COMMONWEALTH OF MASSACHUSETTS
ENERGY FACILITIES SITING BOARD

In the Matter of the Petition of Moraga Storage LLC.	)	
Pursuant to G.L. c .40A § 3 for an Exemption from	)	Docket no.
the Zoning Bylaws of the Town of Oakham, MA	)	EFSB25-07

REPLY BRIEF IN RESPONSE TO MORAGA STORAGE, LLC'S INITIAL BRIEF FILED BY LIMITED PARTICIPANTS, VINCENT PIUCCI AND BARBARA PIUCCI

In their initial post hearing brief, Moraga (The Company) has made sweeping generalizations proclaiming that they have met the burden of showing the need for this facility in this location in order to gain comprehensive exemptions to the Oakham's bylaws. The evidentiary record shows quite the opposite. Many of their claims have already been discredited in the initial post hearing briefs submitted by the Town, the Interveners and the Limited Participants, these briefs being incorporated herein by reference.

The story in this case is that of a small town that has already borne more than its share of statewide burdens, and a private developer that chose that town precisely because it believed it could override both local law and basic siting standards. For nearly a century, Oakham has functioned as an unheralded host for critical elements of the Commonwealth's drinking water system. Roughly thirty percent of its land was taken, including the destruction of Coldbrook Springs and the permanent removal of roughly 4,000 acres from any productive tax-generating use through state-mandated forestation for watershed protection. That land now protects the Ware River headwaters that ultimately feed the Quabbin and Wachusett Reservoirs, providing pristine water to millions of residents far beyond Oakham's borders. In return, the Town lives with a diminished tax base, a permanently constrained development footprint, and PILOT payments calculated on the value of "unimproved forest," not on the robust commercial center that was eradicated. The residents who remain in Oakham's rural-residential core, including along Coldbrook Road, have organized their lives around that reality. This is a quiet community with a small volunteer fire department, no public water system, and a landscape whose highest and best use is protection, not industrialization.

Against that backdrop, Oakham did the precise thing that the Commonwealth has repeatedly said it wants municipalities to do: it studied emerging BESS risks, considered its unique watershed role, and adopted a zoning bylaw that allows co-located BESS with renewables but prohibits grid-scale, stand-alone BESS in residential and watershed areas. The Attorney General's Office, charged with reviewing every zoning bylaw in the Commonwealth, approved that restriction for Oakham and no other municipality. Oakham is thus legally and

factually unique: it is the only one of 351 cities and towns where the Commonwealth's chief legal officer has affirmatively endorsed a stand-alone BESS ban.

It is that singular town, and that singular bylaw, that Moraga chose as the site for a 180 MW, four-hour merchant BESS. It did so through a special-purpose LLC with no operating history of building or running BESS projects, formed solely to own this facility and to insulate its parent's broader asset base from risk. It proposes to monetize price spreads on largely fossil-fueled grid energy, charging when wholesale prices are low, often at night when solar output is minimal, and discharging when prices are high, without any claim that the facility will be materially limited to, or contractually tied with, new renewable generation. That business model may be profitable, but it does not "significantly reduce or eliminate the use of energy from non-renewable sources," which is the core definition of "clean energy" in the very Climate Act on which the Company relies.

In its brief, Moraga attempts to treat the Climate Act's new "public service corporation" definition as a self-executing label: because it is duly registered to do business in Massachusetts and "proposes to own and operate" a storage facility, the analysis supposedly ends. That reading ignores the statute's structure and purpose. The Climate Act is, by title and design, "An Act Promoting a Clean Energy Grid, Advancing Equity and Protecting Ratepayers," and it defines "clean energy" as technologies that "significantly reduce or eliminate the use of energy from non-renewable sources." Energy storage was added to the list of facilities eligible for special treatment precisely because of its role in supporting clean generation, not as a free-standing arbitrage platform indifferent to the underlying fuel mix. A single-project LLC, created solely for private gain, that has never built or operated a BESS, that refuses to disclose basic financial information, and that offers no binding commitment to advance renewable integration does not resemble the "public service" entities the SJC and Legislature had in mind. It is, rather, a merchant developer seeking to leverage a broad statutory definition for a project that does not further the Act's core aims in any meaningful way.

The manner in which Moraga has conducted itself in this proceeding confirms that point. A developer that truly views itself as serving the public would not treat the EFSB and the host community as obstacles to be outmaneuvered. Here, the record shows a consistent pattern: incomplete, evasive, and at times misleading discovery responses, strategic concealment of key projects and documents, and a refusal to place critical environmental and siting information before the Board until after the evidentiary record closes.

