STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

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

January 23, 2019

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

In Re: Docket 4892 – Renewable Energy Growth Program for 2019

Dear Luly,

Please find the State of Rhode Island Division of Public Utilities and Carriers, (the "Division") Response to the Commission's Briefing Question relating to the Renewable Energy Growth Program for 2019 for filing with the Public Utilities Commission's in the above captioned docket.

I appreciate your anticipated cooperation in this matter.

Very truly yours,

Jon G. Hagopian
Deputy Chief Legal Counsel

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: THE RENEWABLE ENERGY GROWTH (RE GROWTH) PROGRAM FOR YEAR 2019 FILINGS SUBMITTED BY THE RHODE ISLAND DISTRIBUTED GENERATION BOARD'S (DG BOARD) AND THE NARRAGANSETT ELECTRIC CO. D/B/A NATIONAL GRID

Docket No. 4892

THE STATE OF RHODE ISLAND DIVISION OF PUBLIC UTILITIES AND CARRIERS REPLY TO THE PUBLIC UTILITIES COMMISSION'S BRIEFING QUESTION

ISSUE

Now comes the State of Rhode Island Division of Public Utilities and Carriers (the Division), and hereby responds to the briefing question posed by the Public Utilities Commission (the Commission), in the above entitled docket. On January 9, 2019, the Commission referenced a recent open meeting on the subject of carports and how carports are categorized under the 2019 Renewable Energy Growth Program, the discussion centered around the following:

> At its September 6, 2018 Open Meeting, the Commissioners discussed expectations for the filing of carport targets and ceiling prices expected to be included in the filings for the 2019 Renewable Energy Growth Program year. The PUC questioned how carports

> are a different technology under the Renewable Energy Growth Program (R.I. Gen. Laws §§ 39-26.6-1 to 27). One of the specific questions was whether a different type of construction equated to a different technology under the statute.[1]

This discussion resulted in the Commission posing the following briefing question to the parties:

> What is the statutory authority in the Renewable Energy Growth Program, or other authority, to create a separate solar carport category of the same size as another solar category?[2]

The Commission questions the authority for action by the Distributed Generation Board assigning carport solar facilities in separate category, but of the same kW\MW renewable generator size.

APPLICABLE LAW
STATUTORY INTERPRETATION

To analyze this issue properly we must look at the entire chapter, Chapter 26.6 of Title 39 of the Rhode Island General Laws, in order to glean the scope of the authority of the Distributed Generation Board, the Office of Energy Resources, (the OER) and National Grid possess to administer this program.

The Rhode Island Supreme Courts has often held that in "[i]n matters of statutory interpretation our ultimate goal is to give effect to the purpose of the act as intended by the Legislature." *Alessi v. Bowen Court Condominium,* 44 A.3d 736, 740 (R.I.2012) (quoting *Webster v. Perrotta,* 774 A.2d 68, 75 (R.I.2001)). "[W]hen the language of a statute is clear and unambiguous, this Court must interpret the statute literally and must give the words of the

[1] Public Utilities Commission, Notice of Briefing Question, 1/9/19.
[2] *Id.*

statute their plain and ordinary meanings." *Id.* (quoting *Waterman v. Caprio,* 983 A.2d 841, 844 (R.I.2009)). However, the plain meaning approach must not be confused with "myopic literalism"; even when confronted with a clear and unambiguous statutory provision, "it is entirely proper for us to look to ' the sense and meaning fairly deducible from the context.' "In *re Brown,* 903 A.2d 147, 150 (R.I.2006) (quoting *In re Estate of Roche,* 16 N.J. 579, 109 A.2d 655, 659 (1954)); *see also Mendes v. Factor,* 41 A.3d 994, 1002 (R.I.2012)." Therefore, we must ' consider the entire statute as a whole; individual sections must be considered in the context of the entire statutory scheme, not as if each section were independent of all other sections.' "Mendes, 41 A.3d at 1002 (quoting *Generation Realty, LLC v. Catanzaro,* 21 A.3d 253, 259 (R.I.2011)); *see also Alessi,* 44 A.3d at 742; *Jerome v. Probate Court of Barrington,* 922 A.2d 119, 123 (R.I.2007).

Similarly, the Rhode Island Supreme Court in Brennan v. Kirby, 529 A.2d 633 (R.I. 1987) opined that a statute or enactment may not be construed in a way that would attribute to the Legislature an intent that would result in absurdities or would defeat the underlying purpose of the enactment, (*City of Warwick v. Aptt,* 497 A.2d 721, 724 (R.I. 1985)), nor may it be construed, if at all possible, to render sentences, clauses, or words surplusage. (*State v. Gonsalves,* 476 A.2d 108, 110-11 (R.I. 1984)). The Court in Brennan, stated [m]oreover, we have indicated that when apparently inconsistent statutory provisions are questioned, every attempt should be made to construe and apply them so as to avoid the inconsistency and should not be applied literally if to

do so would produce patently absurd or unreasonable results. (State v. Goff, 110 R.I. 202, 205, 291 A.2d 416, 417 (1972)). The same principle should apply where apparent inconsistencies exist within the same statute or enactment.

