STATE OF RHODE ISLAND
PUBLIC UTILITIES COMMISSION

IN RE: RECONSIDERATION OF INTERPRETATION : OF R.I. GEN. LAWS § 39-26.4-2(5)(ii) : DOCKET NO. 5145

ORDER

This matter was initiated by the Public Utilities Commission (Commission) to reconsider a decision made in Docket No. 5122 (Petition of Nautilus Solar Energy, LLC For Declaratory Judgment on R.I. Gen. Laws § 39-26.4, The Net Metering Act). In its declaratory ruling issued on March 29, 2021 (Declaration), the Commission made a single declaration that "Public housing authorities organized under R.I. Gen. Laws § 45-25 or R.I. Gen. Laws § 45-26 are eligible to enter into multi-municipal collaboratives for the purpose of entering into a net metering financing arrangement." That declaration is not being reconsidered in this docket.

In the Declaration, the Commission also denied a requested interpretation of R.I. Gen. Laws § 39-26.4-2(5)(ii) believing it was being asked to rule on a new question of law. The Commission had no need to reach this second issue of statutory interpretation because the Petitioner was granted relief on the first grounds. The Commission, however, believed that providing the interpretation would provide important guidance to entities participating in the net-metering program, based on the assumption that it was an issue that never had been addressed.

R.I. Gen. Laws § 39-26.4-2(5)(ii) states in relevant part that any eligible net-metering system:

> 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 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. (Special Entity net metering)

The Petitioner had requested the Commission declare that the use of the indefinite article "a" could be interpreted to mean either "one or more" or "one." According to Petitioner, such a definition would allow, for example, a single eligible net-metering system to be owned and operated on behalf of both a public entity and educational institution. The Commission denied this request for an interpretation based on the limited facts presented in the Petition. That denial has been appealed to the Supreme Court of Rhode Island – not by the Petitioner who was granted relief on the first grounds – but by one of the intervenors in that proceeding, Green Development LLC.

Following issuance of the Declaration, however, the Commission learned that The Narragansett Electric Company d/b/a National Grid (National Grid) has been allowing an eligible net metering facility to allocate renewable net metering credits to electric accounts of more than one public entity, educational institution, hospital, and nonprofit, separate from multi-municipal collaboratives (Special Entities). In Docket No. 5122, one intervenor advised the Commission in its Motion to Intervene that it has developed projects with multiple Special Entity credit recipients but did not elaborate on the specific facts in its comments. Additionally, National Grid intervened in this matter, stating that it would, "if permitted to intervene, National Grid expects to offer additional perspective regarding its interpretation of the Net Metering Act and the Company's Net Metering Provision." Unfortunately, National Grid did not provide any such perspective on its interpretation of its tariffs. Thus, the Commission was unaware, at the time of its decision, that the Declaration being sought was not a new question of the applicability of the Special Entity net metering law. Consequently, the Commission also was unaware that its ruling had the potential to disrupt a market that had, for some period of time, already relied upon the interpretation requested by the Petition.

The Commission notes that it would not ordinarily reconsider a decision after an appeal has been filed because the Commission may lose jurisdiction over the matter once the appeal is taken.[1] In the case of Docket No. 5122, however, the relief sought by the Petitioner was granted. It was the interpretation of law regarding the second ground for relief sought by Petitioner that caused an intervening party, Green Development LLC, to take the appeal. Thus, reconsideration of the second issue in this new docket has no effect on the relief obtained by the Petitioner in Docket No. 5122 and the appeal was not challenging the first interpretation upon which that relief was granted. Further, when the Commission issued its notice in this new docket that it intended to reconsider its interpretation on the second declaration from Docket No. 5122, no party objected, including Green Development LLC. In fact, Green Development LLC subsequently filed helpful comments in this docket, requesting reconsideration of the issue.[2]

Through this docket, the Commission sought to understand how the various Special Entity net metering arrangements already operational or under contract are structured, and why, in light of the use of the singular by the legislature, allowing the designation of electric accounts to multiple Special Entities is necessary or important from a legal, policy, or practical perspective.

