

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: PETITION OF
RIH ORTHOPAEDIC FOUNDATION, INC.
FOR DECLARATORY JUDGEMENT
ON RHODE ISLAND GENERAL LAWS
§39-26.4, THE NET METERING ACT

Docket No.

PETITION FOR DECLARATORY JUDGMENT

RIH Orthopaedic Foundation, Inc., a Rhode Island non-profit corporation (“Foundation”) files this Petition for Declaratory Judgement seeking a determination from the Rhode Island Public Utilities Commission (“PUC”) that, under Rhode Island Gen. Laws Chapter 26.4 of Title 39 (inclusive of relevant regulations, the “Act”), (a) the Foundation can enter into an agreement with University Orthopedics, Inc., a Rhode Island professional service corporation (“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 a net-metering financing arrangement, and, that (b) any electrical service account designated by a nonprofit for net metering is eligible for net metering and may receive net-metering credits from an eligible net-metering system irrespective of whether the nonprofit is the customer of record on such electrical service account(s). Any terms used herein but not separately defined herein have the definition set forth in the Act.

Foundation brings this petition pursuant to 815-RICR-00-00-1.11(c) and R.I. Gen. Laws §42-35-8. The requested declaratory judgment is warranted as it will serve to advance the stated purpose of the Act by allowing and encouraging Foundation, as well as other eligible public entities, educational institutions, hospitals, nonprofits and multi-municipal collaboratives, to enter into net-metering financing arrangements under the circumstances described in this petition and

thereby facilitate the diversification of the state's energy generation sources, stimulate economic development and reduce distribution system costs.

FACTS

Foundation is a nonprofit corporation as defined and established through Chapter 6 of title 7 of the Rhode Island General Laws. UOI is a professional service corporation that was formed to engage in the practice of orthopedic surgery – a purpose that UOI engages in at facilities throughout the State of Rhode Island. The Foundation likewise operates in facilities throughout the State of Rhode Island, sharing space with UOI at most of the locations that UOI operates out of. Foundation and UOI collaborate on a range of activities to support both UOI's and the Foundation's objectives in the field of orthopedic medicine, including the provision of administrative, supervisory and teaching services at Rhode Island Hospital and Miriam Hospital, funding research into orthopedic care, and providing contracts for laboratory services. These activities support both UOI's provision of medical services as well as the Foundation's tax-exempt purposes of conducting medical research, biotechnology testing, providing teaching services, and providing administrative services to medical and surgical care to hospitals.

The Foundation and UOI have entered into a Purchased Services Agreement that identifies the relationship between UOI and the Foundation described in the preceding paragraph, and also permits the Foundation to make that electrical service available to UOI at UOI's facilities in Rhode Island.

The Foundation would like to contract with an electric-distribution company and administratively retitle certain electric service accounts providing service to UOI facilities into the Foundation's name (such accounts are hereafter referred to as the "Service Accounts"), with the

ultimate goal of entering into a net-metering financing arrangement that designates the Service Accounts for receiving renewable net-metering credits.

Entering into such an arrangement would further the Foundation's mission of providing medical research and healthcare services by defraying operating costs, and would support UOI's goal of structuring its operations in a manner that promotes renewable energy within the State of Rhode Island. However, before engaging in this arrangement and assuming potentially costly obligations, the Foundation is requesting that the PUC confirm (a) that the relationship proposed between the Foundation and UOI is permitted under the Act, as well as (b) whether it is necessary for the Foundation to perform the administrative task of actually retitling the electric service accounts providing service to UOI facilities into the Foundation's name in order for the Foundation to designate those accounts to receive renewable net metering credits.

LEGAL ANALYSIS

In general, as set forth in R.I. Gen. Laws § 39-26.4-2(5) and (6), the energy generated by an eligible net-metering system cannot exceed the amount of energy consumed by the net-metered electric service account(s) that are actually located in the same geographical location as the eligible net-metering system. The Act provides for certain exceptions to that rule, however, by allowing for community remote-net-metering systems and, relevant for this Petition, eligible net-metering resources that are "(i) Owned by a public entity, educational institution, hospital, nonprofit, or multi-municipal collaborative or (ii) Owned and operated by a renewable-generation developer on behalf of a public entity, educational institution, hospital, nonprofit, or multi-municipal collaborative through net-metering financing arrangement...". R.I. Gen. Laws § 39-26.4-2(5). The Foundation is a nonprofit within the definition set forth in the Act. Accordingly, any eligible net-metering resource owned and operated by a renewable-generation developer on

behalf of the Foundation through a net-metering financing arrangement falls within the definition of an eligible net-metering system.