It is against this legal backdrop that we must view this issue. We now turn to the specific statutory question here. The Commission Memorandum of January 9, 2019, states that:

> The statutory use of "class" and "classification" appears to refer to size. "Technology" appears to refer to the type of renewable energy resource converted to electrical energy (solar, wind, hydro, etc.) as set forth in R.I. Gen. Laws § 39-26-5(a).[3]

First, pursuant R. I. Gen Laws § 39-26.6-1, the purpose of the Renewable Energy Growth statute is:

> to facilitate and promote installation of grid-connected generation of renewable energy; support and encourage development of distributed renewable energy generation systems; reduce environmental impacts; reduce carbon emissions that contribute to climate change by encouraging the siting of renewable energy projects in the load zone of the electric distribution company; diversify the energy generation sources within the load zone of the electric distribution company; stimulate economic development; improve distribution system resilience and reliability within the load zone of the electric distribution company; and reduce distribution system costs.

To this end, the legislature enacted the Renewable Energy Growth Program, which is a feed in tariff to finance renewable energy projects. R.I.

[3] Public Utilities Commission, Notice of Briefing Question, 1/9/19.

Gen. Laws § 39-26.6-2 provides in pertinent part that "[t]he renewable energy growth program shall be implemented by the electric distribution company, and guided by the distributed generation board, in consultation with the office of energy resources, subject to the review and supervision of the commission."

There are certain important definitions that should be mentioned to frame this issue properly. The first is Distributed Generation Project, which is defined as a "distinct installation of a distributed generation facility." Under R.I. Gen. Laws § 39-26.6-3 (4), a Distributed Generation Facility is defined as a "an electrical generation facility located in the electric distribution company's load zone with a nameplate capacity no greater than five megawatts (5 MW), using eligible renewable energy resources as defined by § 39-26-5, including biogas created as a result of anaerobic digestion, but, specifically excluding all other listed eligible biomass fuels, and connected to an electrical power system owned, controlled, or operated by the electric distribution company."

Particularly applicable to the issue here is the definition of "Renewable Energy Classes" which are defined pursuant to R.I. Gen. Laws § 39-26.6-3 (14) as follows:

> "Renewable energy classes" means categories for different renewable-energy technologies using eligible renewable-energy resources as defined by § 39-26-5, including biogas created as a result of anaerobic digestion, but, specifically excluding all other listed eligible biomass fuels specified in § 39-26-2(6). For each program year, in addition to the class of solar distributed-generation specified in § 39-26.6-7, **the board shall determine the renewable-energy**

classes as are reasonably feasible for use in meeting distributed-generation objectives from renewable-energy resources and are consistent with the goal of meeting the annual target for the program year. The board may make recommendations to the commission to add, eliminate, or adjust renewable-energy classes for each program year, provided that the solar classifications set forth in § 39-26.6-7 shall remain in effect for at least the first two (2) program years and no distributed-generation project may exceed five megawatts (5MW) of nameplate capacity. ***Emphasis.***

R.I Gen. Laws § 39-26.6-7 defines generally solar project sizes providing *inter alia:*

> Tariff(s) shall be proposed for each of the following solar distributed generation classes:
>
> (1) Small-scale solar projects;
>
> (2) Medium-scale solar projects;
>
> (3) Commercial-scale solar projects; and
>
> (4) Large-scale solar projects.
>
> (b). Such classes of solar distributed-generation projects shall be established based on nameplate megawatt size as follows:
>
> (1) Large scale: solar projects from one megawatt (1 MW), up to and including, five megawatts (5 MW) nameplate capacity;
>
> (2) Commercial scale: solar projects greater than two hundred fifty kilowatts (250 kW), but less than one megawatt (1 MW) nameplate capacity;
>
> (3) Medium scale: solar projects greater than twenty-five kilowatts (25 kW), up to and including, two hundred fifty kilowatts (250 kW) nameplate capacity;

and

(4) Small scale: solar projects, up to and including, twenty-five kilowatts (25 kW) nameplate capacity.

