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RI SECRETARY OF STATE
ADMINISTRATIVE RECORDS

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: PETITION OF SOUTHERN SKY	:	
RENEWABLE ENERGY RHODE ISLAND, LLC	:	
FOR DECLARATORY JUDGMENT ON RHODE	:	DOCKET NO. 4694
ISLAND GENERAL LAWS § 39-26.4,	:	
THE NET METERING ACT	:	

ORDER

On March 13, 2017, Southern Sky Renewable Energy Rhode Island, LLC (Petitioner) filed with the Public Utilities Commission (PUC) a Petition for Declaratory Judgment (petition) seeking a declaration that for purposes of entering into a Public Entity Net Metering Financing Arrangement as defined in R.I. Gen. Laws § 39-26.4-2(16)(i) (Net Metering Act), the requirement that an eligible net metering resource be located on property owned or controlled by a public entity or municipality is satisfied by (a) the public entity or municipality entering into a ground lease as a co-tenant along with the solar developer, or (b) an easement agreement in which the public entity or municipality has control over the property.¹

In support of the petition, Petitioner submitted that a ground lease or easement agreement allows the municipality or public entity to exercise the necessary control anticipated by the Net Metering Act for purposes of Public Entity Net Metering Financing Arrangements. According to Petitioner, “[l]ease and easement agreements have long been recognized as enforceable interests in real estate and both grant control to the tenant or holder of the easement to the extent provided for in the instruments.”² Petitioner represented that based on informal discussions with National

¹ Pet. at 1; [http://www.ripuc.org/eventsactions/docket/4694-SouthernSky-DJ\(3-13-17\).pdf](http://www.ripuc.org/eventsactions/docket/4694-SouthernSky-DJ(3-13-17).pdf). Petitioner has standing as a renewable energy developer engaged in the facilitation 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 or multi-municipal collaborative. See Pet. at 1-2 and R.I. Gen. Laws § 39-26.4-2(16), defining the roles of the participants in a public entity net metering arrangement. Petitioner engages in activities that fall within the role of one of the participants to such agreements.

² Pet. at 3 (citations omitted).

Grid, that Petitioner believed such instruments would comply with the ownership or control requirement. However, the lender with whom Petitioner is working has conditioned construction financing on a favorable ruling by the PUC on this Petition.³

On March 22, 2017, the PUC propounded data requests to Petitioner seeking additional information about the instruments. In responses received on March 27, 2017, Petitioner represented that the terms of the ground lease or easement agreement would be for twenty-five years and that certain documents would be recorded with the register of deeds. Petitioner also provided exemplars of the terms of both a ground lease and easement.⁴

On March 30, 2017, the PUC caused a Notice of Filing and Deadline for Comments regarding the petition to be published in the Providence Journal. The deadline for filing written objections to or comments on the petition was April 19, 2017.⁵

On April 19, 2017, The Narragansett Electric Company d/b/a National Grid (National Grid) filed a Motion to Intervene and submitted comments in this matter. National Grid acknowledged that the “owned or controlled” requirement in the Public Entity Net Metering Financing Agreement may be satisfied by a ground lease or easement agreement based on established caselaw. However, National Grid indicated that “the express terms of the lease or easement agreement will determine whether the ownership or control requirement of the Net Metering Act is satisfied and requested the PUC order include a provision that all net metering applications would still be subject to National Grid’s review.”⁶

At an Open Meeting held on May 4, 2017, the PUC considered the filings and found that for purposes of entering into a Public Entity Net Metering Financing Arrangement as defined in

³ Pet. at 4.

⁴ Responses to PUC Data Requests; <http://www.ripuc.org/eventsactions/docket/4694-SouthernSky-DR-PUC1.pdf>.

⁵ Notice; <http://www.ripuc.org/eventsactions/docket/4694-notice.pdf>.

⁶ National Grid Comments at 2-3; [http://www.ripuc.org/eventsactions/docket/4694-NGrid-Intervention\(4-19-17\).pdf](http://www.ripuc.org/eventsactions/docket/4694-NGrid-Intervention(4-19-17).pdf).

R.I. Gen. Laws § 39-26.4-2(16)(i) (Net Metering Act), the requirement that an eligible net metering resource be located on property owned or controlled by a public entity or municipality is satisfied by (a) the public entity or municipality entering into a ground lease as a co-tenant along with the solar developer, or (b) an easement agreement in which the public entity or municipality has control over the property. Specifically, in this case, while all Net Metering applications are subject to review by National Grid and any disputes over whether an application satisfies the requirements of the statute or related tariff are subject to PUC determination, the exemplar ground lease and easement agreement submitted in this case satisfy the “owned or controlled” requirement in the Net Metering Act.⁷

R.I. Gen. Laws § 39-26.4-4 requires that the chapter be construed liberally in aid of its purpose. The purpose of the Net Metering Act 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.”⁸ Finding that a properly worded, executed, and recorded ground lease or easement agreement satisfies the “owned or controlled” requirement in the definition of a Public Entity Financing Agreement will facilitate and promote the purpose of the statute.

It is hereby:

(22789) DECLARED:

1. For purposes of entering into a Public Entity Net Metering Financing Arrangement as defined in R.I. Gen. Laws § 39-26.4-2(16)(i) (Net Metering Act), the requirement that an eligible net metering resource be located on property owned or controlled by a public entity or municipality is satisfied by (a) the public entity or municipality entering into

⁷ Pet. at 3-4.

⁸ R.I. Gen. Laws § 39-26.4-1.


a ground lease as a co-tenant along with the solar developer, or (b) an easement agreement in which the public entity or municipality has control over the property.


2. The exemplar ground lease and easement agreements submitted in this matter are sufficient to meet the requirements of the statute.

EFFECTIVE AT WARWICK, RHODE ISLAND ON MAY 9, 2017 PURSUANT TO AN OPEN MEETING DECISION ON MAY 4, 2017. WRITTEN ORDER FILED WITH THE SECRETARY OF STATE'S OFFICE ON MAY 9, 2017

PUBLIC UTILITIES COMMISSION




Margaret E. Curran, Chairperson


Herbert F. DeSimone, Jr., Commissioner


Marion S. Gold, 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.

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