

**COMMONWEALTH OF MASSACHUSETTS  
ENERGY FACILITIES SITING BOARD**

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Petition of Hillman Energy Center, LLC	)	
Pursuant to G.L. c. 40A for an	)	EFSB 25-08
Exemption From the Zoning Bylaw of the	)	
Town of Tewksbury, Massachusetts	)	
	)	

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**INITIAL BRIEF OF THE TOWN OF TEWKSBURY**

In accordance with the briefing schedule established by the Energy Facilities Siting Board (“Board,” “Siting Board” or “EFSB”) on February 27, 2026, the Town of Tewksbury (the “Town”), an intervenor in the above-captioned proceeding (the “Proceeding”), hereby submits its Initial Brief. In the Proceeding, Hillman Energy Center, LLC (“Hillman), pursuant to G.L. c. 40A, § 3, seeks individual and comprehensive exemptions from the Town’s Zoning Bylaw (the “Zoning Bylaw”) to construct a 125 megawatt (“MW”) Battery Energy Storage System (“BESS”) and related infrastructure, including a new electric substation, on approximately 4.3 acres of previously developed industrial land located at 73-75 Hillman Street, as well as an approximately 1,200 foot long new electric transmission interconnection (“the Proposed Transmission Interconnection”) across four parcels of land of which three are owned by New England Power Company d/b/a National Grid (“National Grid”) and the fourth is owned by the Massachusetts Bay Transportation Authority (“MBTA”) in Tewksbury, Massachusetts (collectively, the “Project”).

## **I. PROCEDURAL BACKGROUND**

On April 1, 2025, Hillman filed its Petition and supporting documents and testimony for the Project. The Siting Board docketed the proceeding on September 9, 2025, and issued a Notice of Adjudication and Public Comment Hearing setting October 24, 2025, as the date for filing petitions to intervene and to participate as a limited participant. The Siting Board conducted a hybrid public hearing on October 9, 2025.

Two parties filed timely petitions to intervene: the Town and Maureen DiPalma/Dennis Sheehan (hereafter “DiPalma/Sheehan”). Seven petitions for limited participant status were also filed: one from New England Power Company d/b/a National Grid (“National Grid”) who would provide Hillman with an interconnection to the regional grid, five from Tewksbury residents (Christine Chesbrough, Linda Martin, Robert Wald, John F. Quinn and Gerald Corbin) and one from Representative David Allen Robertson who is the State Representative for the 19th Middlesex District that includes Tewksbury.

On November 14, 2025, the Presiding Officer granted the two petitions for full party status and all seven of the limited participant petitions. She subsequently issued a Procedural Schedule for the balance of the Proceeding on November 25, 2025.

On November 24, 2025, the Tewksbury Board of Health (“Board of Health”) late filed a Petition to Intervene as a full party in the Proceeding. The next day, the Board of Health updated that Petition. The Presiding Officer subsequently added the Board of Health to the service list, pending a ruling on its petition.

On December 11, 2025, the Hearing Officer conducted a prehearing conference to establish a schedule and deal with other procedural matters.

On December 19, 2025, the Presiding Officer granted the Board of Health's Petition to Intervene and issued a revised schedule.

The Siting Board and parties thereafter issued and/or responded to a number of rounds of discovery.

On January 12, 2026, the Town filed a Motion to Extend the date for it to file its Prefiled Testimony until February 6, 2026, because ongoing negotiations and review of a proposed Host Community Agreement ("HCA") between the Town and Hillman were not concluded. *Id.* The HCA was designed to set out the key conditions that the Town believed should be incorporated into a decision if the Project was ultimately approved by the Board and consequently would serve as the basis for two pieces of prefiled direct testimony on behalf of the Town. Motion to Extend at p. 3. Although the Motion to Extend's request for a filing date of February 6th was not expressly granted in writing, it was implicitly allowed, and the Town filed two pieces of testimony on February 6, 2026: Prefiled Direct Testimony of John Curran, Tewksbury Town Manager, Exh. TEWK-JC, which included the near- final draft of the HCA as an attachment, and Prefiled Direct Testimony of Paul Hayes, an expert employed by the Hiller Companies as Vice President of Energy Infrastructure who addresses Fire Protection Needs in the Energy Sector. Exh. TEWK-PH.

On January 13, 2026, DiPalma/Sheehan filed a "Motion for Partial Summary Decision" claiming that the Siting Board lacked authority to grant the requested waiver of Section 5.6 of the Zoning Bylaw titled "Groundwater Protection District." A decision on that motion was deferred until the close of the evidentiary hearings. Tr. Vol. 1, pp. 13-14.