The Act does not purport to place limitations on the electric service accounts that the Foundation could designate for net metering under a net-metering financing arrangement. To the contrary, the definition of “eligible net-metering system” as set forth in the Act states that: “*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.” (emphasis added). R.I. Gen. Laws § 39-26.4-2(5).

In the definition of “eligible net-metering system site” the Act generally requires that, “all of the net-metered accounts at the eligible net-metering-system site must be the accounts of the same customer of record and customers are not permitted to enter into agreements or arrangements to change the name on accounts for the purpose of artificially expanding the eligible net-metering-system site to contiguous sites in an attempt to avoid this restriction.” R.I. Gen. Laws § 39-26.4-2(6). However, that provision expressly excludes eligible net-metering systems owned or operated on behalf of a nonprofit such as the Foundation from that restriction, as it is immediately preceded by the following: “Except for an eligible net-metering system owned by, or operated on behalf of, a public entity, educational institution, hospital, nonprofit, or multi-municipal collaborative through a net-metering financing arrangement, or except for a community remote-net-metering system,”. *Id.* Accordingly, the Act expressly permits (albeit by implication) the Foundation to participate in a net-metering financing arrangement even if it is not the technical customer of record on all net-metered accounts at an eligible net-metering system site operated on the Foundation’s behalf pursuant to a net-metering financing arrangement.

Other sections of the Act are also consistent with this position. For instance, the definition of net-metering financing arrangement only relevantly requires that “[t]he 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.*” (emphasis added). R.I. Gen. Laws § 39-26.4-2(14). There is no requirement that production be directly tied to the consumption of the public entity, educational institution, hospital, nonprofit, or multi-municipal collaborative (such entities referred to herein as a “Remote Eligible Entity”), nor is there a requirement that production be directly tied to accounts that the Remote Eligible Entity is the customer of record on. As discussed above, those restrictions do appear to be applicable to eligible net-metering systems that are not owned or operated on behalf of a Remote Eligible Entity, but the Act does not include any such analogous limitation with respect to the type of system being proposed by the Foundation.

There is also support for this position in The Narragansett Electric Company Net Metering Provision, R.I.P.U.C. No. 2207 (the “Net Metering Tariff”). Unlike the statutory provisions in the Act, the Net Metering Tariff includes a definition for the term “Net Metered Accounts.” That term is defined in the Net Metering Tariff as follows:

one or more electric delivery service accounts owned by a single customer of record on the same campus or complex of sites contiguous to one another and the site where the Eligible Net Metering System is located or a Farm in which the Eligible Net Metering System is located, *or the electric delivery service account(s) associated with an Eligible Net Metering System that is:* (i) owned by a Public Entity, Educational Institution, Hospital, Nonprofit, or Multi-Municipal Collaborative or (ii) *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;* or (iii) a Community Remote Net Metering System, provided that the Net Metering Customer has submitted Schedule B (attached) with the individual billing account information for each Net Metered Account.

(emphasis added). Net Metering Tariff at Sheet 3-4.

Again, the Net Metering Tariff, like the statutory provisions in the Act, exempts an eligible net metering system that is owned and operated by a renewable generation developer on behalf of a nonprofit from the requirement that all electric delivery service accounts associated with an eligible net metering system be owned by a single customer of record. Also, like the statutory provisions of the Act, the Net Metering Tariff does not appear to place any restrictions on which electric delivery service accounts can be designated as net metered accounts under a net metering financing arrangement.