The Commission requested written comments to be provided by any interested party to provide facts and rationale for the Commission's reconsideration of its prior interpretation of R.I. Gen. Laws § 39-26.4-2(5)(ii).[3] The Commission also issued data requests to which National Grid

[1] *See, e.g., Cavanagh v. Cavanagh*, 119 R.I. 479, 380 A.2s 964 (1977).
[2] The Commission notes that there is a very short period of time (seven days) between the issuance of a Commission order and the time that a party such as Green Development LLC could have sought reconsideration before filing an appeal with the Supreme Court. *See* R. I. Gen. Laws § 39-5-1.
[3] The comments were to be limited to Special Entity net metering projects where the designated electric accounts are those of public entities, educational institutions, hospitals, nonprofits, or multi-municipal collaboratives that share in a project allocation with another one of the previously listed entities. There was a separate matter (Docket No. 5101 – In Re: RIH Orthopaedic Foundation, Inc. Petition for Declaratory Judgment), which has since been withdrawn by Petitioner, to consider a suggested broader interpretation of the net metering statute that was not under consideration in this docket.

responded with additional information explaining how the Company administers Special Entity net metering crediting and the rationale for its decisions.[4]

The Commission received comments from National Grid and six other interested parties representing developers of renewable energy projects and other participants in the administration of Special Entity net metering and community remote net metering. After reviewing all the comments and responses to data requests, at an Open Meeting on May 26, 2021, the Commission unanimously voted to reconsider its prior interpretation of R.I. Gen. Laws § 39-26.4-2(5) and declared that an eligible net metering system, as defined in R.I. Gen. Laws § 39-26.4-2(5) 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.

The Commission appreciates the thoughtful and informative factual comments of all commenters along with the legal analysis provided by some of the commenters. The Commission initially read the plain language of § 39-26.4-2(5) as requiring an interpretation in the singular. Several of the commenters directed the Commission to R.I. Gen. Laws § 43-3-4, a section not originally presented to the Commission in Docket No. 5122. This section, addressing the rules of statutory interpretation states: "[e]very word importing the singular number only may be construed to extend to and to include the plural number also, and every word importing the plural number only may be construed to extend to and to embrace the singular number also."[5] National Grid explained that the Rhode Island Supreme Court has stated that the rules of statutory construction

[4] National Grid provided that as of April 29, 2021, there were a total of 45 operational remove net metering facilities, not including community remote net metering. Of those, 12 were allocating net metering credits to multiple Special Entities while the remaining 33 were allocating net metering credits to a single Special Entity. (National Grid Response to PUC 1-2).
[5] National Grid Comments at 7-8; Arcadia Comments at 2.

shall be observed unless the result would be inconsistent with the "manifest intent of the general assembly, or be repugnant to some other part of the statute."[6]

Kearsarge suggested that interpreting the term "a" in the plural and allowing for a renewable-generation developer to own and operate an eligible net metering system on behalf of more than one Special Entity would not be contrary to the purpose of statute.[7] No Commenter argued that such an interpretation would violate the purposes of the statute. National Grid concluded that while the Commission's determination that the plain language of R.I. Gen. Laws § 39-26.4-2(5)(ii) was reasonably interpreted to mean a singular public entity, a broader interpretation would harmonize the statute with the current practices and not disrupt the market for Special Entity net metering.[8]

In its Comments, Kearsarge provided two reasons why this interpretation makes sense from a practical and policy standpoint. Kearsarge explained that most Special Entities separately do not use enough electricity to make it economically feasible to have one Special Entity as the sole credit recipient of renewable net metering credits. Second, Kearsarge indicated that with the exception of municipalities, most Special Entities do not have the credit rating to allow a renewable-generation developer to obtain financing to develop the eligible net metering system.[9] Additionally, one may imagine there may be instances whereby a renewable-generation developer needs to execute multiple net metering financing arrangements with certain Special Entities that are affiliated but, because of their organizational structure, may require more than one net metering financing arrangement.[10]

