STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: TARIFF ADVICE FILING REGARDING NET METERING PURSUANT TO R.I.G.L. § 39-26.2-1.

Docket No. 4268

RESPONSE OF CONSERVATION LAW FOUNDATION TO COMMISSION'S DATA REQUEST OF NOVEMBER 16, 2011

Conservation Law Foundation respectfully submits its response to the Public Utilities Commission's (PUC or Commission) data request issued on November 16, 2011.

The hypothetical posed by the PUC is this: "Please respond to the following assuming that a customer with an annual usage of 1.0 MW is seeking to construct and install a 3.5 MW turbine."

Based on this hypothetical, CLF here responds to the PUC's Questions (a) and (b).

Question (a): Would the facility above qualify as an Eligible Net [M]etering System under the definition contained in R. I. Gen Laws § 39-26.2-2(2)?

Answer: Yes.

Question (b): If the answer to 1.[a] is yes, please explain how it is reasonably designed and sized to annually produce electricity in an amount that is equal to or less than the renewable self-generator's usage at the eligible net metering site.

Answer: The underlying issue or question that is posed by the Commission's data request is whether a single renewable energy facility can be simultaneously eligible both for net metering (under Chapter 26.4 of Title 39, the "Net Metering Statute") and for a DG

contract (under Chapter 26.2 of Title 39 the "DG Statute"). The Commission's hypothetical posits a self-generator that uses only 1 MW but produces 3.5 MW, but the issue posed would be exactly the same for a self-generator that uses 1 MW but produces 150 MW with a utility-scale wind project with hundreds of turbines.

The two chapters at issue (the DG Statute at Chapter 26.2 and the Net Metering Statute at Chapter 26.4)[1] were written together, heard in committee together, passed by the General Assembly together, and signed into law by the Governor at the same ceremony at the site of a local renewable energy project that was affected by the statutes. When the bills were heard in the Senate and House environment committees, witnesses explained how the bills were designed to and did work together. In fact, what is now the DG Statute and the Net Metering Statute were originally part of a single bill; Senate President Paiva-Weed separated them into two different bills late in the session in order to give more Senators an opportunity to be lead sponsors of this very popular legislation. (The bill that became the DG Statute passed both chambers of the General Assembly unanimously; there were only a handful of nay votes on the Net Metering bill.)

There are three separate reasons that a single renewable energy facility can be simultaneously eligible both for net metering (under the Net Metering Statute) and for a DG contract (under the DG Statute). The first reason is that the law explicitly says so; the law is clear and must be followed. The second reason is that a well-settled canon of

[1] The first two of the three statutory citations contained on page 1 of the Commission's Data Request mistakenly place the definitions for "Eligible Net Metering System" and "Renewable Net Metering Credit" in Chapter 26.2 (the DG Statute) instead of where they actually appear, in Chapter 26.4 (the Net Metering Statute).

statutory interpretation supports this view. The third reason is that the law accurately reflects the public-policy concerns that led to the law being drafted as it was.

1. The Plain Language of the Statute

As the Commission's data request itself reflects, Section 6(g) of the DG Statute speaks in plain language of "[a] distributed generation project that is also being employed by a customer for net metering purposes . . . ." R. I. G. L. 39-26.2-6(g). That is, the way we know that the same facility can be both a net metering facility and a DG facility simultaneously is that the law explicitly says exactly that. Where, as here, the language of a statute is clear and unambiguous, the statute means just what its plain language says. DeMarco v. Travelers Ins. Co., 26 A.3d 585, 616 (R.I. 2011) (citing Martone v. Johnston School Comm., 824 A.2d 426, 431 (R.I. 2003)).

The General Assembly knew, meant, and intended that the DG Statute and the Net Metering Statute would work together, because the General Assembly carefully referred to "[a] distributed generation project that is also being employed by a customer for net metering purposes . . . ." "The plain statutory language is the best indicator of legislative intent." DeMarco, 26 A.3d at 616 (quoting State v. Santos, 870 A.2d 1029, 1032 (R.I. 2005).

This means that a self-generator who uses 1 MW can build a facility that is 3.5 MW (as in the Commission's hypothetical) or 150 MW. The system must be "reasonably designed and sized to annually produce electricity in an amount that is equal to or less than the self-generator's usage at the eligible net metering site . . . ." R.I. Gen. Laws

§ 39-26.2-2(2). This means that the self-generator can net meter, but only up to the level of its own consumption, and beyond that the self-generator gets a DG contract for its output.

