COMMONWEALTH OF MASSACHUSETTS

ENERGY FACILITY SITING BOARD

Petition of Moraga Storage, LLC EFSB 25-07

Pursuant to G.L. c. 40A § 3 for an Exemption

From the Zoning By-law of the Town of

Oakham, MA

INITIAL BRIEF OF SEVEN OAKHAM RESIDENT REPRESENTED INTERVENOR PARTIES

INTRODUCTION

The central question in this proceeding that overhangs all other issues is why the Rhynland/Moraga company (the "Company" or "Moraga" unless otherwise provided) chose the one and only town among all 351 towns in the Commonwealth that through a by-law, uniquely approved by the Massachusetts Attorney General, restricts industrial scale battery energy storage facilities (BESS) that are not associated with a solar energy facility, when far more appropriate alternative sites with negligible risks to the environment and its inhabitants were and are available throughout the Commonwealth. It was Moraga's burden to show that its site selection was a reasonable and thorough process considering and comparing competently and honestly multiple viable sites of which there are hundreds in Massachusetts, and not a sham exercise dismissing with a 'hand-wave' all others, but Moraga didn't come close to meeting that burden.

The record of this EFSB proceeding is clear that Moraga chose this pristine Oakham setting (the "Site"), which entirely fails the Massachusetts Department of Energy Resources

criteria and standards for BESS site locations that could qualify as meeting the Commonwealth's BESS goal, for one reason only: it calculated that the Town and its citizens would lack the resources meaningfully to participate in an EFSB proceeding and that the Company's promise of short-term construction jobs and a 20-year revenue stream would seduce a cash-poor community into accepting a massive violation of its local laws that were established and in legal effect before the Company obtained control over the Site.

As the compelling testimony of the sole layperson to testify, James Stevens who with his wife Danielle, mother -in-law and nephew, resides in a home and property adjacent to the subject Property and within about ¼ mile from the proposed BESS site clearly demonstrated, this is not a typical NMBY scenario. Rather it is a battle between an industrial giant and a tiny town and its residents to prevent the wholesale destruction of their rural way of life and the beautiful protected natural resources surrounding and sustaining them and surrounding communities. By approving a BESS project in this protected environment rather than in multiple more appropriate sites in New England, ESFB would abandon its role as an objective administrative agency and violate the principles of fairness and due process that should be the hallmark of such proceedings.

I. SIGNIFICANT OMISSIONS IN THE RECORD CREATE VOIDS THAT DO NOT SUPPORT GRANTING MORAGA'S PETITION TO OVERRIDE OAKHAM'S ZONING AND OTHER PERMITS AND APPROVALS

It was Moraga's burden to show that its site selection was a reasonable and thorough process considering and comparing competently and honestly multiple viable sites of which there are hundreds in Massachusetts, and not a sham exercise dismissing with a 'hand-wave' all others, but Moraga didn't come close to meeting that burden.

Indeed, at every opportunity to provide facts to support its project, the Company concealed facts rather than provided them, or didn't disclose them until the hearing was well underway, and its representatives avoided or evaded legitimate questions with testimony under oath that was non-responsive. The reply of the Company and its witnesses when confronted with an untimely or inadequate submission was consistent: it was an "oversight." The Company's non-compliance with the EFSB requirements to supplement its submissions before the hearing closed left fundamental gaps in the record. These gaps and the Company's entire approach to these proceedings interfered with the goal of a fair and objective process

The Company has asked the EFSB to approve its proposed BESS industrial facility in the Town of Oakham that will bring monster trucks, air pollution, artificial light to dark skies, loud noise to one of the quietest communities in the Commonwealth where crickets and birds are the ambient noise, destruction of irreplaceable wetlands and vernal pools, cutting of at least 5.9 acres of forests, fouling of the groundwater that feeds wells that are the sole water source for the Town and its residents' drinking water, as well as contamination of the streams and watersheds that connect to the Quabbin Reservoir that supplies clean drinking water to approximately 3 million residents in eastern Massachusetts.

If approved, this project will inalterably destroy the character of the Town, its surrounding communities as well as the peace and quiet and property values of its residents. No matter how much Moraga promises that its project will add to the Town's coffers, an industrial BESS in this residential location will constitute a major public and private nuisance that will threaten public health, safety and the environment in ways that cannot be measured in dollars and cents. Rather than submit material facts into the record of this proceeding so that the EFSB has sufficient information in order to make an informed decision on the petition and the site selected,

the Company chose to deprive the EFSB of critical information about which it had the burden of proof, in effect proceeding rear-end backwards to the normal requirement to first apply for and seek local permits from the issuing authority, going to the EFSB only as a final resort.

Moraga has not begun to seek a variety of Town permits and approvals and stated that it would take that normally required first step only after having the EFSB preempt Town zoning, including the conditional BESS bylaw. Moraga's decision to delay producing this material information in the record of these proceedings should lead to the EFSB dismissing this petition for lack of substantial evidence on the whole record, in addition to the other grounds discussed below.

II. SITE SELECTION DOES NOT MEET STATE STANDARDS

A. How the EFSB Arrived Here

The fundamental core undertaking necessary from the record created in this hearing is to determine if the applicant satisfied its burden of proof to demonstrate that the Site Selection process resulted in a properly selected site for a large BESS facility from among thousands of other potential industrial zoned sites, including former developed utility sites rather than in an established quiet residential neighborhood adjacent to protected wetlands and waterways. To keep the parties' identities and relationships clear, Rhynland Energy and Segue Renewables, LLC have joint ownership of SR1 Rhynland HoldCO 1 LLC ("Rhynland"), which in turn is the sole owner and managing entity of Moraga Storage LLC. ("Moraga"). Moraga is the special purpose entity through which Rhynland is pursuing this BESS project in the Town of Oakham, in order to insulate Rhynland's assets and personnel from being at risk if something goes wrong in Oakham.

Moraga never tried to justify its selection of Oakham as a suitable site, let alone as the best or appropriate site for its industrial battery storage plant, readily admitting that it relied only on aerial photos and public data, none of which could inform the developer of the critical absence of a Town water system, of its small, volunteer fire department with woefully inadequate equipment to fight even a small house fire much less a lithium ion battery fire, the risk of a forest fire kindled by failures of the BESS, the presence of protected wetlands and waterways, vernal pools, a protected watershed connected hydro geologically to the Quabbin Reservoir that is the sole potable water supply for approximately 3 million people in eastern Massachusetts, unsampled soil and groundwater contamination in the immediate vicinity of the planned BESS and accompanying equipment, as well as the presence of abandoned cars and car parts on the entirety of the Property.

Furthermore, after Moraga filed its petition in this matter, the Town through its Board of Selectmen, town departments, including Health, Environment, Conservation Commission, Fire Chief, Police Chief, as well as hundreds of citizens, a State Legislator, State Senator, and officials and citizens from adjacent towns, testified orally and in writing about the substantial risks this project would pose to the environment, health and safety, traffic and the very rural character of the Town. Moraga's willful blindness to these substantial risks and its cavalier decision to proceed with its Petition without a modicum of due diligence and without making good faith efforts to engage with the Town prior to and after filing its petition substantively has created a deficient record on which to base a decision to approve preemption of the Town's zoning authority.

Moraga was well aware of the State's recently announced criteria that are in effect and govern the selection of qualified BESS facilities to contribute to Massachusetts' goal of having

5,000 Mw of BESS, before it selected Oakham to host a BESS in total disregard of those criteria. Further, Moraga ignored another site over which its parent, Rhynland, already had complete control and adequate uncommitted space and capacity--the Tyngsboro site. See the discussion below in Section B.

Moreover, there is concern about the credibility of the Company's evidence with regard to the timing of and nature of its control over the Oakham Site. The Company has been exercising what it described as control over the Site since November 2022 through a land control agreement with the current owner, Zovl Properties. Notwithstanding the Company having this control, an affiliate of Zovl filed one application for a permit along with the then owner and after Zovl purchased the Site Zovl and its affiliate filed a second application for a permit to the Oakham Planning Board for zoning approvals for an entirely different non-industrial, non-BESS use of this site—a storage lot for online car auctions. Each of those permits was approved for a one-year duration but Zovl let each permit lapse without taking any steps to develop their purported business use. See pre-filed testimony of Planning Board Chair Philip Warbasse. In fact, during the second permit application hearing on February 27, 2024, a representative of the affiliate of Zovl when asked by the Board Chair if there were any plans for BESS at the site stated: "I don't think anything is going to move forward." Then he asked what the Chair's concern was and when the Chair informed him of the BESS zoning ban he stated: "Obviously if it's prohibited, not going to happen. We only do what is allowed."[1]

[1]That meeting and statements are available to the EFSB on a YouTube recording of the hearing, at 16 minutes, 31 seconds-17 minutes, 26 seconds.

