

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: PETITION FOR DECLARATORY JUDGMENT :
OF THE RHODE ISLAND AIRPORT CORPORATION : DOCKET NO. 4591

ORDER

On December 4, 2015, the Rhode Island Airport Corporation (RIAC) filed with the Public Utilities Commission (PUC) a Petition for Declaratory Judgment (petition) seeking a declaration that it falls within the definition of public entity set forth in R.I. Gen. Laws § 39-26.4-2(12) (Net Metering Act). Designation as a public entity for purposes of the Net Metering Act allows that entity to enter into financial arrangements with developers to develop a renewable energy project which would constitute an Eligible Net Metering System. In this case, RIAC seeks to develop a solar energy system on airport property to reduce energy costs to RIAC for all of its airports (T.F. Green, Newport, North Central, and Quonset State Airport). In order to enter into a public entity net metering financing arrangement, RIAC seeks confirmation that it is, indeed, a public entity under the Net Metering Act.

In support of the petition, RIAC indicated that, while it has a distinct legal existence from the State of Rhode Island, it is a subsidiary of the Rhode Island Commerce Corporation.¹ The Commerce Corporation is a public corporation of the State.² The Commerce Corporation has the power to undertake the planning, development, construction, financing, management, and operation of any “project” including the acquisition, operation, construction, or the provision of

¹ Pet. at 2, citing R.I. Gen. Laws § 42-64-7.1. R.I. Gen. Laws § 42-64-7.1(h) requires the appointment of a board of directors by the Governor with the advice and consent of the senate. See RI Airport Corporation website <http://www.pvdairport.com/corporate/ri-airport-corporation/board-of-directors>. Per R.I. Gen. Laws § 42-64-7.1(d), the Commerce Corporation as the parent corporation of the Rhode Island Airport Corporation, shall not be liable for the debts or obligations or for any actions or inactions of the Rhode Island Airport Corporation, unless the Rhode Island commerce corporation expressly agrees otherwise in writing. Therefore, RIAC is the appropriate entity to be seeking the declaration.

² Pet. at 2, citing R.I. Gen. Laws § 42-64-7.1

financing for, any airport facility.³ Furthermore, according to RIAC, the Supreme Court of Rhode Island has advised that “RIAC is a wholly owned subsidiary of the [Rhode Island Port Authority and Economic Development Corporation (RIPA) now known as Rhode Island Commerce Corporation] and holds the same powers and limitations as RIPA. Since RIPA is defined as a ‘government agency’ RIAC also is a governmental agency.”⁴ RIAC argued that by virtue of its status as the public corporation/governmental agency charged with operating the State’s airports, RIAC meets the statutory threshold as a public transit agency.⁵

On December 15, 2015, the PUC caused a Notice of Filing and Deadline for Comments regarding RIAC’s petition to be published in the Providence Journal. The deadline for filing written objections with a memorandum of law or comments in support of the petition was December 28, 2015. No comments or objections were received in response to the notice. On January 11, 2016, the Division of Public Utilities and Carriers (Division) submitted a letter from Leo J. Wold, Assistant Attorney General, recommending the PUC grant RIAC’s petition opining that construing RIAC as a public entity for purposes of the Net Metering Act is reasonable.⁶

³ Pet. at 2, citing R.I. Gen. Laws § 42-64-4, 42-64-7(1). R.I. Gen. Laws § 42-64-3(20) states: (20) "Project" or "port project" means the acquisition, ownership, operation, construction, reconstruction, rehabilitation, improvement, development, sale, lease, or other disposition of, or the provision of financing for, any real or personal property (by whomever owned) or any interests in real or personal property, including without limiting the generality of the foregoing, any port facility, recreational facility, industrial facility, *airport facility*, pollution control facility, utility facility, solid waste disposal facility, civic facility, residential facility, water supply facility, *energy facility or renewable energy facility, or any other facility, or any combination of two (2) or more of the foregoing, or any other activity undertaken by the corporation.* (emphasis added). R.I. Gen. Laws § 42-64-3(37) states: "Renewable energy facility" means any real or personal property, or any combination thereof, related to, or incidental to, any project, designed, intended, or utilized for an eligible renewable energy resource that meets the criteria set forth in subsections 39-26-5(a) and 39-26-5(c).

