



Rhode Island Department of Revenue

Division of Taxation

Declaratory Order 2018-01

Request for Ruling Regarding the Obligations of the Parties in Connection with the Design, Construction, and Installation of a Solar Photovoltaic System

Request for Ruling

The Owner of the Project (defined below) requested a declaratory order (“Ruling Request”) to determine whether R.I. Gen. Laws §§ 44-18-30(7), 44-18-30(22), and/or 44-18-30(57) exempt(s) from Rhode Island Sales and Use Tax: (1) the purchase or use of any assets that the Owner acquires for a solar photovoltaic (PV) system, such as those the Owner is required to provide to the Contractor under their agreement, (2) the purchase or use of any assets that the Contractor acquires for the solar PV system pursuant to the agreement, and (3) any of the payments made by the Owner to the Contractor pursuant to their agreement.

Facts

The facts set forth below are taken from the statement of facts presented in the Ruling Request dated May 23, 2018 and additional documentation provided by Owner’s counsel that will be specified below.

Owner (“Owner”) is a limited liability company and Contractor (“Contractor”) is a limited liability company that have contracted to design, construct, and install a solar PV system (the “Project”). The Project in question will be designed, constructed, and installed by the Contractor for the Owner on a municipal site in the City leased by the Owner.

The solar units for the project will be mounted on ballasted racking on a closed, capped municipal landfill. The obligation to design, construct, and install the Project by the Contractor is pursuant to an Agreement among the parties dated as of March 19, 2018 (the “Agreement”). Exhibit A of the Agreement indicates that the project will involve approximately 12,462 solar panels to convert solar power into approximately 4.05 megawatts of direct current. That power will be converted into 3.00 megawatts of alternating current by the project site inverters. 3.00 megawatts of alternating current power will be delivered to the grid at the point of interconnection (“POI”).

The Agreement indicates that the Owner is responsible for providing the solar panels used in the Project (approximately 12,462 panels will be used in the Project) and the Contractor is responsible for any other costs (other than the cost of equipment that is to be supplied by the Owner per the Agreement) related to the design, construction, and installation of the Project. The solar panels used in the Project have an estimated useful life of thirty-five (35) years. After the expiration of their useful life, the solar panels will either be used up or worn out to the degree or extent that they cannot be repaired, reconditioned, or rendered fit for further manufacturing use or they will have become obsolete. The Contractor is to be compensated for this work on a fixed-price turnkey basis.

Agreement Exhibit T contains a document that discusses the Owner's participation in Rhode Island's Renewable Energy Growth Program ("REG Program") pursuant to R.I. Gen. Laws Chapter 39-26.6. Under this program, the program participant installs a distributed generation project ("DG Project") that allows for interconnection with the utility's ("Utility") electric distribution system. *See* Tariff at 1. In exchange, the Owner will receive funding for the Project. *Id.* The purpose of the REG Program is to encourage the development of renewable energy at a reasonable cost. *See* R.I. Gen. Laws § 39-26.6-2.

On August 9, 2018, Owner's counsel provided the following asset list ("Asset List") that describes the functionality of some Project items for which Owner seeks exemption.

Major Equipment Used Directly To Generate Power

I. Mechanical Systems

Below are the lists of mechanical systems with a brief functional description, and the major equipment within 3.0 MW AC PV solar plant system that are directly related to the generation of power:

- Ballasted Foundations – The foundations design for the referenced Project consists of concrete filled tubs. Each tub is poured in place with 4,000 PSI of concrete ready mix that is being supplied by a local ready-mix company. A portion of the racking system is prefabricated on site and set into the tubs prior to placement of the concrete. The ballasted foundation system is specified and designed in lieu of the conventional driven steel pile foundation to avoid penetrating the landfill cap. The components that make up the foundation system are the gravel pads beneath the tub, the A-Frame structure supporting/leveling the feet, and the fabricated A-Frame that connects the foundation to the balance of the PV module support structure.
- Fixed-Tilt Pour-In-Place Ground System – The racking design is coordinated with the module manufacturer for all layout and hardware attachments and meets the design criteria, including snow and wind loading. The solar modules attached to the support structure and the layout and tilt angles are configured to maximize the energy production on the site. The wire management (DC power) and grounding are also integrated into the racking system.
- Solar Modules – The solar modules being furnished and installed on the Project are 72 Cell, Polycrystalline that have an expected power output of 330 Watts (W). The PV solar panels absorb sunlight as a source of energy to generate electricity. A PV module is a connected assembly of PV solar cells. Each module is rated by its DC output power under standard test conditions (STC).

II. Electrical Systems

Below are the lists of electrical systems with a brief functional description, and the major equipment within that system that are directly related to the generation of power.