This series of actions misled the town of Oakham and its officials about Rhynland's intentions to site a BESS facility at the Site. Timing matters particularly given that the Massachusetts DOER requires applicants for BESS projects that qualify as satisfying the Commonwealth's goal of supplying 5000 Mw of storage capacity "Provide information (a) demonstrating past and current productive relationships with host communities…" IRP-2, p. 38, requirement 7.9. Recalling that (1) Ryhnland testified that the only business it does is to own BESS facilities ('we are only in the BESS business, not in renewables business'), so that everyone with whom it controls land knows exactly what it will do with that land, and (2) these misleading misrepresentations to Oakham town officials and zoning regulatory boards that the future use of this site would not include a BESS, were made in 2024, although Rhynlad/Moraga testified that the Site was under their control since 2022. Nonetheless, these misleading misrepresentations were never corrected and only surfaced for the first time during cross-examination of the Company.

If Rhynland/Moraga controlled this site since late 2022 as it testified (Tr. 166-167), there is no explanation as to why it (1) did not exercise its control to prevent the owner from making such a misrepresentation to local regulatory Boards in Oakham, (2) did not correct this false statement during the past 25 months, and (3) did not address or rectify this misrepresentation during these proceedings. In the hearing, Company witnesses refused, even under a requirement of confidentiality, to supply to any parties the signed documents evidencing this control. This leaves a record with unresolved contradictory and unreliable statements and omissions as to the fundamental issue of site control and future site development with no reliable evidence to support a decision to preempt local zoning at this site.

Is it mere coincidence that the Site owner (with which Moraga had a land control agreement since 2022) filed a second permit application for a non-BESS use of the Site in the same time period (2024) that Moraga filed a request for wetlands delineation with the Oakham Conservation Commission, for the first time publicly disclosing its intent to develop the Site for a BESS? Moraga certainly did nothing to dispel the questions raised by this series of events and so the record remains muddy.

From the beginning, the record evidences a Company's disregard for laws of the Town and for complying with state laws on the environment.

Moraga/Rhynland has not met the recently established and required Massachusetts criteria to consider in detail and present multiple viable alternative BESS sites that are qualified and use an acceptable location to meet the state's BESS goal. The potential alternative sites as well as the eventually selected site should not pose potential unreasonable risks of safety, fire prevention, noise, environmental, wetlands, or zoning, impacts imposed on abutters and the community. This is always true when siting a large energy facility, but becomes critical when seeking to pre-empt established local law in the only single community where Attorney General Healey approved the specific law for the Oakham's location regarding BESS that no other community in the Commonwealth was so approved. The Oakham situation is unique legally and substantively.

B. CURRENT LAW REQUIREMENTS FOR BESS SITES

The record in this case establishes that Moraga/Rhynland stated that it is proposing this project for one reason -- to satisfy and further the Commonwealth's ongoing selection of 5000 Mw of BESS serving the Commonwealth. Petition, MS-1. The Commonwealth has established a

process for the identification and selection of both applicant developers and BESS sites that qualify to submit bids to meet this goal. Moraga and its parent company, Rhynland, knew every detail about these BESS criteria, having submitted a very detailed application for a site in Tyngsborough, MA, supplying scores of pages about these criteria in 2025. See RPI-2. at Site Selection, see also Tr. 117.

Failure to Answer Questions and Supply Documents in Good Faith

Notwithstanding that Rhynland applied to qualify pursuant to the Massachusetts BESS criteria for selection as a BESS provider at another location in Massachusetts, they repeatedly refused to reply to Information Requests on the record or during the 2026 hearing in this matter that inquired about such other project(s)- on the ground that this information was not relevant. The Presiding Officer declined to require the Company to answer such questions, even after a Rhynland Vice President in charge of BESS site selection (Brian Beneto) misrepresented that the Company had no other Massachusetts projects, but ultimately admitted that it had these and it should have included this information about the Tyngsborough project. Tr. 121.

Additionally, Moraga provided incomplete IR responses answers and misled parties about public information regarding other projects in the Commonwealth. To a relevant question about all other publicly announced BESS projects and their siting locations, Moraga only answered about two other projects in Texas and two in New York, Tr. 108, not revealing public information about the BESS project in Tyngsborough, MA they had been awarded in 2025. Tr. 117-118. Because the Company's initial IR responses were inaccurate and not true, the Intervenors' counsel were required to spend multiple days hunting for true information not disclosed by the Company in order to conduct cross-examination, at which time the Company admitted its nondisclosures. Tr. 113, 140-141.

In response to the Intervenors' cross-examination at the hearing on its first day, Rhynland's Vice President again did not reveal the existence of Rhynland's Tyngsborough, Massachusetts, River Mill BESS project until Intervenors introduced into evidence the Application for the Tyngsborough BESS project, at which point he admitted that he had prepared the document, Exh. IRP-2. Rhynland had submitted this extremely detailed document six months previously to the EFSB's sister agency with whom it coordinates, the Massachusetts Department of Energy Resources (DOER). *Id*. This document prepared by the Company addresses in detail how Rhynland's Tyngsborough BESS project satisfies the Massachusetts' site selection criteria.

Asked why this BESS site owned by the Applicant and this document prepared by witness and the Company had not voluntarily been identified or supplied in response to the Intervenors' Information Requests, Moraga representatives replied that it was "an oversight." Tr. 140. The pattern during this proceeding of Moraga/Rhynland refusing to answer questions about public information or to supply copies of relevant requested documents, self-identified as "oversights" has created a record for this proceeding that does not meet the minimal state standards for EFSB approval. Despite the Oakham individual resident intervenors' request to the Presiding officer to compel production of the missing information and to award fees and costs to them for this pattern of obstruction, the Presiding Officer denied the request.

1. State Provisions for BESS Sites and Site Selection

The criteria for site selection set forth by Massachusetts for BESS facilities that meet the Commonwealth's standard to qualify to meet the Commonwealth's goal eventually to have 5000 Mw of BESS in the future are contained in the Massachusetts Department of Energy Resources Request for Proposal Application Form completed by Moraga. Int. Exhibit RPI-2. This form

prepared by the Massachusetts DOER and completed and submitted by Rhynland is a more than 60-page single-spaced document even with redactions. The form requires that BESS facilities qualified to meet the Commonwealth's BESS goal must demonstrate that they meet each of these criteria for their site selection:

- Section 3.5 "Specifically, please describe any co-location or contractual pairing with an RPS qualified resource" (such as solar or wind power)
- Section 3.9 "Degradation Mitigation Plan… Specify the anticipated degradation rate…"
- Section 7.1 "the assumed right-of-way width" of the site
- Section 7.2 iii "… the status of acquisition of real property rights, any options in place…"
- Section 7.2 v "Provide a copy of the leases, agreements, including option agreements, easements, rights of way, and related documents granting the right to use the energy storage system site … (and applicable letters of intent if formal agreements have not been executed)"
- Section 7.3 "Provide evidence that the Energy Storage System site and interconnection locations are properly zoned or permitted."
- Section 7.7 "Provide the anticipated timeline for seeking and receiving the required permits, licenses, and environmental assessments and/or environmental impact statements."
- Section 7.9 "Provide information (a) demonstrating past and current productive relationships with host communities."
- Section 7:10 "Provide documentation identifying the level of public support for the project including letters from public officials… Include information on specific host

community and localized support and/or opposition to the project of which the bidder is aware."

Rhynland stated in its completed application that it met all of the above requirements at its Tyngsborough, Massachusetts, River Mill BESS facility location. *Id*.

The record of this proceeding documents that the Company did not even consider, let alone comply with the following Massachusetts criteria and standards for selection of a BESS sites:

- Section 3.5 "Specifically, please describe any co-location or contractual pairing with an RPS qualified resource" (such as solar or wind power). *The Company admitted it had not made and did not intend to make such plans.*
- Section 7.1 "the assumed right-of-way width" of the site. *The record indicates that there is a significant risk that the large trucks transporting the massive Tesla 2XL BESS units, transformers, cranes and other heavy equipment will be unable to utilize and navigate turns from public rural roads onto the limited driveway into the Site or from that driveway onto the rural road without going off the road or encroaching on public or private property and the Company never produced a swept path analysis for exiting the site despite an IR from the Intervenors and orally repeated during the hearing.*
- Section 7.2 iii "… the status of acquisition of real property rights, any options in place.." *Rhynland/Moraga continued to refuse to supply any actual documentary proof of site control executed by the Company even though it said it possessed such control, only providing an unsworn statement from Rhynland's outside counsel who were not under oath and did not attach any evidence of the supposed document.*

- Section 7.2 v "Provide a copy of the leases, agreements, including option agreements, easements, rights of way, and related documents granting the right to use the energy storage system site … (and applicable letters of intent if formal agreements have not been executed)". *Rhynland/Moraga continued to refuse to supply any actual documentary proof of site control executed by the Company even though it said it possessed such control, only providing an unsworn statement from Rhynland's outside counsel who were not under oath and did not include any evidence or the supposed document.*
- Section 7.3 "Provide evidence that the Energy Storage System site and interconnection locations are properly zoned or permitted." *The hearing record evidences that there is no proper zoning at this proposed Oakham site for a BESS facility.*
- Section 7.7: "Provide a list of all the permits, licenses, and environmental assessments and/or environmental impact statements required to construct and operate the project." *Rhynland/Moraga testified it had not sought necessary permits from the town and refused to do so prior to or during the EFSB hearing.*
- Section 7.9 "Provide information demonstrating past and current productive relationships with host communities." *As stated above, the Company made misrepresentations to Town officials more than a year after the Company testified that it had control of the Site.*
- Section 7:10 "Provide documentation identifying the level of public support for the project including letters from public officials… Include information on specific host community and localized support and/or opposition to the project of which the bidder is aware." *Rhynland/Moraga did not demonstrate that it had applied for all or even any necessary permits from the town before seeking an EFSB override of local zoning.*

These established Massachusetts prerequisite standards for BESS site selection were met by Rhynland for their sister Tesla 2XL BESS in Tyngsborough but were not met in this proceeding involving Oakham. This brief demonstrates that the Massachusetts standard for site selection was not satisfied in any regard. Moraga's utter failure to justify its site selection should lead the EFSB to deny its petition for preemption of Town zoning.