The most striking example is the Tyngsborough "River Mill" BESS project. Months before this hearing, Rhynland, Moraga's parent company, had submitted to DOER a detailed, 60-plus-page application for a 500 MW Tesla 2XL BESS in Tyngsborough, laying out how that site satisfied Massachusetts' newly developed BESS siting criteria and successfully winning state approval in the inaugural storage auction. That application, which Moraga's witness admitted he authored, described a site with industrial zoning, as-of-right BESS use, no

comparable wetlands or watershed conflicts, and no AG-approved BESS prohibition. It also stated that only 150 MW of the 500 MW capacity had been committed to the state program, leaving roughly 350 MW of uncommitted capacity, nearly double what Moraga now proposes to install in Oakham.

Despite all this, when responding to Intervenors' information requests about other BESS projects in ISO-NE and Massachusetts, the Company mentioned projects in Texas and New York but omitted Tyngsborough, and its vice president initially testified that there were no other Massachusetts projects. Only when confronted at hearing with the redacted DOER application, which was supplied by Intervenors from public sources, not by Moraga, did the witness concede Tyngsborough's existence and his role in preparing the filing, falling back on the now-familiar refrain that the omission was an "oversight." The Company has also refused to produce underlying site-control documents for Oakham, offering instead only an unsworn letter from outside counsel, while simultaneously insisting that it has had "control" of the site since 2022.

This pattern of obfuscation extends beyond Tyngsborough. Moraga filed an Abbreviated Notice of Resource Area Delineation with the Oakham Conservation Commission that omitted or underplayed wetlands and vernal pool habitat in areas later revealed to be jurisdictional, then promised to address those issues in a full Notice of Intent only after the EFSB hearing and briefing schedule were complete. Company witnesses acknowledged that key submissions to DCR and other agencies, submissions that will necessarily address stormwater, contamination, and watershed protection, would not be made until close to the time the Board is expected to make its decision. In other words, rather than front-load critical environmental information into this adjudication, Moraga has deliberately chosen a "rear-end backwards" sequence: seek to preempt the only AG-approved BESS zoning ban in the Commonwealth first, then work out whether wetlands, contamination, and DCR's watershed concerns can be prudently managed later.

In parallel, the Company fought production of documents that go to the heart of site control, alternative sites, and environmental conditions, prompting motions to compel that were denied or left unresolved until the end of hearing, ensuring that, even if granted, there would be little opportunity to test the information on the record. Town officials' direct experience with Moraga mirrors what the record shows: initial outreach that downplayed or obscured the true nature of the planned use, applications for non-BESS permits that were never acted on but soothed local concerns, and private meetings with state agencies from which Oakham was excluded. That is not the conduct of an entity acting as a "public service corporation" in any meaningful sense.

Viewed against that record, Moraga's showing on the second statutory prong, whether the proposed use is "reasonably necessary for the convenience or welfare of the public", is equally deficient. It offers almost no project-specific need analysis, relying instead on the existence of statewide storage targets in the Climate Act and subsequent Executive Order as if any BESS, in any location, inherently satisfies the "public convenience

and welfare" test. On the contrary, the Board's precedents, and the case law, make clear that the analysis is more nuanced: the Board must consider the need for the particular use, the adequacy of alternative sites, and the environmental and local impacts, and then weigh the statewide and local effects.

Nothing in the record suggests that the Commonwealth will be unable to reach its storage targets without siting this particular BESS in Oakham. The evidence shows that Massachusetts can likely satisfy its 5,000 MW goal with a relatively small number of large, well-sited projects that comply with DOER's criteria. In the first auction alone, DOER selected four BESS projects totaling 1,268 MW from thirteen bids, more than one quarter of the 5,000 MW target. The Company's own witness did not dispute that the full target could be met with on the order of twelve to twenty such facilities. Rhynland's Tyngsborough project by itself offers 500 MW of capacity, with 350 MW still uncommitted and available to host the 180 MW now proposed for Oakham, at a site that is industrially zoned, allows BESS as of right, and has already been vetted and approved by state energy regulators.

