

Public Notice of Proposed Rulemaking Template

RHODE ISLAND GOVERNMENT REGISTER PUBLIC NOTICE OF PROPOSED RULEMAKING

AGENCY: Public Utilities and Carriers, Division of Public Utilities Commission

RULE IDENTIFIER: ERLID 5601

REGULATION TITLE: Rules and Regulations Establishing Non-Profit Affordable Housing Certification Application Process and Eligibility Criteria as Required Under Rhode Island General Laws, Section 39-26-2(19)

RULEMAKING ACTION: Direct Final

If no formal objection is received on or before January 6, 2017 Public Utilities and Carriers, Division of Public Utilities Commission will file the repeal without opportunity for public comment.

TYPE OF FILING: Repeal

DATES: Public Notice Date: Monday, December 5, 2016

End of Comment Period: Friday January 6, 2017

SUMMARY OF PROPOSED RULE: The rule is no longer applicable. In 2008, the State of Rhode Island enacted an amendment to Rhode Island General Laws, Chapter 39-26, entitled "Renewable Energy Standard," specifically, Section 39-26-2(19), requiring the Rhode Island Division of Public Utilities and Carriers to promulgate regulations setting forth an application process and eligibility criteria for "non-profit affordable housing" developments or projects to benefit from the allotted renewable energy demonstration projects constructed and placed into service under Rhode Island General Laws, Section 39-26-6(k), and the additional consequential ability to apply excess renewable generation credits to other accounts within the eligible affordable housing development or project in accordance with Rhode Island General Laws, Section 39-26-6(g)(3). The statutory provisions were subsequently amended, making the rule obsolete.

COMMENTS INVITED:

All interested parties are invited to submit written or oral comments concerning the proposed regulations by January 6, 2017 to the addresses listed below.

ADDRESSES FOR PUBLIC COMMENT SUBMISSIONS:

Mailing Address:

Division Clerk
Rhode Island Division of Public Utilities and Carriers
89 Jefferson Boulevard
Warwick, RI 02888

Email Address:

luly.massaro@puc.ri.gov

PUBLIC HEARING INFORMATION:

In accordance with RIGL §42-35-2.8, an oral hearing will be granted if requested by twenty-five (25) persons, by an agency or by an association having at least twenty-five (25) members. A request for an oral hearing must be made within thirty (30) days of this notice.

FOR FURTHER INFORMATION CONTACT:

Thomas Kogut
Rulemaking Coordinator
RI Division of Public Utilities and Carriers
89 Jefferson Boulevard
Warwick RI, 02888
(401) 780-2105
Thomas.kogut@dpuc.ri.gov

SUPPLEMENTARY INFORMATION:

Regulatory Analysis Summary and Supporting Documentation:

The statutory language supporting the rule is no longer in effect. For full regulatory analysis or supporting documentation see agency contact person above.

Authority for This Rulemaking:

Formerly under Chapter 39-26-2, subsequently amended

Regulatory Findings:

In the development of the proposed repeal consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.

The Proposed Amendment:

Public Utilities and Carriers, Division of Public Utilities Commission proposes to repeal ERLID 5601 as follows:

~~STATE OF RHODE ISLAND~~
~~DIVISION OF PUBLIC UTILITIES AND CARRIERS~~
~~89 Jefferson Boulevard~~
~~Warwick, Rhode Island 02888~~

~~Rules and Regulations Establishing Non-Profit Affordable
Housing Certification Application Process and Eligibility
Criteria As Required Under Rhode Island General Laws,
Section 39-26-2(19).~~

~~Date of Public Notice: February 11, 2009~~

~~Date of Public Hearing: March 30, 2009~~

~~Effective Date: April 30, 2009~~

1. INTRODUCTION

~~In 2008, the State of Rhode Island enacted an amendment to Rhode Island General Laws, Chapter 39-26, entitled “Renewable Energy Standard,” specifically, Section 39-26-2(19), requiring the Rhode Island Division of Public Utilities and Carriers to promulgate regulations setting forth an application process and eligibility criteria for “non-profit affordable housing” developments or projects to benefit from the allotted renewable energy demonstration projects constructed and placed into service under Rhode Island General Laws, Section 39-26-6(k), and the additional consequential ability to apply excess renewable generation credits to other accounts within the eligible affordable housing development or project in accordance with Rhode Island General Laws, Section 39-26-6(g)(3). The pertinent provisions of Rhode Island General Laws, Sections 39-26-2(19), 39-26-6(g)(3) and 39-26-6(k) are as follows:~~

~~“Non-profit affordable housing” shall mean a housing development or housing project as defined by section 42-55-3 undertaken by a non-profit entity where the residential units taking electric service are either in the same building in close proximity to the renewable energy source or, if not within the same building, are within one-half (1/2) of a mile radius from the renewable energy source: provided, however, that the application has been filed with and received by the division of public utilities and carriers and the division has certified the development or project as eligible. The division shall promulgate regulations setting forth an application process and eligibility criteria to assure that the net metering allowed will benefit low income residential electric customers only (R.I.G.L. §39-26-2(19)).~~

~~If the electricity generated by the renewable generation facility during a billing period exceeds the customer’s kilowatt hour usage during the billing period, the customer shall be billed for zero kilowatt hour usage and the excess renewable generation credits shall be credited to the customer’s account for the following billing period...Non-profit affordable housing may elect to apply any such credits earned to other accounts within the eligible affordable housing development (R.I.G.L. §39-26-6(g)(3)).~~