⁴ Pet. at 2, quoting, *In re Advisory Opinion to Governor*, 627 A.2d 1246, 1251 (R.I. 1993).

⁵ Pet. at 2, n.3, stating, “[t]ransit is widely accepted to mean the conveyance of people or goods from one place to another (including the system for such conveyance (e.g., an airport system).” R.I. Gen. Laws § 39-26.4-2(12) (defines public entities as including public transit agencies).

⁶ Letter from Leo J. Wold to Luly Massaro, Clerk (Jan. 11, 2016).

At an open meeting held on January 15, 2016, the PUC considered the filings and found that RIAC is a public entity within the meaning of the Net Metering Act.⁷ R.I. Gen. Laws § 39-26.4-2(12) defines a public entity as including the state of Rhode Island. While not a department of the State of Rhode Island, RIAC is a subsidiary of a government agency. Furthermore, a review of RIAC's website shows that it is subject to the Access to Public Records Act which applies to public bodies. Article One of its bylaws states: "Name and Authority. The Rhode Island Airport Corporation ("Corporation"), a public corporation, governmental agency and public instrumentality, has been established pursuant to the provisions of Title 42, Chapter 64, of the Rhode Island General Laws (the "Act")."⁸ The definition also specifies "public transit agencies" as qualifying as public entities. While not the Rhode Island Public Transit Authority, RIAC has authority over airport facilities and may reasonably be defined as a transit agency.⁹

R.I. Gen. Laws § 39-26.4-4 requires that the chapter be construed liberally in aid of its purpose. The purpose of the Net Metering Act is, in part, "to facilitate and promote installation of

⁷ The PUC has the authority to make this determination under R.I. Gen. Laws § 42-35-8.

⁸ <http://www.pvdairport.com/documents/accountabilitytransparency/bylawsjan611.pdf>.

⁹ Article One, 2. (a) Purpose. The Corporation is empowered, pursuant to its Articles of Incorporation and Rhode Island law, to undertake the planning, development, management, acquisition, ownership, operation, repair, construction, reconstruction, rehabilitation, renovation, improvement, maintenance, development, sale, lease, or other disposition of any "airport facility", as defined in the Act. "Airport facility" is defined in the Act [R.I. Gen. Laws § 42-64-3(2)] in part as "developments consisting of runways, hangars, control towers, ramps, wharves, bulkheads, buildings, structures, parking areas, improvements, facilities, or other real or personal property, structures, parking areas, improvements, facilities, or other real or personal property, necessary, convenient, or desirable for the landing, takeoff, accommodation, and servicing of aircraft of all types, operated by carriers engaged in the transportation of passengers or cargo, or for the loading, unloading, interchange, or transfer of the passengers or their baggage, or the cargo, or otherwise for the accommodation, use or convenience of the passengers or the carriers or their employees (including related facilities and accommodations at sites removed from landing fields or other areas), or for the landing, taking off, accommodation, and servicing of aircraft owned or operated by persons other than carriers". (b) Limitations. The Corporation is not empowered by its Articles of Incorporation or Rhode Island law to borrow money or to exercise the power of condemnation. <http://www.pvdairport.com/documents/accountabilitytransparency/bylawsjan611.pdf>. See In re Advisory Opinion to Governor, 627 A.2d at 1247-48, stating, The Director of the Department of Transportation and the Rhode Island Port Authority possess the statutory authority to *delegate to RIAC the power to operate and manage the airport system. RIAC, pursuant to such delegation, possesses the authority to operate and manage the airport system.* (emphasis added).

customer-sited, grid-connected generation of renewable energy [and] to support and encourage customer development of renewable generation systems.” Finding that the RIAC falls within the definition of a public entity for purposes of the Net Metering Act will facilitate and promote the installation of distributed generation of renewable energy at the site of the Newport Bridge by making it clear that RIAC is eligible to enter into a public entity net metering financing arrangement.

It is hereby:

(22310) ORDERED:

Rhode Island Airport Corporation is a public entity under R.I. Gen. Laws § 39-26.4-2(12).
EFFECTIVE AT WARWICK, RHODE ISLAND ON JANUARY 15, 2016 PURSUANT
TO AN OPEN MEETING DECISION. WRITTEN ORDER ISSUED JANUARY 26, 2016.

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. Gen. Laws § 39-5-1, any person aggrieved by a decision or order of the PUC may, within 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.