C. WHOLESALE DISREGARD OF STANDARDS AND CRITERIA IN SELECTING THE OAKHAM SITE FOR A BESS FACILIITY

Rhynland/Moraga all but admitted on the first day of the hearing that it had not adopted any of the standards contained in the Massachusetts DOER site selection criteria utilized in Massachusetts to screen and evaluate alternative sites that qualify to meet the 5,000 Massachusetts goal when its witness could not answer basic questions about alternative sites that meet the criteria, Tr. 81, thus not satisfying its burden before the Board. Without satisfying this burden and not even considering in this site selection an industrial site with uncommitted capacity at its Tyngsborough site, or in hundreds to thousands of other alternative sites, the Company is precluded from arguing that its project meets the public need and convenience. Thus the EFSB should find that there is no basis to justify preempting local zoning laws and dismiss the petition.

There are multiple sites for BESS that already have in place the necessary interconnection infrastructure and thus require less conversion to an industrial BESS use. The Company agreed that having a transformer substation already in place at multiple locations where they already are along transmission lines in Massachusetts would be beneficial. This would avoid having to devote an additional approximately one-third of the facility footprint for a new substation with high-voltage transformers and substation, but then said he "could not recall"

reviewing any such specific substation sites for the Project. Tr. 102. The Company did not disagree that in the Commonwealth there are numerous now closed or closing electric generating facilities that already have all energy infrastructure resources necessary and sufficient usable land where a BESS could be sited, but then admitted it had never screened for and had ignored numerous sites with existing substations installed in its site selection process. Tr. 154-155.

D. THE COMPANY IGNORED TENS OF THOUSANDS OF MORE APPROPRIATE ALTERNATIVE BESS SITES

The record developed by parties in the hearing, also demonstrates that there are thousands of alternative sites that are possible and could be much more appropriate locations for BESS to meet the Massachusetts goal of 5,000 Mw of BESS by 2030. It was the responsibility of the Company to consider some of the tens of thousands of viable BESS sites, and ultimately the charge of EFSB to determine that this proposed site satisfies Massachusetts' criteria among this very large universe of potential BESS sites adjacent to high voltage transmission lines. There are many other BESS development parties demonstrating that they are more than able to satisfy the 5000 Mw Massachusetts BESS goal using far superior, properly zoned sites, while working with the existing community.

1. Abundant More Appropriate BESS Sites Pursued by Many Developers

The record created on the first day of EFSB hearings that lasted for three weeks, documents the large universe of site possibilities for BESS site selection. The Company admitted on the EFSB record that the 4 project locations for BESS proposed to and selected by Massachusetts energy regulatory authorities already satisfied more than one-quarter of this state's BESS goal, choosing 1,268 of the 5000 MW goal. As set forth in the section, the Massachusetts application for this BESS auction specified the above criteria for BESS site

selection, none of which Rhynland/Moraga used for site selection for the Oakham project. Utilizing and applying any single one of these many Massachusetts BESS site selection criteria would have immediately ruled out the Oakham facility location proposed by the Company.

The company admitted that it had no basis to dispute that at this rate of BESS development mentioned in the paragraph above, the MA DOER goal of 5,000 Mw of BESS could potentially be met by approximately 12-20 BESS projects, given that 4 out of 13 sites bid had already satisfied more than one-quarter of this 5,000 Mw of BESS as of the 2025 Massachusetts DOER BESS auction. The company witness was asked whether he or the company even bothered to use any of the BESS on-line tracking systems which identify dozens of BESS projects progressing in ISO-NE and Massachusetts and their site selections. He stated that he was not familiar with those and did not use those, but admitted that there could be multiple BESS projects progressing. Tr. 131, L 6-7. The Company witness was also asked if he was familiar with the MA DOER in its 2025 BESS auction receiving more than a dozen 2025 BESS project bids, and selecting only 4 of them (less than one-third of the total submitted) including the Company Rhynland's Tyngsborough River Mill BESS project, to satisfy its first-round auction demand. The witness stated that the Applicant did not know about these other projects. Tr. 128.

The record in this proceeding establishes that from the large number of potential alternative sites to host a BESS facility, there needs to be only a modest number of BESS sites to satisfy Massachusetts' 5,000 Mw goal using the Massachusetts site selection criteria. The charge of the Board regarding site selection is to disapprove inappropriate sites that do not satisfy Massachusetts criteria. It is the Applicant's burden to demonstrate on the record that it applied Massachusetts site selection criteria to consider multiple sites that do satisfy Massachusetts site

selection criteria that the EFSB's sister energy agency has developed for BESS facilities proposed in 2025 and thereafter.

When the EFSB is asked to overrule all local zoning by a private developer even before the developer applies for necessary local permits, that puts the developer "horse" before the "cart" of existing public laws, leaving a burden not met by the Company in the EFSB record. Here, the proposed Site that does not meet Massachusetts site selection criteria is in the only town in the Commonwealth for which Attorney General Healey's office approved a ban on stand-alone BESS not associated with on-site renewable energy. Tr. 173. Oakham is thus unique among the 351 towns and cities in Massachusetts, and going to the EFSB to preempt Attorney General Healey's approval of this zoning law is a unique situation for which with this unique status of state approval by the Commonwealth's highest state legal officer regarding appropriate local zoning laws, devoting an entire division to these tasks, there is a higher standard for the EFSB to preempt that authority.

A significant disparity in the record of this case is that Rhynland demonstrated that it satisfied Massachusetts site selection criteria for its similar Tesla Megapack 2XL BESS facility in Tyngsborough, see IRP-2, at Section A-7, which has no such restrictive BESS ordinance as Oakham, but ignored the same site selection criteria when selecting the Oakham site, the only town in the Commonwealth for which Attorney General Healey approved a restriction on BESS facilities if they are not co-located with a compatible renewable energy facility.

As set forth in Section herein, the 500 Mw Tyngsborough BESS had only obligated 150 MW to be part of the Massachusetts 5000 Mw of BESS facilities sought by Massachusetts. The 350 Mw remaining still unobligated of the total 500 Mw at the Rhynland Tyngsborough site could accommodate at that site almost double the 180 MW now before the Siting Board for

siting in Oakham. The question before the Siting Board is whether the Company's Tyngsborough facility with uncommitted BESS capacity a more appropriate site is compared to Oakham to meet the Commonwealth's goals.

The Applicant's site selection witness and the rest of the Company's expert panel were asked if the Rhynland Tyngsborough site had compatible industrial zoning. The Applicant's site selection witness admitted that he was very familiar with the Tyngsborough site, but could not recall. The witness was directed to Exh. RPI-2 that he had prepared for the Massachusetts DOER but had not supplied in response to Intervenors' Information Requests, which states that this site was industrially zoned in Tyngsborough and allowed BESS facilities to locate "as of right." Tr. 142.

The Tyngsborough River Mill facility contrasts notably with the Oakham site at issue in this current proceeding. The Oakham site is the only town in the Commonwealth, among 531 towns and cities, for which Attorney General Healey had approved a zoning by-law preventing stand-alone BESS facilities not associated via co-location storing solar or other intermittent power. Tr. 173. This is not because no other towns had requested this, they had. It is because the Oakham facts are unique, and it has a unique, different legal status.

Comparing these two Company controlled sites demonstrates the clear unsuitability of Oakham to host a BESS facility:

1. The zoning is appropriately industrial for the Rhynland BESS site in Tyngsborough, and BESS is allowed "as of right." The exact opposite is true in Oakham, and this is uniquely supported by a decision of former Attorney General Healey's office.

