HANDY LAW LLC

Memorandum

From: Seth Handy & Justin Somelofske for Green Development, LLC
To: Rhode Island Public Utilities Commission
Date: May 6, 2021
RE: Docket No. 5145 – Reconsideration of Interpretation of R.I. Gen. Laws § 39-26.4-2(5)(ii)

Green Development, LLC appreciates the opportunity to provide public comment in this docket requesting the Public Utilities Commission ("PUC" or the "Commission") reconsider its interpretation of R.I. Gen. Laws § 39-26.4-2(5)(ii).

1. Procedural History

On January 25, 2021, Nautilus Solar Energy, LLC ("Petitioner") filed a Petition for Declaratory Judgment, which was assigned Docket No. 5122. Nautilus requested the Commission to determine:

> (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 the relevant regulations, the "Act") may be owned and operated by a renewable-generation developer on behalf of more than one public entity, 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.

The Commission's determination related to Petitioner's first request is the only determination relevant to this proceeding.

On March 3, 2021, Green Development, LLC, WED GW Solar, LLC, WED Portsmouth One, LLC, GD Hopkinton Main I, LLC, WED Shun I, LLC, WED Green Hill, LCC (collectively "Green") timely moved to intervene in Docket No. 5122 in accordance to Rule 1.14 of the Rhode Island Public Utilities Commission Rules of Practice and Procedure ("Rules"), 810-RICR-00-00-1. Green argued it was necessary and appropriate to intervene in Docket 5122 as Green had an interest not adequately represented by Petitioner. Specifically, Green argued that it "owns and operates many eligible net metering systems that have entered net metering financing arrangements with

more than one eligible net metering customer . . . ."[1] Green's intervention was necessary as Petitioner did not have any projects interconnected to the distribution system and generating power that would be affected by a negative determination of the first request and, therefore, could not adequately communicate the broader impacts a negative determination would have on Rhode Island's net metering program. Green was prepared to advocate different legal positions and provide valuable information for the Commission to consider.[2]

Pursuant to Rule 1.14(E), no party objected to Green's motion to intervene within the allowed time and the Commission subsequently granted Green's motion at its March 29 Open Meeting. Despite successfully intervening, Green never received an opportunity to be heard and the Commission never considered Green's arguments. Instead, the Commission summarily dismissed Green's intervention as making "the same two arguments as Nautilus in support of Nautilus' position."[3] As a result, the Commission rejected the interpretation that § 39-26.4-2(5)(ii) allows an eligible net-metering system to be owned and operated on behalf of more than one public entity, educational institution, hospital, nonprofit, or multi-municipal collaborative despite National Grid allowing this practice.[4] On April 13, 2021, Green appealed the Commission's order to the Rhode Island Supreme Court, Case No. SU-2021-0084-MP.

On April 22, 2021, the Commission opened this docket to solicit comments to reconsider its interpretation of § 39-26.4-2(5)(ii). Green takes this opportunity, to reiterate its legal arguments made in Docket 5122 and discuss the broader policy and practical implications necessitating the Commission's reconsidering its interpretation.

2. Legal Arguments

The Net Metering Act's (the "Act") purpose, in part, is to "facilitate and promote installation of customer-sited, grid-connected generation of renewable energy [and] to support and encourage customer development of renewable energy generation systems . . . ." R.I. Gen. Laws § 39-26.4-1. Further, the Act is to be construed liberally to achieve this declared purpose. R.I. Gen. Laws § 39-26.4-4. The Act also allows exceptions to net metering eligibility to certain covered entities that provide essential public services. When reading the Act in its entirety, particularly the statutory definitions of "Eligible Net Metering System" and "Eligible Net

[1] Docket No. 5122, Motion to Intervene by Green Development, LLC, WED GW Solar, LLC, WED Portsmouth One, LLC, GD Hopkinton Main I, LLC, WED Shun I, LLC, WED Green Hill, LCC, ¶ 5 (Mar. 3, 2021), http://www.ripuc.ri.gov/eventsactions/docket/5122-WED-Intervene3-3-21.pdf.

[2] Id., ¶¶ 6–7.

[3] Docket No. 5122, Order 24023, at 4 (Apr. 6, 2021), http://www.ripuc.ri.gov/eventsactions/docket/5122-NautilusSolar-Ord24023%20(4-5-21).pdf.

