

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
PUBLIC UTILITIES COMMISSION

IN RE: PETITION OF  
NAUTILUS SOLAR ENERGY, LLC  
FOR DECLARATORY JUDGEMENT  
ON RHODE ISLAND GENERAL LAWS  
§39-26.4, THE NET METERING ACT

Docket No.

**PETITION FOR DECLARATORY JUDGMENT**

Nautilus Solar Energy, LLC, a Delaware limited liability company (“Nautilus”) files this Petition for Declaratory Judgement seeking a determination from the Rhode Island Public Utilities Commission (“PUC”) that (a) a single eligible net-metering system, as defined in R.I. Gen. Laws §39-26.4-2(5) of Chapter 26.4 of Title 39 (inclusive of relevant regulations, the “Act”), may be owned and operated by a renewable-generation developer on behalf of more than one public entity, educational institution, hospital, nonprofit or multi-municipal collaborative,<sup>1</sup> and, that (b) a group of public housing authorities are eligible to enter into a multi-municipal collaborative for the purposes of entering into a net-metering financing arrangement.

Nautilus brings this petition pursuant to 815-RICR-00-00-1.11(c) and R.I. Gen. Laws §42-35-8. The requested declaratory judgment is warranted as it will serve to advance the stated purpose of the Act by allowing Nautilus, and other renewable-generation developers, to enter into net-metering financing arrangements with multiple eligible entities to own and operate eligible net-metering resources on behalf of those entities, and thereby facilitate the diversification of the state’s energy generation sources, stimulate economic development and reduce distribution system costs.

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<sup>1</sup> Terms used herein that are defined in the Act are intended to have the definition as set forth in the Act.

## **FACTS**

Nautilus, through affiliates and subsidiary entities, is a professional renewable energy developer with solar projects throughout the United States and Canada, including projects developed and under development in Rhode Island. In March, 2020, Nautilus responded to a Request for Proposal from Public Housing Association of Rhode Island (PHARI) (“PHARI”) to enter into one or more net-metering financing arrangements with City and Town Housing Authorities (as defined in R.I. Gen. Laws §§ 45-25-1 to 35.1 and R.I. Gen. Laws §§ 45-26-1 to 13, respectively) (each individually a “Housing Authority” and collectively, the “Housing Authorities”) whereby Nautilus, through three of its affiliates (Renew Solar RI Exeter Mail, LLC, Renew Solar RI Exeter Ten, LLC, and Islander Solar, LLC, collectively, the “Affiliates”) would own and operate an eligible net-metering resource on behalf of the Housing Authorities.

Nautilus, through its Affiliates, is currently in the process of developing three such facilities. PHARI has identified eleven (11) Housing Authorities that intend to enter into net-metering financing arrangements with the Affiliates. As presently configured, Nautilus anticipates that two of the facilities under development will be sized to produce electricity in an amount that is equal to, or less than, the three-year (3) average annual consumption of four (4) specific Housing Authorities, and the third facility under development will be sized to produce electricity in an amount that is equal to, or less than, the three-year (3) average annual consumption of three (3) specific Housing Authorities.

If an eligible net-metering system is only permitted to have a single Housing Authority that can designate accounts as eligible for net metering, then eleven (11) separate eligible net-metering systems would have to be developed in order for all eleven Housing Authorities to be able to participate in net metering at these sites. Such a requirement would significantly increase the cost

and challenge the feasibility of developing and administering these facilities. Previous decisions by the PUC have indicated that, among other attributes, an eligible net-metering system should have a unique point of common coupling with the distribution system. Requiring eleven such points of common coupling here, instead of the three that are currently under development, would require additional expenses and infrastructure that would discourage development of these facilities, undermining the stated purpose of the Act. See, e.g. PUC Order No. 23417, Dkt. No. 4908, as well as the related Dry Bridge Solar Orders (since an “eligible net-metering resource” is defined in the Act as an eligible renewable-energy resource, as defined in R.I. Gen. Laws § 39-26-5 [which was also the statute being interpreted in the Dry Bridge Solar order referenced above] we find this Order to be instructive).

