STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: CLEAN ECONOMY DEVELOPMENT LLC'S PETITION FOR DECLARATORY JUDGMENT ON RHODE ISLAND GENERAL LAWS §39-26.4 NET METERING	))))	Docket No.

PETITION FOR DECLARATORY JUDGMENT

Clean Economy Development, LLC (CED) brings this petition pursuant to the Public Utility Commission's Rule of Procedure 1.10(C) for a declaratory judgment that public housing authorities are "public entities" eligible to participate in the existing public entity net metering and, therefore, are not subject to the thirty megawatt cap on the newly instituted pilot program for eligible credit recipients from community remote net-metering systems. Such a judgment is warranted for two reasons: 1) Rhode Island and federal law clearly define public housing authorities as public entities; and 2) nothing in the 2016 amendments to the net metering law restricts the rights of public entities to remote net meter.

Facts

CED is a professional consulting firm providing finance and project development expertise to the renewable energy industry. CED represents a range of public entities including municipalities, school districts and public housing authorities. CED's clients have entered and are considering remote net metering contracts for municipal and school department accounts. CED seeks this declaratory judgment to confirm that public housing authorities share the rights of other public entities to remote net meter. For many reasons, CED's municipal and public housing authority clients prefer to develop and retain all the rewards of their own remote net-metering projects rather than being eligible credit recipients from the development of "community remote net-metering systems."

The Law

Rhode Island law allows net metering from "eligible net metering systems." R.I. Gen. Laws §39-26.4-3. An "eligible net metering system" must "be owned by the same entity that is the customer of record on the net metered accounts" except that any "eligible net metering resource" owned by a "public entity" or owned and operated by a renewable generation developer on behalf of a public entity through a "public entity net metering financing arrangement" will be "treated as an eligible net metering system and all accounts designated by the public entity or multi-municipal collaborative for net metering shall be treated as accounts eligible for net metering within an eligible net metering system site." Id. at §39-26.4-2(2). An "eligible net metering system site" is the site where the eligible net metering system is located except that for public entities the energy generated by the eligible net metering system does not have to be consumed by net-metered electric service account(s) that are located in the same geographical location as the eligible net metering system. Id. at §39-26.4-2(3). The capacity to generate electricity at one location and credit it to accounts at another location is commonly referred to, and referred to herein, as "remote net metering."

Amendments to the net metering law passed in 2016 provided additional capacity for "low and moderate income housing credit recipients" to receive net metering credits from "community remote net-metering systems," but only up to a pilot program cap of 30 megawatts. House Bill 8354A; R.I. Gen. Laws §39-26.4-2(3)(iii). In contrast, there is no program cap on the capacity of public entities to remote net meter. While there is a project cap of ten megawatts on any individual net metering project, there is no overall program limit on public entities capacity to remote net meter. R.I. Gen. Laws §39-26.4-3.

The net metering law defines a "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." Id. at §39-26.4-2(12). The net metering law defines a "municipality" as any Rhode Island town or city, including any agency or instrumentality thereof, with the powers set forth in title 45 of the general laws. Id. at §39-26.4-2(15). CED seeks this declaratory judgment because state and federal law clearly recognize that public housing authorities are "public entities" as defined in the net metering statute.

The Rhode Island General Assembly has established that city housing authorities are instrumentalities of a Rhode Island town or city and therefore are "public entities" as defined in the net metering law. Id. at §39-26.4-2(12). The enabling legislation for city housing authorities (the "Act"), as set out in Title 45 of the general laws, defines an "authority" or a "housing authority" as "a public body and a body corporate and politic, organized in accordance with the provisions of chapters 25 and 26 of this title for the purposes, with the powers, and subject to the restrictions established in chapters 25 and 26 of this title." Id. at §45-25-3(1). To establish a public housing authority, a municipal council must pass a resolution finding that the municipality is in need of a public housing authority and notify the mayor or town manager of the passed resolution at which point the mayor or town manager then appoints five (5) commissioners to act as an authority, which shall be a public body and a body corporate and politic. Id. at §45-25-7. The Act addresses corporate authority as follows: "When the application has been made, filed, and recorded, the authority shall constitute a public body and a body corporate and politic under the name proposed in the application." Id. at §45-25-8. The provision on powers of a public housing authority states that, "[a]n authority constitutes a public body and a body corporate and politic, exercising public powers. . ." Id. at §45-25-15(a). The Act is unambiguous that housing authorities are instrumentalities of municipal government. The Commission's Order in Docket 4557 noted very similar language in the Rhode Island Bridge and

Turnpike Authority enabling legislation when it recently declared RIBTA a "public entity" for the purposes of net metering. Order, PUC Docket 4557 (April 1, 2015), p. 1-2.