More broadly, the record demonstrates an immense universe of potential BESS sites in ISO-New England and Massachusetts: roughly 9,000 miles of high-voltage transmission lines across the region, yielding on the order of 475,000 potential interconnection points based on a 100-foot right-of-way on one side, and close to 940,000 if both sides are considered. Even focusing only on Massachusetts, simple population-weighted assumptions suggest hundreds of thousands of possible interconnection points in this Commonwealth alone. These are not precise site counts; they are orders-of-magnitude indicators of abundance. Against that backdrop, the Company's site-selection effort consisted of four Worcester-County candidates, dismissed in roughly five double-spaced pages of its petition, and undisputed failure to apply the very DOER BESS siting criteria it complied with in Tyngsborough.

Those criteria are not abstract policy statements. In its Tyngsborough application, Rhynland was required to, and did, provide detailed information on co-location with Renewable Energy Portfolio Standard-qualified renewables, the status and documentation of site control, zoning compliance and permits, right-of-way and access constraints, wetlands and environmental impacts, relationships with the host community, and community support or opposition. Here, by contrast, the record shows:

- No consideration of co-location with existing solar, wind, small hydro, or waste-to-energy projects, despite the Company's admission that storing intermittent renewable output is the "ideal" use of BESS.

- No systematic screening of closed fossil plants or other legacy industrial sites that already host substations and transmission infrastructure, even though three of the four winning projects in the DOER auction are located at retired energy or petrochemical sites with built-in interconnection facilities.

- No investigation of the numerous large solar arrays and renewable sites in Worcester County that could support co-located BESS consistent with both DOER's criteria and Oakham's bylaw.

- An admitted failure to use publicly available BESS tracking tools, ISO-NE interconnection data, or even high-level mapping to identify the many superior, properly zoned locations in Massachusetts that already have both transmission access and compatible land use.

In short, Moraga did not come close to meeting its burden to show that Oakham is a reasonably necessary site from among many reasonable alternatives. It selected, instead, the one town in the Commonwealth where stand-alone BESS is expressly restricted by an AG-approved bylaw, with no public water system, a volunteer fire department with limited equipment, narrow rural roads ill-suited for heavy truck traffic, and a project site that is both adjacent to DCR watershed land and within mapped Surface Water Protection Areas for the Ware River. That choice is the opposite of what DOER's BESS criteria are designed to encourage.

The local and environmental impacts underscore why Oakham, in particular, is an inappropriate host. This is not an industrial zone at the edge of a city, it is a quiet residential cluster where ambient nighttime sound levels at the Stevens home were measured at roughly 25 dBA, and likely lower along the shared rear property line where the Company failed even to take measurements. Moraga's own noise consultant modelled construction noise at approximately 59 dBA at that boundary. That daytime increase is far above the 10 dBA maximum that MassDEP's policy allows anywhere in the Commonwealth. Long-term operational noise presents similar concerns: the Company's modelling assumes a fixed 40 percent fan duty cycle, uses Tesla data for new batteries only, and does not attempt to account for increasing fan operation and degraded performance as batteries age and internal temperatures rise. Company witnesses acknowledged that batteries degrade, that degradation reduces round-trip efficiency, and that internal heat can increase significantly over time, yet offered no modelling of the corresponding increase in fan noise. They further conceded that the primary driver of fan operation is the charge-discharge cycle, and that charging is most economical late at night, precisely when residents are most sensitive to new noise.

The environmental and public health record is equally troubling. The site is a former auto salvage yard with decades of exposure to automotive fluids and at least two apparent illegal landfill areas containing unknown commercial waste, including along and over the boundary with protected DCR land. The Town's experts have raised credible concerns that excavation, grading, and construction could mobilize contaminants into groundwater and surface runoff feeding the Ware River and, ultimately, the Quabbin system, yet Moraga has not conducted the level of investigation that would ordinarily be expected for a project of this scale in such a location. Its latest response on cleanup proposes only "targeted removal" of large debris within the project footprint and some adjacent wetlands, with no commitment to remove or fully characterize the illegal dumping on DCR land

or elsewhere on the property, an approach its own environmental expert conspicuously did not endorse by signing the response.

All of this would be concerning even in a town with a full-time, well-resourced fire department and robust water infrastructure. In Oakham, it is untenable. The Town has no municipal water system, no hydrants, and a volunteer fire department that recently struggled to contain a single residential fire. The Company's own fire-safety expert points to misting a plume from a distance as a potential tactic but does not negate the Fire Chief's testimony that BESS fires can burn for six to eight hours or more, with ongoing risk of re-ignition, and produce large volumes of toxic smoke and particulates containing heavy metals that can settle over miles. The Town's Board of Health has already stated, after reviewing the project, that it suspects that the project is likely to constitute a public nuisance and potentially be "harmful to the inhabitants, injurious to their estates, and dangerous to public health," yet the Company has made no meaningful effort to engage that Board, let alone seek the location assignment required under Massachusetts law for noisome trades.

