



Rhode Island Housing
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PUBLIC UTILITIES COMMISSION

December 2, 2016

Public Utilities Commission
89 Jefferson Blvd.
Warwick, RI 02889

Re: Petition for Declaratory Judgment on R.I.G.L. Sec. 39-26.4 Net Metering
Filed by Clean Economy Development, LLC

Commissioners:

Rhode Island Housing submits this statement in support of the Petition for Declaratory Judgment filed by Clean Economy Development, LLC (“CED”) that housing authorities are “public entities” eligible to participate in the existing public entity net metering program. Rhode Island Housing is the state’s housing finance agency , created by the legislature in 1973 as a public corporation of the state, “exercising public and essential governmental functions”. R.I. Gen. Laws §42-55 (the “Act”). In carrying out its mission under the Act, Rhode Island Housing is familiar with the structure and operations of housing authorities throughout the state.

Discussion

Under Rhode Island law, the creation of a municipal housing authority is authorized in certain narrow circumstances. Such agencies are creatures of statute when established pursuant to Chapter 25 and Chapter 26 of Title 45 of the General Laws of Rhode Island (city housing authorities and town housing authorities, respectively). When properly created a housing authority “constitutes a public body corporate and politic, exercising public powers, and has all the powers necessary or convenient to carry out and effectuate the purposes and provisions” of Chapters 25 and 26 of Title 45.

The essential public nature of a housing authority has been recognized repeatedly by the Rhode Island courts. In *State ex rel. Costello v. Powers*, 80 R.I. 390 (R.I. 1953), the Rhode Island Supreme Court, in referring to the character of the City of Pawtucket housing authority, noted:

It appears that the housing authority of the city of Pawtucket when set up in accordance with the provisions of G. L. 1938, chap. 344, 4, "shall constitute a public body and a body corporate and politic" and be issued a certificate of incorporation.

* * *

Its acts are those of the body corporate. The powers of such housing authority in providing in the public interest safe and sanitary dwelling accommodations for persons of low income include among other things authority to borrow money from the federal government and to enter into contracts with it in aid of the purposes of the housing authority. It also exercises some of its powers as a representative of the city government and other powers as an agent of the federal government.

Id. at 396.

Similarly, in *Parent v. Woonsocket Housing Authority*, 87 R.I. 444 (R.I. 1958), which was a breach of contract action against the Woonsocket Housing Authority, the Supreme Court held that rules governing the activities of municipal corporations applied to housing authorities:

[T]he services which these authorities render are impressed with a public character to such an extent that we think it is a matter of public policy that they bound in some particulars by the rules which govern the activities of municipal corporations and departments thereof.

* * *

We think it is clear that these housing authorities have a dual nature which partakes of a public as well as a private character. They function in an area which is public and governmental in character as well as in an area which is proprietary or private.

Id. at 448.

Finally, in *Housing Authority of the City of Woonsocket v. Fetzyk*, 110 R.I. 26 (R.I. 1972), the Court reiterated its holdings in *Powers* and *Parent*, stating:

[A] housing authority is one of a large class of corporations created by the government to undertake public enterprises in which the public interests are involved to such an extent as to justify conferring upon such corporations important governmental privileges and powers.

Id. at 33.

The process of creating a housing authority in the State of Rhode Island is explicit. A city housing authority can only be created upon the filing of a petition with the city clerk signed by 25 residents asserting a need for a public housing authority in the city. R.I. Gen. Laws § 45-25-4. A public hearing open to all interested parties thereafter is held, and following the hearing the city council must determine whether the conditions necessary to establish a housing authority exist in the city. R.I. Gen. Laws § 45-25-5. If the city council determines that the preconditions are met, it shall adopt a resolution to that effect and transmit the resolution to the mayor, who shall appoint 5 commissioners to act as a public housing authority. The commissioners so appointed shall file an application with the Rhode Island Secretary of State demonstrating that the requirements of law have been met. R.I. Gen. Laws § 45-25-7. Upon the completion of these steps, the authority shall constitute a public body and body corporate, whose boundaries are coterminous with the territorial boundaries of the city. R.I. Gen. Laws § 45-25-8.

The process to establish a town housing authority is similar, but not identical to that described above. Rhode Island law provides there is created a public body corporate and politic to be known as the housing authority of the town; however, such authority cannot transact any business until the town council, by resolution on its own motion, or upon the filing of a petition by 25 town voters, determines that there is a need for a town housing authority. R.I. Gen. Laws

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§ 45-26-2. The findings of the town council declaring the need for a town housing authority, and the process for filing with the Rhode Island Secretary of State, must be made in the same manner as set forth in the case of city housing authorities. R.I. Gen. Laws § 45-26-5.

The thrust of these statutes and decisions is clear. In Rhode Island, PHAs, when properly constituted, are granted governmental privileges and powers to carry out public purposes in the public interest and are therefore “public entities”. Rhode Island Housing support CED’s Petition for Declaratory Judgment in this matter.

Thank you for your consideration.

Respectfully submitted,



Michael V. Milito (#2806)
Manager Intergovernmental Relations and Policy
Rhode Island Housing
mmilito@rhodeislandhousing.org