480V AC Equipment:

- Inverters – The solar modules produce a DC potential (voltage) that must be converted to AC before energy can be sold to the Utility. This is the job of the inverters. The inverter produces three-phase 480V AC energy that is synchronized to the Utility's three-phase system. The inverter produces an AC voltage level slightly higher than the Utility's voltage level to allow the energy to be exported to the grid. There are forty-six (46) inverters in the Project.
- Inverter Combiners – The energy produced by each inverter needs to be combined together – eventually into a single three-phase AC output at Utility voltage. The inverter combiners combine the AC from three or four inverters into a higher current AC circuit. There are twelve (12) such combiners in the project.
- AC Re-combiners – There are four (4) AC re-combiners in the Project. Each re-combiner combines the output of three (3) inverter combiners into a single 1,200A AC 480V circuit. This single output connects to the medium voltage (MV) step-up transformer.

MV Step-up Transformers:

- 780 KVA Dual Primary Voltage Transformers – There are four (4) MV step-up transformers in this Project. The job of the transformer is to step the inverter nominal 480V AC output up to the Utility voltage. The Project will connect initially to a 23,000V Utility circuit. At some point in the future, the Utility plans to change the voltage to 12,480V. These transformers are loop fed on the Utility voltage side; they have an in and an out port. The four (4) transformers are connected in a loop or daisy chain configuration creating a combined MV circuit for the entire plant.

Medium Voltage Equipment:

- Recloser – The Utility requires this Project to have a recloser. A recloser is a device that monitors the quality of the energy flowing from the Project plant to the Utility. If there is a quality issue with the power, the recloser will disconnect the Project plant from the Utility. When the problem is corrected, the recloser can be manually or remotely (via the internet) closed to re-connect the Project plant.
- Pole Mounted Transformers – The Project has a revenue grade production meter to measure the energy production of the PV system. This information is used to check the Utility's revenue grade meter. The Utility's meter determines the revenue payments to the Owner.
- 25KV Inline Fused Cut-out 1.5A – These are fuses to protect the revenue grade meter.
- Gang Operated Load Break SW – The Utility requires a manually operated switch to disconnect the PV system from the Utility.

- AC/DC Collector Cable and Wire – All of these components need to be connected together via wire of various sizes and types.
- PVC Conduit - PVC and steel conduits are used in various places to protect the wire from physical damage.
- Grounding and Lightning Protection - Provides the connections to ground to mitigate damage from ground faults and lightning strikes.

Assets Indirectly Used to Generate & Monitor Power

- Civil Infrastructure – This item includes the gravel access roads that were designed and constructed to access the Project’s solar arrays. This network of roads provides access to the transformer pads, inverters, and MV gear that is critical to the production of power and overall performance of the power plant. In addition, the capped landfill is improved to provide a level site with storm water drainage, roads, parking, fencing, and landscaping.
- Transformer Pads – These foundations and support pads are used to house the MV equipment for the Project. There are four (4) transformer pads total and the process includes foundation preparation by excavating native soil to subgrade, compaction of subgrade soils, placement of crushed stone drainage layer, and forming, placing, and finishing the structural concrete pads.
- DAS Equipment – The Data Acquisition System (DAS) or monitoring system enables integrators, installers, maintenance staff, and system owners to improve the site performance, assure the yield of the system, maximize solar power harvesting, and reduce maintenance costs by increasing system up-time and resolving faults more effectively.

Owner’s Ruling Request includes an attached Scope of Work document, Agreement Exhibit C (“SOW”), that discusses additional assets that will be acquired by the Contractor and used as part of the Project. *See* Section 1. Those SOW Section 1 assets will be enumerated below.

- A - All equipment including PV modules (furnished by Owner), mounting structures, racking, inverters, electrical systems, DC and AC cables and conduit, controls, monitoring, and ancillary equipment to interconnect the Project to the Utility electric grid in accordance with the Interconnection Agreement and Utility requirements (Exhibit T of the Agreement).
- B - Site work including temporary staging areas, repair or restoration of cap rutted up during construction, all trenching, bedding, and backfill for electrical work, and minor seeding of restored areas... Also included in this item is maintenance of all erosion control measures, and permanent onsite roads.
- C – AC electrical collection system to combine the output of each inverter, collection system, aux bus, step up transformers, switchgear and protection systems, data access link

to Utility provided metering, protection relays, SCADA communications, and interface to the Utility POI.

- D – The Project electrical POI will be at the 23kV/12.47 kV utility pole planned near the Project site main entrance as required by Utility.

