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PANNONE LOPES DEVEREAUX & WEST LLC

counselors at law

Jillian N. Jagling
Associate
401-824-5121
jjagling@PLDW.com

December 3, 2015

VIA Regular Mail & Email

Cynthia G. Wilson-Frias
Deputy Chief of Legal Services
RI Public Utilities Commission
89 Jefferson Blvd.
Warwick, RI 02888

RE: Petition for Declaratory Judgment Pursuant to Rule 1.10(c)

Dear Ms. Wilson-Frias:

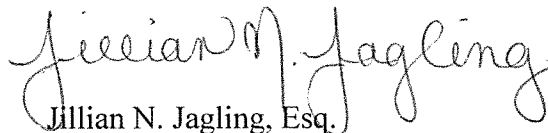
Enclosed for filing please find an original and 9 copies of the Rhode Island Airport Corporation's Petition for Declaratory Judgment regarding Rhode Island General Laws, § 39-26.4 – Net Metering.

I also sent an electronic copy of this letter and the Petition to Luly Massaro, Commission Clerk and Leo Wold, Assistant Attorney General.

If you have any questions, please feel free to contact me.

Sincerely,

PANNONE LOPES DEVEREAUX & WEST LLC


Jillian N. Jagling, Esq.

{Encls.}

cc: Luly Massaro, Commission Clerk (via email)
Leo Wold, Assistant Attorney General (via email)

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317 Iron Horse Way, Suite 301 Providence, RI 02908
tel 401 824 5100 • fax 401 824 5123

www.pldw.com

**STATE OF RHODE ISLAND
PUBLIC UTILITIES COMMISSION**

In re: Rhode Island Airport Corporation)
Petition for Declaratory Judgment regarding) Docket No. _____
Rhode Island General Laws § 39-26.4 – Net Metering)

PETITION FOR DECLARATORY JUDGMENT PURSUANT TO RULE 1.10(C)

This Petition for Declaratory Judgment concerns the definition of a “public entity” found in Rhode Island General Laws 1956 § 39-26.4-2(12) (the “Net Metering Statute” or “Statute”). The Rhode Island Airport Corporation (“RIAC”) hereby petitions the Public Utilities Commission (“PUC”) for a determination that RIAC is a “public entity” within the meaning of the Statute.

I. Summary of Request

RIAC wishes to have a developer create a solar energy system on airport property, to include T.F. Green, Newport, North Central, and Quonset State Airports, that will be deemed an “Eligible Net Metering System” under the Statute (the “Project”). The Project will, during its operational life, be a source of clean power and will provide energy to National Grid, resulting in a net metering credit (i.e., savings) to RIAC’s overall power bill for all Airports. The electricity generated will reduce energy costs and thereby free up dollars to maintain critical infrastructure.¹ RIAC has received proposals in connection with securing a developer to construct, own, and manage the Project.

One of the ways a renewable energy resource, like the one to be developed as part of the Project, may be deemed an “Eligible Net Metering System,” is for the System to be owned and operated by a renewable generation developer on behalf of a “public entity” through a public entity net metering financing arrangement.

RIAC intends to enter into a public entity net metering financing arrangement to facilitate the financing and operation of the Project, but wishes to confirm with the PUC that it is considered a “public entity” under the Statute, before doing so.

II. State of Law Regarding Net Metering

Section 39-26.4-2(2)(ii) of the Statute is the impetus for this Petition. The Statute defines “Eligible Net Metering System” as “any eligible net metering resource: [...] (ii) owned and operated by a renewable generation developer *on behalf of a public entity* [...] through public entity net metering financing arrangement.” (Emphasis added) Only “Eligible Net Metering Systems” are eligible for net metering under the Statute.

The Net Metering Statute defines “public entity” as “the state of Rhode Island, municipalities, wastewater treatment facilities, public transit agencies or any water distributing

¹ RIAC is responsible for the operation and maintenance of the State’s six airports.

plant or system employed for the distribution of water to the consuming public within this state including the water supply board of the city of Providence.”

