



STATE OF RHODE ISLAND

DIVISION OF PUBLIC UTILITIES & CARRIERS

Legal Section

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April 22, 2021

Luly Massaro, Clerk
Public Utilities Commission
89 Jefferson Blvd.
Warwick, RI 02888

Re: Docket No. 5101

Dear Ms. Massaro,

RIH Orthopaedic Foundation, Inc. ("Foundation"), a Rhode Island non-profit corporation, has filed a petition seeking declaratory rulings as to the following: (i) whether the Foundation can enter into an agreement with University Orthopedics, Inc. ("UOI") such that the Foundation becomes the customer of record on electrical service accounts that UOI was previously the customer of record on, for the purposes of, among other things, designating those accounts to receive remote net metering credits pursuant to net-metering financing arrangement, *Petition at 8*, and (ii) whether any electric service account designated by the Foundation for net metering is eligible for net metering and may receive net-metering credits from an eligible net-metering system irrespective of whether the Foundation is a customer of record on such electrical service account(s). *Id.* The Division answers both queries in the negative. This correspondence reflects the Division's reasoning in support of its recommendation.¹

¹ As part of its review of the Petition, the Division conferred with the Foundation and The Narragansett Electric Company d/b/a National Grid ("National Grid") on March 18, 2021 and March 30, 2021, respectively.

UOI is a for-profit enterprise. *Petition at 1*. The Foundation is a non-profit enterprise. *Id.* The Foundation and UOI share a common president, Edward Akelman, M.D. *Response to NGrid 1-5*. UOI is the customer of record that operates at each of the account locations that the Foundation proposes to designate as eligible for net metering to obtain net-metering credits.² Of these locations, the Foundation only maintains “a separate office at 1 Kettle Point in East Providence, RI.” *Response to Div 1-10*. Although the Foundation avers that “dozens of UOI’s employees perform services on behalf of the Petitioner,” the Foundation “does not directly employ any employees.” *Response to Div 1-11*. The Foundation and UOI have an “intermingled relationship” that “is not easily demarcated by physical location.” *Response to Div 1-10*. UOI and the Foundation “engage in cost sharing and regularly contract for services that benefit one another across a range of activities.” *Response to Div 1-4*.

UOI and the Foundation have entered into a Purchase Services Agreement (“PSA”). Under the PSA, the Foundation agrees to maintain agreements with hospitals, obtain funds so that residents may undertake orthopedic care, enter into contracts to provide a laboratory testing program and “contract for electricity and certain other select utilities from vendors of the Foundation’s choosing and make the same available to UOI at any and all facilities, as directed by UOI.” *PSA, Para. 1(d)*. The PSA is effective for a one-year term that automatically renews unless terminated, at any time, by either party on 30 days written notice. *PSA, Para. 2*.

The Foundation envisions entering into a net-metering financing arrangement with a private entity, controlling a “parcel of land through a long-term lease” on which “is expected to be an eligible renewable energy resource³ in form of direct solar radiation.” *Response to Div 1-3*. Assuming National Grid permits UOI to close and reopen the requested UOI accounts in the name of the Foundation, the Foundation will purchase net metering credits at a discount from the net metering resource facility owner. *Response to Div 1-15*. Amounts that UOI would have

<u>² Account #</u>	<u>Location</u>	<u>Customer</u>
*****_*****	1 Virginia Ave., Unit 7 Providence, RI 02905	UOI
*****_*****	1 Virginia Ave., Unit 6 Providence, RI 02905	UOI
*****_*****	345 Valley Road, Apt N BBAS Pole 12A Middletown, RI 02842	UOI
*****_*****	345 Valley Road, Apt N BBAS Pole 12A Middletown, RI 02842	UOI
*****_*****	345 Valley Road, Apt N BBAS Pole 12A Middletown, RI 02842	UOI
*****_*****	1 Kettle Point Ave., East Providence, RI 02914	UOI

Response to Div 1-7 and 1-8.

³ An “eligible net-metering resource,” in pertinent part, “means eligible renewable energy resource, as defined in § 29-26-5...” *R.I. Gen. Laws § 39-26.4-2(4)*. According to *R.I. Gen. Laws § 39-26.4-2(5)*: “Notwithstanding any other provisions of this chapter, any eligible net-metering resource . . . owned and operated by a renewable-generation developer on behalf of a . . . nonprofit through a net-metering financing arrangement shall be treated as an eligible net-metering system and all accounts designated by the . . . nonprofit . . . 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)*. An “eligible net-metering system site,” in pertinent part, “means the site where the eligible net-metering system . . . is located...” *R.I. Gen. Laws § 39-26.4-2(6)*. An “eligible net-metering system,” in pertinent part, “means a facility generating electricity using an eligible net metering resource...” *R.I. Gen. Laws § 39-26.4-2(5)*.

otherwise been responsible for related to the electricity usage will be credited by UOI against any amounts owed by the Foundation to UOI in connection with the PSA; however, the PSA has not been amended to reflect this provision. *Id.* The net metering credits will be applied to offset electricity usage at the requested designated account locations. *Id.*

