

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION**

**IN RE: APPLICATION FOR CERTIFICATION AS :
ELIGIBLE RENEWABLE ENERGY RESOURCE : DOCKET NO. 4858
FILED BY KEARSARGE GB LLC – :
NEW GENERATION :**

**IN RE: APPLICATION FOR CERTIFICATION AS :
ELIGIBLE RENEWABLE ENERGY RESOURCE : DOCKET NO. 4891
FILED BY KEARSARGE UXBRIDGE LLC – :
NEW GENERATION :**

ORDER

I. Overview

On August 14, 2018, the Public Utilities Commission (PUC) received two applications from companies seeking certification of their projects as eligible New Renewable Energy Resources under Rhode Island’s Renewable Energy Standard (RES) and the PUC’s Rules governing the Implementation of a Renewable Energy Standard (Rules).¹ The first application, submitted by Kearsarge GB LLC, sought certification for its Kearsarge GB Generation Unit, a 1.44 MW AC solar energy Generation Unit located in Great Barrington, Massachusetts. The second application submitted by Kearsarge Uxbridge LLC, sought certification for its Kearsarge Uxbridge Generation Unit, a 1.416 MW AC solar energy Generation Unit located in Uxbridge, Massachusetts.^{2,3} The PUC’s

¹ R.I. Gen. Laws § 39-26-1 to 10; 810-RICR-40-05-2.

² These generation units are referred to, collectively, as the Facilities and the two limited liability companies are referred to as Kearsarge LLC.

³ Pursuant to Section 2.6 and other relevant Sections of the Rules, a thirty-day period for public comment was provided during which time no such comments were received. Supplemental and clarifying information was provided to PUC staff and the PUC’s consultant. Said supplemental and clarifying information included: a) documentation regarding the NEPOOL-GIS Identification Number of the Generation Unit, b) clarification regarding the nameplate capacity of the Generation Unit, c) documentation regarding the Commercial Operation Date of the Generation Unit, d) clarification regarding the Grid Connected status of the Generation Unit, and e) a completed Appendix D: Special Provisions for Aggregators of Customer-sited or Off-grid Generation Facilities.

consultant recommended approval of the Facilities, offering that they met the technical specifications set forth in the Renewable Energy Standard and PUC Rules.

The PUC subsequently, on July 8, 2019, after a review by legal and policy staff, issued additional data requests to Kearsarge LLC. The data requests were responded to on July 24, 2019.⁴ On November 5, 2019, based on these responses and its analysis of the RES and Rules, the PUC rejected Kearsarge LLC's applications, finding them not to

⁴ The following is the data request in full:

The Rhode Island Renewable Energy Standard does not allow behind-the-meter net metering systems to be qualified under the Renewable Energy Standard if they are located outside of Rhode Island. The PUC's regulatory policy is that for systems located in Rhode Island, remote net metering systems are net metering systems. Thus, they are considered to be offsetting load. All net metering systems are required to register with the NEPOOL-GIS in the same manner. The PUC does not yet have a policy for remote net metering systems located outside of Rhode Island.

In January 2019, Kearsarge Uxbridge [and Kearsarge Great Barrington] was asked and answered the following questions:

- Q. For each Kearsarge facility, will any of the generation be used to offset customer-sited load (either through direct electrical connection, or through a net-metering arrangement with the interconnecting electric utility, or through a net-metering arrangement with a third party customer of the interconnecting electric utility)? If yes, please describe the contractual mechanisms through which this generation is committed.
- A. No generation from this facility will be used to offset customer-sited load. This facility is structured under a virtual net metered arrangement where the energy is sent back onto the National Grid distribution lines and the net metered credits are sent, virtually, to Massachusetts municipal off-takers.
- Q. The companies (Kearsarge Uxbridge, LLC and Kearsarge GB, LLC) are listed as the owners of the subject Generation Units. To what extent do these companies have control over the generation sites and/or the sites where customer load may be served by these facilities?
- A. Kearsarge Uxbridge LLC owns the generation unit and owns the land on which the unit is located. There is no customer load being served by this facility. As described in Question #1, a virtual net metered power purchase agreement is in place with municipal off-takers and all energy produced is exported back onto the grid.

Follow-up questions:

The following are follow-up questions to which responses are due on or before July 29, 2019:

1. Please confirm that both the Kearsarge GB and Kearsarge Uxbridge facilities were registered in the NEPOOL-GIS with a NON designation. If one was not, please clarify for each.
2. While the facilities will not physically offset load, are they considered to be net metering facilities of any kind by the Massachusetts Electric Company?
3. Please provide a copy (or hyperlink) to the net metering tariff under which the customer will be credited with the net metering credits from the Kearsarge facilities.
4. Is the tariff provided in response to number 3 different for behind-the-meter net metering facilities?
5. Please provide any information of which Kearsarge is aware that the Massachusetts Department of Public Utilities treats virtual net metering facilities differently from behind-the-meter net metering facilities for purposes of its RPS or any other regulatory purpose.

qualify as eligible New Renewable Energy Resources in Rhode Island solely because they are net metering facilities located outside of Rhode Island.

