



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

Rhode Island Division of  
Public Utilities and Carriers  
89 Jefferson Blvd.  
Warwick RI 02888  
(401) 941-4500

December 14, 2016

Luly Massaro, Commission Clerk  
Rhode Island Public Utilities Commission  
89 Jefferson Blvd.  
Warwick, RI 02888

**Docket 4670---Clean Economy Development, LLC's Petition for Declaratory Judgment of R.I. Gen. Laws §§34-26.4 on Net Metering**

Dear Luly,

Please find attached the Division of Public Utilities and Carriers Memorandum of Law with respect to Clean Economy Development, LLC's Petition for Declaratory Judgment of terms within R.I. Gen. Laws 34-26.4 et seq. on Net Metering for consideration by the Commission in the above entitled matter.

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

Very truly yours,

Jon G. Hagopian  
Senior Legal Counsel

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
PUBLIC UTILITIES COMMISSION**

**IN RE: CLEAN ECONOMY DEVELOPMENT  
LLC'S PETITION FOR DECLARATORY  
JUDGMENT ON R.I. GEN. LAWS §39-26.4  
NET METERING**

**Docket No. 4670**

The Rhode Island Division of Public Utilities and Carriers (Division) hereby submits the within memorandum in response to Clean Economy Development, LLC's (CED) Petition for Declaratory Judgment pursuant to Commission Rule of Practice 1.10(C).

**ISSUE**

Whether a city or town public housing authority may be deemed a "public entity" within the meaning R.I. Gen. Laws § 39-26.4-2 (15) of the of the State of Rhode Island Net Metering statute.

Whether a Public Housing Authority which is deemed a "public entity" is subject to the thirty (30) MW cap R.I. Gen. Laws § 39-26.4-3

**APPLICABLE LAW**

To answer this we must break the question down into at least two parts. The first question is whether state statute recognizes a public housing authority as a State public body. The next issue is whether the state's Net Metering law recognizes a public housing authority as "public entity" and the attendant legal permutations of this designation in relation to the net metering statute.

Title 45 Chapter 25 entitled City Housing Authorities is the enabling act providing authority for the organization of city housing authorities. R.I. Gen.

Laws § 45-25-3 (1) provides as follows:

"Authority" or "housing authority" means 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.

R.I. Gen. Laws §45-25-3 (17) provides a "State public body" means any city, town, municipal corporation, commission, district, authority, or other subdivision or public body of the state.

Similarly, Title 45 Chapter 26 is the statutory authority creating town housing authorities. R.I. Gen. Laws §45-26-2 (a) provides:

In each town of the state there is created a public body corporate and politic to be known as the "housing authority" of the town (hereafter called "town authority"); provided, that the town authority does not transact any business or exercise its powers until or unless the town council of the town, by proper resolution, determines at any time that there is need for a town authority to function in the town.

It can be safely concluded from the recitation of these statutory sections that the authority for the establishment of city and municipal public housing authorities is well defined pursuant to laws of the State of Rhode Island.

Turning to the issue of whether public housing authorities are in fact "public entities" for purposes of the Rhode Island's Net Metering statute found at Title

39 Chapter 26.4. First we must refer to the definition of an “Eligible Net Metering System R.I. Gen. Laws §39-26.4-2 (2), which includes systems that:

may be owned by the same entity that is the customer of record on the net metered accounts or may be owned by a third party that is not the customer of record at the eligible net-metering system site and which may offer a third-party net-metering financing arrangement or public entity net-metering financing arrangement, as applicable. Notwithstanding any other provisions of this chapter, any eligible net metering resource:

(i) owned by a public entity or multi-municipal collaborative or

(ii) owned and operated by a renewable generation developer on behalf of a public entity or multi-municipal collaborative through public entity net metering financing arrangement shall 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.

A “public entity” is defined pursuant to R.I. Gen. Laws §39-26.4-2 (15) as the following:

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.

In turn, a “municipality” is defined pursuant to R.I. Gen. Laws §39-26.4-2 (18) 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”.