Evidentiary hearings in this Proceeding began on February 9<sup>th</sup> and continued over a period of ten days in total, concluding on February 27<sup>th</sup>. There was a total of 31 record requests issued to, and responded by, Hillman, Sheehan/DiPalma and the Town.

At the close of the last hearing, the Presiding Officer issued a briefing schedule that called for simultaneous initial briefs due March 20<sup>th</sup> with simultaneous replies due on April 3<sup>rd</sup>. She also allowed into the record all of the exhibits as marked on the exhibit list. Tr. Vol. 10, p. 1478.

## II. STANDARD OF REVIEW

The Siting Board and the Department have recognized that comprehensive zoning relief is necessary in circumstances where, as in this case, numerous individual exemptions are required, and the issuance of a blanket exemption could avoid substantial public harm by serving to prevent delay in the construction and operation of the proposed use. *New England Power Company d/b/a National Grid*, D.P.U. 09-136/09-137, at 49 (2011); *Boston Edison Company d/b/a NSTAR Electric*, EFSB 04-1/D.T.E. 04-5/04-7, at 147 (2005) (“Boston Edison 2005”).

In accordance with the applicable standard under G.L. c. 40A, § 3, and if the Siting Board finds an existing need for this Project, numerous individual exemptions would be required. Without comprehensive zoning relief, there is currently no pathway for the Project to be reviewed and approved in order to enable its construction and completion. Therefore, a comprehensive zoning exemption may be warranted. *See Cranberry Point Energy Storage, LLC*, D.P.U. 22-59 (2023), at 128; *Medway Grid, LLC*, D.P.U. 22-18/22-19 (2023), at 138; *Boston Edison 2005*, at 162.<sup>1</sup>

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<sup>1</sup> The Climate Act of 2024, St. 2024, c. 239, §98, set a 5,000 MW energy storage procurement target for the Commonwealth by 2030 and buttressed the state’s policy direction of aggressive development of new BESS.

It bears emphasis that neither this standard nor Siting Board practice<sup>2</sup> require it to approve now an applicant's Project Emergency Response Plan ("ERP"), Hazard Mitigation Analysis ("HMA") or similar documents that are preconditions to final construction of a BESS. Nor do they require an Applicant to even submit final versions of such documents in, as is the case here, a Zoning Exemption proceeding. See *infra* at pp. 8-9.

### III. ARGUMENT

A. The Town Manager Demonstrated that the Town Has Negotiated a Host Community Agreement That Will Impose a Series of Conditions to Ensure that the Highest Level of Public Safety is Required.

The Town offered the testimony of John Curran, Exh. TEWK-JC. Mr. Curran described his long background in municipal government. Tr. Vol. 8, pp. 1122-1123. He set out in detail the process the Town used to negotiate the HCA with Hillman and discussed potential impacts of the proposed battery energy storage system project (the "Project") on the Town and its residents, among other things. Exh. TEWK-JC, pp. 2-7. The Town also responded to several information requests made by DiPalma/Sheehan (Exhs. D/S-T-1, D/S-T-2 and D/S-T-3), and six record requests by the Board (RR-EFSB-13 through RR-EFSB-18) and three record requests by DiPalma/Sheehan (RR-D/S-7 through RR-D/S-9).

Mr. Curran's Testimony contained as an attachment the near-final draft HCA (the "Draft HCA") which was negotiated by the Town, "reviewed by appropriate Town Department Heads, and also was posted online." Exh. TEWK-JC at p. 6. This Draft HCA was discussed in a joint public meeting held by the Select Board and Board of Health and was subject to public

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<sup>2</sup> Prior to the express delegation to the Siting Board of jurisdiction over BESS, the Massachusetts Department of Public Utilities conducted those reviews. See, e.g., *Cranberry Point Energy Storage, LLC*, D.P.U. 22-59 (2023), and *Medway Grid, LLC*, D.P.U. 22-18/22-19 (2023).

comment. On February 4<sup>th</sup>, the Draft HCA was approved by the Select Board which authorized its execution in substantially the form of Exh. TEWK-JC at pp. 11-36, subject to minor changes after a review and action by Hillman's corporate parent. *Id.*, Tr. Vol. 8 at pp. 1051-1052. The Town will provide the Siting Board and the parties with the final, executed HCA and a redline showing changes compared to the Draft HCA. RR-EFSB-16.