The traffic and roadway evidence reinforces just how mismatched this facility is to its setting. Oakham's roads are narrow, lightly built rural ways, many are essentially paved former cart paths without reinforced subgrades. They are not designed for repeated 42-ton BESS loads and associated cranes, transformers, heavy equipment and near continuous deliveries of concrete, gravel and other supplies. In written testimony, the town's highway superintendent explained that Coldbrook Road, Rutland Road, and Old Turnpike Road are already in fair to poor condition, with significant cracking, heaving, and edge deterioration, and that the hundreds of projected heavy round-trip construction loads, plus future replacement and decommissioning traffic, will cause substantial rutting, culvert damage, and accelerated failure well beyond that which the Town's limited resources can repair. Swept-path analysis performed by the Company failed to evaluate critical turning movements, such as a right turn from the site back onto Coldbrook Road, despite explicit information requests. Moraga's own traffic expert conceded at the hearing that trucks cannot safely execute certain turns from the south and that oversized loads will impede two-way traffic on roads that are, in many stretches, only 18–20 feet wide. Additionally, the driveway pavement encroaches on the Stevens property. Turning large WB-67 trucks in and out of the driveway requires trespass on abutter land, which Moraga has not committed to resolve.

It is in this context that Moraga asks the Board not only to find that the project is "reasonably necessary for the convenience or welfare of the public," but also to grant a comprehensive exemption from Oakham's zoning. This includes the uniquely AG-approved stand-alone BESS prohibition, as well as at least seven other bylaws, the same bylaws by which every tax paying citizen of Oakham must abide. That request cannot be squared with either the record or the governing standards. Comprehensive exemptions are reserved for circumstances where denying them would cause substantial public harm, typically where a time-sensitive, multi-municipality project critical to system reliability would otherwise be delayed by a patchwork of conflicting local requirements. Here,

there is no such showing: the project is not part of a larger, regional build-out; it involves only one town, which uniformly opposes it; and the Company has made no project-specific case that delay in Oakham would meaningfully jeopardize the Commonwealth's ability to meet its storage goals, particularly given the existence of the Tyngsborough alternative and the abundance of better-sited options.

Moraga cannot satisfy the separate requirement that exemptions be "required" for the project to proceed. Oakham's bylaw does not prohibit BESS outright; it prohibits grid-scale, stand-alone BESS not co-located with a permitted large-scale solar installation. When the Board asked directly about the potential to combine this BESS with large-scale solar on the 42.9-acre parcel or adjoining land, Moraga simply answered that it "does not plan" to do so. This is a deliberate business choice to maximize return by building a stand-alone arbitrage facility, rather than a co-located clean-energy project, and does not transform the bylaw into an impediment that must be swept aside. It merely underscores that the interests at stake belong to private capital, not to the public that the Climate Act is designed to serve.

Oakham has already sacrificed a third of its land and its former commercial hub to provide clean drinking water for the Commonwealth. It has, with Attorney General approval, tailored its zoning to allow BESS where it supports renewable generation while barring precisely the kind of stand-alone industrial facility Moraga proposes at this watershed-adjacent, residential site. The record establishes that Massachusetts can meet its storage targets through a modest number of well-sited projects, many already identified, including one owned and controlled by Moraga's parent, without preempting Oakham's democratically adopted, AG-approved bylaw and without imposing disproportionate environmental and public-health risks on this small community.

Under these circumstances, the statutory tests are not close calls. Moraga has not shown that it is the kind of "public service corporation" the Climate Act was designed to privilege, has not demonstrated that this project in this location is reasonably necessary for the convenience or welfare of the public, and has not established that comprehensive zoning exemptions are required. Forcing this giant industrial facility into Oakham would cause permanent and irrevocable damage to the very nature of the town. The residents of Oakham choose to live in Oakham for a reason. They forego the conveniences and amenities of the city for the quiet solitude of country life. This facility is the very antithesis of that life.

Because Moraga has not met its burden on any of the statutory prongs, and because approving this project would undermine both the Climate Act's purposes and the Attorney General-approved zoning for this uniquely burdened host community, the only outcome consistent with the statute and the evidence is denial of the petition.

Respectfully submitted on this 24th day of April 2026 by:

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