



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

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

February 8, 2019

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

In Re: Docket 4917 – Energy Development Partners, LLC – Petition for Declaratory Judgment

Dear Luly,

Please find the State of Rhode Island Division of Public Utilities and Carriers, (the “Division”) Memorandum relating to Energy Development Partners, LLC’s Petition for Declaratory Judgment for filing with the Public Utilities Commission’s in the above captioned docket.

I appreciate your anticipated cooperation in this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jon G. Hagopian".

Jon G. Hagopian
Deputy Chief Legal Counsel

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

**IN RE: PETITION OF ENERGY DEVELOPMENT
PARTNERS, LLC FOR DECLARATORY
JUDGMENT ON R.I. GEN. LAWS §39-26.4
THE NET METERING ACT**

Docket No. 4917

**THE STATE OF RHODE ISLAND DIVISION OF PUBLIC UTILITIES AND
CARRIERS COMMENTS RELATING TO THE SITE CONTROL REQUIREMENT
PURSUANT TO THE NET METERING ACT**

INTRODUCTION

Now comes the State of Rhode Island Division of Public Utilities and Carriers (the Division), and hereby submits the following comments to the Public Utilities Commission (the Commission), in the above entitled docket relating to the so-called “site control” requirements of the Net Metering Act (the Act), set-forth in R.I. Gen. Laws 39-26.4.

On December 21, 2018, Energy Development Partners, LLC, (EDP), filed this Declaratory Judgment action with the Commission seeking a ruling relating to an issue of interpretation of the Net Metering Statute. EDP is a Rhode Island professional renewable energy project development company. EDP is seeking the determination from the Commission for purposes of entering a third-party financing arrangement as defined by R.I. Gen. Laws § 39-26.4-2 (14)(i), with a public entity, educational institution, hospital, non-profit, or multi-municipal collaborative.

To complete this transaction, site control by the public entity must be demonstrated for purposes of the Net Metering Act. EDP is proposing to proceed with development of the project and will grant an irrevocable license to the public entity, which will grant it control of the property, thereby satisfying the Act.

ISSUE

The issue is whether an “eligible net-metering resource [that] is located on property owned or controlled by a public entity” (the Site Control Requirement) is satisfied by the granting of an irrevocable license over the property.

DISCUSSION

Pursuant to R.I. Gen. Laws §39-26.4-3 (5), it is provided among other things that an eligible net metering system

“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: **(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.

The issue of site control here will be addressed in the context a third-party financing arrangement. Pursuant to R.I. Gen. Laws § 39-26.4-2 (14)(i) a third-party financing arrangement under the Net Metering Act means an arrangement undertaken by a public entity and a private entity, the latter responsible for the financing and operation of the eligible net metering resource, and who owns and operates the eligible net metering resource on behalf of a public entity. To be eligible to net meter, the Net Metering Act requires that the property that the eligible net metering resource is located on be “**owned or controlled** by the public entity”.¹

The location here of the eligible net metering resource is owned by EDP or a third party landowner, a private entity, therefore the third-party financing arrangement can only qualify under the Net Metering Act, if the location of the eligible net metering resource is controlled by the public entity. To accomplish this EDP proposes to grant an irrevocable license to the public entity in order to provide it with the requisite control over the locus of the eligible net metering resource, in order to satisfy the Net Metering Act.

EDP in support of its petition, notes that the Commission has recognized something less than a fee simple absolute ownership of a net metering resource location as satisfying the requisite control over the location of an eligible net metering resource to satisfy the Net Metering Act. The petition here is a case of first impression. In *In re: Petition of Southern Sky Renewable Energy Rhode*

¹ R.I. Gen. Laws § 39-26.4-2 (14)(i).

Island, LLC, for Declaratory Judgment on R.I. Gen. Laws §39-26.4, The Net Metering Act, PUC Docket No. 4694 (May 2017), Order No. 22789, the Commission held that a “ground lease” or an “easement agreement” provided the requisite control to a “public entity to exercise the necessary control anticipated by the Net Metering Act”. EDP is seeking the Commission to declare that an irrevocable license be included in the types of acceptable site control interests under the Net Metering Act.