~~Consistent with the public policy objective of developing renewable generation as an option in Rhode~~

~~Island, the electric distribution company is authorized to propose and implement pilot programs to own and operate no more than fifteen megawatts (15MW) of renewable generation demonstration projects in Rhode Island and include the costs and benefits in rates to distribution customers. At least two (2) demonstration projects shall include renewable generation installed at or in the vicinity of nonprofit affordable housing projects (R.I.G.L. §39-26-6(k)).~~

~~These rules and regulations are designed to facilitate the implementation of the aforementioned directives.~~

2. DEFINITIONS

- ~~a. “Division” means the Rhode Island Division of Public Utilities and Carriers as defined in R.I.G.L. §39-1-2(11).~~
- ~~b. “Nonprofit entity” means a domestic corporation organized under the provisions of Rhode Island’s Nonprofit Corporation Act, as contained in Rhode Island General Laws, Chapter 7-6, or other nonprofit association, subject to the condition that no part of the net income or profit of the corporation or association will be distributable to its members, directors or officers.~~

3. NONPROFIT AFFORDABLE HOUSING ELIGIBILITY CRITERIA

- ~~a. In order for a housing development or housing project to be considered as “nonprofit affordable housing” under these regulations, the following eligibility criteria must be satisfied:
 - ~~1. The housing development or housing project must have been undertaken by a non-profit entity; and~~
 - ~~2. The housing development or project must be designed and financed pursuant to the provisions contained in R.I.G.L. Chapter 42-55, commonly referred to as the “Rhode Island Housing and Mortgage Finance Corporation Act” and be for the primary purpose of providing sanitary, decent, and safe dwelling accommodations for persons and families of low income in need of housing. Such development or project may entail either new construction or rehabilitation, and be associated with either single family or multi family residences, including without limitation mobile homes and shelters; and~~~~

- ~~3. The residential units taking electric service in the housing development or project must be located within one half (1/2) of a mile radius from the renewable energy source;~~
- ~~4. The housing development or project shall only remain eligible under these regulations so long as it continually provides affordable housing to low income residents. Initial eligibility shall be predicated upon a showing of evidence (as described below) that the housing development or project will be maintained as affordable housing for a period of not less than ten (10) years; and~~
- ~~5. The housing development or project must have applied for and received certification from the Division pursuant to the certification procedures set forth in these regulations.~~

4. APPLICATION FILING REQUIREMENTS

- ~~a. An application submitted under these regulations shall be filed in conformance with the filing requirements set forth in the Division's *Rules of Practice and Procedure*. The Division's *Rules of Practice and Procedure* shall similarly apply to all regulatory issues and matters covered therein, including, without limitation, to the docketing of applications, and all issues related to appearances and practice before the Division, service, notice, interventions, the filing of motions, pre-hearing procedure, discovery, subpoenas, hearings, witnesses and rules of evidence.~~
- ~~b. Applications shall include the following information:
 - ~~1. The applicant's legal name and business address;~~
 - ~~2. The date of organization, a copy of the articles of incorporation, association, partnership agreement, or other similar document regarding legal organization;~~
 - ~~3. Name and business address of all officers and directors, partners, or other similar officials;~~
 - ~~4. Name, title and business address of contact person;~~
 - ~~5. Evidence that the applicant is a non-profit entity;~~
 - ~~6. Evidence that the housing development or project was designed and is financed pursuant to the provisions contained~~~~

~~in the Rhode Island Housing and Mortgage Finance Corporation Act (R.I.G.L. Chapter 42-55);~~

- ~~7. Evidence that the housing development or project is for the primary purpose of providing sanitary, decent, and safe dwelling accommodations for persons and families of low income in need of housing;~~
- ~~8. Evidence that the housing development or project is located either in the same building as or within one-half (1/2) of a mile radius from the renewable energy source;~~
- ~~9. Evidence that the housing development or project will be maintained as affordable housing for a period of not less than ten (10) years. A resolution, issued by the board of directors of the nonprofit entity and recorded at the land records office in the city or town where the housing development or project is located, stating that the structure will be used as affordable housing for a period of not less than ten (10) years, shall be satisfactory evidence that the requirements of this regulation has been satisfied;~~
- ~~10. Evidence that any electric accounts within the affordable housing development or project that will be receiving net metering credits will be accounts at units where low income customers are residing; and~~
- ~~11. Any additional information required by the Division.~~

5. PROCEDURES FOR CERTIFICATION

- ~~a. Upon receiving a properly completed application, the Division may, if it determines that all eligibility requirements are clearly present, summarily certify the housing development or project as compliant with the requirements set forth in Rhode Island General Laws, Section 39-26-2(19).~~
- ~~b. Alternatively, if eligibility issues remain after evaluating an application, and its supporting documentation, the Division may elect to propound relevant discovery and/or conduct a public hearing on the application filing before deciding whether certification is warranted.~~

~~6. ANNUAL REPORTING REQUIREMENTS~~

- ~~a. On an annual basis, the electric distribution company shall provide a list to the Division of all certified non-profit affordable housing developments or projects that have, either, an active net-metering account with the distribution company, or been receiving electric service from a renewable generation demonstration project owned and operated by the electric distribution company. Such list shall be provided on or before December 31 of each calendar year.~~

~~Adopted regulations of the Rhode Island Division of Public Utilities and Carriers on March 31, 2009, for effect on April 30, 2009.~~

~~Thomas F. Ahern, Administrator~~