2. The wetlands on the Oakham site that were not mapped nor included in company's 2025 application to the EFSB are a looming issue, Tr. 30. The Company stated to the MA. DOER that similar environmental issues are not present in Tyngsborough. RP1-2.
3. There are no protected watersheds that supply a state-wide source of clean drinking water in Tyngsboro.
4. The Oakham site immediately abuts and shares property lines with long-present residential properties with houses close enough to hear the current and proposed state maximum allowed noise impacts produced by the proposed facility. The Company's promise that it will keep noise impact sat the abutting residential property boundaries below the state maximum for any property – let alone residential abutting properties- at no more than the 10 dBA maximum, *See* MS-1, is not sufficient nor acceptable when choosing to site a BESS facility in a residential cluster of long-existing homes. The record does not demonstrate that noise levels at adjacent or neighboring properties, measured at the property line furthest from Coldbrook Road, will be under the state maximum.

It is part of the official historical record of the Quabbin Reservoir that supplies a clean drinking water supply for approximately 60 municipalities in eastern part of the State, that the Commonwealth took by eminent domain most of the Town of Oakham in order to supply a protected watershed for the critical Reservoir. The Town has never been adequately compensated for this sacrifice that destroyed its commercial main street and depleted its tax base in perpetuity. See the pre-filed testimony of Matthew Broderick, a witness for the Town of Oakham. The Commonwealth should not be permitted to return to this Town again seeking to preempt its conditional zoning banning non-co-located BESS facilities-- which was approved by

the Attorney General as appropriate here and in no other town in the Commonwealth-- to force it to make another contribution to the public good when so many more appropriate sites exist.

The determination to be made by the EFSB is whether the Company's selection of a site in Oakham located in a residential cluster of existing homes complies with State standards and is necessary or appropriate given a plethora of alternative sites that are far more appropriate and would comply with State standards. Because the Company devoted only five double-spaced pages in its Petition to discuss site selection for all four sites and was wholly unable to explain at the hearing why it had chosen the Barre, other Oakham, and Leicester sites as alternatives and refused to supply any more details about these choices, the Company has not met its burden on site selection.

2. <u>The Company did not Attempt to Identify any Sites Pursuant to the Massachusetts Criteria for Site Selection from Tens of Thousands of Potential Sites in Massachusetts</u>

The EFSB record demonstrates the large number of potential BESS sites adjacent to the high voltage transmission network that the Company did not review nor screen for alternative site options satisfying the Massachusetts BESS site criteria developed by the Massachusetts Department of Energy Resources, set forth above. Such potentially available sites exist throughout the Commonwealth, which Applicant does not deny. Tr. 99, L 1-8; 98, L 20 through 99, L 8. Even if one were focusing on Worcester County where all of the Company's four sites that it said it considered are located, there are an abundant number of potentially superior sites that satisfy Massachusetts Department of Energy Resources BESS site selection criteria, in stark contrast to the selected Oakham site which does not satisfy any. Tr. 154-155, L 23.

Even focusing on a more local area, the Applicant's site selection witness was asked about potentially superior sites within the radius immediately around Oakham. Tr. 156-158. The Applicant identified its 3 other alternative sites in its EFSB application in this more contained area, then summarily dismissed each of its three alternatives in one double-spaced page each in its application, without utilizing any of the Massachusetts site selection criteria set forth above. The Company's witness testified that Rhynland/Moraga had not considered any of the many other sites in the local area along the high voltage transmission lines. *Id*. Instead, without applying the Massachusetts Department of Energy Resources site selection criteria, the Company arbitrarily selected a very small town lacking industrial zoning with limited resources, no municipal water system, only a volunteer fire department with inadequate equipment and manpower, rural streets, wetlands, vernal pools, extensive forests, a protected DCR reservation, absence of a renewable source to connect to a BESS (and he refusal of the Company to consider any such co-location: "we are only in the BESS business, not in renewables business'), and the only town in the entire Commonwealth with a restrictive BESS law approved by the Attorney General.

3. BESS Site Selection in ISO-New England

In terms of the number of potential sites in New England, Intervenors introduced into the record Exh. IRP-1, a public ISO-NE document, which weeks before the Intervenors had supplied to all parties. Under questioning, the Company's site selection witness, shown that Exh. IRP-1, admitted ISO-NE identifies more than 9,000 miles of high voltage transmission lines in ISO-NE. Tr. 90, L 1-8. The same witness stated that the line(s) to interconnect their BESS facilities to the high voltage ISO-NE transmission system were each only a few inches in diameter and thus didn't require much space or associated right-of-way to accomplish their interconnection to the

more than 9,000 available miles of ISO-NE high voltage grid lines. Tr. 70, L 16-21. This Rhynland/Moraga witness agreed that a generous 100-foot-wide right-of-way was enough space to more than accomplish such a BESS interconnection. Tr. 91.

This Rhynland/Moraga site selection witness agreed that with more than 9,000 miles of high voltage transmission lines in ISO-NE, he did not dispute that this would create approximately 475,000 points with a 100-foot right of way to interconnect the line from a proximate BESS facility potentially could be evaluated for site selection to interconnect to the existing high-voltage transmission system. Tr. 94, L 14- 95, L 4. Although the witness suggested that while he preferred to interconnect from just the less complicated side of a transmission line to avoid having to cross around the existing line, he then agreed if a developer was willing to connect from land on either side of a transmission line utilizing a 100 foot right-of-way for the interconnecting line from the BESS facility, this would double the number of parcels from which one could potentially interconnect from either side to double the amount calculated of sites above, to yield approximately 940,000 land parcels for which a BESS facility site could interconnect its facility to the grid. *Id*.

Intervenors' counsel made clear they were not suggesting what percentage of this large number of points a BESS interconnection to the grid would satisfy the Massachusetts site selection criteria. However, the record contains discussion of a large inventory of hundreds of thousands of potential sites along the ISO-NE grid from which to draw alternative sites if a diligent site selection process is utilized. *Id*. Despite this evidence, the Company chose the Oakham site which does not satisfy Massachusetts site selection criteria and is the only Town among the 351 towns in Massachusetts to have an Attorney General-approved zoning by-law that restricts this proposed BESS facility.

4. BESS Site Selection in Massachusetts

The Company's site selection witness was asked what percentage of these more than 9,000 miles of high voltage transmission lines in ISO-NE were located in Massachusetts, which would identify potential points for Massachusetts sites for BESS. The witness stated that he had no idea. *Id*. The same witness was asked whether he or the Company had seen data suggesting that Massachusetts hosted 4000-5000 miles of these more than 9000 miles of lines. He responded that he was not familiar with this. *Id*.

Under questioning in which the relative population of each of the New England states was identified by Intervenors' counsel, the Company's site selection witness was asked if based on some simple math, Massachusetts had approximately 46.4 percent of the total New England six states' population. Tr. 96, L 3-20. The witness state that seemed accurate. Tr. 99, L 1-8. The witness was asked if assuming that Massachusetts had a denser population than most of the Massachusetts states, whether that denser population meant that higher voltage transmission lines are likely to be used to transmit more power capacity and energy to those locations and whether it followed that a similar 46.4 percent of high voltage transmission lines would be located in Massachusetts. He stated that he had no reason to believe that not to be true. *Id*.

Asked if this large amount of high voltage transmission lines in Massachusetts would create approximately 220,000 100-foot right-of-way interconnection points for a BESS facility to interconnect just from this Company site selection witness's preferred access side of a transmission line. and approximately twice that many potential interconnection points (approximately 440,000) if one was to interconnect from a BESS parcel located on either side of a Massachusetts high voltage transmission line, the Company witness did not disagree. *Id*.

The Company witness was asked if any of these other hundreds of thousands of sites were part of the screening process to select any potential alternative sites to present to the EFSB. The witness stated that none were considered, even though he testified that being able to actually store solar power would be ideal for a BESS storage location. Tr. 81-83. The manner in which Rhynland/Moraga conducted site selection here was so simplistic and inadequate on its face that it is explained in approximately one single page for each of its 4 alternative sites discussed in less than five total pages in the site selection chapter of the Company's petition. MS-1, Site Selection.

5. <u>Rhynland/Moraga Ignored Massachusetts Co-Location Criterion for Site Selection</u>

The Company's site selection witness was asked if the Company considered any sites where the BESS facility could co-locate with other dispersed renewable generation that needed to be stored, consistent with Massachusetts objectives in supporting BESS. The witness responded they had not. The witness was asked whether the Company has considered several Massachusetts universities already hosting behind-the-meter dispersed generation as possible sites. The witness responded they had not. Tr. 101, L 1-7.

The Company witness was asked whether the Company was had considered any of the small hydro sites in Massachusetts that produce often intermittent renewable energy as possible sites for their BESS to store that intermittent energy. The witness responded the Company had not. Tr. 82-83.

6. <u>Rhynland/Moraga Ignored Existing Closed Energy Facilities with Transmission Infrastructure for Site Selection</u>

The questioning of the Company's site selection witness noted that 3 of the 4 winning sites in the Massachusetts Department of Energy Resources September 2025 BESS auction

were former closed power plants or Exxon facilities where interconnection infrastructure was already in place. Tr. 102, L 12-14. Such sites are properly zoned for a large energy facility and have necessary infrastructure like substations in place so they would require a much smaller additional footprint to host a BESS facility. Of note, while the Rhynland winning Tyngsborough River Mill facility alone among those four winners in the DOER BESS auction did not have similar existing energy interconnection infrastructure, it was zoned for industrial use and had no bylaw banning a BESS. The Company's site selection witness testified that having a substation and transformer already in place reduces the need to develop approximately two-thirds of an acre of additional infrastructure for the substation and transformer, which itself is a notable portion of the less than three acres of the footprint for a BESS facility. Tr. 74-77.