I

In a declaratory judgment petition action, the petitioner has the burden to show the envisioned application satisfies the purpose of the statute. *Panarello v. Dept. of Corrections*, 88 A.3d 350, 363-66 (R.I. 2014); *Connor v. Schlemmer*, 996 A.2d 98, 108 (R.I. 2010). The Rhode Island Supreme Court, moreover, has held that it is the Court’s “obligation ‘to ascertain the intent behind . . . [a] legislative enactment and to give effect to that intent.’” *E.g., Kaya v. Partington*, 681 A.2d 256, 260 (R.I. 1996). The legislation’s intent is not determined by a mechanical application of the statutory language or definitions. *Id.* See also *Matter of Falstaff Brewing Corp. re: Narragansett Brewery Fire*, 637 A.2d 1047, 1050 (R.I. 1994). Rather, it is determined by the meaning most consistent with its policies and with the obvious purposes of the Legislature. *Brennan v. Kirby*, 529 A.2d 633, 637 (R.I. 1987). In all events, a party may not advance an interpretation “that would result in absurdities or would defeat the underlying purpose of the enactment.” *Id.*

Non-profits often struggle to pay their bills due to, among other things, their limited financial resources, the charitable nature of their work, *etc.* The favorable net-metering treatment afforded to non-profits through a net-metering financing arrangement under Title 39-26.4 is intended to aid these entities by lowering their utility service obligations via an award of net-metering credits on their electric utility bills. All ratepayers subsidize the cost of these credits. In return, ratepayers receive the benefit of the valuable services non-profits can continue to provide. The favorable treatment afforded by Title 39-26.4 to a non-profit is intended to serve the non-profit, including all of the accounts/locations that the non-profit intends to designate as eligible for net metering. Title 39-26.4 is not intended to provide favorable net-metering treatment to for-profit entities which should have no need for such treatment.

Based on the purpose of Title 39-26.4, the Foundation must show that UOI will not benefit from favorable net-metering treatment afforded by Title 39-26.4. *Panarello*, 88 A.3d at 363-66; *Connor*, 996 A.2d at 108. The Division does not believe the Foundation has met its burden.

UOI directs the Foundation as to where to make electricity available at each of its locations. *PSA, Para. 1(d)*. While the relationship between UOI and the Foundation is characterized as “intermingled,” sharing common employees and a common President, *Response to Div 1-5, 1-10, 1-11*, UOI is clearly the dominant operating entity at each location to be designated for favorable net-metering treatment under Title 39, Ch. 26.4. See website of UOI:

https://universityorthopedics.com/contact_us/locations.html

The Foundation only maintains a separate office at 1 Kettle Point Ave. in East Providence. *Response to Div 1-10*. The Foundation does not directly employ any employees. *Response to*

Div. 1-11. Even though the Foundation will be the nominal customer of record on accounts to be designated for favorable net-metering treatment, it is the operations of UOI, a for-profit entity, that will receive the benefit of the net-metering credits.

The Foundation avers that amounts that UOI would have otherwise been responsible for related to the electricity usage will be credited by UOI against any amounts owed by the Foundation to UOI in connection with the PSA; however, no such provision is reflected in the PSA. *Response to Div 1-15.* Even were UOI and the Foundation to amend the PSA to contain such a provision as “may” be proposed, *id.*, the PSA may be terminated at any time on 30 days written notice, *PSA Para 2*; nothing in Title 39, Ch. 26.4 gives state regulatory bodies or National Grid the authority to monitor or enforce compliance of such a provision; and it is unclear how compliance with such a provision can ever be assured without such authority when UOI and the Foundation “engage in cost sharing” and have an “intermingled relationship” that “is not easily demarcated by physical location.” *Response to Div 1-4, 1-10.*

In sum, the application of net-metering credits to lower the operating costs of a for-profit entity is not consistent with Title 39, Ch. 26.4’s policies and with the obvious purposes of the Legislature. *E.g., Brennan*, 529 A.2d at 637. The Foundation has not shown to the Division’s satisfaction through the PSA or otherwise that UOI will not be the principal beneficiary of the requested net-metering treatment.

II

The Foundation also requests a declaration that “*any* electric service account designated by a non-profit for net metering is eligible for net metering and may receive net-metering credits from an eligible net-metering system irrespective of whether the non-profit is a customer of record on such electrical service accounts(s).” *Petition at 8* (emphasis added).

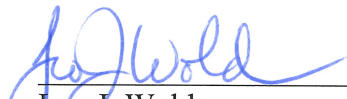
As discussed above, the intent of Title 39, Ch. 26.4 is to require a non-profit customer of record, that is associated with an eligible net metering system through a net-metering financing arrangement, to designate accounts/locations that are similarly non-profit in character as the net metering customer of record. RIPUC 2207, Sheet 4 defines the term “Net Metering” in the case of a non-profit as meaning “using electrical energy generated by an Eligible Net Metering System for the purpose of . . . generating Net Metering Credits to be applied to the electric bills of the Net Metered Accounts *of the Net Metering Customer.*”⁴ *RIPUC 2207, Sheet 4* (emphasis added). Neither the statute nor the tariff is intended to permit a non-profit entity, as a customer of record of an eligible net metering system, to designate account locations belonging to a for-profit entity for favorable net-metering treatment. The account locations of the for-profit entity would not be “net-metered accounts of the net metering customer” or “non-profit” in character like the non-profit, net-metering customer of record. It follows that the Foundation may not designate “*any* electric service account for net metering . . . [to] receive net-metering credits from an eligible net-metering system irrespective of whether [the Foundation] is a customer of

⁴ The term “Net Metering Customer,” is defined as “an electric delivery service customer of record for the Eligible Net Metering System.” *RIPUC 2207, Sheet 4.*

record on such electrical service account(s).” *Petition at 8* (emphasis added).

Respectfully submitted,

Division of Public Utilities and Carriers



Leo J. Wold
Deputy Chief of Legal Services

cc: Service List