If the Act's plain language is not enough, the Rhode Island Supreme Court has repeatedly and regularly recognized that public housing authorities are public entities. In Adler vs. Lincoln Housing Authority, the Court found that the Lincoln Housing Authority was exempt from supplementary proceedings, the usual process of execution to collect on a judgment, because it was a "public corporation. . .dedicated to public purposes." 623 A.2d 20, 23 (R.I. 1993); citing Little v. Conflict of Interest Commission, 397 A.2d 884, 888 (1979) (housing authorities are clothed with attributes of municipal body); Jackvony v. Berard, 18 A.2d 889, 892 (1941) (Woonsocket Housing Authority is "a public body and a body corporate and politic."); State ex rel. Costello v. Powers, 97 A.2d 584, 586 (1953) (housing authority is "a public or quasi-municipal corporation which exercise[s] police powers in the general public interest").

Rhode Island and federal laws regularly recognize public housing authorities as municipal entities. Public housing authority employees are subject to the Rhode Island Code of Ethics for public workers. See e.g., R.I. Ethics Commission Advisory Opinion No. 98-155 (employee of Providence Housing Authority, a municipal agency, may solicit its vendors for donations to the Providence Housing Community Housing Corporation). The US Department of Housing and Urban Development (HUD) defines "Public Housing Agency" to mean any State, county, municipality, or other governmental entity or public body, or agency or instrumentality of these entities, that is authorized to engage or assist in the development or operation of low-income housing. 24 CFR § 5.100; (see also IRS Rev. Rul. 57-128, 1957-1 C.B. 311, applying IRC 3121(b)(7) (FICA) and 3306(c)(7), an "instrumentality" of government performs a government function, is supervised by public authorities and is created and governed per statutory authority). Both state and federal law

require that public housing authorities be considered "public entities" as defined by Rhode Island's net metering law.

The 2016 amendments to the net metering law do not change the unrestricted capacity of public housing authorities to remote net meter as "public entities." House Bill 8354A addressed low and moderate income housing (LMI) as credit recipients from community remote net-metering systems; it does not limit the capacity of public housing authorities or any other public entities to develop or partner with outside investors to develop remote net-metering projects. R.I. Gen. Laws §39-26.4-2(3)(iii). The community net metering pilot adds capacity for low and moderate-income housing projects, including public housing, to receive net metering credits from community remote net-metering systems. Id. These amendments are important for LMIs that are not public housing authorities, including nonprofit organizations, limited equity housing cooperatives and private affordable housing developers. R.I. Gen Laws §45-53-3 (9). However, public housing authorities and other public entities remain authorized to develop or have third parties develop their own remote net metering systems that are not "community remote net-metering systems." The amendments did not change the definition of "eligible net metering system" or "eligible net metering site" as they relate to public entities, other than by adding eligibility for "community remote net-metering systems." Id. at §39-26.4-2(5)-(6). The General Assembly simply expanded the definition of "net metering," as follows:

> "Net metering" means using electricity electrical energy generated by an eligible net metering system for the purpose of self-supplying electrical energy and power at the eligible net metering system site, or with respect to a community remote net-metering system, for the purpose of generating net-metering credits to be applied to the electric bills of the eligible credit recipients associated with the community net-metering system.

[emphasis added] While public housing authorities may now receive net metering credits from community remote net-metering projects (subject to the thirty-megawatt cap), as "public entities"

public housing authorities are also still entitled to remote net meter under the unchanged definition of "eligible net metering system site." Any other reading of the law would be internally inconsistent and Rhode Island's law of statutory construction clearly militates against that. See e.g., DePasquale v. Cwiek, 129 A.3d 72, 77 (R.I. 2016); Olamuyiwa v. Zebra Atlantek, Inc., 45 A.3d 527, 534 (R.I. 2012); Tarzia v. State, 44 A.3d 1245, 1252 (R.I. 2012). A reading that limits public housing authorities to only participate in the thirty megawatt pilot for "community remote net metering systems" would also be inconsistent with the General Assembly's mandate that the net metering statute "shall be construed liberally in aid of its declared purposes" which include facilitating installation of renewable energy, reducing environmental impacts including carbon emissions and climate change, diversifying the state's energy sources, stimulating economic development, improving distribution system resilience and reliability and reducing distribution system costs. Id. at §39-26.4-4, 1; see also, Order, PUC Docket 4557 (April 1, 2015), p. 3.

Conclusion & Requested Relief

Given the clarity of the law on this matter and to prevent and mitigate market confusion, CED requests a declaratory judgment that public housing authorities are "public entities" as defined in the net metering law and are, therefore, entitled to remote net meter without the 30 megawatt program restriction for eligible credit recipients from community remote net-metering systems.

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