

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
PUBLIC UTILITIES COMMISSION

IN RE: PETITION OF THE TOWN OF NEW :  
SHOREHAM, RHODE ISLAND, FOR DECLARATORY :  
JUDGMENT THAT THE TOWN OF NEW SHOREHAM : DOCKET NO. 4425  
AND ITS RESIDENTS AND BUSINESSES ARE ELIGIBLE :  
TO RECEIVE FUNDING FOR RENEWABLE ENERGY :  
PROJECTS LOCATED IN THE TOWN OF NEW SHOREHAM :

ORDER

On July 10, 2013, the Town of New Shoreham (“Town”) filed with the Public Utilities Commission (“PUC”) a Petition for Declaratory Judgment (“Petition”) seeking “a declaration that the Town and its residents and businesses are eligible to receive funding for renewable energy projects from the Renewable Energy Fund.<sup>1</sup> The Town indicated that it was seeking the declaration as a result of a ruling by the Rhode Island Economic Development Corporation (“EDC”) in an amended Resolution approving a grant to a Block Island company, Entech Engineering Incorporated, on “the condition...that Entech Engineering will seek clarification from the [PUC] as to eligibility of Renewable Energy Fund projects located in New Shoreham.”<sup>2</sup>

In its Petition, the Town noted that this condition was different from the one to which the EDC had alluded in a previous letter regarding the eligibility of Town projects. In that prior letter, the EDC had stated that it “may request applicants to obtain authorization from the [PUC] as an eligible renewable energy project, pursuant to the PUC’s rules implementing the

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<sup>1</sup> Petition for Declaratory Judgment at 1. R.I. Gen. Laws § 42-35-8 and Commission Rule of Practice and Procedure 1.10(c) provide for “declaratory rulings as to the applicability of any statutory provision or of any rule or order of the agency.” R.I. Gen. Laws § 42-35-8.

<sup>2</sup> *Id.* at 3-4, citing June 24, 2013 Resolution of the EDC Board of Directors.

Renewable Energy Standard.”<sup>3</sup> Moreover, no such requirement was imposed on the Town when it was awarded a grant from the Renewable Energy Fund in July 2009.<sup>4</sup>

According to the Town, the PUC lacks subject matter jurisdiction over the determination of whether grant applications are eligible for grants from the Renewable Energy Fund; such jurisdiction lies solely with the EDC.<sup>5</sup> In support of its assertion, the Town relied on three state statutes, R.I. Gen. Laws §§ 42-64-13.2, 39-26-7, and 39-2-1.2.<sup>6</sup>

R.I. Gen. Laws § 42-64-13.2 states in part:

(c) Renewable energy development fund. The [EDC] shall, in the furtherance of its responsibilities to promote and encourage economic development, establish and administer a renewable energy development fund as provided for in § 39-26-7, may exercise the powers set forth in this chapter, as necessary or convenient to accomplish this purpose, and shall provide such administrative support as may be needed for the coordinated administration of the renewable energy standard as provided for in chapter 39-26 and the renewable energy program established by § 39-2-1.2. The [EDC] may upon the request of any person undertaking a renewable energy facility project, grant project status to the project, and a renewable energy facility project, which is given project status by the [EDC], shall be deemed an energy project of the [EDC]. (d) Duties. The [EDC] shall, with regards to renewable energy project investment: (1) Establish by rule, in consultation with the office, standards for financing renewable energy projects from diverse sources. (2) Enter into agreements, consistent with this chapter and renewable energy investment plans adopted by the office, to provide support to renewable energy projects that meet applicable standards established by the [EDC]. Said agreements may include contracts with municipalities and public corporations.<sup>7</sup>

According to the Town, the cited statutory authority language designates the EDC as the public body with exclusive jurisdiction over the administration and management of Renewable Energy Fund grants and imposes upon the EDC the obligation to administer the Renewable Energy Fund through the establishment of rules and regulations.<sup>8</sup> The Town asserted that the

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<sup>3</sup> *Id.* at 2, citing Letter dated February 4, 2009 from Julian Dash, Director of Renewable Energy EDC to the New Shoreham Town Manager.