The Act is ambiguous with respect to whether a single eligible net-metering system can be owned and operated on behalf of multiple Housing Authorities. Nautilus has consulted with the PUC’s attorney on the matter, who has indicated that any ambiguity would need to be resolved by the PUC, which has the discretion to interpret the tariff and Act. Prior to entering into net-metering financing arrangements, the Housing Authorities, Nautilus, the Affiliates and PHARI have an interest in ensuring that the eligible net-metering system and net-metering financing arrangements being proposed here will be in full compliance with state rules and regulations, including, without limitation, the Act. Accordingly, Nautilus has submitted this request to the PUC for a declaratory judgment on behalf of the Affiliates.

### **LEGAL ANALYSIS**

Rhode Island law allows net metering of electricity from an “eligible net-metering system,” as defined in the Act. Under Rhode Island law, any eligible net-metering resource “[o]wned and operated by a renewable-generation developer on behalf of a public entity, educational institution,

hospital, nonprofit, or multi-municipal collaborative through net-metering financing arrangement shall be treated as an eligible net-metering system and all accounts designated by the public entity, educational institution, hospital, nonprofit, or multi-municipal collaborative for net metering shall be treated as accounts eligible for net metering within an eligible net-metering-system site.” R.I. Gen. Laws § 39-26.4-2(5)(ii) (*emphasis added*).

The use of the indefinite article “a” in the definition of eligible net-metering system (as well as elsewhere in the Act, such as in the definition of eligible net-metering system site) could be interpreted to mean either “one or more” or “one”. If the article is interpreted to mean “one or more” then, for instance, a single eligible net-metering system could be owned and operated on behalf of both a public entity and an educational institution. In the instant case, a single eligible net-metering system could be owned and operated on behalf of multiple Housing Authorities. If the article is interpreted to mean “one” then the only permissible way that an eligible net-metering system could be owned and operated on behalf of multiple entities, is if those entities were eligible to participate in (and did in fact enter into) a multi-municipal collaborative.

The law favors that the indefinite article “a” set forth in the definition of eligible net-metering system should be interpreted to mean “one or more” in light of the requirement set forth in R.I. Gen. Laws § 39-26.4-4, which requires the Act to be construed liberally in aid of its declared purpose.

Additionally, Housing Authorities should be eligible to enter into a multi-municipal collaborative, in light of the PUC’s position in Order No. 22641, Dkt. No. 4670, Page 3 (December 20, 2016) (the “Clean Economy Order”), which found that public housing authorities are public entities under the Act.

1. *An eligible net-metering system can be owned and operated on behalf of more than one eligible entity.*

As a general framework for statutory construction the article “a” is not meant to be read in the singular sense unless such an interpretation is **clearly** conveyed by the language and structure of the statute. See *Cook v. Carmen S. Pariso, Inc.*, 734 N.Y.S.2d 753, 757-758, 287 A.D.2d 208, 213 (2001); *Matter of Hotel St. George Corp.*, 207 N.Y.S.2d 529, 531, (1960); citing *Lindley v. Murphy*, 387 Ill. 506, 517, 56 N.E.2d 832, 837–838 (1944); *Chavira v. State*, 167 Tex.Cr.R. 197, 319 S.W.2d 115 (1958); *State v. Martin*, 60 Ark. 343, 349–351, 30 S.W. 421, 422–423 (1895); cf., *Lewis v. Spies*, 43 A.D.2d 714, 715–716, 350 N.Y.S.2d 14 (1973). As set forth in *Cook v. Carmen S. Pariso*:

Although “a” may mean “one” where the overall tenor of the statute connotes such meaning, that is neither the usual meaning of the word generally, nor the most reasonable meaning of the word given the particular circumstances and statutory language at issue here. Recognizing that a contrary interpretation of the article “a”, if adopted generally, would lead to no end of absurd statutory constructions, those courts that have considered the issue have held that the usual and ordinary meaning of “a” is not “one and only one”, but rather “any number of” or “at least one”—not “one and no more”, but rather “one or more”. *Id.* at 213.

In the context of the definition of “eligible net-metering system,” the Act does not evince a **clear** intention that an eligible net-metering resource be operated on behalf of one and only one public entity, educational institution, hospital, nonprofit, or multi-municipal collaborative.

To the contrary, the purpose of the Act, as set forth in R.I. Gen. Laws § 39-26.4-1 is to:

facilitate and promote installation of customer-sited, grid-connected generation of renewable energy; to support and encourage customer 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.