## DISCUSSION

Applying the law to facts here requires us to make certain interpretations based upon a sparse set facts. Fortunately, there was discovery in this docket which the Division relied upon to fill in the factual gaps of the Petition.

First, there is ample precedent on the issue of defining public entities by the Commission. The Commission in two separate dockets has recognized the Rhode Island Airport Corporation as a “public entity” for purpose of net metering and also the Rhode Island Bridge and Turnpike Authority. *See*, Docket No. 4591, In re: RI Airport Corporation's Petition for Declaratory Judgment regarding R.I.G.L. 39-26.4 - Net Metering (filed 12/4/15); *see also*, In re: RI Turnpike and Bridge Authority's (RITBA) Petition for Declaratory Judgment regarding R.I.G.L. 39-26.4 - Net Metering (filed 2/26/15).

Turning now to the analysis of the issue framed in the instant action. The Division has relied upon Petitioner’s responses to the Commission’s First set of Data Requests and has identified the City of Central Falls for this analysis.<sup>1</sup> CED represents that Central Falls public housing authority (CFPHA) is contemplating entering a remote net metering contract.<sup>2</sup> The State of Rhode Island Office of the Secretary of State’s database demonstrates that CFPHA was organized and exists pursuant to state and municipal law.<sup>3</sup> A review of the

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<sup>1</sup> *See*, CED’s Responses to Commission Data Requests 1-1.

<sup>2</sup> *See*, CED’s Responses to Commission Data Requests 1-1.

<sup>3</sup> *See*, RI secretary of State Database printout of Articles of Organization, April 4, 1963 attached hereto.

CFPHA's website further demonstrates that it is a well-established city managed and operated public housing authority. Based upon these attributes it can be concluded that the CFPHA indeed meets the definition of a housing authority pursuant to R.I. Gen. Laws §45-25-3. Similarly, the CFPHA is a "public entity" within the meaning of the Net Metering statute. Simply put, the City of Central Falls is a municipality within the meaning of R.I. Gen. Laws §39-26.4-2 (10) as it is a city organized and existing under the laws of the State of Rhode Island. Second, the CFPHA is a "public entity" within the meaning R.I. Gen. Laws §39-26.4-2 (15) because it is a Rhode Island municipal agency.

The final issue is if the public housing authority is deemed a "public entity" in accordance with R.I. Gen. Laws §39-26.4-2 (15) whether it is subject to the thirty (30) MW cap found in R.I. Gen. Laws §39-26.4-2 (3). The short answer is no, a public housing authority who is deemed a "public entity" is not subject to a thirty (30) MW cap.<sup>4</sup>

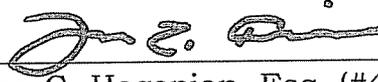
### **CONCLUSION**

The Division concludes that based upon the foregoing facts that indeed a municipal public housing authority could qualify as a "public entity" within the meaning of Rhode Island's Net Metering statute and is not bound by the thirty (30) MW cap imposed by the statute on community remote net metering facilities.

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<sup>4</sup> R.I. Gen. Laws §39-26.4-3 provides in pertinent part that "[t]hrough December 31, 2018, the maximum aggregate amount of community remote net-metering systems built shall be thirty megawatts (30 MW). Any of the unused MW amount after December 31, 2018, shall remain available to community remote net-metering systems until the MW aggregate amount is interconnected.....This aggregate amount shall not apply to public entity facilities or multi-municipal collaborative facilities.

Division of Public Utilities and  
Carriers  
By its attorney,



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Dated: December 14, 2016

**CERTIFICATE OF SERVICE**

I hereby certify that on the 14<sup>th</sup> day of December 2016 that I transmitted an electronic copy of the within Memorandum to the attached service list and to Luly Massaro, Commission Clerk by electronic mail and one set hand delivered.



**Docket No. 4670– Clean Economy Development – Petition for Declaratory Judgment**

**Service List updated 11/18/16**

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