The Company witness responded that he couldn't remember if he had considered these footprint minimization factors that would reduce the amount of tree cover needed to be removed in considering proposed alternative sites. Tr. 102, L 12-14.

The Oakham Site that lacks any of the above features and would require substantial and adverse disruption to the environment as well as totally transforming a quiet rural town in order to serve as a host for a BESS demonstrably fails to meet any of the applicable Massachusetts site selection criteria now in place for BESS energy projects. This Oakham site selection process also does not measure up nor incorporate the site selection criteria that the Rhynland River Mill site in Tyngsborough had to meet to earn Massachusetts energy regulatory agency approval. *See* IRP-2.

7. <u>Rhynland/Moraga Ignored Co-Location with Existing Waste-to-Energy Facilities which would Satisfy More Commonwealth and Federal Criteria for Site Selection</u>

The Company site selection witness was asked whether the Company had considered as potential sites any of the several still-operating waste-to-energy facilities that produce what is recognized under both federal law pursuant to the Public Utilities Regulatory Policies Act of 1978 which has been upheld by the U.S. Supreme Court, as well as under Massachusetts law and policy, as expressly preferred sources of renewable and/or waste-derived sustainable power. Tr. 101, L. 8-24. The witness responded that the Company had not. *Id*.

8. <u>BESS Site Selection in Worcester County, Massachusetts</u>

Worcester County is where all of Moraga's alternative sites are located. MS-1, Site Selection. The Company's site selection witness was asked whether they had considered any sites adjacent to fossil fuel plants with substations already in place, including a number of such facilities specifically identified by Intervenor's counsel. The witness responded they had not. Tr. 154-155. Additionally, the Company witness agreed that they had not considered three waste-to-energy facilities that are located in Worcester County, as well the Worcester Airport for co-location of a BESS. Tr. 84.

There are a preference and financial incentive provided under the Massachusetts SMART program and under the Massachusetts historic net metering program, for renewable energy projects sited on closed landfills which can also accompany waste-to-energy facilities. The Company did not consider any of these potential Commonwealth favored options in its site selection process here. Instead it chose the Oakham Site that is located in the middle of a quiet residential area which satisfies none of Massachusetts' current site selection criteria for sites qualified to satisfy DOER selection and DPU-approved contracts for realizing the Commonwealth's BESS goal.

9. BESS Site Selection Alternatives Within the Limited Area Close to Oakham Where Rhynland Chose its Three Alternative Sites in Massachusetts

The Company's site selection witness was asked whether they had considered any other alternative sites within a 12-mile radius of Oakham where there are substantial amounts of existing solar, wind, or other renewable power. The question specified four different towns bordering Oakham Tr. 156, L 11-158, L 4. The witness replied that they had not. *Id*.

When questioned about a single town abutting Oakham that has multiple large field-mounted solar projects installed at the maximum size allowed to earn Massachusetts Solar Renewable Energy Credits, the Company witness testified that if a BESS were co-located with such a renewable energy source, the batteries could actually store intermittent solar energy which the witness testified was both ideal as well as the purpose of a BESS. Tr. 81-83.

The Company's witness was also asked whether the Company had considered as an option two existing 6 Mw solar projects completed and operating for the last decade and located on approximately 150 acres of land along the border of neighboring towns, East Brookfield and Spencer, with many of the solar panels located in a sheltered below-grade sand pit where substantially less than 40% of the 150 acres is occupied by the solar project Tr. 157-159. The witness replied they had not. *Id*.

Summary of the Woefully Inadequate and Arbitrary Site Selection Process

The Company ignored the Massachusetts site selection standards and criteria applied to BESS projects that meet the state's 5,000 Mw goal in its site selection process by not considering the large inventory of potential sites that already have industrial/renewable energy uses:

- existing waste-to-energy sites;

- sites with significant intermittent co-located renewable energy generation (Note: the existing Oakham by-law that the Company seeks to preempt does not prohibit BESS at such co-located sites);
- additional sites in Worcester County;
- a significant number of existing renewable energy and/or sites with existing substations within a 12-mile radius of Oakham;
- thousands of other potential BESS sites in Massachusetts with access to an adjacent existing high voltage transmission line with at least a 100-foot right-of-way to interconnect, which the Company witness stated was sufficient to interconnect Tr. 91;
- and double the number of sites in the above bullet in ISO-New England rather than only in Massachusetts.

The site selection process engaged in by the Company as evidenced in the record was so cursory and abbreviated that its dismissal of three supposedly alternative sites and of the selected Oakham site is explained in less than 5 double-spaced pages in the Company's Petition to the EFSB. See MS -1, Site Selection. In selecting BESS sites that satisfy the Commonwealth's BESS criteria, the Massachusetts Department of Energy Resources devotes 60 pages of qualifications to thoroughly vet each site. IRP-2. The Company's site selection process does not satisfy the burden of any applicant for Section 40A relief to demonstrate that sufficient reasonable alternative sites were considered and does not incorporate or utilize the Massachusetts 2025 BESS site selection criteria.

The record in these proceeding does not come close to satisfying even the most basic standard for site selection set forth in the Massachusetts criteria applied to BESS site selection. This failure to satisfy the Company's obligation, based on the record in this matter is sufficient

basis for the Board to reject this Petition and require the Company to commence another site selection process considering the significant number of viable documented alternative sites for location of a BESS.

For this reason alone, in addition to the other issues discussed below, the EFSB should deny this petition. By answering "no" to every question that was posed to the Company's site selection witness about consideration of local/proximate sites for BESS, about other sites in Worcester county, about now available former fossil fuel generation sites which have all necessary transmission infrastructure already installed, about the importance of proper zoning for BESS sites, the Company did not meet even the most minimal requirements of Massachusetts BESS site selection.

E. Rhynland has Already Achieved Approval from Massachusetts Energy Regulators for an Alternative Site for BESS Where it has Committed Only 30% of its Capacity, and has in Reserve an Uncommitted 350 Mw of BESS Capacity which can More than Accommodate at this Alternative Site this 180 Mw BESS Capacity Proposed for Oakham Without Violating any Local Laws as Would Siting a BESS at the Oakham Site

The EFSB Docket 25-07 record now contains substantial evidence of a much superior site of which the Company has sworn to the Commonwealth of Massachusetts that it has complete site control, is of more than adequate size, is properly zoned as industrial, where BESS can be sited as-of-right, and has already been approved by Massachusetts regulatory agencies to host BESS and to qualify to meet Massachusetts' BESS goals. See Exh. IRP-2, Tr. 122, 142, 145. This is the MA DOER's already selected Rhynland Tyngsborough River Mill site.

In response to the Intervenors' first round and second information requests, the Company refused to answer if it had other publicly disclosed BESS sites. Intervenors filed motions to compel an answer that were held in suspension by the Presiding Officer during the EFSB hearing

and then denied at its close. The Company first denied at hearing that it had made that Tyngsborough facility public: "We have not made that project public." Tr. 118, L 11-12. When confronted with their redacted public version of the Tyngsborough application to Massachusetts, Exh. IRP-2, Company witness Brian Benito then admitted that Exh. IRP-2 was prepared and submitted to Massachusetts public agencies under his control and direction, id, and never identified nor supplied in response to Intervenors or other parties' Information Requests prior to the start of the hearing. Tr. 140, L 8-16.

Although refusing to answer questions about the size of this Tyngsborough BESS facility or what percentage of it was committed and what percentage of it still available to host BESS, Tr. 123 L 5-14, under additional questioning the Company site selection witness did not dispute on the record that:

1) The Rhynland Tyngsborough BESS facility was expressly publicly stated to Massachusetts Department of Energy Resources to be 500 MW of capacity completely under Company site control and with no significant environmental impediments. Tr. 117, 133-134;
2) In contrast, the Company refused to supply any original document of the Company regarding Oakham of site control (as opposed to a document from its counsel which counsel was not sworn nor was the issuer made available for examination. Tr. 167;
3) It appears that only 150 Mw of this 500 Mw was obligated to satisfy the Massachusetts BESS goals for 2030. Tr. 135, L 9-136, L 1. This means that this alternative Tyngsborough location, superior legally and practically to the Oakham site, has sufficient uncommitted BESS capacity to host the 180 MW proposed for the inappropriate site selection of the Oakham site. Even if the 180 MW of BESS

proposed for Oakham was sited instead at the River Mill Tyngsborough site, that site would still have left over approximately 140 Mw of additional uncommitted BESS capacity at that single alternative location. Tr. 178;

4) Moreover, based on the first auction where Massachusetts chose 4 of 13 offered BESS projects in the 2025 MA DOER BESS auction to supply more than one-quarter of its long-term 5000 Mw BESS goal, it appears that the Commonwealth to be able to satisfy its entire BESS goal with 20 or fewer BESS site locations, not thousands, or hundreds, or even scores of locations. There is not a need for scores of BESS sites to be developed from the hundreds of thousands of available BESS sites, and only sites that satisfy the Massachusetts standards and criteria need to, or should be, permitted. This does not include overriding local zoning to shoehorn a BESS site into a long-existent quiet residential zone in Oakham.