Ruling Requested

Based on the facts provided, whether R.I. Gen. Laws §§ 44-18-30(7), 44-18-30(22), and/or 44-18-30(57) exempt(s) from Rhode Island Sales and Use Tax: (1) the purchase or use of any assets that the Owner acquires for the Project, such as those the Owner is required to provide to the Contractor under the Agreement, (2) the purchase or use of any assets that the Contractor acquires for the Project pursuant to the Agreement, and (3) any of the payments made by the Owner to the Contractor pursuant to their Agreement.

Pertinent Statutory and Regulatory Law

R.I. Gen. Laws § 44-18-18 imposes a tax on all sales at retail in the state of Rhode Island. R.I. Gen. Laws § 44-18-20 imposes a complementary use tax on all tangible personal property that is stored, used, or otherwise consumed in Rhode Island. R.I. Gen. Laws § 44-18-16 defines tangible personal property as “personal property which may be seen, weighed, measured, felt, or touched, or which is in any other manner perceptible to the senses,” including electricity. R.I. Gen. Laws § 44-18-25 presumes that the gross receipts and use of tangible personal property in Rhode Island are subject to tax until the taxpayer proves otherwise.

Under Regulation C (“Contractors and Subcontractors”), Regulation 280-RICR-20-70-54 (“Contractors and Subcontractors”), formerly Regulation SU 91-27, a company that contracts to perform a job, and acquires materials to complete the job, must pay the sales or use tax at the time it acquires the materials, except where the contractor acts as a retailer. *See* Declaratory Ruling 2000-03. R.I. Gen. Laws §§ 44-18-30(7) and 44-18-30(22) provide exemptions to the Rhode Island Sales & Use Tax for manufacturing purposes while § 44-18-30(57) provides exemptions for certain renewable energy products.

R.I. Gen. Laws § 44-18-30(7) states as follows:

(7) Purchase for manufacturing purposes.

(i) From the sale and from the storage, use, or other consumption in this state of computer software, tangible personal property, electricity, natural gas, artificial gas, steam, refrigeration, and water, when the property or service is purchased for the purpose of being manufactured into a finished product for resale and becomes an ingredient, component, or integral part of the manufactured, compounded, processed, assembled, or prepared product, or if the property or service is consumed in the process of manufacturing for resale computer software, tangible personal property, electricity, natural gas, artificial gas, steam, refrigeration, or water. (Emphasis added.)

(ii) "Consumed" means destroyed, used up, or worn out to the degree or extent that the property cannot be repaired, reconditioned, or rendered fit for further manufacturing use.

(iii) "Consumed" includes mere obsolescence.

(iv) "Manufacturing" means and includes: manufacturing, compounding, processing, assembling, preparing, or producing.

(v) "Process of manufacturing" means and includes all production operations performed in the producing or processing room, shop, or plant, insofar as the operations are a part of and connected with the manufacturing for resale of tangible personal property, electricity, natural gas, artificial gas, steam, refrigeration, or water and all production operations performed insofar as the operations are a part of and connected with the manufacturing for resale of computer software.

(vi) "Process of manufacturing" does not mean or include administration operations such as general office operations, accounting, collection, or sales promotion, nor does it mean or include distribution operations that occur subsequent to production operations, such as handling, storing, selling, and transporting the manufactured products, even though the administration and distribution operations are performed by, or in connection with, a manufacturing business.

R.I. Gen. Laws § 44-18-30(22) provides in pertinent part:

(22) Manufacturing machinery and equipment.

(i) From the sale and from the storage, use, or other consumption in this state of tools, dies, molds, machinery, equipment (including replacement parts), and related items to the extent used in an industrial plant in connection with the actual manufacture, conversion, or processing of tangible personal property, or to the extent used in connection with the actual manufacture, conversion, or processing of computer software as that term is utilized in industry numbers 7371, 7372, and 7373 in the standard industrial classification manual prepared by the Technical Committee on Industrial Classification, Office of Statistical Standards, Executive Office of the President, United States Bureau of the Budget, as revised from time to time, to be sold, or that machinery and equipment used in the furnishing of power to an industrial manufacturing plant. For the purposes of this subdivision, "industrial plant" means a factory at a fixed location primarily engaged in the manufacture, conversion, or processing of tangible personal property to be sold in the regular course of business; (Emphasis added.)