II. The Kearsarge Facilities

The Kearsarge facilities are interconnected to the Massachusetts Electric Company's distribution system. They are net metering facilities owned by Kearsarge LLC and are operated under the Massachusetts Electric Company net metering tariff, M.D.P.U. No. 1404.⁵ Kearsarge stated that the facilities do not serve on-site customer load, but rather, operate as virtual net metering facilities through a virtual net metering arrangement where the energy is delivered to the distribution system and net metering credits are applied to Massachusetts municipal off-takers.

The Massachusetts net metering tariff does not distinguish between behind-the-meter net metering and virtual net metering, nor does it treat the facilities any differently under the tariff. Each of the net metering categories requires a host customer. A host customer is defined as a customer that generates electricity on the customer's side of the meter. Based on Kearsarge's data responses, the host customers appear to be municipalities (who are also customers of the Massachusetts Electric Company). These facilities are each likely a net metering facility of a municipality which is defined as a net metering facility (a) that is owned or operated by a municipality; or (b) of which the municipality is the host customer and is assigned 100% of the output.

III. PUC Findings

If they were not net metering facilities, the PUC could find the Kearsarge facilities meet the criteria for the RES with no further analysis. The question of first

⁵ https://www9.nationalgridus.com/non_html/Net%20Metering%20Provision_12.03.18.pdf

impression for the PUC is whether virtual/remote net metering facilities located in another state can be certified as Rhode-Island eligible renewable energy resources.

In making its determination, the PUC must determine whether Rhode Island law intends for virtual/remote net metering facilities to be treated differently from behind-the-meter net metering facilities for RES purposes. The RES only authorizes the certification of customer-sited⁶ or self-generation facilities if located in Rhode Island. Clearly, behind-the-meter net metering facilities can only be certified if they are located in Rhode Island.^{7,8}

The PUC finds that there is no legal basis for treating virtual/remote net metering facilities differently for RES purposes where they are not treated differently for net metering purposes. The Rhode Island General Assembly appears to have made a deliberate decision to equate, as much as possible, virtual/remote net metering with behind-the-meter net metering. Therefore, it would make no sense to treat the facilities differently under the RES.

The first question is whether the statutory language is clear or if it is ambiguous and requires interpretation. Reading the RES in isolation without reference to any other

⁶ Customer-sited generation facility means “a generation unit that is interconnected on the end-use customer's side of the retail electricity meter in such a manner that it displaces all or part of the metered consumption of the end-use customer.” R.I. Gen. Laws § 39-26-2(4).

⁷ In Rhode Island, net metering means:

using electrical energy generated by an eligible, net-metering system for the purpose of self-supplying electrical energy and power at the eligible net-metering-system site, or with respect to a community remote-net-metering system, for the purpose of generating net-metering credits to be applied to the electric bills of the eligible credit recipients associated with the community net-metering system. The amount so generated will thereby offset consumption at the eligible net-metering system site through the netting process established in this chapter, or with respect to a community remote-net-metering system, the amounts generated in excess of that amount will result in credits being applied to the eligible credit-recipient accounts associated with the community remote-net-metering system.

R.I. Gen. Laws § 39-26.4-2(12).

⁸ The PUC has required virtual/remote net metering facilities located in Rhode Island to comply with the same requirements as for behind-the-meter net metering facilities to qualify for RES certification.

Rhode Island statutes, the plain language would suggest that the prohibition should only apply to such behind-the-meter net metering installations. The PUC, however, cannot ignore other sections in Title 39 of the Rhode Island General Laws such as the net metering law. Both the RES and net metering statutes contain slightly different definitions of self-generator that can and should be read in harmony.

Under the RES, self-generator means an end-use customer in Rhode Island⁹ that displaces all or part of its retail electricity consumption, as metered by the distribution utility to which it interconnects, through the use of a customer-sited generation facility.¹⁰ The net metering statute defines a renewable self-generator as an electric distribution service customer of record for the eligible net-metering system or community remote-net-metering system at the eligible net-metering-system site.¹¹ The RES definition assumes on-site generation. The net metering statute requires the retail electric customer to be a credit recipient of the eligible system site upon which the net metering facility is located. Thus, the PUC finds that each definition treats the self-generator *as if it is located at the generating site*, regardless of whether it really is.