A requirement that one and only one public entity, educational institution, hospital, nonprofit, or multi-municipal collaborative be able to designate accounts for net metering on each eligible net-metering system would run counter to the purposes of the Act by increasing the cost of developing renewable energy resources through requiring a proliferation of discrete eligible net-metering systems (and, thereby, points of interconnection with the electric-distribution company, infrastructure costs and administrative costs), which in turn would discouraging the local siting of renewable energy projects, discourage economic development and increase distribution system costs.

Further, R.I. Gen. Laws § 39-26.4-4 requires that the Act be construed liberally in aid of its declared purpose. Here, to the extent any uncertainty exists over whether the article “a” is intended to mean “one and only one” or “one or more”, the depressing effect that the former interpretation would have on the growth of renewable energy projects, economic development and the accompanying increased distribution system costs requires that the PUC interpret the article “a” to mean “one or more” to meet the obligation of liberal construction in aid of the declared purpose of the Act.

*2. A municipal housing authority is eligible to enter into a multi-municipal collaborative*

In addition to the foregoing, the Housing Authorities should be permitted under the Act to enter into a multi-municipal collaborative.

The PUC clearly and specifically analyzed whether a public housing authority qualifies as a “public entity” and thus is eligible to participate in “public entity net metering” when it issued the Clean Economy Order. In the Clean Economy Order, the PUC determined that public housing authorities are “public entities under the Net Metering Act”. *Id.* at 3.

In connection with the petition discussed in the Clean Economy Order, several interested parties submitted memoranda in support of the position ultimately adopted by the PUC. Among the entities that submitted memoranda were the Division of Public Utilities and Carriers (the “Division”) and National Grid. Both the Division and National Grid took the position that a public housing authority fell within the definition of a “municipality” as defined in the Act.<sup>2</sup>

Under the Act, a municipality is defined as: “any Rhode Island town or city, *including* any agency or instrumentality thereof, with the powers set forth in Title 45 of Rhode Island General Laws” (emphasis added). A public housing authority organized under R.I. Gen. Laws § 45-25 (with respect to city housing authorities), or R.I. Gen. Laws § 45-26 (with respect to town housing authorities) would appear to fall squarely within the definition of a “municipality” that includes an “agency” of a city or town.

The Clean Economy Order does not expressly state that a public housing authority is a “municipality”, though the order does state that “[t]he [PUC] agrees with the analysis of... National Grid, and the Division...” in declaring public housing authorities to be public entities. *Id.* at 2. The term “public entity” is defined in the Act to mean “the federal government, the state of Rhode

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<sup>2</sup> See National Grid’s Comments, dated December 7, 2016, and The Division of Public Utilities and Carriers’ Memorandum of Law, both available here: <http://www.ripuc.ri.gov/eventsactions/docket/4670page.html>

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.” R.I. Gen. Laws § 39-26.4-2(18). As the definition does not include a term, other than “municipalities”, under which a public housing authority it is apparent that the PUC has adopted the position that a public housing authority is a municipality..

The definition of a “multi-municipal collaborative” set forth in the Act is “a group of towns and/or cities that enter into an agreement for the purpose of co-owning a renewable generation facility or entering into a [net-metering financing arrangement].” Given the determination in the Clean Economy Order that a public housing authority is a “municipality” by virtue of being an agency of a city or town, , then the reference to “a group of towns and/or cities” under the definition of multi-municipal collaborative should also be understood to mean the agencies and instrumentalities of those cities and towns.

Accordingly, multiple Housing Authorities, by virtue of being agencies of cities and towns, should be eligible to enter into a multi-municipal collaborative. Once such a multi-municipal collaborative has been formed, Nautilus will be permitted to own and operate an eligible net-metering system on behalf of such collaborative.

### **REQUESTED RELIEF**

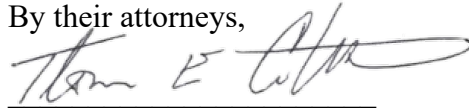
For these reasons, Nautilus respectfully request that the PUC grant this Petition and enter an Order and Judgment, (a) declaring that a single eligible net-metering system may be owned and operated by a renewable-generation developer on behalf of more than one public entity, educational institution, hospital, nonprofit or multi-municipal collaborative; (b) declaring that a group of public housing authorities are eligible to enter into a multi-municipal collaborative for



the purposes of entering into a net-metering financing arrangement; and (c) for such other relief as the PUC deems appropriate.

**NAUTILUS SOLAR ENERGY, LLC**

By their attorneys,

A handwritten signature in dark ink, appearing to read "Jon M. Restivo", is written over a horizontal line.

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