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[6] National Grid Comments at 8, quoting State v. Ross, 973 A.2d 1148, 1165 (R.I. 2009).
[7] Kearsarge Comments at 1.
[8] *Id.* at 8.
[9] Kearsarge Comments at 1.
[10] *See e.g.,* Kearsarge Comments at 1 (referencing multiple YMCAs); R.I. Gen. Laws § 39-26.4-2(14) defines net metering financing arrangement as:

Taking all of these facts together and considering the legal analysis provided, the Commission has reconsidered its interpretation given in Docket No. 5122 and finds the practice that has been in place since 2016 to allow an eligible net metering system to allocate net metering credits to multiple Special Entities is not inconsistent with the purposes of the statute. Nor would interpreting "a" to be read in the plural be contrary to the general assembly's clear intent. The Commission notes that in each example of existing eligible net metering systems with multiple Special Entity credit recipients, each net metering system is owned by or operated on behalf of a Special Entity and the credit recipients include accounts designated by the Special Entity that would be qualified to receive net metering credits on its own.[11,12] This is critical to the Commission's acceptance that the current practice of allowing "a" to be read in the plural can be read as consistent with state law.[13] The Commission cautions that in the future, it will not blindly

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> [A]rrangements entered into by a public entity, educational institution, hospital, nonprofit, or multi-municipal collaborative with a private entity to facilitate the financing and operation of a net-metering resource, in which the private entity owns and operates an eligible net-metering resource on behalf of a public entity, educational institution, hospital, nonprofit, or multi-municipal collaborative, where: (i) The eligible net-metering resource is located on property owned or controlled by the public entity, educational institution, hospital, or one of the municipalities, as applicable; and (ii) The production from the eligible net-metering resource and primary compensation paid by the public entity, educational institution, hospital, nonprofit, or multi-municipal collaborative to the private entity for such production is directly tied to the consumption of electricity occurring at the designated net-metered accounts.

[11] In other words, each Special Entity is designating electric accounts associated with the Special Entity and not to electric accounts of entities (e.g., for profit entities) that would not qualify on their own. The Commission never reached the question of whether such an interpretation was allowed because, as noted above, Petitioner in Docket No. 5101 withdrew the Declaratory Petition after receiving opposition to such an interpretation from National Grid and the Division of Public Utilities and Carriers. (Docket No. 5101 – In Re: RIH Orthopaedic Foundation, Inc. Petition for Declaratory Judgment).

[12] In its comments, National Grid explained that:

> When an Eligible Net Metering System is owned by a developer on behalf of a public entity, educational institution, hospital, nonprofit, or multi-municipal collaborative pursuant to a net metering financing arrangement, the Company allows the developer, as the customer of record, to allocate net metering credits to the accounts it designates, which may include allocating credits to the accounts of more than one public entity, educational institution, hospital, nonprofit and/or multi-municipal collaborative from a single project, as long as all such designated accounts are held by a qualifying public entity, educational institution, hospital, nonprofit, and/or multimunicipal collaborative. The Company does not allow developers to designate accounts that are excluded from these categories, such as private corporations or residential accounts, to receive net metering credits. This has been the Company's practice since 2016. (National Grid Comments at 5-6).

[13] As part of this decision, the Commission assumes that the renewable-generation developer is meeting all of the requirements of the conditions regarding site control within the net metering financing arrangement definition.

allow the continuation of past practice if not persuaded that such practice is consistent with state law.

It is hereby:

(24078) DECLARED:

1. An eligible net metering system, as defined in R.I. Gen. Laws § 39-26.4-2(5) 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.

EFFECTIVE AT WARWICK, RHODE ISLAND PURSUANT TO AN OPEN MEETING DECISION ON MAY 26, 2021. WRITTEN ORDER FILED WITH THE SECRETARY OF STATE'S OFFICE ON JUNE 28, 2021.

PUBLIC UTILITIES COMMISSION

Ronald T. Gerwatowski, Chairman

Abigail Anthony, Commissioner

John C. Revens, Jr., Commissioner

Notice of Right of Appeal: Pursuant to R.I. Gen. Laws § 39-5-1, any person aggrieved by a decision or order of the PUC may, within 7 days from the date of the Order, petition the Supreme Court for a Writ of Certiorari to review the legality and reasonableness of the decision or Order.