F. <u>Oakham is Legally Unique, as the Only One of the 351 Massachusetts Towns and Cities in which Attorney General Healey Approved as Reasonable and Permitted a Local Zoning Ordinance Restricting Certain BESS Facilities, and then Only when not Co-Located with Intermittent Sustainable Energy</u>

It does not satisfy the applicable Massachusetts site selection criteria nor qualify pursuant to any available exception, for a developer to select the only single town where Attorney General Healey's office approved a restrictive zoning by-law in Oakham among all of the 351 towns and cities in the Commonwealth, that is the town where the town and state Attorney General do not allow BESS not co-located with renewable energy projects. It is not supported on the EFSB record in this proceeding and makes no sense to pick a site in the middle of a residential cluster of houses in this already restricted town of Oakham that is not zoned for BESS, for what the Company witness admitted is a large industrial facility being placed not in an industrial zone. Tr. 142, L 5-24.

Siting a large industrial BESS facility in the middle of residential homes in Oakham is not supported on the EFSB record in this proceeding and makes no sense in Oakham with only a volunteer fire department that tragically, recently was not able to put out a home fire that cost the occupant their life. Oakham lacks piped water supply and no forced main fire hydrants to fight a BESS fire event, such as what has happened at some other BESS facilities in the U.S. and elsewhere. At this site in Oakham, the fan cooling systems for the BESS is the primary way that the BESS system can control heat. Tr. 60. Those fans are going to be turned down to 40% of throttle cooling capacity, and the record does not guarantee that fan operation under certain heat and environmental conditions could still violate Massachusetts noise laws, as discussed in a separate section III below.

The issue before the Board is whether the extensive record in this matter, demonstrates appropriate site selection of a compatible site from among the record now identifying tens of thousands of locations in Massachusetts where BESS could be sited without overriding local zoning laws, where Rhynland/Moraga:

- Did not consider adequate reasonable alternative sites, and/or;
- Did not create a record in this hearing sufficient to support a decision that this site in this town without sufficient public safety resources satisfies Massachusetts site selection standards and criteria, and;
- Selected a site where there is no pumped water or centrally pressurized fire hydrants in the town, where the entire facility's cooling technology is going to be throttled down to less than half its normal cooling operating protocol;
- This record will not support this Oakham site selection if one applies the Massachusetts regulatory agencies site selection criteria for BESS projects.

G. The Company has not Followed the Required Due Process Under Applicable Massachusetts Law -- There was no Effort to Obtain the Prerequisite Necessary Local Permits and Approvals

The Company never made the normally required basic filings under existing law to Oakham legal bodies before attempting now to override them without proceeding to exhaust all local administrative options under existing law before asking a state body to preempt localities' zoning laws. The Company admitted that it would engage Oakham after the EFSB preempts their laws. This is absolutely backwards under traditional Massachusetts practice.

The Board requires a record that that supports the unusual step of preempting local law. And this is not a case for that extreme remedy. Oakham is the only one of Massachusetts 351 municipal governments for which Attorney General Healey found it appropriate to approve its current zoning laws prohibiting certain large BESS facilities not associated with or co-located with renewable energy facilities. Tr. 173. This is a unique set of legal status and site-specific facts on the record before the EFSB, that applies to none of the other 350 Massachusetts municipalities. EFSB decisions stress that the Board makes site-specific case-by-case siting decisions. These Oakham facts are unique, and they dictate a case-by-case decision on these facts that do not parallel those of other BESS facilities.

H. The Company Refused to Provide any Documents Executed by Company Officials that Demonstrated Control Over the Oakham Site, as Required by Massachusetts Energy Regulatory Agencies Identifying Bess Projects Meeting Massachusetts Bess Goals

1. Rhynland Evidence of Control in Tyngsborough to Incorporate the 180 Mw Now Proposed for a Totally Inappropriate Oakham Site

In terms of creating an accurate and transparent EFSB record, the Applicant refused to answer several of Intervenors' Information Requests, and then asserted during the hearing that as

of the end of January 2026, it had supplied all information about other publicly disclosed BESS it was planning to build in ISOs by revealing two BESS in New York and two BESS in Texas. Tr. 108, but not revealing their Massachusetts Tyngsborough facility which has uncommitted capacity to host the 180 Mw of BESS planned for Oakham. During cross-examination, the Applicant's site selection witness was confronted with a public redacted document he had prepared in 2025 and submitted to the Massachusetts Department of Energy Resources that had not been revealed in response to parties' information requests. Tr. 119, L 3-12; Exh. IRP-2.

As set forth above, this document of dozens of pages (IRP-2), revealed that the Applicant had been awarded state approval in 2025 for a Massachusetts BESS facility in Tyngsborough, Ma. Tr. 117, IRP-2. This Company admitted to the Board that its responses to Information Requests were not accurate. Tr. 121. When asked why this occurred, the (unsurprising and consistent) answer was this was an "oversight."

There were several motions to compel the furnishing of Oakham site control information withheld by Moraga. The Presiding Officer declined to make any decision on these during the hearing, ensuring even if this was eventually granted, it would be too late to do much on the record with that information. Then on the final day of the hearing, at its close, the Hearing Officer declined to require production of necessary documents.

This sought site control information is exactly the information that the Massachusetts Department of Energy Resources would require any BESS company to provide should it seek to win a Massachusetts DPU-approved contract supporting its BESS facility operation. Rhynland knew that the Commonwealth had required this information from Rhynland for its Tyngsborough BESS facility, but did not disclose this information to intervenors in response to information requests during this proceeding. The withheld information that the Company refused to disclose

during the hearing, even though it was already disclosed to the state for the Tyngsborough facility, included:

- its very existence, it having already been approved by Massachusetts DOER;
- its size and capacity;
- the amount of capacity remaining to replace this proposed Oakham facility, which is very relevant to site selection;
- the lack of significant environmental issues at the Tyngsborough site.

III. THE NOISE IMPACT DATA OF RECORD IS NOT SUFFICIENT NOR DEFINITIVE FOR THE EFSB TO CONCLUDE IT WILL NOT BE EXCESSIVE

The noise data supplied by the Company:

- does not model the noise at existing occupied residential property lines as required,
- does not consider the actual excessive noise over the lifecycle of this BESS project
- the state maximum noise limit applies to even industrially zoned sites without adjacent bordering occupied residential dwellings as exist in Oakham, where a lower residential zone limit in a residential zone is appropriate in Oakham.

A. The Noise Model did not Take Noise Measurements at the Affected Properly Lines or Other Necessary Locations

To not elongate this brief, the Non-town Intervenors support and adopt, incorporate here by reference, the positions set forth in the Town brief, and particularly on noise issues before the EFSB, and adopt them by this reference. In particular, Intervenors agree with the Town brief on noise issues associated with the proposed Oakham site, and the failure of the record by sufficient or substantial evidence to demonstrate that the noise impact will remain within maximum state

noise requirements, and even more important, that even if it were sometimes within maximum state noise requirements – applicable also to industrial and commercial zones – those maximum levels are not appropriate in an existing residential zone, and even less appropriate when those noise sources sandwiched in between existing residential houses.

B. Moraga Admitted that the Fan System is Automated to Determine when and how Much it Operates, Utilizing Software, not a Physical Governor, to Adjust the Fan Throttle Speed and Resultant Noise and the Company Doesn't Understand how it Works

Rhynland/Moraga stated that fan operation and amount is controlled automatically, Tr. 1029, L 22-24, by the TMS system controlled by programmable software, but the Company whose only business is BESS, confessed on the record that it is now not even "sure how that is programmed or controlled." Tr. 1030, L 22-24. The company could not, or would not, specify how they would ensure that the fan speed throttle, which is the primary heat control, and therefore the noise it emits, will be maintained at low-noise levels on warm days or as batteries degrade. The best answer they could provide on how they would ensure noise is sufficiently controlled is that "Implementing the fan duty cycle cap will require a contractually defined operational constraint shown below, where any system damage resulting from operations outside of these conditions would not be covered by the warranty." Tr. 1032, L 8-12, because that "would put the project at significant risk…" Tr. 1034, L 7-8,

The Company's inadequate modelling of the noise impact on already occupied adjoining residential properties and property lines was not their concern in these proceedings. Their primary concern was preserving the contractual warranty that would make Tesla, the manufacturer, rather than Moraga, the operator, responsible for noise emissions. The evident lack of understanding of how their equipment works by a company, Moraga, whose sole business

is siting and installing BESS systems, does not create a record on potential noise impacts and how those impacts can be restricted to meet legal requirements on which the EFSB can rely.