(ii) Machinery and equipment and related items are not deemed to be used in connection with the actual manufacture, conversion, or processing of tangible personal property, or in connection with the actual manufacture, conversion, or processing of computer software as that term is utilized in industry numbers 7371, 7372, and 7373 in the standard industrial classification manual prepared by the Technical Committee on Industrial Classification, Office of Statistical Standards, Executive Office of the President, United States Bureau of

the Budget, as revised from time to time, to be sold to the extent the property is used in administration or distribution operations;

(iii) Machinery and equipment and related items used in connection with the actual manufacture, conversion, or processing of any computer software or any tangible personal property that is not to be sold and that would be exempt under subdivision (7) or this subdivision if purchased from a vendor or machinery and equipment and related items used during any manufacturing, converting, or processing function is exempt under this subdivision even if that operation, function, or purpose is not an integral or essential part of a continuous production flow or manufacturing process;

(iv) Where a portion of a group of portable or mobile machinery is used in connection with the actual manufacture, conversion, or processing of computer software or tangible personal property to be sold, as previously defined, that portion, if otherwise qualifying, is exempt under this subdivision even though the machinery in that group is used interchangeably and not otherwise identifiable as to use.

Regulation 280-RICR-20-70-19 (“Manufacturing, Property and Public Utilities Service Used In”), formerly Regulation SU 07-58, further clarifies the manufacturing exemptions provided by R.I. Gen. Laws §§ 44-18-30(7) and 44-18-30(22). There are three parts to the business of manufacturing: administration, production, and distribution. 280-RICR-20-70-19.5(A). Items used during the production process are exempt. *Id.* at § 19.6(A). Items used in the administration and/or distribution process are subject to sales and use tax. *Id.* at § 19.5(B). Additionally, equipment used during the production process is exempt under regulation § 19.7(C) while equipment used during the administration and distribution processes are subject to tax under regulation § 19.7(B).

R.I. Gen. Laws § 44-18-30(57) provides as follows:

(57) *Renewable energy products.* Notwithstanding any other provisions of Rhode Island general laws, the following products shall also be exempt from sales tax: solar photovoltaic modules or panels, or any module or panel that generates electricity from light; solar thermal collectors, including, but not limited to, those manufactured with flat glass plates, extruded plastic, sheet metal, and/or evacuated tubes; geothermal heat pumps, including both water-to-water and water-to-air type pumps; wind turbines; towers used to mount wind turbines if specified by or sold by a wind turbine manufacturer; DC to AC inverters that interconnect with utility power lines; and manufactured mounting racks and ballast pans for solar collector, module, or panel installation. Not to include materials that could be fabricated into such racks; monitoring and control equipment, if specified or supplied by a manufacturer of solar thermal, solar photovoltaic, geothermal, or wind energy systems or if required by law or regulation for such systems but not to include pumps, fans or plumbing or electrical fixtures unless shipped from the manufacturer affixed to, or an integral part of, another item specified on this list; and solar storage tanks that are part of a solar domestic hot water system or a solar space heating system. If the tank comes with an external heat exchanger it shall also be tax exempt, but a standard hot water tank is not exempt from state sales tax.

Taxpayers claiming statutory tax benefits must demonstrate not only that a tax exemption or deduction exists but that they clearly and unequivocally come within the ambit of its provisions. *Cookson v. Clark*, 610 A.2d 1095, 1098 (R.I. 1992); *Rhode Island Lithograph Corp. v. Clark*, 519 A.2d 589, 591 (R.I. 1986). Furthermore, statutes conferring such tax benefits must be strictly and narrowly construed, *Fleet Credit Corp. v. Frazier*, 726 A.2d 452, 454 (R.I. 1999); *Rice Machinery Co. v. Norberg*, 391 A.2d 66, 70 (R.I. 1978); *Red Fox Gingerale Co. v. Norberg*, 217 A.2d 466, 467 (R.I. 1966), with all doubts and ambiguities resolved against the taxpayer and in favor of the taxing authorities. *Roger Williams General Hospital v. Littler*, 566 A.2d 948, 950 (R.I. 1989); *American Hoescht Corp. v. Norberg*, 462 A.2d 369, 371 (R.I. 1983).

Discussion

The Division will address the assets that were specifically enumerated in the Owner's Asset List and the SOW items that the Division could find which are not included in the Asset List. The Ruling Request states that the Owner will provide approximately 12,462 solar panels for use in the Project. The Contractor is responsible for procuring all other items that will be used to design, construct, and install the Project. The City will acquire items for a methane mitigation system for the Project. This section will first discuss the equipment acquired by the Owner, the Contractor, and the City and finally the payments made by the Owner to the Contractor.

A. Assets Acquired by the Owner

The solar panels that the Owner will purchase are expressly nontaxable according to R.I. Gen. Laws § 44-18-30(57). The language of the statute clearly exempts from Rhode Island sales and use tax "solar photovoltaic modules or panels, or any module or panel that generates electricity from light..." Since solar panels are not subject to tax by virtue of R.I. Gen. Laws § 44-18-30(57), the Division does not reach the applicability of the manufacturing exemptions to the Owner-acquired solar panels.