The common law of licenses and easements in Rhode Island is steeped in antiquity. The Rhode Island Supreme Court has recognized the existence of irrevocable licenses at common law since as early as 1856. The Rhode Island Supreme Court in *Foster v. Browning*, 4 R.I. 47 (R.I. 1856), declared that the “revocability of a mere license to enter upon the lands of licensor, whether the license be by deed or by parol, is an ancient well settled doctrine at common law.” The issue in the *Foster* case, was whether the license was revocable or irrevocable. The *Foster*, case, *supra*, clearly demonstrates that Rhode Island jurisprudence recognizes the enforceability of an irrevocable license.²

The Net Metering Act in R.I. Gen. Laws § 39.26.4-4 expressly provides that “[t]his chapter shall be construed liberally in aid of its declared purposes.” Similarly, R.I. Gen. Laws § 39-26.4-1 states that “[t]he purpose of this chapter is to facilitate and promote installation of customer-sited, grid-connected generation of renewable energy; to support and encourage customer

² See also, Rocco v. Pagnano, C.A. No. 90-7506, 1995 R.I. Super. LEXIS 105 (R.I. Super CT. Jan. 19, 1995).

development of renewable generation systems; to reduce environmental impacts; to reduce carbon emissions that contribute to climate change by encouraging the local siting of renewable energy projects; to diversify the state's energy generation sources; to stimulate economic development; to improve distribution system resilience and reliability; and to reduce distribution system costs.”

For the foregoing reasons, the Division supports granting EDP’s petition by the Commission declaring that the granting of an irrevocable license by EDP to the public entity is sufficient means for satisfying the site control requirements of the Net Metering Act, if granted under certain conditions including, as follows:

- That license instrument be expressly irrevocable by its terms;
- That it be granted to a public entity, educational institution, hospital or one of the municipalities, as applicable; grant to the public entity, educational institution, hospital or one of the municipalities, the right to exercise control over the property in in question;
- That license instrument expressly state that the irrevocable license runs with the land;
- That the license instrument is be recorded in the land evidence records of the city or town where the subject property is located, together with a recitation of the relevant plat and lot number of the subject property set-forth therein.

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: February 8, 2019

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of February 2019 that I transmitted an electronic copy of the within Memorandum to the attached service list and to Luly Massaro, Division Clerk via electronic mail.



**Energy Development Partners, LLC – Petition for Declaratory Judgment –
Docket No. 4917**

List updated 1/7/2019

Name/Address	E-mail	Phone
Rickie M. Sonpal, Esq. William M. Daley, Esq.	Rsonpal@rc.com;	401-709-3300

Robinson & Cole LLP One Financial Plaza, Suite 1430 Providence, RI 02903-2485	Wdaley@rc.com ;	
Jon Hagopian, Esq. Division of Public Utilities & Carriers	Jon.hagopian@dpuc.ri.gov ;	401-784-4775
	John.bell@dpuc.ri.gov ;	
	Al.mancini@dpuc.ri.gov ;	
	Jonathan.Schrag@dpuc.ri.gov ;	
Original & 9 copies file w/: Luly E. Massaro, Commission Clerk Public Utilities Commission 89 Jefferson Blvd. Warwick, RI 02888	Luly.massaro@puc.ri.gov ;	401-780-2107
	Cynthia.WilsonFrias@puc.ri.gov ;	
	Todd.bianco@puc.ri.gov ;	
	Alan.nault@puc.ri.gov ;	
Raquel Webster, Esq. National Grid	Raquel.webster@nationalgrid.com ;	781-907-2121
	Joanne.scanlon@nationalgrid.com ;	
	Brooke.Skulley@nationalgrid.com ;	
Christopher Kearns Andrew Marcaccio, Esq. Office of Energy Resources	Christopher.Kearns@energy.ri.gov ;	
	Andrew.Marcaccio@doa.ri.gov ;	
	Nicholas.ucci@energy.ri.gov ;	