

*A Limited Liability Partnership*

March 8, 2017

Via Email: [Luly.massaro@puc.ri.gov](mailto:Luly.massaro@puc.ri.gov)

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PUBLIC UTILITIES COMMISSION

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

**In Re: Petition of Southern Sky Renewable Energy Rhode Island, LLC for  
Declaratory Judgment on R.I. Gen. Laws §39-26.4, The Net Metering Act**

Dear Madam Clerk:

Enclosed for filing please find the following document:

**Petition of Southern Sky Renewable Energy Rhode Island, LLC for  
Declaratory Judgment on R.I. Gen. Laws §39-26.4, The Net Metering Act**

I will be forwarding via regular mail, postage prepaid, an original and nine copies as well.

Should you have any questions concerning this filing please contact me at (401) 272-1400.

Thank you for your attention to this matter.

Sincerely,

Christian F. Capizzo, Esq.

Enclosures

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STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
PUBLIC UTILITIES COMMISSION

IN RE: PETITION OF SOUTHERN SKY RENEWABLE ENERGY  
RHODE ISLAND, LLC FOR DECLARATORY  
JUDGMENT ON RHODE ISLAND GENERAL LAWS  
§39-26.4, THE NET METERING ACT

Docket No.

**PETITION FOR DECLARATORY JUDGMENT**

Southern Sky Renewable Energy Rhode Island, LLC, a Rhode Island limited liability company ("SSRERI"), files this Petition for Declaratory Judgment seeking a determination from the Rhode Island Public Utilities Commission ("PUC") that, for purposes of entering into a Public Entity Net Metering Financing Arrangement as defined in R.I. Gen. Laws §39-26.4-2(16)(i) of Chapter 26.4 of Title 39 (the "Act"), the requirement that an eligible net metering resource be located on property "*owned or controlled*" by a public entity or a municipality is satisfied by (a) the public entity or municipality entering into a ground lease as a co-tenant along with the solar developer, or (b) an easement agreement in which the public entity or municipality has control over the property.

SSRERI brings this petition pursuant to the PUC's Rules of Practice and Procedure 1.10 (c). The requested judgment is warranted as it will serve to advance the declared purpose of the Act by allowing SSRERI, and other renewable energy developers, to enter into financial arrangements with lending institutions in order to provide the necessary funding to construct, install and develop eligible net metering systems throughout Rhode Island.

**Facts**

SSRERI is a professional renewable energy developer with expertise in developing, building and operating solar power facilities in Rhode Island. SSRERI is involved with all aspects

of solar photovoltaic facilities including selection and acquisition of site, engagement and education of the host communities, navigation of state and local permitting process, design of the solar array layout, procurement of solar photovoltaic panels and equipment, construction of the solar photovoltaic facilities, securing financing for their projects, ensuring seamless connection and transmission of power to the grid and ongoing operation and maintenance of the solar photovoltaic facilities. SSRERI has an established history of success developing, constructing, maintaining and operating solar photovoltaic facilities. Renewable energy developers typically require financing from third party lending institutions for the construction and development of these facilities. Third party lenders must be satisfied that such facilities will be in full compliance with local, state and federal rules and regulations before providing such financing.

#### **The Law of Net Metering**

Rhode Island law allows net metering of electricity from “eligible net-metering systems.” R.I. Gen. Laws §39-26.4-3. Under Rhode Island law in order for a system to qualify as an “eligible net metering system” it 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(5).

More specifically related to SSRERI’s petition, Rhode Island General Laws §39-26.4-2(16) defines a "Public Entity Net-Metering Financing Arrangement" as:

"...arrangements entered into by a public entity or multi-municipal collaborative with a private entity to facilitate the financing and operation of a net-metering resource in

which the private entity owns and operates an eligible net-metering resource on behalf of a public entity or multi-municipal collaborative, where *(i) the eligible net-metering resource is located on property owned or controlled by the public entity or one of the municipalities as applicable, and* (ii) the production from the eligible net-metering resource and primary compensation by the public entity or multi municipal collaborative to the private entity for such production is directly tied to the consumption of electricity occurring at the designated net-metered accounts.”

### **SSRERI's Position**

SSRERI submits that the condition in RIGL 39-26.4-2(16)(i) requiring the eligible net-metering resource be located on property “*owned or controlled*” by the public entity or municipality is satisfied by (a) the public entity or municipality entering into a ground lease as a co-tenant along with the solar developer, or (b) an easement agreement in which the public entity or municipality has control over the property.

A ground lease or an easement agreement allows the municipality or public entity to exercise the necessary ownership or control over the property where the eligible net metering resource is located. Lease agreements and easement agreements have long been recognized as enforceable interests in real estate and both grant control to the tenant or holder of the easement to the extent provided for in the instruments. See Grady v. Narragansett Elec. Co., 962 A.2d 34, 46 (R.I. 2009)(quoting Sharp v. Silva Realty Corp., 134 A.2d 131, 136 (R.I. 1957) (“it is an established principle that the unrestricted grant of an easement gives the grantee all such rights as are incident or necessary to the reasonable and proper enjoyment of the easement.”); Heroux v. Katt, 68 A.2d 25, 28 (R.I. 1949) (a tenant “has the exclusive right of possession of the land.”). In the case of co-tenants of real estate, each co-tenant “is entitled to possession and enjoyment of the whole property and every part thereof subject to the same right in the other tenants” Manchester v. Pereira, 926 A.2d 1005, 1013-1014 (R.I. 2007)(quoting Sheldon F. Kurtz, Moynihan’s Introduction to the Law of Real Property 281 (4th ed. 2005)).

In support of this position, SSRERI's legal counsel sought and received input from National Grid that a ground lease as set forth above should satisfy the "*owned or controlled*" requirement of the statute. However, notwithstanding the informal feedback from National Grid, SSRERI's lender has conditioned construction financing on a favorable ruling on this Petition. If the within Petition is granted, it will allow SSRERI and other energy developers to enter into financial arrangements with third party lending institutions to provide the necessary financing for the construction, development and installation of solar photovoltaic facilities

### **Conclusion and Requested Relief**

R.I. Gen. Laws §39-26.4-2(16)(i) provides that in order for a solar developer to enter into a Public Entity Net Metering Financing Arrangement, the eligible net metering resource must be located on property owned or controlled by the public entity or one of the municipalities in the State of Rhode Island. Pursuant to R.I. Gen. Laws § 39-26.4-4, the Net Metering Act is to be liberally construed to meet its declared purpose, which includes facilitating installation of renewable energy, reducing environmental impacts diversifying the state's energy sources, stimulating economic development, improving distribution system resilience and reliability and reducing distribution system costs. *Id.* at RIGL § 39-26.4-4; See also, Order, PUC Docket 4557 (April 2015), p.3.

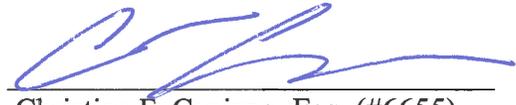
Granting the within Petition, clarifying and establishing that a ground lease (with the public entity or municipality as co-tenant along with the solar developer) and/or an easement agreement satisfies the "*owned or controlled*" language found in R.I. Gen. Laws §39-26.4-2(16)(i), will enable renewable energy developers to enter into financial arrangements with lending institutions necessary to fund the construction, installation and development of eligible

net metering systems throughout Rhode Island, thereby advancing the declared purpose of the Net Metering Act.

For the above reasons, SSRERI respectfully requests that the within Petition be granted.

Respectfully Submitted,

SOUTHERN SKY RENEWABLE  
ENERGY RHODE ISLAND, LLC  
By their Attorney



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Dated: March 8, 2017