The HCA sets out extensive construction, operation and post-closure conditions negotiated between the Town and Hillman that the Town believes help to assure that the Project, if approved, would minimize environmental impacts and be constructed and operated in a manner consistent with the public interest. Exh. TEWK-JC, pp. 8-9; Tr. Vol. 8 at pp. 1124, 1142-1143, 1083-1100.

Mr. Curran testified that the Town had appropriately considered a "myriad" of Project information materials and that, notwithstanding the contention of some parties or limited participants, "[it's] very common in the permit process at a local level or a state level" to review plans that are 30 percent complete at this stage of the process. Tr. Vol. 8, p.1140, lines 15-23. The fact that the Emergency Response Plan ("ERP") and Hazard Mitigation Analysis ("HMA") are not done is "not unusual." *Id.* at pp. 1140, line 24, and 1141, line 1. As Mr. Curran noted "[w]hat's important is that provisions are put in the HCA that ensure that things that need to be in the HCA,<sup>3</sup> in the emergency response plan, are included... when and if the project is permitted." *Id.* at lines 1-6; Tr. Vol 8, p. 1143, lines 4-11.

Therefore, the Town respectfully requests that the Board incorporate the final HCA into any approval it may issue in this proceeding. The Town also requests, at a minimum, that the

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<sup>3</sup> The Town believes this reference in the Transcript should have read "HMA" given the context, not "HCA," and construes it as such in this Initial Brief.

following specific provisions of the final HCA<sup>4</sup> be expressly incorporated into the final decision of the Board as conditions:

- Permitting, Section 3;
- Public Safety Training & Technical Rescue Equipment Funds, Sections 6.A(i), (ii) and (iii);
- Technical Review Payment, Section 6.B;
- Town Energy & Sustainability Programming Funding, Section 6.C;
- Energy Capacity Study, Section 6.E;
- Property Value Security Fund, Section 6.F;
- Community Support Funding, Section 6.G;
- Water Quality Improvement Funding, Section 6.H;
- Facilitation of the Project, Section 7.B;
- Compliance with Laws, Section 8;
- Construction Management Plan, Section 9;
- Noise and Visual Mitigation, Sections 10.A-D;
- Traffic Impacts, Sections 11.A-E;
- Fire, Health and Safety, Sections 12.A-L;
- Use of Local Labor, Section 13;
- Decommissioning, Section 14;
- Local Purchasing, Section 15;
- Community Updates, Sections 16.A-C; and
- Insurance and Indemnification, Sections 17.A-B.

Epecially important is specific incorporation of all of the conditions set out in the Appendix to the HCA, Exh. TEWK-JC at pp. 46-49. The Hiller witnesses testified in detail as to the derivation of each bullet point and why each is so significant. Tr. Vol.8 at p.1037, lines 16-21; Tr. Vol. 8, pp. 1083-1100; *infra* at pp. 9-10.

**B. The Hiller Testimony on Behalf of the Town Demonstrated that the Project Would Meet the Highest Safety Standards.**

The Town offered the testimony of E. Paul Hayes, Jr., Vice President, Energy Infrastructure, the Hiller Companies, who is a nationally recognized authority on BESS and Special Hazards fire protection. Exh. TEWK-PH, p. 2, lines 16-17. Mr. Hayes has experience

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<sup>4</sup> References below are to the draft HCA contained as an attachment to Mr. Curran's testimony, Exh. TEWK-JC at pp. 11-49. Section references in the Final HCA should be the same but if any change, the Town will so note that when it provides the Final HCA.

with over 200 Grid-scale BESS and worked with most major BESS Operation Emergency Manuals (“OEM”). *Id.* at p. 2. He serves as current Technical Committee Chair for the 2029 edition of the NFPA 855. *Id.* at p. 7.

Because Mr. Hayes was unavailable the day the Board heard the Town’s witnesses, February 24, 2026, his colleagues Mr. Michael Nicholas and Mr. Andrew Casper, both of whom had assisted in the preparation of Mr. Hayes’ Prefiled Direct Testimony, Tr. Vol. 8 at p. 1003, lines 19-22, p. 1003, lines 23-24 and p, 1004, line 1, adopted his testimony and testified as to their own considerable expertise in fire safety related to BESS and the other matters addressed in that testimony. Tr. Vol. 8 at p. 1004, lines 8-16; Exhibits TEWK-MC and TEWK-AC. (References hereafter to the “Hiller Testimony” should be read as referring generally to Mr. Hayes’ Prefiled Testimony and Mr. Nicholas’ and Mr. Kasper’s testimony in the evidentiary hearing on February 24<sup>th</sup>.)