[4] Id., ¶¶ 4–5.

Metering System Site," it is clear that more than one public entity may enter a net metering finance arrangement with an eligible net metering system.

The "Eligible Net Metering System" definition states "any Eligible Net Metering Resource . . . owned and operated by a renewable generation developer on behalf of a Public Entity, Educational Institution, Hospital, Nonprofit, or Multi-Municipal Collaborative through a Net Metering Financing Arrangement . . . shall be treated as an Eligible Net Metering System, and ***all delivery service accounts designated*** by the Public Entity, Educational Institution, Hospital, Nonprofit, Multi-Municipal Collaborative . . . 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). However, the clear language of the Act does not limit the amount of net metering finance arrangements associated with a single eligible net metering system. The act merely requires *a* covered entity to have *a* net metering financing arrangement with the renewable generation developer in order to designate its accounts eligible for net metering. Liberal construction of the Act allows for the interpretation that multiple net metering financing arrangements may be associated with a single eligible net metering system.

The definition for "Eligible Net Metering System Site" further clarifies "Eligible Net Metering System" through two exceptions for systems owned and operated by a developer on behalf of eligible net metering customers. First, "***Except for*** an Eligible Net Metering System owned by or operated on behalf of a Public Entity, Educational Institution, Hospital, Nonprofit, or Multi-Municipal Collaborative through a Net Metering Financing Arrangement . . . the purpose of this definition is to reasonably assure that energy generated by the Eligible Net Metering System is consumed by net metered electric delivery service account(s) that are actually located in the same geographical location as the Eligible Net Metering System." *Id.*, § 39-26.4-2(6). Second, "***Except for*** an Eligible Net Metering System owned by or operated on behalf of a Public Entity, Educational Institution, Hospital, Nonprofit, or Multi-Municipal Collaborative through a Net Metering Financing Arrangement . . . all of the Net Metered Accounts at the Eligible Net Metering System Site must be the accounts of the same customer of record." Additionally, "[a]s long as the Net Metered Accounts meet the requirements set forth in this definition, there is no limit on the number of delivery service accounts that may be net metered within the Eligible Net Metering System Site." *Id.*

Under the plain language of these definitions, more than one Public Entity, Educational Institution, Hospital, Nonprofit, or Multi-Municipal Collaborative may enter net metering finance arrangements with one Eligible Net Metering System. The statute and tariff do authorize multiple Net Metering Finance Arrangements for one Eligible Net Metering System and do not require that the eligible off-taker meters must be accounts of the same customer of record. Nor is there any limit on the number of delivery service accounts that can be net metered from an Eligible Net Metering System site. The two "except" terms found in the "Eligible Net Metering System Site" definition give broad latitude in completing a Schedule B designating eligible net metering customer accounts, with no requirement that the accounts belong to the same customer of record and no limit to the number of accounts that can be designated. The Petitioner did not

make reference to the two critically important exceptions in the definition of Eligible Net Metering System Site in Docket No. 5122, which resolves any ambiguity with regard to the question addressed to the Commission.

Further, in accordance with National Grid's Responses to Commission's First Set of Data Requests, issued on April 19, 2021, "[w]hen a renewable-generation developer applies for net metering on behalf of a public entity, educational institution, hospital, nonprofit or multi-municipal collaborative, ***the renewable-generation developer becomes the single customer of record for the net metering***." The second exception in the definition for "Eligible Net Metering System Site" expressly states that all the net metered accounts do not have to belong to the customer of record provided that the net-metered accounts are otherwise eligible. Thus, the renewable generation developers, the sole customers of record for net metering on behalf of a covered entity, are free to contract with multiple covered entities to populate a Schedule B that directly ties the consumption of electricity occurring at the designated net-metered accounts to the capacity of the eligible net-metering system. The Act, through the plain language of these exceptions for covered entities, demonstrates a clear intent to remove barriers for covered entities to participate in net metering and to do so in the most cost-effective manner.

