Commission on Energy Infrastructure Siting and Permitting (CEISP)
March 5, 2024 Public Hearing

Comments submitted by Wendell No Assault and Batteries

Preface: Rural communities, rich in forestlands and water resources, but under-resourced financially in public safety infrastructure, have been locked in a regulatory box known as chapter 40A, s. 3, which allows for profit corporations—some not even located in the United States—to override home rule zoning by laws to allow huge utility-scale projects, like hydro pumped storage and battery energy storage systems, to locate "as of right" in small communities like Wendell (pop 921), and to dictate to local government WHERE their project will go, and HOW BIG their project will be. A BESS developer financed by a venture capitalist in New Jersey and a Canadian pension fund, has chosen to ask the state DPU to dispossess town government of any land use rights. The AG has been rejecting local zoning bylaws that appear to regulate BESS protects. Now the CEISP is offering to open a barred window on our regulatory box to let in the air---but make no mistake—we still are prisoners of chapter 40A until your first act is to strike the language in section 3 that gives solar projects and battery storage "as of right" dominance over local zoning regulations. This "protected" status must end before you create a goal of "ensuring communities have input into energy siting."

THE FIRST 4 QUESTIONS FROM THE CEISP SURVEY

Q1.How to ensure communities have input into siting energy projects

1. Eliminate "protected" status for PV and battery storage from 40A, s 3

2. Prohibit energy developers, like New Leaf, from sitting on the CEISP. Developers should not be regulators of their own industry.

3.Allow the existing land use statute, ch. 40a, to work as usual: developers apply for a special permit, and have the right to appeal an adverse decision to the courts

4. Create an "intervention fund" to protect local communities who have to fight a developer before the EFSC or the DPU. The cost of legal and technical experts can easily exceed $100,000 per docket. This gives investor-owned energy developers a huge advantage over local citizens. This fund will help level the playing field.

Q2. How can the state protect the safety for under-resourced populations

1 Create an “intervention fund” noted above.

2. Improve the public special permit/site plan review process to include enhanced safety regulations that developers must meet, like the ones being vetted in Governor Hochul’s NY state’s Interagency Work Group on Fire Code:

--PEER REVIEW: Require industry-funded independent peer reviews for all projects.
--EXPLOSION CONTROL: Expand the requirement for explosion control to include BESS cabinets in addition to rooms, areas, and walk-in units. Additionally, provide design requirements or language for what constitutes a “passable” system.
--FIRE MITIGATION PERSONNEL: Require that qualified personnel are available for dispatch within 15 minutes and able to arrive on scene within four hours to provide support to local emergency responders.
--SYSTEMS MONITORING: Update the Fire Code to ensure that Battery Management System (BMS) data is monitored by a 24/7 staffed Network Operations Center (NOC). Critical failure notifications should be immediately communicated to the site owner/operator to take corrective actions as necessary.
--SECURITY OF INSTALLATIONS: Update the Fire Code to incorporate requirements for closed-circuit television (CCTV) systems, specifying their intended use as both a continuous monitoring tool and a post-event analysis resource.
--APPLICABILITY: Remove the Fire Code exemption for BESS projects owned or operated by electrical utilities to ensure that all projects comply with the Fire Code.
--EMERGENCY RESPONSE PLANS and REGULAR FIRE DEPARTMENT TRAINING: Include a requirement for an Emergency Response Plan (ERP) and annual local first responder training for every BESS installation.
--CENTRAL STATION MONITORING OF BESS FACILITIES: Include a Fire Code requirement for monitoring of fire detection systems by a central station service alarm system to ensure timely, proper notification to the local fire department in the event of a fire alarm.
--FIRE STOPS, BARRIERS, or FIRE BREAKS: Mandate the installation of fire stops for all BESS enclosure penetrations to prevent the propagation of fires from one BESS unit to another through these pathways.
--PERIODIC SPECIAL INSPECTIONS: Introduce a new provision in the Fire Code mandating industry-funded special inspections for BESS installations to ensure thorough safety and compliance.
--WATER SUPPLY: establish guidance for water supply, including whether water is appropriate for different technologies, in an emergency response to a BESS fire and determining if more specific requirements are necessary.

Q3. How to protect the Natural Environment?

1. Prohibit solar and battery stores facilities from locating on forest land. Require such projects be prioritized for redeveloped land, parking lots and other impervious surfaces, etc. Limit the scale of projects allowed. Preservation of "forest as forests" is an important environmental policy priority for the Commonwealth.
2. Develop "virtual power plants," like the Department of Energy's aggregated rooftop solar/in-home residential batteries, used to collect and store energy to sell back to the grid---instead of incentivizing large, utility scale batteries. Preservation of forest land for forest use is an important environmental policy priority for the Commonwealth, and battery technology implementation should be compatible with using "forests as forests."
3. Expand aggressive source-conservation: train governmental, residential, commercial, agricultural and industrial users on methods to reduce the carbon emissions at the source with PV and battery storage.
4. Require all new or existing private commercial and industrial developments to develop a rooftop or ground mounted PV installation, or to demonstrate why such PV is not-feasible. Create incentive grants or tax exemptions for some portion of PV installations.

Q4. Who should have a seat at the table for decision-making on energy infrastructure?

1. Energy infrastructure developers should be welcomed to comment, submit data, and testify at hearings, but corporations who will be submitting energy proposals should not be allowed to sit as voting members of boards or commissions that will make decisions on energy infrastructure.
2. Municipalities should be represented on any energy infrastructure board at the state level.
3. Local zoning boards should maintain control over the land use decisions made for their city or town, with chapter 40A appeal rights for applicants.

Al Norman comments for Wendell NAB
3.5.24