The extensive relevant experience of Mr. Hayes and the other Hiller witnesses strongly mitigates in favor of extending special credibility to their testimony, particularly with respect to the risks posed by BESS fires and what constitutes state-of-the-art fire safety standards.

All fires create toxic smoke. A BESS fire doesn’t present materially differently than a house or warehouse fire. It is worth noting that the size of a BESS fire, given the amount of material consumed, is significantly smaller than a house or warehouse fire.

Exh. TEWK-PH, p. 4, lines 6-8; see also Tr. Vol. 8, p. 1010, lines 5-13.

Mr. Hayes noted that:

It is a fundamental principle of fire science that all combustion—whether in a residential structure or a commercial warehouse—produces toxic emissions. However, it is a common misconception that a Battery Energy Storage System fire poses a unique or greater atmospheric risk than traditional structure fires.

Exh. TEWK-PH, p. 4, lines 10-13.

Mr. Nicholas’ on-the-ground experience in Kern County, California, Exh. TEWK-MN, Tr. Vol 8, pp. 1000, lines 17-24 and 1001, line 1, is particularly salient in that he has had firsthand operational responsibility dealing with BESS fire safety issues. As a result, the Town submits special weight should be accorded his testimony during the evidentiary hearings in the Proceeding. Mr. Nicholas described in detail how the HCA and Appendix “help establish a data-backed and enforceable... set of conditions for the project... with the objective being to ensure that any approved project meets the highest safety standards for BESS critical safety systems, emergency access, thermal runaway mitigation, and thereby protecting the community’s interest and the safety of first responder(s).” *Id.*, pp. 1004, lines 20-24, and 1005, lines 1-5.

The Hiller Testimony provides the overarching context that the Town believes is appropriate for the Siting Board to employ in its review at this stage of the Proceeding. The criticisms offered by DiPalma/Sheehan and their witnesses are overstated and misplaced – “[t]his stage [of the application process] is only to determine the conditions that would allow the Project to proceed to the next stage and advance the NFPA 855 requirements. If the Town, Authority Having Jurisdiction, or the Building Department determines the HCA (and Siting Board) conditions have not been met, they have the option to reject the Project at that stage of the process, which will require resubmittal until those conditions are met.” Exh. TEWK-PH, p. 6, lines 13-15; *accord* Tr. Vol 8, pp. 1027, lines 10-24, 1028, line 1, and p. 1029, lines 18-23.<sup>5</sup>

The Hiller witnesses amply supported the construct that the Town submits is appropriate for review here, especially given Hillman’s commitment to follow all of the NPFA 855-2026 requirements.

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<sup>5</sup> Mr. Nicholas observed that “[n]ow I think one of the misconceptions is that if the Siting Board approves this Project that it is suddenly approved for construction, and that is not the case. Prior to construction and building permit application, full submissions [of a hazard mitigation analysis and emergency response plan] are required for review and approval.” Tr. Vol. 8, lines 18-23.

Q. (Mr. Senie)(referring to Mr. Hayes' Prefiled Direct Testimony, Exh. TEWK-PY): "All sections (of NFPA 855) are required, and the HCA mandates that these conditions be provided before issuance of a fire department and building permit. The Siting Board should do the same." What do you mean here, that "the Siting Board should do the same"?

A. [NICHOLAS] So the Siting Board should be taking into consideration the fire department and the building department's review and approval.

Q. But that review and approval hasn't happened yet.

A. [NICHOLAS] Correct, but it can be a condition of the approval that the fire department and building department must approve that.

Tr. Vol. 8, pp. 1033, lines 14-24, and 1034, lines 1-3.

Messrs. Nicholas and Casper testified in detail as to the protections provided by each of the many provisions in the Appendix to the HCA, Exh. TEWK-JC, pp. 46-49, that they drafted.

Tr. Vol 8, pp. 46-49; *accord*, Exh. at pp. 6, lines 17-27, and 7, lines 1-22. As noted in the Hayes Testimony, "it is an exhaustive list of what should be included... to ensure the permit applicant has a clear understanding of the minimum requirements for the fire application process." Exh. TEWK-PH, p. 8, lines 13-15.<sup>6</sup>

They also discussed how the HMA and ERP will work and the role an Authority Having Jurisdiction ("AHJ") plays in the process and the special resources it needs to discharge that responsibility. The Subject Matter Expert ("SME") that is relied upon is a key "gatekeeper" in that review. Messrs. Nicholas and Casper provided a series of benchmarks as to what information should be supplied, and approved, at what points in the process. RR-EFSB-13.

