Energy Storage Resources, LLC, seeks to construct and operate is a “major energy facility” over which the Energy Facility Siting Board has and should exercise jurisdiction.

Although the Board’s Rules may contain no language placing energy storage systems within the scope of the Board’s jurisdiction, the language of the Energy Facility Siting Act (Act) can be found to support jurisdiction. The definition of “major energy facility” in R.I. Gen. Laws § 42-98-3(d) includes “facilities for the generation of electricity designed or capable of operating at a gross capacity of forty (40) megawatts or more.” As Petitioner stated in its response to the Board’s Data Request 2-7, power, unlike energy, cannot be stored, be it forty megawatts or otherwise; and it is electric power that is put onto the electric grid. Petitioner further asseverated in its response to the Board’s Data Request 1-6, that it is aware of no way to store electrical energy in a pure form.

It follows from the foregoing that storage systems must have some process that generates electrical energy and electric power from the stored, non-electrical energy; Petitioner describes this as “reclaim[ing] that energy as electricity.” Thus, Petitioner has admitted that energy storage systems **cannot** store electric power and **cannot** store electrical energy. If neither can be stored by the storage facility, then both must be generated (from other forms of stored energy) by the facility to put power on the electric system. As such, the proposed energy storage facility is a facility for the generation of electricity, operating at greater than 40 MW, for the express purpose of putting electricity onto the wholesale power grid.

Moreover, Petitioner contends that because generation means “to bring into existence,” storage, which does not “create” anything, cannot be said to be involved in the generation of electricity. Storage, according to the Petitioner, takes electricity that comes from other power stations where it is brought into existence, converts that electrical energy into some other form of storable energy, and reclaims that electrical energy when electric power generation is needed. But energy can neither be created nor destroyed, thus “generation of energy” is a red herring. The process involved in, e.g., a natural gas generation facility, transforming the chemical energy in the fuel into electricity, or electric power, and putting it onto the grid is fundamentally the same “reclamation” process involved in a storage system that transforms its stored energy into electrical energy and then feeds electric power into the grid. Accordingly, again, the Board has jurisdiction here.

Another reason further supports reading the Act to encompass siting jurisdiction over major energy storage facilities. State schemes for the siting of major energy facilities are necessary and politic, because they allow focused concentration and resolution of the particular concerns endemic to such infrastructure projects. Among those are harm to the environment and to wildlife; health and public safety concerns; water and wetland concerns; the long term economic impact on the state as well as on the area(s) closest to the facility; the costs of construction and operation, including wholesale energy market costs administered through the regional transmission organization; and matters of land use. Also, the regulatory authority over the myriad concerns is generally spread across sundry agencies at the state, municipal, and county levels.³

³ See also Comments of Eversource, Petition of Cranberry Point Storage, LLC for a Jurisdictional Determination, Commonwealth of Massachusetts Energy Facility Siting Board, EFSB 19-01 (Feb. 20, 2019), available at <https://eeaonline.eea.state.ma.us/DPU/Fileroom/dockets/bynumber> which support the rationale set forth in this dissent.

Thus, if it cannot be shown that a proposed project is needed or that it will not cause unacceptable harm to the environment, for example, the Act provides it may not be awarded a permit. But in addition to assuring that unqualifying projects are not built, siting acts are intended to ensure that all necessary energy infrastructure, facilities critical to the operation of a safe and reliable electrical grid, is permitted and installed. That is why siting acts confer on a state-level agency, such as this Board, sole authority over all necessary permitting decisions, with certain limited exceptions,⁴ as well as the concomitant authority to override local opposition to the construction and operation of major energy facilities. The latter authority is critical because, while virtually everyone wants abundant, cheap, reliable, and clean energy, hardly anyone wants to have the major infrastructure necessary to provide that energy sited nearby. *See* Stephen Ansolabehere & David M. Konisky, *CHEAP AND CLEAN: HOW AMERICANS THINK ABOUT ENERGY IN THE AGE OF GLOBAL WARMING* at 58-59 (2014); Steven Ferrey, *Siting Technology, Land-Use Energized*, 66 *Catholic U. L. Rev.* 1, 7 (2017).

The position adopted by South Kingstown, the local authority involved in this matter, illustrates well the concerns and problems that would be solved if the Board recognized and exercised jurisdiction over the proposed facility. While the town initially dealt with Petitioner's local application as a zoning matter, it subsequently determined that it might be a special use but one that was not allowed. The future of the proposed project thus appeared to be uncertain. Moreover, the town manager and the attorney for the town both provided public comment, arguing strenuously that the State Board, not the town, should have jurisdiction over the siting of the major storage facility.

⁴ *See* R.I. Gen. Laws § 42-98-7(a)(3) (federal permitting matters delegated to the Rhode Island Department of Environmental Management).

Because standalone storage facilities are now, by virtue of the majority's decision, not within the jurisdiction of the Act, they are subject to the vagaries of the various municipal zoning and land use regulatory schemes. There are some municipalities that would likely welcome major, grid-connected, FERC-jurisdictional wholesale-market participating energy storage systems such as Petitioner's. There are others that are less likely to welcome such development. At the same time, monumental changes to the electrical grid that are being driven by Rhode Island's clean and distributed energy legislative mandates and the Governor's initiatives, such as her recent executive order to advance a 100% renewable energy future for Rhode Island by 2030, as well as similar efforts both regionally and nationwide, demand the equally monumental development and addition of large scale-energy storage systems. That need is immediate, and it will irreversibly continue to grow explosively.

For all the reasons set forth above, the 180 MW standalone energy storage system constitutes a major energy facility over which this Board has siting jurisdiction.



Margaret E. Curran, Chairperson