B. Assets Acquired by the Contractor

1. **Mechanical Items.** First, we turn to the mechanical assets listed in the Owner's Asset List: the ballasted foundations and the fixed-tilt pour-in-place ground system. The solar modules have already been deemed tax-exempt under Discussion Section A above.

a. The Ballasted Foundations

The ballasted foundations of the Project consist of concrete filled tubs containing 4,000 PSI of ready mix concrete. R.I. Gen. Laws § 44-18-30(57) exempts "ballast pans for solar collector, module, or panel installation". There is no definition of "ballast pan" under R.I. Gen. Laws §§ 44-18, 44-19, or 39-26.6. Nor is there any mention of "ballast pan" in the Owner's Ruling Request or supplemental Asset List. To the extent that the ballasted foundations contain ballast pans, such pans are exempt under R.I. Gen. Laws § 44-18-30(57).

The next question is whether the ballasted foundations, if not exempt under § 44-18-30(57), are exempt under § 44-18-30(7) and/or § 44-18-30(22). The concrete foundations are not assets

consumed during the manufacturing process and are therefore not exempt under § 44-18-30(7). The ballasted foundations are also not exempt under § 44-18-30(22) because they are not machinery or equipment that can either be (a) used in an industrial plant in connection with the actual manufacture, conversion, or processing of tangible personal property nor be (b) used in the furnishing of power to an industrial manufacturing plant.

Section 19.9(E) of 280-RICR-20-70-19 states that “[m]aterials used in constructing a foundation to hold production machinery would be subject to the tax in that such a foundation is part of a building or structure and does not qualify for the production exemption.” Additionally, Section 19.9(B) of Regulation 280-RICR-20-70-19 indicates that “[m]achinery used by a manufacturer before the manufacturing process has begun or after it has been completed is taxable.” The purpose of the ballasted foundations is to support the solar panels that are part of the energy production process. The ballasted foundations are also used before and after the manufacturing process. Therefore, the ballasted foundations and their components are subject to sales and use tax to the extent they do not contain exempt ballast pans under § 44-18-30(57). If such pans are used in the ballasted foundations of the Project, the pans are exempt while all other foundational materials are subject to tax.

b. Fixed-Tilt Pour-in-Place Ground System (Racking System)

The Owner’s Asset List refers to this item as the “racking system”. SOW Section 2 defines “mounting structure, racking” as “[a] mechanical assembly of tracking members used to support the PV modules and string wiring, including motors and actuators for tracker-based equipment.” R.I. Gen. Laws § 44-18-30(57) explicitly exempts “manufactured mounting racks” from sales and use tax. However, excluded from the exemption are “materials that could be fabricated into such racks.” To the extent that the Owner’s mounting racks are provided by a manufacturer, they are exempt by statute. If the Owner’s racks were built on site from materials that could be fabricated into such racks, the materials are not exempt under § 44-18-30(57). Since the racking system is a support structure or foundation that supports the production machinery, it is not exempt manufacturing equipment under § 44-18-30(22). *See* Regulation 280-RICR-20-70-19, Section 19.9(E).

2. **Electrical Systems.** We next examine the electrical systems on the Asset List that will be part of the Project.

a. Inverters

The purpose of the 46 inverters is to convert DC potential to AC potential before the energy can be sold to the Utility. R.I. Gen. Laws § 44-18-30(57) expressly exempts from Rhode Island sales and use tax “DC to AC inverters that interconnect with utility power lines.” Since the inverters here are used to convert DC to AC voltage that will allow the energy to be exported to the Utility’s grid, they are not subject to tax. For this reason, the Division does not reach the applicability of the manufacturing exemptions to the inverters.

b. Inverter Combiners

The 12 inverter combiners are used to combine the AC current from three or four inverters into a higher current AC circuit for delivery to the Utility. Inverter combiners are not expressly exempt under R.I. Gen. Laws § 44-18-30(57). Nor is there evidence that the inverter combiners are purchased for the purpose of being manufactured into electricity and become an integral part of the electricity under § 44-18-30(7). There is also no indication that the inverter combiners are consumed in the process of manufacturing electricity for resale. However, inverter combiners are assets that are used in an industrial plant (the solar array) in connection with the actual manufacture, conversion, or processing of electricity under § 44-18-30(22). R.I. Gen. Laws § 44-18-30(22)(i) defines an “industrial plant” as “a factory at a fixed location primarily engaged in the manufacture, conversion, or processing of tangible personal property to be sold in the regular course of business.” Although a solar array in and of itself is not a traditional factory composed of four walls and equipment therein, one definition of factory is “any place producing a uniform product, without concern for individuality.”¹ The Project itself may be considered a factory that manufactures electricity with the solar array equipment. Therefore, inverter combiners are equipment used in connection with manufacturing energy that are not subject to sales and use tax under R.I. Gen. Laws § 44-18-30(22).

