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PANNONE LOPES DEVEREAUX & WEST LLC

counselors at law

Jillian N. Jagling
Associate
401-824-5121
jjagling@PLDW.com

February 26, 2015

VIA Regular Mail

Cynthia G. Wilson-Frias
Deputy Chief of Legal Services
RI Public Utilities Commission
89 Jefferson Blvd.
Warwick, RI 02888

RE: Petition for Declaratory Judgment Pursuant to Rule 1.10(c)

Dear Ms. Wilson-Frias:

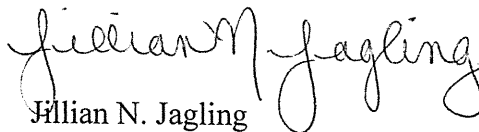
Enclosed for filing please find an original and 9 copies of the Rhode Island Turnpike and Bridge Authority's Petition for Declaratory Judgment regarding Rhode Island General Laws, § 39-26.4 – Net Metering.

I also sent an electronic copy of this letter and the Petition to Luly Massaro, Commission Clerk and Leo Wold, Assistant Attorney General.

If you have any questions, please feel free to contact me.

Sincerely,

PANNONE LOPES DEVEREAUX & WEST LLC



Jillian N. Jagling
Associate

{Encls.}

cc:Luly Massaro, Commission Clerk
Leo Wold, Assistant Attorney General

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317 Iron Horse Way, Suite 301 Providence, RI 02908
tel 401 824 5100 • fax 401 824 5123

www.pldw.com

**STATE OF RHODE ISLAND
PUBLIC UTILITIES COMMISSION**

In re: Rhode Island Turnpike and Bridge Authority)
Petition for Declaratory Judgment regarding) Docket No. _____
Rhode Island General Laws § 39-26.4 – Net Metering)

PETITION FOR DECLARATORY JUDGMENT PURSUANT TO RULE 1.10(C)

This Petition for Declaratory Judgment concerns the definition of a “public entity” found in Rhode Island General Laws 1956 § 39-26.4-2(12) (the, “Net Metering statute” or “Statute”). The Rhode Island Turnpike and Bridge Authority (“RITBA”) hereby petitions the Public Utilities Commission (“PUC”) for a determination that RITBA is a “public entity” within the meaning of the statute.

I. Summary of Request

RITBA anticipates receiving a grant from the Rhode Island Commerce Corporation that will facilitate the development of a solar energy system adjacent to the Newport Bridge (the “Project”). The Project will, during its operational life, be a source of clean power and will provide all the energy necessary to light the bridge. The electricity generated will reduce energy costs and thereby free up dollars to maintain critical infrastructure.¹ RITBA intends to go out to bid to secure a partner to construct and operate the Project. Because the Project will require a net metering financing arrangement a declaration that RITBA is a “public entity” is necessary for the success of the Project.

II. State of Law Regarding Net Metering

Rhode Island General Laws § 39-26.4-2(2)(ii) is the impetus for this Petition. The Net Metering statute defines “eligible net metering system” as “any eligible net metering resource: [...] (ii) owned and operated by a renewable generation developer *on behalf of a public entity* [...] through public entity net metering financing arrangement shall be treated as an eligible net metering system.” (Emphasis added) Only “eligible net metering systems” are eligible for net metering under the Statute.

The Net Metering statute defines “Public entity” as “the state of Rhode Island, municipalities, wastewater treatment facilities, public transit agencies or any water distributing plant or system employed for the distribution of water to the consuming public within this state including the water supply board of the city of Providence.”

III. RITBA Position Statement

RITBA submits that it is properly deemed to be a “public entity” under the Net Metering statute.

¹ RITBA is responsible for the Mount Hope, Jamestown, Newport and Sakonnet bridges.

The Authority's enabling statute, General Laws 1956 § 24-12-2, refers to RITBA as "a body corporate and politic," which, according to Black's Law Dictionary, "is a public corporation invested with powers and duties of government. It is often used, in a rather loose way, to designate the state or nation or sovereign power, or the government of a county or municipality, without distinctly connoting any express and individual corporate character." This definition aligns with the definition of "public entity" in the Net Metering statute in that as a body corporate and politic, RITBA is similar to the state or a municipality.

