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May 6th, 2021

VIA E-EMAIL and USPS

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

RE: RECONSIDERATION OF INTERPRETATION OF R.I. GEN. LAWS § 39-26.4-2(5)(ii), DOCKET NO. 5145, NOTICE TO SOLICIT COMMENTS, ISSUED APRIL 22, 2021

Dear Ms. Massaro,

Kearsarge Solar (Kearsarge) appreciates this opportunity to provide comment regarding the Public Utilities Commission's (PUC) reconsideration of its prior interpretation of R.I. Gen. Laws § 39-26.4-2(5)(ii) in Docket No. 5122.

Per your instructions included in the April 22nd Notice to Solicit Comments, Kearsarge has submitted these comments electronically and also mailed an original copy of these comments as well as three additional copies to Luly Massaro, Public Utilities Commission, 89 Jefferson Boulevard, Warwick, R.I. 02888.

Kearsarge's comments begin on the next page.

If you have any questions, please contact me at 617-251-8622 or sfeigenbaum@kearsargeenergy.com.

Many thanks,

/s/ Sam Feigenbaum
Sam Feigenbaum
Senior Associate for Development, Government, and Legal Affairs
MA BBO # 707161

PUC Docket No. 5145
IN RE: Reconsideration of Interpretation of R.I. GEN. LAWS § 39-26.4-2(5)(ii)
Response to PUC's Notice to Solicit Comments
Issued on April 22, 2021

Kearsarge's position is that National Grid's practice of allowing an Eligible net-metering system, as defined per § 39-26.4-2(5)(ii), to allocate net metering credits to multiple "credit allocatees" or "offtakers" aligns with the purpose of § 39-26.4 (the Net Metering Act).

These comments precede in two parts. The first part explains the deleterious effect the PUC's prior interpretation of § 39-26.4-2(5)(ii) will have on the renewable energy industry in Rhode Island if it is not overturned. The second part sets out Kearsarge's understanding of industry practice concerning § 39-26.4-2(5)(ii) as well as the correct interpretation of the statute under basic principles of statutory interpretation.

I. If not overturned, the PUC's decision in Docket No. 5122 threatens renewable energy projects worth hundreds of millions of dollars across the state.

National Grid's practice of allowing an Eligible net-metering system to designate multiple credit allocatees under § 39-26.4-2(5)(ii) has been critical to the growth of renewable energy in Rhode Island.

Most entities eligible for net metering under § 39-26.4-2(5)(ii) (public entity, educational institution, hospital, nonprofit, or multi-municipal collaborative) alone do not use enough electricity alone to make it economically feasible to have a single entity serve as the sole credit allocatee for an Eligible net-metering system.

Moreover, excepting municipalities, most of the eligible entities for net metering do not possess the credit grade needed to allow a renewable energy developer to secure financing for an Eligible net-metering system. Many hospitals, for example, are in difficult credit situations, such as South County Hospital, which is looking to procure millions of net metering credits. Thus, a developer can frequently only procure the debt and tax equity needed to finance an Eligible net-metering system through a multiple credit allocatee arrangement mixing municipalities with other eligible entities such as a hospital or nonprofit.

Kearsarge, for instance, provides discounted solar energy or has signed agreements to provide discounted energy through such multiple credit allocatee arrangements with Rhode Island organizations such as Edesia, the Preservation Society of Newport County, the Rhode Island Philharmonic, Tockwotten on the Waterfront, Saint Elizabeth Home and other nursing homes, three credit unions, multiple YMCAs, and numerous educational institutions (both secondary schools and colleges and universities).

As is apparent from the list above, the organizations Kearsarge provides discounted energy to through multiple credit allocatee arrangements are key parts of the Rhode Island economic and social fabric. This discounted energy is particularly critical at this moment as many of these organizations, such as the Rhode Island Philharmonic or Tockwotten on the Waterfront, look to rebound from 15 months of COVID-19 related losses.

Looking at the Kearsarge portfolio alone, the PUC decision in Docket No. 5122 endangers Eligible net-metering systems currently in operation that National Grid has interconnected worth approximately $46 million. As for Eligible net-metering systems under development, it imperils Eligible net-metering systems worth approximately $130 million. Kearsarge has signed Interconnection Agreements with National Grid for every one of these Eligible net-metering systems. Development of these Eligible net-metering systems will support approximately 200 to 250 construction jobs over the next two years.

II. In light of the overall purpose of the Net Metering Act, which is to promote the development of renewable energy in Rhode Island, § 39-26.4-2(5)(ii) can only mean that an Eligible net-metering system can assign net metering credits to multiple allocatees.

a. Interpreting § 39-26.4-2(5)(ii) to allow multiple credit allocatees furthers the purpose of the Net Metering Act; interpreting § 39-26.4-2(5)(ii) to allow only a sole credit allocatee thwarts its purpose.

Until the PUC's decision in Docket No. 5122, there was no question that § 39-26.4-2(5)(ii) allowed multiple credit allocatees per Eligible net-metering system. Per an (until now) uncontroverted practice, developers submitted Eligible net-metering systems with multiple credit allocatees for interconnection and National Grid approved for interconnection such submissions as a matter of course pursuant to a mutually agreed upon interpretation of § 39-26.4-2(5)(ii).