<sup>4</sup> *Id.* at 2, citing Letter date July 27, 2009 from J. Michael Saul, Interim Executive Director EDC, to the New Shoreham Town Manager.

<sup>5</sup> *Id.* at 4.

<sup>6</sup> *Id.* at 5-7.

<sup>7</sup> R.I. Gen. Laws § 39-64-13.2(c)-(d).

<sup>8</sup> *Id.* at 5-6.

statute “gives no other agency or commission regulatory authority over the funding decisions of the [EDC].”<sup>9</sup> Furthermore, according to the Town, the EDC has accepted that jurisdiction through its own rules and regulations for the Renewable Energy Fund.<sup>10</sup>

R.I. Gen. Laws § 39-2-1.2 states, in part:

(b) Effective as of January 1, 2008, and for a period of ten (10) years thereafter, each electric distribution company shall include ... 0.3 mills per kilowatt-hour delivered to fund renewable energy programs. The electric distribution company shall establish and after July 1, 2007, maintain two (2) separate accounts, ... one for renewable energy programs, which shall be administered by the economic development corporation pursuant to § 42-64-13.2 and, shall be held and disbursed by the distribution company as directed by the economic development corporation for the purposes of developing, promoting and supporting renewable energy programs.... (1) The renewable energy investment programs shall be administered pursuant to rules established by the economic development corporation. .... (d) The executive director of the economic development corporation is authorized and may enter into a contract with a contractor for the cost effective administration of the renewable energy programs funded by this section. A competitive bid and contract award for administration of the renewable energy programs may occur every three (3) years and shall include as a condition that after July 1, 2008 the account for the renewable energy programs shall be maintained and administered by the economic development corporation as provided for in subdivision (b) above.<sup>11</sup>

According to the Town, these sections which specifically reference the administration of renewable energy programs provide further evidence that the EDC has exclusive jurisdiction over the awarding of grants for renewable energy projects within the State.<sup>12</sup>

R.I. Gen. Laws § 39-26-7(a) states in part:

There is hereby authorized and created within the economic development corporation a renewable energy development fund for the purpose of increasing the supply of NE-GIS certificates available for compliance in future years by obligated entities with renewable energy standard requirements, as established in this chapter. The fund shall be located at and administered by the Rhode Island economic development corporation in accordance with § 42-64-13.2. The economic development corporation shall: Adopt plans and guidelines for the management and use of the fund in accordance with § 42-64-13.2....<sup>13</sup>

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<sup>9</sup> Petition for Declaratory Judgment at 7.

<sup>10</sup> *Id.*

<sup>11</sup> R.I. Gen. Laws § 39-2-1.2(b),(d).

<sup>12</sup> Petition for Declaratory Judgment at 6-7.

<sup>13</sup> R.I. Gen. Laws § 39-26-7(a).

Again, the Town relied on specific statutory language in support of its assertion that the EDC possesses the exclusive authority to administer the Renewable Energy Development Fund through its establishment of rules and regulations.<sup>14</sup> Based on the foregoing statutory scheme, the Town concluded that the EDC “is the public body which has jurisdiction over the implementation and management of the [Renewable Energy Fund]. Accordingly, the Petitioners respectfully submit that the PUC should decline to exercise jurisdiction over this matter.”<sup>15</sup> The Town opined that the effect of such a decision would be that “the awarding of the grant to Entech and the [EDC’s] determination that projects located within New Shoreham are eligible to receive REF grants will stand.”<sup>16</sup>

On July 11, 2013, a memorandum was sent to all persons who had previously expressed an interest in renewable energy issues and whose electronic mail addresses were still on file with the PUC. The memorandum set forth an August 1, 2013 deadline for intervention and the filing of memoranda on jurisdiction. The PUC received one set of comments from the Division of Public Utilities and Carriers (“Division”) recommending the PUC decline jurisdiction. The PUC also received public comment from several individuals requesting the PUC find that Town projects would be eligible for grants from the Renewable Energy Fund.<sup>17</sup>

In its comments, the Division, relying on § 42-64-13.2(c)-(d), noted that jurisdiction of the Renewable Energy Fund lies with the EDC.<sup>18</sup> The Division concluded that there is no “similar power either original or concurrent which may be exercised by the [PUC] with respect

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<sup>14</sup> Petition for Declaratory Judgment at 6.