C. The Applicant Admitted on the Record that its Stated Noise Values did not Include Increasing Noise Emitted by the Proposed Facility After the First Year, or Additional Fan Operation Necessary to Control Heat and Safety

Rhynland/Moraga only modelled the noise using Tesla data. And Tesla data only models the fan noise of new Tesla batteries. Tr. 1059, L 12-17. This data is accurate for Day 1 of the BESS facility, but not for this BESS facility over time in later months and years. Moraga under questioning admitted these batteries degrade over time. Tr. 1058, L 9-10. Moraga was ignorant of factors that were not included in a model of new batteries nor the implicates for actual site noise that will be emitted and are not now modelled over time given battery degradation:

- The rate at which batteries degrade, Tr. 1060, L 4-7;
- That batteries develop hot spots as they degrade, increasing heat inside their containments, Tr. 1060, L 8-13;
- Moraga admitted that they knew that these battery degradations over time decreased efficiency and round-trip efficiency Tr. 1060, L18-23, 1061, L 2;
- Heat in and from the batteries as they age and degrade increases exponentially in a nonlinear upwards "J-shaped curve" Tr. 1029, L 22-24;
- The Company's panel of witnesses stated that they were not aware that degrading BESS units could become as much as 50% hotter internally within the BESS containment units, Tr. 1063, L 4-7;

- And as the discharge rate increases exponentially over time, there is exponentially more residual waste heat generated inside the batteries, of which no one on the Company witness panel could answer questions about. Tr. 1063, L 20-21;
- In addition, on a hot day, the sun on the battery containers can increase heat in the BESS containment structures.

D. <u>Noise Impact on Existing Residential Adjoining Properties</u>

Rhynland/Moraga witnesses stated that Intervenors James and Danielle Stevens' property line the construction noise would be approximately 59 dBA. Tr. 1036, L 1-7. The Company admitted that at the Stevens' residence, current ambient noise in the evening was measured at 25 dBA. Tr. 1036, L 18-24. However, at the rear property line of the Stevens' property closest to the adjoining construction area, the noise was not measured by Moraga. This is a significant oversight of one of the most key measurements of noise at the common property line shared by the BESS facility and an existing neighbor.

Every existing homeowner has the right to continue to use their entire residential property without having to endure long-term unreasonable noise levels. The Commonwealth's noise limitation applies at the point of the property boundary with a neighboring property, here the proposed BESS facility, as well as at the point of the home on the property. Instead, Moraga only measured and modelled noise levels at the point of the home that is located on Coldbrook Road, rather than further away at a common property line with the proposed BESS location. The result of this omission is that the Company ignored that this further away point would have had an even lower ambient noise level than the 25 dBA measured at Coldbrook Road because of the absence of vehicle traffic. The Company never provided this essential piece of missing noise data before the hearing record closed.

While it is true that construction would not be planned to occur during the night, a 59 dBA construction noise level at the Stevens' common property line with the proposed BESS facility property would be substantially above the day-time ambient noise level at the location. That noise will violate even the maximum a +10 dBA noise increase amount, as Moraga's witness said applies anywhere "in the state of Massachusetts." Tr. 1048, L 10. Construction and its noise is planned to occur over 1 ½ years, although could go longer, and could occur as the Company brings in its so-called auxiliary batteries planned for placement in its facility footprint and replacement batteries over time.

The Oakham site and its surrounding existing residential dwellings are not and never were in an industrial zone suitable for BESS facilities. But because Moraga committed another "oversight" by not monitoring or modelling noise at key property lines, this essential piece of data is not available to the EFSB or parties in this Docket. The existing EFSB record does not resolve, absent this data, whether there would be an excessive noise level at certain residential property line locations, exceeding what is allowed.

The Company admitted that all three noise sources at the site – the battery fan cooling system, the dozens of medium voltage transformers, and the main power transformer, would operate simultaneously. Tr. 1039, L 1-5. Moraga stated that maximum noise would occur when the fan(s) "… definitely do[es] respond to the charge and discharge cycle." Tr. 1057, L 11-12. The Company admitted that charging the BESS with all sources operating would likely occur when power was most cheaply obtained, Tr. 1031, L 22-23, which in Massachusetts for the last half century has been late at night when people are asleep without lights on from 11 pm to 6 am. That added noise would be disturbingly audible at existing properties. BESS discharge of electricity was stated by Rhynland/Moraga also to occur during the peak time when power was

needed, Tr. 1040, L 5-8, when people are home from work as are children being with family in the late afternoon and evening.

Over time, there also is no limit on how many additional "auxiliary" batteries could be added to this proposed Oakham site. Having made the substantial expenditure for a new substation, the Company has an incentive to add more batteries to utilize and load that substation at a later date. Moraga stated, without providing any evidence, that the Transmission line adjacent to this site could not accept more than the proposed 180 Mw of BESS. Tr. 104. However, the Company's plan to add from Day 1 a larger pad for auxiliary additional BESS units that they admitted under cross-examination could accommodate perhaps up to more than 30% more batteries than currently proposed, but nonetheless had their noise expert not model that up to more than 30% more BESS units, that could produce that much more noise. Tr. 1042, L 14-20. On the record, Rhynland/Moraga would not agree that it would not exceed 180 MW of installed BESS by hosting more battery packs over time.

Under cross-examination, Moraga admitted that even if there is a current transmission capacity of no more than 180 Mw of BESS at the site, this cap could be eliminated in an instance, if other projects planning to use that line withdrew applications, Tr. 1044, L 17-22; or reconductored and upgraded lines to handle more power were installed as often occurs because as the Company witness stated, "lines get upgraded every day," Tr. 1044, L 21-22. So there is no guarantee of any kind that this site would not in the future host more than 180 Mw.

With more batteries, there are more fans for cooling and more medium voltage transformers, each of which brings more and greater noise. As batteries age, they degrade, and this cycle of degradations makes the batteries exponentially hotter, emitting noticeable more heat, possibly requiring fans to operate at greater than the originally programmed 40% throttle

speed to keep the batteries cool and ensure safety. More fan operation equals more noise. With no guarantees about the number of BESS units at this site or their aging over time, and with the Company witness stating that there was no reason to notify the Commonwealth EFSB if more "auxiliary" batteries (actually the same identical Tesla Megapack 2XL batteries) were later installed, Tr. 42, there is nothing in the record of this proceeding to provide any assurance to adjacent residential neighbors or children at the school only approximately one-half mile away from the BESS, or for that matter to the EFSB or the Commonwealth, that noise on day 1 of operation before any battery degradation will not become substantially greater as batteries age and/or "auxiliary" batteries are added over time. This failure of the Company to account anywhere on the record for the actual lifecycle noise output of the BESS as the system ages and degrades leaves a major deficiency in the closed record that does not provide the EFSB sufficient evidence to find the Company noise study sufficient to provide real noise data accurately modelled over time, without additional information that is not now in the record.

E. The Maximum State Noise Level Allowed in Industrial Zones is not the Level Appropriate in an Oakham Residential Zone with Already Occupied Dwellings Bordering the Bess Site and Sharing Property Lines

The noise could be appreciably louder than modelled because Moraga did not test actual ambient noise at key shared residential property lines closest to the BESS, as cited above. Or Moraga could bring more batteries to occupy the larger than 30% of the pad that they propose that is saved for additional "auxiliary" battery placement after the facility is first opened. Or, in order to keep the heat down for safety reasons regarding battery operation, the software could be adjusted to allow more fan throttle speed to remove more heat to keep the batteries within safe operating parameters.

The company could not state when going from 40% fan throttle to 60% fan throttle, how much more noise would be emitted by the BESS fans, although their witness admitted that it would increase noise by "probably 3 or 4 decibels." Tr. 1049, L 3-4. A 10 dBA sound increase doubles the sound level, Tr. 1049, L 11-12. A 4 dBA increase would have a noticeable audible increase for all people using their outdoor property now living in proximity to the BESS property or sharing a property line with the Company-selected BESS property location, their families, and their pets. And with only a 1 dBA cushion below the state maximum additional noise allowed modelled at some of the modelled sound receptors identified by the Company, this potential noise level could exceed the state maximum for any industrial zone anywhere in Massachusetts. And the maximum allowed in an industrial zone is not what is appropriate in an existing residential town in one of the quietest residential communities in the Commonwealth.

The noise showing that must be made by the Company on the record is straightforward. The Applicant has the burden of proof to show two things in two time dimensions: First, that the absolute state requirement of no excess of the state's +10 dBA will be exceeded by the project's noise emissions in any zoned area of the Commonwealth, in either its planned Day 1 operation or when future battery degradation occurs and/or additional "auxiliary" BESS units are added to the site either to increase storage and discharge capacity or to compensate for less efficiency of other aging batteries which are emitting exponentially more heat that must be addressed by greater fan operation.