Finally, Schedule B to the Net Metering Tariff (attached to the Net Metering Tariff at Sheet 12) also supports the position that (a) there is no restriction on the Foundation retitling the Service Accounts into the Foundation's name so that, among other things, the Foundation can enter into a net-metering financing arrangement that designates the Service Accounts for receiving renewable net-metering credits, and (b) the Foundation could designate the Service Accounts for receiving renewable net-metering credits even without becoming the customer of record on those accounts. Schedule B is an agreement that each net-metering customer must enter into with the Narragansett Electric Company to identify which accounts are to receive renewable net-metering credits associated with each eligible net-metering system. The form of such agreement that is attached to the Net Metering Tariff states expressly that: "Except in the case of a Public Entity, Educational Institution, Hospital, Nonprofit, or Multi-Municipal Collaborative or Community Remote Net Metered System, the customer of record must be the same the [sic] customer for each Net Metered Account." *Id.* Inclusion of that language in Schedule B strongly supports the position that, not only is there no requirement for the Foundation to also be the customer of record on the Service Accounts in order for those accounts to receive renewable net-metering credits, but also that there is nothing in the Act that restricts the Service Accounts from receiving renewable net-

metering credits once they are retitled in the Foundation's name pursuant to the Purchased Services Agreement.

The clear, unambiguous language of the Act permits the Foundation to enter into the Purchased Services Agreement, administratively retitling the Service Accounts into the Foundation's name, and then entering into a net-metering financing arrangement with a private entity to operate an eligible net-metering resource on its behalf, applying renewable net-metering credits to the designated Service Accounts. Furthermore, the clear unambiguous language of the Act does not require the Foundation to become the customer of record with respect to those Service Accounts in order for the Foundation to designate the Service Accounts for receiving renewable net-metering credits under a net-metering financing arrangement.

Under well-established statutory rules of construction, "when the language of a statute is clear and unambiguous, [a court] must interpret the statute literally and must give words of the statute their plain and ordinary meanings." Accent Store Design, Inc. v. Marathon House, Inc., 674 A.2d 1223, 1226 (R.I.1996); *see also* Keystone Elevator Co., 850 A.2d at 918; Driscoll v. Karroo Land Co., 600 A.2d 722, 724 (R.I.1991). In addition, a court "will not broaden statutory provisions by judicial interpretation unless such interpretation is necessary and appropriate in carrying out the clear intent or defining the terms of the statute." Simeone v. Charron, 762 A.2d 442, 448–449 (R.I. 2000). Finally, the Act is to "be construed liberally in aid of its declared purposes." R.I. Gen. Laws § 39-26.4-4.

In applying the foregoing rules of statutory construction to the Act, it is clear that the Act permits the Foundation to identify the Service Accounts to receive renewable net-metering credits under a net-metering financing arrangement, irrespective of whether the Foundation is the customer of record on those accounts. See R.I. Gen. Laws § 39-26.4-2(6). Further, there is no

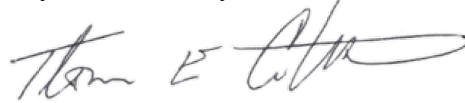
reason for the PUC to read such a limitation into the statute where the clear and unambiguous language provides for such an outcome. Such a broadening of the existing statutory limitation is only warranted if necessary and appropriate to carry out the clear intent of the statute. See *Simeone* at 448-449. Here, such a broadening would have the opposite effect, undermining the intent of the statute by frustrating the expansion of diverse energy generation sources, in contravention of the provisions of R.I. Gen. Laws § 39-26.4-4, requiring the statute to be liberally construed.

REQUESTED RELIEF

For these reasons, the Foundation respectfully request that the PUC grant this Petition and enter an Order and Judgment, (a) declaring that the Foundation can enter into an agreement with 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 a net-metering financing arrangement, and (b) declaring that any electrical service account designated by a Remote Eligible Entity for net metering are eligible for net metering and may receive net-metering credits from an eligible net-metering system irrespective of whether the Remote Eligible Entity is the customer of record on such electrical service account(s), and (c) for such other relief as the PUC deems appropriate.

**RIH ORTHOPAEDIC FOUNDATION,
INC.**

By their attorneys,

A handwritten signature in black ink, appearing to read "Thomas Carlotto", written over a horizontal line.

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