c. AC Re-combiners

The four AC re-combiners are used to combine the output of three (3) inverter combiners into a single 1,200 A AC 480 V circuit. For the same reasons as the inverter combiners in Section (b) above, the AC re-combiners are not subject to sales and use tax under § 44-18-30(22).

d. 780 KVA Dual Primary Voltage Transformers

The Project’s four transformers are used to step up the inverter’s nominal 480 V AC output to the Utility’s voltage. There is no exemption for transformers in § 44-18-30(57), so the question is whether the transformers are part of the production or distribution process as manufacturing equipment. The step-up transformers are part of the Project’s POI. *See* SOW Section 5.5.7 (“Main Electrical Interconnect” is composed of “a collection system, switchgear, disconnects, *step-up transformers*, protection, and delivery point to the Utility) (emphasis added); SOW Section 7.17 (“Interconnection facilities shall primarily consist of *step-up transformers* to 23kV-12.47kV Utility grid voltage...” (Emphasis added.)

The question for manufacturing exemption purposes is whether the interconnection of the Owner’s Project with the Utility is part of producing power for resale. The equipment needed to interconnect the Project to the Utility’s electrical grid would be part of how the Owner distributes the power it produces to the Utility. Interconnection is a distribution process, which the regulation defines as “all operations subsequent to production such as handling, storing, selling, displaying, loading, and transporting the manufactured products.” *See* § 19.5(A)(3) of 280 RICR-20-70-19. However, although the POI is a point of distribution and not production, some equipment used as part of interconnection may include production processes.

¹ Dictionary.com. <https://www.dictionary.com/browse/factory?s=t>. Accessed 23 Oct 2018.

Per the Asset List, the purpose of a step-up transformer “is to step the inverter nominal 480V AC output up to the utility voltage.” The transformer converts or processes the current so that it can be distributed to the Utility at the proper higher voltage. Once the current is converted to the Utility’s voltage, it can be transferred at the POI. Since the transformers are part of the energy production process, they are exempt under R.I. Gen. Laws § 44-18-30(22). Other equipment that is part of the POI would have to be evaluated for the manufacturing equipment exemption on an item-by-item basis.

e. Recloser

A recloser monitors the quality of the energy flowing from the Project to the Utility and will disconnect the Project from the Utility if there is a quality issue with the power. There is no exemption for this item in § 44-18-30(57). Furthermore, the recloser appears to perform a post-production quality control function that can stop distribution of the final product. Since the recloser is not involved with the production of electricity for resale, but rather distribution, it is subject to Rhode Island sales and use tax.

f. Pole Mounted Transformers

These items appear to be part of the Project’s revenue grade production meter to measure the energy production of the PV system. This information is used as a check against the Utility’s revenue grade meter, which determines the revenue payments to Owner. There is no exemption for this item in R.I. Gen. Laws § 44-18-30(57). Since the pole mounted transformers are not involved with energy production for resale, but rather distribution, and in particular compensation for the amount of product distributed, they are subject to Rhode Island sales and use tax.

g. 25KV Inline Fuse Cut-out 1.5A

These are fuses to protect the revenue grade meter. Like the pole mounted transformers, they are subject to sales and use tax.

h. Gang Operated Load Break SW

This item is, or is part of, a manually operated switch that can disconnect the PV system from the Utility. There is no exemption for this item in § 44-18-30(57). It is not involved with the production of electricity and is therefore subject to tax.

i. AC Collector Cable and Wire

There is no exemption for this item in R.I. Gen. Laws § 44-18-30(57). To the extent these cables and wires are connected to equipment that is involved with energy production, they are not subject to Rhode Island sales and use tax. Otherwise, they are taxable.

j. PVC Conduit

There is no exemption for this item in § 44-18-30(57). To the extent these conduits are used for equipment that is involved with energy production, they are not subject to tax. Otherwise, they are taxable.

k. Grounding and Lightning Protection

These are safety items that guard against damage from ground faults and lightning strikes. There is no exemption for such items in § 44-18-30(57). They are not involved with energy production and are therefore subject to tax.