Moreover, other bodies corporate and politic in Rhode Island are considered public entities. For example, the "public entity" definition in the Net Metering statute includes reference to "public transit agencies," which includes the Rhode Island Public Transit Authority. The enabling legislation for the Rhode Island Public Transit Authority, RIGL § 39-18-2(a), similarly states, "[t]here is hereby created a body corporate and politic to be known as the 'Rhode Island Public Transit Authority.'" Similarly, the City Housing Authorities statute, RIGL § 45-25-3(1), defines "Housing Authority" as "a body corporate and politic."

In addition, RITBA is properly considered part and parcel of the "State of Rhode Island." All of the board members are appointed by the Governor. General Laws 1956 §24-14-1. RITBA comports with state purchasing, financial reporting, open meetings, other public governance laws. RITBA is a component unit of the State of Rhode Island for financial reporting purposes; is exempt from federal and state income taxes; and its audited financial statements are included in the state's annual financial report.

A review of other sections of the RITBA enabling statute confirm that RITBA is a public entity. For example, § 24-12-9, sets forth RITBA's broad, quasi-government powers of authority, which include:

- (9) To fix and revise from time to time, subject to the provisions of this chapter, and to charge and collect tolls for transit over the turnpike [...]
- (11) To acquire in the name of the authority by purchase or otherwise, on such terms and conditions and in such manner as it may deem proper, or by the exercise of the rights of condemnation in the manner as provided by this chapter, public or private lands, including public parks, playgrounds, or reservations, or parts thereof or rights therein, rights-of-way, property, rights, easements and interests as it may deem necessary for carrying out the provisions of this chapter, [...]
- (16) to vacate or change the location of any portion of any public highway, street, or other public way or place, sewer, pipe, main, conduit, cable, wire, tower, pole, and other equipment and appliance of the state or of any municipality or other political subdivision of the state and to reconstruct the same at such new location as the authority shall deem most favorable for the project and of substantially the same type and in as good condition as the original, [...]
- (20) To enter into contracts or agreements with any board, commission, public instrumentality of another state or the federal government or with any political subdivision of another state relating to the connection or connections to be established between the turnpike or any additional facility with any public highway or turnpike now in existence or hereafter

to be constructed in another state, and with respect to the construction, maintenance and operation of interstate turnpikes or expressways.

Also, General Laws 1956 § 24-12-31 of RITBA's enabling statute states, "[t]he exercise of the powers granted by this chapter will be in all respects *for the benefit of the people of the state*, for the increase of their commerce and prosperity and for the improvement of their health and living conditions, and as the acquisition, construction, operation, and maintenance by the authority of the projects as defined in this chapter as will *constitute the performance of essential governmental functions*." These sections of the enabling legislation grant powers and rights to RITBA sufficient to conclude that it is a public entity.

Other Rhode Island laws refer to RITBA as a public agency or public corporation. For example, General Laws 1956 § 22-13-9(f) - Access to executive sessions of a public agency – Access to records – Disclosure by the auditor general, states (f) "For the purposes of this section, the phrase "public agency" shall include: [...] the Rhode Island turnpike and bridge authority." Also, RIGL, § 35-20-5(4) states, "'Public corporation' means any body corporate and politic created or to be created pursuant to statute, including, [...] the Rhode Island turnpike and bridge authority."

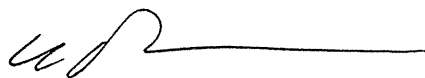
The enabling statute's grant of authority and rights to RITBA, the designation of other similar Rhode Island authorities as public entities, and the use of the phrase 'public entity' and 'public corporation' to refer to RITBA in other Rhode Island statutes, all support the reasonable conclusion that RITBA is a public entity under the Net Metering Statute.

IV. Conclusion

Finally, it is important to note that no legislation unambiguously and specifically address all matters. Therefore, even though RITBA is not explicitly referenced in the definition of public entity, it is reasonable to conclude that RITBA is a public entity after reviewing the enabling legislation and considering other Rhode Island statutes. Also, a declaration by the PUC that RITBA is a public entity will not result in sweeping changes in the operation of the Net Metering Statute. Instead, such a declaration will simply clarify the definition of public entity and allow RITBA to move forward with this Project.

For the reasons stated above, RITBA respectfully requests a declaratory ruling by the PUC finding that RITBA is a public entity as that term is defined in the Net Metering statute.

Respectfully Submitted,



William E. O'Gara (#4257)

Jillian N. Jagling (#8213)

Attorney for Rhode Island Turnpike and Bridge Authority

PANNONE LOPES DEVEREAUX & WEST LLC

317 Iron Horse Way, Suite 301

Providence, RI 02908

401-824-5100

401-824-5123 (fax)

Dated: February 25, 2015