3. Policy Arguments

Green and other renewable generation developers have reasonably relied on the Net Metering Act and National Grid's application of its tariff which has allowed the allocation of net metering credits, through multiple net metering financing arrangements, to multiple public entities, educational institutions, hospitals, nonprofits, and multi-municipal collaboratives. As a result, Green has approximately 40 megawatts of projects currently in operation that rely on being able to send net-metering credits to multiple eligible entities under § 39-26.4-2(5)(ii). Many of these projects have been operational for over five years and were financed as single eligible net metering systems allocating credits to multiple entities through net metering financing arrangements. Additionally, Green has invested over $105 million in projects that are under construction or are in late-stage development through the same practice.

If the Commission does not reverse course and reconsider its interpretation of § 39-26.4-2(5)(ii), Green is not the only entity that will be significantly damaged. The covered entities that provide essential public services and benefits the community rely on the savings realized through net metering. Without the bill credits, the covered entities' ability to carry out their missions will be greatly depressed. Further, there is a whole stream of economic activity spurred by the major investments Green made under the net metering program and is relying on multiple net metering financing arrangements to populate a Schedule B. Local banks have invested in these renewable energy systems in reliance of the value and security the multiple net metering finance arrangements provide. Local contractors and vendors were hired to build and provide materials for the renewable energy systems. The Commission's order broadly disrupts the local economy in addition to hindering the State's clean energy goals.

Rhode Island's Energy Plan requires reducing the soft costs of renewable energy systems.[5] The Commission must consider the economies of scale with larger renewable energy systems. It is much less expensive to build a single, larger project due to the complexities and costs of local permitting, DEM permitting, interconnection, mobilization, and procurement processes. Allowing a renewable generation developer to enter multiple net metering financing arrangements to match consumption with a larger capacity net metering system, brings greater economic relief to the covered entities the legislature intentionally excepted from many of the net metering eligibility requirements. In fact, in the original Petition for Declaratory Judgment, the Petitioner argued the economic infeasibility of the Net Metering Program if it was not allowed to combine the consumption of its allocated accounts to one net metering system.[6] Allowing multiple net metering financing arrangements associated with a single eligible net metering system is the most efficient and least costly manner to designate net metering credits to eligible net metering accounts. If the Commission does not reconsider its interpretation, the net metering program and Rhode Island's vibrant green energy economy will effectively end as it is not cost-effective to build smaller eligible net metering systems for each eligible covered entity.

Moreover, there is no requirement in the Act that a Schedule B must be populated through a single net metering financing arrangement. In fact, such a requirement would be absurd as it would require covered entities, already with limited resources and no expertise in energy development, to seek out additional eligible accounts to populate a Schedule B. Such efforts would effectively nullify the economic benefits and savings the legislature intended these covered entities to realize through net metering. National Grid in its response to Data Request PUC 1-2 suggests that there is no rule prohibiting one covered entity allocating net metering credits to a second covered entity (i.e., a public entity allocating credits to a nonprofit on a Schedule B). Such an arrangement would require additional legal agreements, the sharing of private information, and maintenance costs between these covered entities. Allowing the renewable energy developer, with its greater resources to act as the intermediary to procure the consumption needed on a Schedule B brings these entities the greatest benefit and represents the most accurate interpretation of the Act.

[5] Rhode Island Division of Planning, "Energy 2035: Rhode Island State Energy Plan," at 67 (Oct. 8, 2015), http://www.planning.ri.gov/documents/LU/energy/energy15.pdf. ("Rhode Island should reduce these [soft] costs by addressing key regulatory barriers, establishing uniform standards, and advancing streamlined permitting processes wherever possible.").

[6] Docket No. 5122, Petition for Declaratory Judgment, 2–3 (Jan. 25, 2021), http://www.ripuc.ri.gov/eventsactions/docket/5122-NautilusSolar-DJPetition%201-25-21.pdf. (discussing how separate net metering systems for each covered entity "would significantly increase the cost and challenge the feasibility of developing and administering these facilities.").

CONCLUSION

Green respectfully asks the Commission to reconsider its interpretation of R.I. Gen. Laws § 39-26.4-2(5)(ii) and allow renewable generation developers to continue allowing multiple net metering finance arrangements with public entities, educational institutions, hospitals, and nonprofits, beyond just multi-municipal collaboratives. The practice has brought great value to the state of Rhode Island and the covered entities benefitting from net metering credits.