3. We next examine the Asset List items that the Owner asserts are indirectly related to power generation. When applicable, these assets have been supplemented by related assets in the SOW that were not previously discussed.

a. Civil Infrastructure

The Asset List states that civil infrastructure refers to roads that provide access to the Project. Such infrastructure also includes the capped landfill being leveled to provide storm water drainage, roads, parking, fencing, and landscaping. SOW Section 6.14.2 explains that the Contractor will provide seven-foot-high chain link fencing to enclose the Project. Fencing will also be provided around a collector substation, and gates will be provided at certain approved locations with keyed padlocks. SOW Section 7.14 elaborates that signs will be posted along the perimeter fence at regular intervals to warn about high voltage, multiple power sources, and other hazards. SOW Section 7.15 mentions that all electrical equipment will be labeled. Contractor will maintain Project entrance and access roads and build new roads as needed for Owner to reach the switchgear, transformers, and other heavy equipment, per SOW Section 8.9. Since none of these civil infrastructure items are exempt under R.I. Gen. Laws §§ 44-18-30(7), 44-18-30(22), or 44-18-30(57), they are subject to Rhode Island sales and use tax.

b. Transformer Pads

Four transformer pads serve as foundation and support to house the MV equipment for the Project. Foundational materials used to hold production machinery are subject to tax since they are part of a building or structure and are not part of production. *See* Regulation 280-RICR-20-70-19, Section 19.9(E). Since the transformer pads and their constituent materials are not exempt under the renewable energy product or manufacturing exemptions, they are taxable.

c. DAS Equipment

The Data Acquisition System (DAS) is defined in the Agreement at 3 as “the meaning set forth in the” SOW. The SOW does not define DAS in Section 2 with its other definitions, but the SOW often refers to the SCADA system, which appears to be, or include, the DAS. Section 9 of the SOW discusses the SCADA system requirements. Section 9.1 of the SOW states that the SCADA system will “support the data acquisition, monitoring, and equipment control of the

Project.” SOW Section 2(H) clarifies that “the POI includes the SCADA/communication interfaces as specified herein...” Section 9.4 of the SOW indicates that the SCADA system will communicate with the inverters, which are involved with energy production.

R.I. Gen. Laws § 44-18-30(57) exempts “monitoring and control equipment, if specified or supplied by a manufacturer of solar thermal, solar photovoltaic, geothermal, or wind energy systems or if required by law or regulation for such system...” Section 9.3 of the SOW indicates that the SCADA system must comply with “all requirements set forth by the Utility and Independent System Operator (ISO), Interconnection Agreement and Power Purchase Agreement...” among other requirements. However, it is not clear from the Owner’s Ruling Request, its attachments, and Asset List whether the SCADA/DAS equipment is specified or supplied by a manufacturer or required by law. Nevertheless, this equipment is exempt under R.I. Gen. Laws § 44-18-30(22) because there are aspects of the data monitoring equipment that monitor and control energy production, even though the equipment is part of the POI.

d. Miscellaneous Equipment

Several assets that are included in the SOW but not the above list of items will be addressed here. As discussed earlier, Section 1 (Introduction) of the SOW lists the various assets that will be provided by the Contractor for the Project. These assets will now be addressed in the order in which they are listed in SOW Section 1.

- Section A items have been addressed above.
- Section B items are analogous to the Civil Infrastructure items discussed above and are therefore subject to tax because they do not qualify for the exemptions under R.I. Gen. Laws §§ 44-18-30(7), 44-18-30(22), and 44-18-30(57).
- Section C items have partly been addressed above (e.g., inverters, step up transformers, interface with the Utility POI, SCADA communications, etc.). Additional information would be required for other items such as the collection system, switchgear, protection systems, data access link to Utility-provided metering, and protection relays. This equipment appears to be part of the POI per SOW Sections 7.17.1 and 5.5.7. They are not exempt under R.I. Gen. Laws § 44-18-30(57), but they may be exempt under § 44-18-30(22) if they are part of the energy production, rather than distribution, process.
- The meteorological station mentioned in SOW Sections 2(E) and 9 is, like the SCADA system, related to data monitoring. However, the weather station collects information on the environment and is not involved with energy production. Therefore, it is subject to tax.
- As discussed earlier, the electrical POI itself is a point of energy distribution, not production. The utility pole that serves as the POI is therefore subject to tax.
- Personal protective equipment (“PPE”) listed in SOW Section 2(I) is exempt under Section 19.6(A)(5) of Regulation 280-RICR-20-70-19 to the extent it includes “work clothes,

safety goggles, leather or rubber aprons or similar items of work clothes.” The SOW does not elaborate on what items PPE includes.

