



STATE OF RHODE ISLAND

DIVISION OF PUBLIC UTILITIES & CARRIERS

89 Jefferson Boulevard
Warwick, Rhode Island 02888
(401) 941-4500
(401) 941-9248 - Fax

March 22, 2021

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

IN RE: Docket No. 5122 – Nautilus Energy LLC’s Petition for Declaratory Judgement

Dear Luly,

Attached please find for filing with the Public Utilities Commission the Reply of the Division of Public Utilities and Carriers to the Petition of Nautilus Energy, LLC for Declaratory Judgement in the above entitled matter.

I appreciate your anticipated cooperation in this matter.

Very truly yours,


Jon G. Hagopian
Deputy Chief Legal Counsel

**STATE OF RHODE ISLAND
PUBLIC UTILITIES COMMISSION**

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

Docket No. 5122

**THE DIVISION OF PUBLIC UTILITIES AND CARRIERS REPLY TO
PETITION OF NAUTILUS ENERGY, LLC'S PETITION FOR DECLARATORY
JUDGMENT**

The Rhode Island Division of Public Utilities and Carriers (Division) hereby submits the within memorandum to the Rhode Island Public Utilities Commission (Commission) in response to Nautilus Energy, LLC's (Nautilus) Petition for Declaratory Judgment pursuant to Commission Rule of Practice 810 RICR 1.11(C)a and R.I. Gen. Laws § 42-35-8.¹

ISSUE

Whether a single eligible net metering system may be owned and operated by renewable-generation developer on behalf of educational institution, hospital, non-profit or multi-municipal collaborative, and that a

¹ At the outset there is a question as to whether the questions posed here should have been brought by the housing authorities rather than by the Petitioner however in the interests of administrative efficiency the Division shall defer to the Commission on whether they wish to move forward with this docket.

group of public housing authorities are eligible to enter into a net-metering financing arrangement.²

APPLICABLE LAW

The core question here is whether the housing authorities can successfully form a multi-municipal collaborative and then whether they can enter a “public entity net-metering financing arrangement” within the meaning of the net-metering statute. To answer these questions, we must turn to the net metering statute and prior precedent of the Commission.

First, in the case of In re: Clean Economy Development, LLC Docket 4670, the Commission had occasion to pass on the question of whether city and town housing authorities are public entities within the meaning of Rhode Island’s Net-Metering Act. The Commission ruled that the public housing authorities were in fact “public entities”. The Commission first, decided the question of whether state statute recognized a public housing authority as a State public body. The next issue was whether the state’s Net Metering law recognizes a public housing authority as a “public entity” and the attendant legal permutations of this designation in relation to the Net Metering Act. The Division analyzed the statutes in the following way. Title 45 Chapter 25 entitled City Housing Authorities is the enabling act providing authority for the

² The terms used here are deemed to those used and defined within meaning of R.I. Gen. Laws §39-26.4-2 (15) of the of the State of Rhode Island Net Metering statute.

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.

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”.

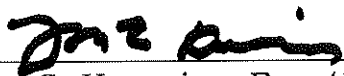
Ultimately, in the Clean Economy, matter [t]he PUC agree[d] with the analysis of the Division and declared the housing authorities there to be public entities within the meaning of the Net Metering Act.³ Similarly, it is clear that the Commission recognized that the housing authorities were not only public entities but were municipal agencies. Finally, a multi-municipal collaborative is

³ In re: Clean Economy Development, LLC Docket 4670, Order 22641 p.2.

a group of towns and/or cities that enter into an agreement for purposes of co-owning a renewable generation facility or a entering a third-party financing arrangement.⁴ Therefore, if a housing authority is a municipal agency, then one can logically interpret the reference to “a group of towns or cities to also mean agencies and instrumentalities of those towns and cities.

For the foregoing reasons, the Division concludes that the municipal housing authorities described in data responses addressed to Nautilus by the Division appear to meet the requirements set-forth here and therefore the housing authorities should be eligible to enter into a multi-municipal collaborative and participate in a “net-metering financing arrangement” relating to an “eligible net metering system” with Nautilus.⁵

Division of Public Utilities and
Carriers
By its attorney,



Jon G. Hagopian, Esq. (#4123)
89 Jefferson Blvd.
Warwick, R.I. 02888
Tel.: 401-941-4500

Dated: March 22, 2021

⁴ See, R.I. Gen. Laws §39-26.4-2 (10).

⁵ See the Data Responses of Nautilus to Division First Set of Data Requests 1-1;1-2 & 1-5.

CERTIFICATE OF SERVICE

I hereby certify that on the 22 nd day of March 2021 that I transmitted an electronic copy of the within Reply to the attached service list and to Luly Massaro, Division Clerk via electronic mail.



Docket No. 5122 – Nautilus Solar Energy, LLC
Service List Updated 2/4/2021

Name/Address	E-mail	
Nautilus Solar Energy LLC Thomas E. Carlotto, Esq. Darrow Everett LLC One Turks Head Place, 12 th Floor Providence RI 02903	tcarlocto@darroweverett.com ;	401-453-1200
	JRestivo@darroweverett.com ;	
National Grid Laura Bickel, Esq. National Grid 40 Sylvan Road Waltham, MA 02451-1600	Laura.Bickel@nationalgrid.com ;	781-907-2126
	Laurie.Riley@nationalgrid.com ;	
	Brooke.Skulley@nationalgrid.com ;	
	Timothy.Roughan@nationalgrid.com ;	
	John.Kennedy@nationalgrid.com ;	
	Vishal.Ahirrao@nationalgrid.com ;	
	Ariel.Maiorano@nationalgrid.com ;	
	Jennifer.hutchinson@nationalgrid.com ;	
Division of Public Utilities Leo Wold, Esq.	Leo.wold@dpuc.ri.gov ;	
	Margaret.L.Hogan@dpuc.ri.gov ;	
	John.bell@dpuc.ri.gov ;	
	Al.Contente@dpuc.ri.gov ;	
	Joel.munoz@dpuc.ri.gov ;	
Public Utilities Commission Luly E. Massaro, Commission Clerk Public Utilities Commission 89 Jefferson Blvd. Warwick, RI 02888	Luly.massaro@puc.ri.gov ;	401-780-2017
	Patricia.lucarelli@puc.ri.gov ;	
	Cynthia.WilsonFrias@puc.ri.gov ;	
	Todd.bianco@puc.ri.gov ;	
	Alan.nault@puc.ri.gov ;	
Office of Energy Resources Albert Vitalli, Esq. Nick Ucci Chris Kearns Shauna Beland Carrie Gill	Albert.Vitali@doa.ri.gov ;	401-222-8880
	nancy.russolino@doa.ri.gov ;	
	Christopher.Kearns@energy.ri.gov ;	
	Shauna.Beland@energy.ri.gov ;	
	Nicholas.ucci@energy.ri.gov ;	
	Becca.Trietch@energy.ri.gov ;	
	Carrie.Gill@energy.ri.gov ;	