2. Statutory Interpretation

To assert that the quoted text in the preceding paragraph ("reasonably designed and sized to annually produce electricity in an amount that is equal to or less than . . .") means that our hypothetical self-generator who uses 1 MW can never build a facility that is larger than 1 MW (and thus take advantage of both the Net Metering Statute and the DG Statute) would be to render all of Section 6(g) of the DG Statute (referring to "[a] distributed generation project that is also being employed by a customer for net metering purposes . . . .") as mere surplusage.

This would violate a well-settled and fundamental canon of statutory interpretation. The Rhode Island Supreme Court has explained:

> This court has long applied a canon of statutory interpretation which gives effect to all of a statute's provisions, with no sentence, clause or word construed as unmeaning or surplusage. State v. Caprio, 477 A.2d 67, 70 (R.I. 1984); In re Rhode Island Commission for Human Rights, 472 A.2d 1211, 1212 (R.I. 1984); Murphy v. Murphy, 471 A.2d 619, 622 (R.I. 1984); Spikes v. State, 458 A.2d 672, 674 (R.I. 1983); Probate Court of East Providence v. McCormick, 56 R.I. 308, 320, 185 A. 592, 597 (1936), rearg. denied, 57 R.I. 157, 189 A. 2 (1937). "Where one provision is part of the overall statutory scheme, the legislative intent must be gathered from the entire statute and not from an isolated provision." State v. Caprio, 477 A.2d at 70; accord In re Rhode Island Commission for Human Rights, 472 A.2d at 1212.

R. I. Dep't of Mental Health, Retardation and Hosps. v. R.B., 549 A.2d 1028, 1030 (R.I. 1988) (internal quotation marks and case citations as in original). To put the same point

another way: "[N]o construction of a statute should be adopted that would demote any significant phrase or clause to mere surplusage . . . the presumption [is] that the Legislature intended each word or provision of a statute to express significant meaning. . . ." State v. Clark, 974 A.2d 558, 572 (R.I. 2009) (internal quotation marks and internal case citations omitted).

In this case, it is easy to give effect to both Section 2(2) of the Net Metering Statute ("reasonably designed and sized to annually produce electricity in an amount that is equal to or less than . . .") and to Section 6(g) of the DG Statute (referring to "[a] distributed generation project that is also being employed by a customer for net metering purposes . . . ."). A self-generator reasonably designs and sizes its project to net meter only up to the amount of its own consumption; any output the self-generator produces beyond that level gets a DG contract.

This interpretation reflects what the law actually, explicitly says (because the law says that the same project can net meter and get a DG contract) and conforms to well-settled canons of statutory interpretation (to avoid surplusage).

3. Public Policy

This interpretation also comports with the public-policy underpinnings of the Net Metering Statute. At the meetings at which the Net Metering Statute was drafted, the utility expressed a concern that all net metering projects should be properly sized. The reason for the utility's concern was that self-generators were going to receive a very generous payment – the full retail rate – from the utility (and, ultimately, from ratepayers)

under the Net Metering Statute. The utility was understandably concerned not to have a self-generator that consumes 1 MW of electricity build a utility-scale 150 MW wind farm and – because it was also consuming a miniscule percentage of its own electricity output – claim the very generous net metering rate for its entire electricity production.

In short, the utility wanted to ensure that net metering self-generators could not "game the system" by using a tiny level of net metering to get an unreasonably high rate for a utility-scale project. That was the ætiology of the phrase "reasonably designed and sized . . ." Interpreting the two sections of the law in the manner that CLF here recommends fully addresses the underlying public-policy concern of the utility; net metering self-generators cannot game the system by getting the generous net metering rate for output vastly in excess of their own consumption. Net metering systems will always be properly sized because excess generation will be compensated with a separate contract under the DG Statute.

Conclusion

The short of it is that the General Assembly clearly contemplated "[a] distributed generation project that is also being employed by a customer for net metering purposes . . . ." because they wrote those exact words into the law. R. I. G. L. § 39-26.2-6(g). Thus, whether a self-generator who uses 1 MW builds a facility that is 3.5 MW or 150 MW, the self-generator can net meter only up to the amount of its own consumptions (thus is is "reasonably designed and sized . . .") and then may get a DG contract for its additional output.

That is exactly what the law plainly states. That is exactly what the General Assembly meant.

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CERTIFICATE OF SERVICE

I certify that the original of this Memorandum, together with nine photocopies, was filed in person with the Clerk of the Public Utilities Commission, 99 Jefferson Blvd., Warwick, RI 02888. In addition, electronic copies of this Memorandum were served via e-mail on the the service list for this Docket. All of the foregoing was done on November 21, 2011.