- SOW Section 8.8 indicates that Contractor will set aside land near the main entrance for a forty-foot storage container for future maintenance and storage if space allows. Neither the land nor the building qualifies for the renewable energy product or manufacturing exemptions. *See* Regulation 280-RICR-20-70-19, Section 19.9(E).
- SOW Section 11 states that Contractor will recommend a list of spare parts for Project equipment, including parts required for preventative maintenance. Section 19.9(F) of Regulation 280-RICR-20-70-19 states that “parts and repair service for exempt machinery also are exempt.” The Division does not have the list of spare parts for the Project that Contractor will recommend to Owner. However, per the regulation, spare parts for exempt equipment are not subject to tax while all other spare parts are presumed to be taxable under R.I. Gen. Laws § 44-18-25.
- The irrigation system discussed in SOW Section 14, plus the exterior lighting, are presumed to be taxable since there is no evidence that they qualify for the renewable energy product or manufacturing exemptions.

C. Materials acquired by the City

The SOW discusses that the City will procure materials that will become part of a methane mitigation system designed by the City’s consultant. *See* SOW Section 8.12. Contractor will then install the methane mitigation system upon its approval by the Rhode Island Department of Environmental Management (RIDEM). Any materials that a government entity directly purchases is exempt from Rhode Island sales and use tax pursuant to R.I. Gen. Laws § 44-18-30(8)². Therefore, any assets that the City purchases for the Project are not subject to tax.

D. Payments from the Owner to the Contractor

Owner requests that all payments that it makes to Contractor under the Agreement should be exempt from tax. However, this request is overly broad and fails to indicate what tax and why such payments should be tax exempt. Page 3 of the Agreement, labeled “Article 3 Owner Responsibilities,” states in Section 3.3: “Payment of Contract Price. Owner shall pay Contractor for the Work in accordance with this Agreement.” Section 5.1 under Article 5 (“Compensation and Payment”) indicates that the Owner will pay the Contractor “for the installation of the Equipment and the strict performance by Contractor of the Work and all other Services hereunder in accordance with this Agreement, the Project Schedule and the Key Dates set forth therein...” Section 5.1 further explains that all payments will be made according to the payment schedule (“Payment Schedule”) in Exhibit G of the Agreement.

² R.I. Gen. Laws § 44-18-30(8) states in pertinent part: “From the sale to, and from the storage, use, or other consumption by, this state, any city, town, district, or other political subdivision of this state. Every redevelopment agency created pursuant to chapter 31 of title 45 is deemed to be a subdivision of the municipality where it is located.”

Exhibit G is a list of scheduled payments set to occur between March and September 2018, inclusive, for various aspects of the Project. Payments are labeled as services and equipment. For example, “Mobilization & General Conditions” would be paid for in March and April while “Ballasted Foundations, Logistics, Survey & Concrete Pads” would be paid for in April, May, and June. It is not clear how much of the Contract Price of the Project (the total amount due on Exhibit G) is composed of equipment costs, service costs, markups, and other expenses.

Section 5.2 of the SOW further contemplates that the Contract Price of the Project “is inclusive of any and all sales or use taxes or taxes... of any amount that may be imposed or assessed by any Governmental Authority on Contractor or Owner with respect to this Agreement...” Per Section 5.2, the Contractor is required to timely pay all required taxes, provide proof to substantiate any exemptions, and indemnify the Owner for any unpaid taxes.

The Ruling Request does not indicate whether sales or use tax was paid on any of the items acquired for the Project. However, whether any particular asset is exempt or subject to tax depends on what it is, how it is used, and/or who is acquiring it. Owner is referred to Discussion Sections A, B, and C above to determine whether those items qualify for sales tax exemptions or not. For these reasons, Owner’s request for an exemption from tax on all payments that its makes to the Contractor is denied.

Ruling

The solar modules that Owner acquired for the Project are expressly exempt from sales and use tax by R.I. Gen. Laws § 44-18-30(57). To the extent that Contractor acquired assets that qualify as renewable energy products or manufacturing production under R.I. Gen. Laws §§ 44-18-30(22) and/or 44-18-30(57), they are exempt from sales and use tax. Contractor may receive a Manufacturer’s Exemption Certificate (MEC) from Owner for assets that qualify for the manufacturing exemptions. Contractor will then be entitled to pass the MEC to its vendor but will be liable for Rhode Island sales and use tax to the extent such property is not used for manufacturing purposes. Assets purchased by the City are exempt under R.I. Gen. Laws § 44-18-30(8). Owner’s request that all payments to Contractor under the Agreement be tax exempt is overly broad and is therefore denied.

This ruling is limited to the facts stated herein and may be relied upon by the Owner and Contractor and shall be valid unless expressly revoked because (1) the applicable statutory provisions of law are amended in a manner that requires a different result; (2) the underlying facts described herein materially change; or (3) a decision on point has been issued by the Rhode Island or Federal courts.

Neena S. Savage
Tax Administrator
October 23, 2018