<sup>15</sup> *Id.* at 7.

<sup>16</sup> *Id.* at 4-5. The Petition for Declaratory Judgment also set forth the Town’s reasoning why projects located on Block Island should be eligible for funding in the event the Commission voted to exercise jurisdiction. *Id.* at 8-10.

<sup>17</sup> Benjamin C. Riggs (7/11/2013); North Light Fibers, LLC (electronic mail 7/17/13); Entech Engineering (7/29/2013).

<sup>18</sup> Letter from Jon G. Hagopian, Senior Legal Counsel to Luly Massaro, Commission Clerk, 8/6/2013 at 1.

to the eligibility issue raised here.”<sup>19</sup> The Division further noted that the PUC has not exercised any such jurisdiction in the past. Therefore, the Division recommended the PUC abstain from involving itself in the instant matter.<sup>20</sup>

At an Open Meeting held on August 29, 2013, the PUC considered the Town’s filing and the Division’s comments. After reviewing the relevant materials, the PUC voted unanimously to decline jurisdiction in this matter. The PUC finds that the law is clear that exclusive jurisdiction over the administration of the Renewable Energy Fund lies with the EDC. The sole reason the Town sought review from the PUC was because of the condition included in EDC’s amended Resolution approving the Entech application. The condition included in the amended Resolution differed from the prior requisite which was included in the 2009 letter from the EDC to the Town. While it is within the PUC’s jurisdiction to review projects for eligibility as renewable energy resources under § 39-26-6, it is not within the PUC’s jurisdiction to pass on the eligibility of specific projects for funding from the Renewable Energy Fund under R.I. Gen. Laws § 42-64-13.2.

It appears there is consensus that the Entech application should be approved so the project can move forward. The PUC’s decision herein should provide the clearest means for that to occur.

Accordingly, it is hereby

(21166) ORDERED:

The Petition for Declaratory Judgment filed by the Town of New Shoreham on July 10, 2013 is hereby dismissed for lack of jurisdiction, the Public Utilities Commission finding

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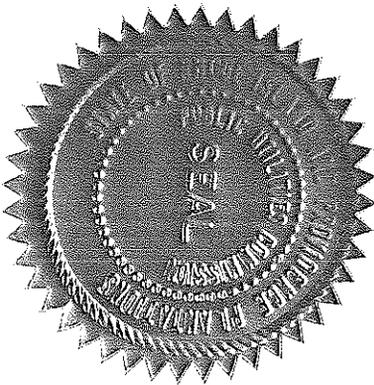
<sup>19</sup> *Id.* at 2.

<sup>20</sup> *Id.*

that the Rhode Island Economic Development Corporation has exclusive jurisdiction over the administration of the Renewable Energy Fund.

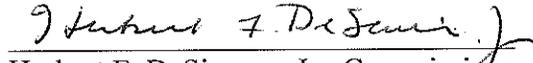
EFFECTIVE AT WARWICK, RHODE ISLAND ON AUGUST 29, 2013 PURSUANT TO AN OPEN MEETING DECISION ON AUGUST 29, 2013. WRITTEN ORDER ISSUED ON SEPTEMBER 20, 2013.

PUBLIC UTILITIES COMMISSION



  
Margaret E. Curran, Chairperson

  
Paul J. Roberti, Commissioner

  
Herbert F. DeSimone, Jr., Commissioner

**NOTICE OF RIGHT OF APPEAL PURSUANT TO R.I.G.L. SECTION 39-5-1, ANY PERSON AGGRIEVED BY A DECISION OR ORDER OF THE COMMISSION MAY, WITHIN SEVEN DAYS (7) DAYS FROM THE DATE OF THE ORDER, PETITION THE SUPREME COURT FOR A WRIT OF CERTIORARI TO REVIEW THE LEGALITY AND REASONABLENESS OF THE DECISION OR ORDER.**