Second, if an industrial or commercial use is proposed for an area that is nonconforming to existing zoning requirements, Massachusetts law on nonconforming uses requires that new uses not enlarge the nonconformity and cannot change the character of the impact on the community. Here, the community is the bordering long-standing quiet residential community

and the Oakham school. Even apart from a large industrial BESS facility changing the existing residential neighborhood into an industrial co-location and use, such new industrial use area in a traditional residential area should not be allowed to adopt the same added maximum of an additional 10 dBA that would be the maximum dBA noise change that might be allowed in a traditional industrial zone.

Such use should never be permitted by a state Board unless there is an emergency situation, which is not the case here where there are tens of thousands of potential alternative BESS sites and based on progress to date with the Massachusetts DOER 2025 auction the 5000 Mw state BESS goal can be realized with less than 20 BESS sites in the Commonwealth (see Section II above). And Oakham is not a site that would be anywhere but at the bottom of any legitimate site selection process – it is the one and only community of 351 municipalities in Massachusetts that Attorney General Healey approved to restrict not co-located BESS projects.

The record demonstrates that at several of the four property boundaries for this proposed BESS site, that the noise impact at the property boundary cannot be guaranteed by the Company not to exceed a state maximum of +10 dBA under different conditions. In a long-established residential neighborhood, under even the most favorable reading of the Company's arguments, neighbors are entitled to utilize the entire metes and bounds of their properties without excessive noise pollution added at any point on that property. As discussed above, the +10 dBA maximum could be exceeded under various Company scenarios over time. This long pre-existing Oakham residential neighborhood is not an acceptable location to site such an industrial facility.

IV. THE PROJECT WILL CAUSE SIGNFICANT ADVERSE ENVIRONMENTAL DAMAGE TO THIS RURAL TOWN, ITS RESIDENTS AND ITS PROTECTED RESOURCES

It was the Company's plan from the beginning not to conduct any environmental investigations at the Site until after the EFSB proceedings concluded, thus depriving the EFSB of material facts about the substantial risk posed to the environment by this massive industrial project. The rationale offered by Mr. Benito, the project developer, that Moraga didn't have control of the site to allow it to do so (Tr. 263) is clearly wrong since more than one company expert visited the site and investigated site conditions beginning in 2022 when the Company signed an option agreement with the owner.[2]

Thus, the Company has ignored and decided not to investigate substantial environmental risks that the Town's experts and Town and Represented Intervenor Parties' witnesses have testified to and which are also the subject of public records:

- The destruction of wetlands and vernal pools and general site clearing, including cutting down of at least 5+ acres of trees could cause flooding that might reach the Represented Intervenor Parties yards, homes, gardens, pets and livestock in the event of a major rain or snowstorm. Tr. 681;
- The potential necessity to cut down mature forest adjacent to the Coldbrook Road residences of the majority of represented intervenor parties in order to allow massive trucks access to the entranceway to the Site without encroachment would destroy their viewshed, tranquility and reasonable use of their properties. See testimony of James Stevens, Tr. 902-911;
- A fire or explosion in the BESS equipment could cause the emission of toxic gases that in a worse case would require evacuation, including of pets and livestock. See

[2] Despite the Town and Represented Intervenor Parties' record request and motion to compel production of the original and amended land control agreements that likely refute this excuse, the Presiding Officer denied those motions.

Tesla emergency manual and table of Tesla battery incidents at sites around the world prepared by Moraga's fire and safety expert, Shawn Morse;

- The construction and installation of heavy equipment and excavation of tons of soil might result in migration of pre-existing soil and groundwater contamination that could disturb the quality of well water of nearby residents as well as the streams and water bodies that feed the Quabbin Reservoir.
- The construction and operation (in the event of a fire or other accident), could damage the protected resources of the adjacent DCR property.

V. THE PROJECT WILL DESTROY OR ALTER PROTECTED WETLANDS AND WATERWAYS

Moraga's environmental expert totally ignored or tried to conceal the presence of protected wetlands and vernal pool habitat in his initial RDAD submission to the Town's Conservation Commission. When forced to admit the "oversight" under cross examination he agreed to present a revised assessment as part of a Notice of Intent to the Conservation Commission, but the Company made clear that this Notice would not be filed until well after the close of the hearing and the submission of briefs, in short close to the date the EFSB has committed to making its decision.

Similarly, the Company's project manager testified very clearly that other required submissions to local and state agencies in which facts crucial to the EFSB's decision would be presented, e.g. the DCR, will not be submitted until close to the decision deadline.

Thus, rather than submit material facts into the record of this proceeding so that the EFSB has sufficient information in order to make an informed decision on the Petition, the Company

chose to run out the clock and deprive the EFSB of that information, in effect proceeding rear-end backwards.

VI. SIGNIFICANT TRAFFIC ISSUES NOT RESOLVED

Traffic impacts will be severe and will seriously interfere with the peace and quiet, and impact the drinking water wells, the darkened skies, homes, grounds and property values of the Represented Intervening Parties who live within less than a mile of the Property. as well as their access to Town roads during construction and operation of the BESS. The Company did not establish an adequate record on these issues, although admitting there will be significant daily traffic during construction as a result of the numbers of construction workers coming onto the Property as well as truck traffic, including over-sized tractor trailers. And it is not disputed that there will be additional traffic periodically during operation and certainly during any emergencies on the roads leading to the Property and on the Property, all of which could have adverse impacts on noise, dust, and enjoyment of private property in a rural town.

Moraga's expert engineer, Mr. Anderson, did not deny there was at least a risk posed by 67 foot long (WB-67) trailer tractors carrying 42-ton loads of battery packs, transformers, cables, cranes and other large equipment of not making the tight left turn needed to enter the Site entranceway from the northerly direction on Coldbrook Road. Tr. 1181, 1233.[3] Notably his firm only modelled this turning radius with a "swept turn analysis" but did not verify through a live simulation. Moreover, he testified that these trucks could only make that left turn coming from the northerly direction, **but he never conducted a swept turn analysis of a right turn from the entranceway onto Coldbrook Road despite a clear IR request from Intervenors**. His off the

[3] He also admitted that this size truck could not safely make a right turn (from the south) from Coldbrook Road onto the entranceway to the Site. *Id*.

cuff in hearing testimony was that it would be a tight turn--within several feet of the edge of the road—but he acknowledged that the report of the engineers who made a site visit contained no reference to the major obstructions immediately off-road, including earthen/iron walls on the east and west sides of Coldbrook Road and a stand of trees nearly opposite the entranceway on the eastern side that were testified to by James Stevens and corroborated by the photos filed as exhibits on the Intervenors' behalf. Unsaid was that a left turn, even if feasible, would bring the large trailer truck into the center of Town, past the elementary school, and residential homes, which would significantly lead to increased noise and air pollution. Tr. 153, 205, 660, 860, 888-91, 968-971, 973, 978-980,1035-36.

CONCLUSION

The Company testified that it did not consider whether Oakham was legally positioned in a unique position by virtue of being the single town among 351 in the Commonwealth whose zoning ordinances as of the first half of 2022 and thereafter were reviewed and approved by the Attorney General as properly entitled to restrict BESS co-located with renewable energy. Tr. 367, L 2-12; L 21-24, 370, L 10-14. The effective date of Oakham's BESS siting law, fully approved by the Attorney General's office, made this law effective and of public notice months before the date that the Company testified that it had control over the Oakham site in late 2022 (the Company made verifying their site control beginning even in late 2022, impossible to verify prior to the hearing by refusing to provide answers to information requests to provide such documents).

The EFSB precedent that EFSB adheres to is that it decides each request for preemption of local law on a case-by-case basis. This Attorney General's office over the prior four years decided that only a single town among the Commonwealth's 351 towns and cities deserved and

was entitled to an Attorney General -approved bylaw that restricts BESS facilities. This determination places the town of Oakham land use is a totally unique and different status than every other town in the Commonwealth.[4] The Company admits that it did not consider any of a large number of viable alternative sites for BESS in Massachusetts, in Worcester County, or even within a short radius of Oakham.

A 180 Mw BESS, can fit within the 350 Mw of uncommitted BESS capacity at the Company's Tyngsborough location where zoning is appropriate, allowing such industrial uses "as of right." The Commonwealth has already qualified the Tyngsborough industrially zoned location as qualifying as an appropriate location to meet the Commonwealth's site selection criteria and to be eligible for financial support through a Massachusetts DPU-approved long-term contract. Notably, the Company has committed only 150 Mw, but not the remaining still uncommitted 350 Mw at this 500 Mw Tyngsborough already vetted and approved BESS site.

The Represented Intervenor Parties respectfully submit that on this multiply layered inadequate and incomplete record before the EFSB, the Company's petition should be denied.

Respectfully submitted,

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[4] Notably as testified to by Town witness Matthew Broderick, the Town of Oakham has already been required to sacrify a substantial portion of its land and tax base when the Commonwealth condemned it as part of the creation of the Quabbin Reservoir.