(c) **Other classifications of solar projects may also be proposed by the board, subject to the approval of the commission**. After the second program year, the board may make recommendations to the commission to adjust the size categories of the solar classes, provided that the medium-scale solar projects may not exceed two hundred fifty kilowatts (250 kW); and/or allocated capacity to community distributed generation facilities, allowing them to compete or enroll under a distinct ceiling price. ***Emphasis.***

DISCUSSION

Applying the statutory authorities cited here to the Commission's briefing question provides sufficient support to deduce that the Renewable Energy Board was within the scope of authority granted to it viz a viz the Renewable Energy Growth statute to form the carport classes. The Renewable Energy Board is not confined to placing technologies in the manner posed in the briefing question. This is clear from a review of the sections of the statute declaring that:

For each program year, in addition to the classes of solar distributed-generation specified in § 39-26.6-7, **the board shall determine the renewable-energy classes as are reasonably feasible for use in meeting distributed-generation objectives from renewable-energy resources and are consistent with the goal of meeting the annual target for the program year. The board may make recommendations to the commission to add, eliminate, or adjust renewable-energy classes for each program year**, ... ***Emphasis.***

This clear unambiguous language vests the Distributed Generation Board and the OER with the authority "to determine the renewable energy classes are reasonably feasible for use in meeting distributed generation objectives from renewable-energy resources and are consistent with the goal of meeting the annual target for the program year." This language in the grant which states "reasonably feasible for use in meeting distributed generation objectives" provides wide scope to deal with all aspects of renewable energy classes. This language provides support for the authority, to create a separate solar carport category of the same size as another solar category.

Similarly, there is additional discretionary statutory language providing that "[t]he board may make recommendations to the commission to add, eliminate, or adjust renewable-energy classes for each program year."[4] Finally, the Renewable Energy Board is vested with authority to make "[o]ther classifications of solar projects ..... proposed by the board, subject to the approval of the commission."[5] Taken together the Renewable Energy Board and the OER do not appear to be acting contrary to the statute.

[4] R.I. Gen. Laws § 39-26.6-3 (14)
[5] R.I Gen. Laws § 39-26.6-7 (c).

CONCLUSION

For the foregoing reasons, the Division asserts that there is ample statutory support for the creation of new renewable energy classes within the RE Growth Program for solar carports.

Division of Public Utilities and
Carriers
By its attorney,

Jon G. Hagopian, Esq. (#4123)
Deputy Chief Legal Counsel
State of Rhode Island
Division of Public Utilities and Carriers
89 Jefferson Blvd.
Warwick, R.I. 02888
Tel.: 401-941-4500

Dated: January 23, 2019

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of January 2019, that I transmitted an electronic copy of the within Reply Memorandum to the attached service list and to Luly Massaro, Division Clerk via electronic mail.

Docket No. 4892 – Renewable Energy Growth Program for Year 2019
RI Distributed Generation Board and National Grid

Service List updated 10/31/2018

Parties' Name/Address	E-mail	Phone
Raquel Webster, Esq.	Raquel.webster@nationalgrid.com;	

Celia O'Brien, Esq. **National Grid** 280 Melrose Street Providence, RI 02907	Brooke.skulley@nationalgrid.com; Joanne.scanlon@nationalgrid.com; Ian.springsteel@nationalgrid.com; Omar.Muneeruddin2@nationalgrid.com; Robin.pieri@nationalgrid.com; Adam.crary@nationalgrid.com; Jorge.sousa@nationalgrid.com;	781-907-2121
Andrew Marcaccio, Esq. **Dept. of Administration** Division of Legal Services One Capitol Hill, 4th Floor Providence, RI 02908	Andrew.Marcaccio@doa.ri.gov; Carol.Grant@energy.ri.gov; Christopher.Kearns@energy.ri.gov; Nicholas.ucci@energy.ri.gov;	401-222-8880
Jim Kennerly	jkennerly@seadvantage.com;	
Jon Hagopian, Esq. Deputy Chief Legal Counsel **Division of Public Utilities and Carriers**	Jon.hagopian@dpuc.ri.gov; John.bell@dpuc.ri.gov; Macky.McCleary@dpuc.ri.gov; Jonathan.Schrag@dpuc.ri.gov; Al.mancini@dpuc.ri.gov; Jmunoz@riag.ri.gov; Dmacrae@riag.ri.gov;	401-784-4775
File an original & 9 copies w/: Luly E. Massaro, Commission Clerk Cynthia Wilson-Frias, Commission Counsel **Public Utilities Commission** 89 Jefferson Blvd. Warwick, RI 02888	Luly.massaro@puc.ri.gov; Alan.nault@puc.ri.gov; Todd.bianco@puc.ri.gov; Cynthia.WilsonFrias@puc.ri.gov; John.harrington@puc.ri.gov;	401-780-2107
Doug Sabetti	doug@newportsolarri.com;	
Michelle Carpenter	mc@green-ri.com;	
Fred Unger	unger@hrtwd.com;	
Paul Raducha	paul@pvdenergy.com;	
Mark Depasquale, Wind Energy Development	md@wedenergy.com;	
Jerry Elmer, Esq., CLF	jelmer@clf.org;	401-351-1102
Charlie Grant, Essex Capital Partners	cgrant@essexcapitalpartners.com;	
Danny Musher	dmusher@eastlightpartners.com;	240-888-7567
Seth Handy, Esq.	seth@handylawllc.com;	
Stephen Lassiter of Sunrun	stephen.lassiter@sunrun.com;	

Beren Argetsinger, Keyes & Fox LLP	bargetsinger@kfwlaw.com;	