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<sup>6</sup> As noted by Mr. Hayes, Exh. TEWK-PH at pp. 6-10, even if the Siting Board approves Hillman's petition in this proceeding "[t]he applicant will still be required to provide a project-level document per NFPA 855 2026 that validates the assumptions and justifies code compliance. A detailed review by a Subject Matter Expert and the Authority Having Jurisdiction can determine whether these conditions have been met; if not, the Authority Having Jurisdiction can request that the applicant supplement the Fire Department permit."

And, in any event, for example, a completed ERP would not be expected until the applicant is ready to commence site work. RR-EFSB-13 at p.3.

Q [STROSBURG]. ... I'll just begin and direct this at Mr. Nicholas, in light of what I learned earlier, that Mr. Nicholas has had experience with AHJs.

My question is: How can AHJs be properly familiarized with BESS safety protocols and procedures in terms of compliance with NFPA 855?

A. [NICHOLAS] So that's typically where we strongly encourage that local jurisdictions contract with a third-party expert. These are very technical documents, and even in my former jurisdiction, you know, I handled the permitting side, the process, the deployment of resources, and so forth, but the technical reports were reviewed by our third-party consultant.

Tr. Vol. 8, pp. 1054, lines 23-24 and 1055, lines 1-13.

[NICHOLAS] ...In my opinion, the fire department is that final gatekeeper. And as a result, I did not modify the work flow of a project until I got written confirmation from our third-party consultant of substantial approval of the submission.

So the fire department will basically prevent the issuance of this building permit based on the direction from their third-party consultant. That prevents the project from even having a construction permit issued. That water – that project is dead in the water until that approval is provided. And then that approval is predicated on that third-party review and some sort of written confirmation of compliance.

Are there things that we allow to be submitted after that condition -- or after that initial review and approval, to [Mr. Casper's] point? Some of these documents will come phased into that submission queue based on that phase of the project. So we wouldn't expect to see the emergency response plan for commissioning necessarily before that phase is approached.

Tr. Vol. 8, p. 1103, lines 1-23.

The red herring that Siting Board review in the instant case would somehow prevent the kind of rigorous review of project-specific fire and other safety measures runs squarely counter to the way that the permitting process actually works.

And so it was an assurance to that particular kind of sister agency and/or local stakeholder that the project -- if they approved the land use for the project, that it was not going to suddenly slide through the approval process without the proper scrutiny, and that

really the fire department and the consultants that were available for us were the right place to put a stopgap of some level of insurance for code compliance.

Tr. Vol 8, p. 1080, lines 8-16. This is especially true in a Zoning Exemption proceeding under G.L. c. 40A, § 3.

Mr. Nicholas provided extensive and unassailable detail supporting each component of the Appendix to the HCA and why they are not only relevant but based on the most rigorous experience to date. Tr. Vol 8, pp. 1083-1100.

Q. [STROSBERG] Why is strict compliance with NFPA 855 2026 the applicant's primary obligation with respect to Siting Board approval?

A. [NICHOLAS] Again, NFPA 855 and now the 2026 edition are the industry's best efforts at regulating and addressing concerns and hazards and construction protocols, permitting, so forth.

So compliance to the highest standard in the industry is the best protection available at this moment. And for an applicant to be willing to adhere to the most recent edition is the best you can ask of the applicant.

Tr. Vol. 8, pp. 1064, lines 24-29, and 1065, lines 1-9.

**C. Hillman Should Comply With Non-Exempted Permit Requirements.**

The Town requests and also expects that Hillman will make timely and complete filings for those local permits for which approval is required, e.g. under the Massachusetts Wetlands Protection Act, G.L. c. 131 § 40, and local water and natural resource bylaw such as the Tewksbury Wetland Protection Bylaw, unless otherwise exempted. Tr. Vol. 8, pp. 1200, lines 10-24, and 1201, 1-10.

The HCA evinces this commitment on the part of Hillman. Exh. TEWK-JC, pp. 12-13 (Section 3, Permitting); see also, Exh. HEC-1. Table 3-1 (List of Permits/Regulatory Reviews Required).

**IV. CONCLUSION**

After a review of the record and the transcripts of the ten days of evidentiary hearings and subject to incorporation of the final HCA as set forth above as well as the Board's imposition of reasonable conditions on the Project pursuant to application of the relevant statutory standards and common law standards, the Town believes that its interests and those of its residents will be adequately protected by granting Hillman's petition at this stage of the process.

Respectfully Submitted,

THE TOWN OF TEWKSBURY

By its attorney,



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