The obvious should be noted here, which is that National Grid and the renewable energy industry do not always find themselves in agreement as to the correct interpretation of a statute. It speaks, therefore, to the clear intent of § 39-26.4-2(5)(ii) that, since the passage of the statute, National Grid and the renewable energy industry have agreed without controversy or dissent that § 39-26.4-2(5)(ii) allows multiple credit allocatees per Eligible net-metering system.[1]

Basic principles of statutory interpretation also lend their support for this interpretation of § 39-26.4-2(5)(ii).

The Rhode Island Supreme Court explains that, "[i]n matters of statutory interpretation [the] ultimate goal is to give effect to the purpose of the act as intended by the Legislature." *Grasso v. Raimondo*, 177 A.3d 482, 490 (R.I. 2018).

In its *Grasso* opinion, the Rhode Island Supreme Court quoted at length from the California Supreme Court on how to interpret a statute, detailing that it considered the California court's perspective "an especially helpful guide."

[1] It is also important to note that allowing multiple credit allocatees per Eligible net-metering system does not place Rhode Island as an outlier as compared to its New England peer states. Both Massachusetts and Maine allow such arrangements. *See, e.g*, 220 Code of Massachusetts Regulations 18.05. National Grid, of course, is one of the two biggest electric utilities in Massachusetts and so is well acquainted in Massachusetts as well with the practice of assigning multiple credit allocatees to a single net-metering system.

The California court stated that:

> "Whenever possible, a statute is to be construed in a way which will render it reasonable, fair and harmonious with its manifest purpose, and which will conform with the spirit of the act . . . .Therefore . . . when a suggested construction of a statute in any given case necessarily involves a decided departure from what may be fairly said to be the plain purpose of the enactment, such construction will not be adopted to the exclusion of a possible, plausible interpretation which will promote and put in operation the legislative intent." *Los Angeles County v. Frisbie*, 122 P.2d 526, 532 (Cal. 1942) (internal quotations marks and citations omitted).

As such, *Grasso* dictates that the PUC must adopt a reading of § 39-26.4-2(5)(ii) that promotes the purpose of the Net Metering Act—the statute in which § 39-26.4-2(5)(ii) appears. Luckily, the purpose of the Net Metering Act is abundantly clear per § 39-26.4-1, the "Purpose" section of the Act. This section states, in relevant part, that the purpose of the Net Metering Act is "to support and encourage customer development of renewable generation systems . . ."

As section I of this comment illustrates, the PUC's decision in Docket No. 5122 would have the exact opposite effect on renewable energy development in Rhode Island. If left standing, the decision will not "support and encourage development of renewable generation systems" as the "Purpose" section of the Net Metering Act dictates, but rather create a new and substantial barrier to successful development of renewable energy. Accordingly, *Grasso* forbids this interpretation. Interpreting § 39-26.4-2(5)(ii) to allow multiple credit allocatees, however, clearly accords with the purpose of the Net Metering Act and is, therefore, permissible under *Grasso*.

b. Interpreting § 39-26.4-2(5)(ii) to allow multiple credit allocatees in no way creates a loophole that undermines the limitations on eligibility that the Net Metering Act sets forth.

The PUC's decision in Docket No. 5122 states that interpreting § 39-26.4-2(5)(ii) to allow multiple credit allocatees "would create a large loophole in the statute that is inconsistent with the fairly clear intent of the Net Metering Act to place reasonable limits on eligibility." Decision and Order, at 4-5. Setting aside the fact that interpreting § 39-26.4-2(5)(ii) to allow only a single credit allocatee per Eligible net-metering system is entirely at odds with the purpose of the Net Metering Act, it is simply not the case that interpreting § 39-26.4-2(5)(ii) to allow multiple credit allocatees would create a "large loophole."

While Kearsarge agrees with the PUC that the Net Metering Act indicates an intent to place limits on eligibility, Kearsarge underscores that the mechanism the Rhode Island legislature chose to achieve these reasonable limits was not limiting Eligible net-metering systems to a single credit allocatee. After all, choosing such a mechanism would have resulted in a statute at war with itself: an act designed to promote Eligible net-metering systems as defined under § 39-26.4-2(5)(ii) that instead made it extremely difficult to build such Eligible net-metering systems.

Indeed, the mechanism that the Rhode Island legislature plainly chose to achieve reasonable limits on eligibility, and a mechanism that accords with the purpose of the Net Metering Act of

encouraging development, is the limitation on the types of entities that can serve as credit allocatees for an Eligible net-metering system: only entities that are a public entity, educational institution, hospital, nonprofit, or part of a multi-municipal collaborative can serve as credit allocatees.

This is not an extensive list of types of entities; it excludes the vast majority of for-profit entities in Rhode Island, thereby placing what are not just reasonable but, in actuality, quite strict limitations on eligibility.

Interpreting § 39-26.4-2(5)(ii) to allow multiple credit allocatees in no way alters these limits.