III. RIAC Position Statement

For the following reasons, RIAC submits that it is appropriate for it to be deemed a “public entity” under the Statute.

Most importantly, while having a distinct legal existence from the State, RIAC is properly considered part and parcel of the State because of its status as a subsidiary of the Rhode Island Commerce Corporation (the “Commerce Corporation”), pursuant to Rhode Island General Laws § 42-64-7.1.

The Commerce Corporation’s enabling statute at § 42-64 of the Rhode Island General laws states that the Commerce Corporation is a public corporation of the State having those powers set forth therein, the execution of which are deemed to be the performance of essential governmental functions of the state for public purposes. The Commerce Corporation is authorized to exercise and perform its powers and function through one or more subsidiary corporations whose creation is approved and authorized by the general assembly. RIAC is such a subsidiary.

Among other powers set forth in the § 42-64, the Commerce Corporation has the power to undertake the planning, development, construction, financing, management, operation of any “project,” which means, the acquisition, ownership, operation, construction, reconstruction, rehabilitation, improvement, development, sale, lease, or other disposition of, or the provision of financing for, any [...] airport facility. *See* Rhode Island General Laws, §§ 42-64-4 and 42-64-7(1).

Also, the Rhode Island Supreme Court acknowledged RIAC’s status in relation to the Commerce Corporation in an Advisory Opinion to the Governor in 1993, wherein it stated “RIAC is a wholly owned subsidiary of RIPA² and holds the same powers and limitations as RIPA. Since RIPA is defined as a “governmental agency,” RIAC also is a governmental agency.” *In re Advisory Opinion to Governor*, 627 A.2d 1246, 1251 (R.I. 1993).

Simply on the basis of RIAC’s status as the public corporation/governmental agency charged with operating the State’s airports, RIAC meets the statutory threshold as a public transit agency.³

It is important to note that no legislation unambiguously and specifically addresses all matters. Therefore, even though RIAC is not explicitly referenced in the definition of “public entity,” in the Net Metering Statute, it is reasonable to conclude that RIAC is a public entity after reviewing the Commerce Corporation’s enabling legislation, the Supreme Court’s Advisory Opinion and RIAC’s status as a public transit agency. Also, a declaration by the PUC that

² The Commerce Corporation was previously named the Rhode Island Port Authority and Economic Development Corporation (“RIPA”).

³ Transit is widely accepted to mean the conveyance of people or goods from one place to another (including the system for such conveyance (e.g., an airport system)).

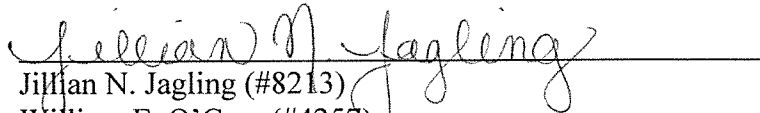
RIAC is a public entity will not result in sweeping changes in the operation of the Net Metering Statute. Instead, such a declaration will simply clarify the definition of public entity and allow RIAC to move forward with the Project.

Finally, the Net Metering Statute requires that it be construed liberally in aid of its purpose, which is, in part, “to facilitate and promote installation, of customer-sited, grid-connected generation of renewable energy [and] to support and encourage customer development of renewable generation systems.” *See* Rhode Island General Laws §§ 39-26.4-1 and 39-26.4-4. A finding by the PUC that RIAC is a “public entity” will facilitate and promote the generation of renewable energy, and support and encourage the development of a renewable generation system at the Project site, in accordance with the purpose of the Statute.

IV. Conclusion

For the reasons stated above, RIAC respectfully requests a declaratory ruling by the PUC finding that RIAC is a public entity as that term is defined in the Net Metering Statute.

Respectfully Submitted,



Jillian N. Jagling (#8213)

William E. O’Gara (#4257)

Attorney for Rhode Island Airport Corporation

PANNONE LOPES DEVEREAUX & WEST LLC

317 Iron Horse Way, Suite 301

Providence, RI 02908

401-824-5100

401-824-5123 (fax)

Dated: December 3, 2015