The next question is whether the use of the term customer-sited generation facility in the RES self-generator definition is intended to only preclude behind-the-meter net metering facilities outside of Rhode Island from being qualified or whether grid-

⁹ End-use customer means a person or entity in Rhode Island that purchases electrical energy at retail from an obligated entity. R.I. Gen. Laws § 39-26-2(8). An obligated entity includes National Grid (electric distribution company) and nonregulated power producers who sell at retail.

¹⁰ R.I. Gen. Laws § 39-26-2(20). This is commonly known as net metering. National Grid defines net metering in its tariff as “using electrical energy generated by an Eligible Net Metering System for the purpose of self-supplying electrical energy and power at the Eligible Net Metering System Site or, with respect to a Community Remote Net Metering System or a Public Entity, Educational Institution, Hospital, Nonprofit, or Multi-Municipal Collaborative 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.” RIPUC No. 2207; [https://www.nationalgridus.com/media/pdfs/billing-payments/tariffs/ri/nmprovision-\(08.01.18\).pdf](https://www.nationalgridus.com/media/pdfs/billing-payments/tariffs/ri/nmprovision-(08.01.18).pdf).

¹¹ R.I. Gen. Laws § 39-26.4-2(20).

connected net metering facilities are also precluded.¹² Again, it appears there was a deliberate legislative drafting effort within the net metering law to equate virtual/remote net metering with behind-the-metering net metering, thus harmonizing with the RES definition of customer-sited generation. For example, virtual/remote eligible net metering systems require ownership and/or control by any public entity, educational institution, hospital, nonprofit, or multi-municipal collaborative of the eligible net metering site upon which the net metering system is located.¹³ The PUC finds the site-

¹² The RES was enacted in 2004, ten years before virtual/remote net metering was allowed in Rhode Island in 2014 (addition of public entity net metering). 2014 R.I. Pub. Laws 493; <http://webserver.rilin.state.ri.us/PublicLaws/law14/law14493.htm>.

¹³ Eligible net-metering system means:

a facility generating electricity using an eligible net-metering resource ... located at the eligible net-metering-system site...The eligible net-metering system may be owned by the same entity that is the customer of record on the net-metered accounts or may be owned by a third party that is not the customer of record at the eligible net-metering system site and which may offer a third-party, net-metering financing arrangement or net-metering financing arrangement, as applicable. Notwithstanding any other provisions of this chapter, any eligible net-metering resource: (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 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.

R.I. Gen. Laws § 39-26.4-2(5).

Eligible net-metering-system site means:

the site where the eligible net-metering system or community remote net-metering system is located or is part of the same campus or complex of sites contiguous to one another and the site where the eligible net-metering system or community remote-net-metering system is located or a farm in which the eligible net-metering system or community remote-net-metering system is located. 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, the purpose of this definition is to reasonably assure that energy generated by the eligible net-metering system is consumed by net-metered electric service account(s) that are actually located in the same geographical location as the eligible net-metering system. All energy generated from any eligible net-metering system is, and will be considered, consumed at the meter where the renewable-energy resource is interconnected for valuation purposes....

R.I. Gen. Laws § 39-26.4-2(6).

Net-metering financing arrangement means:

arrangements 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

control requirement was a deliberate attempt to synchronize virtual/remote net metering and behind-the-meter net metering. The net metering customer (public entity, educational institution, hospital, nonprofit, or multi-municipal collaborative) has ownership or control over the site. The energy put out on the distribution system from the net metering system located on a net metering system site owned or controlled by the customer is then credited to that same customer's accounts. Therefore, the General Assembly attempted to make virtual/remote net metering look as much like traditional net metering as possible.¹⁴

In addition, as noted above, Massachusetts does not appear to treat their behind-the meter net metering facilities and virtual net metering facilities differently under its applicable net metering tariff. In fact, the definition of host customer appears to be a deliberative attempt to equate the two, just as the Rhode Island General Assembly has done.¹⁵ Therefore, there is no conflict between Massachusetts's treatment of the facilities and Rhode Island's treatment of the facilities for purposes of the net metering analysis.

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.

R.I. Gen. Laws § 39-26.4-2(14).

¹⁴ Additionally, a review of the purpose of the net metering law provides additional support for the argument that the General Assembly was deliberative in its drafting. The purpose of the net metering law is to facilitate and promote installation of *customer-sited, grid-connected* generation of renewable energy; to support and encourage customer development of renewable generation systems; to reduce environmental impacts; to reduce carbon emissions that contribute to climate change by encouraging the local siting of renewable energy projects; to diversify the state's energy generation sources; to stimulate economic development; to improve distribution system resilience and reliability; and to reduce distribution system costs. R.I. Gen. Laws § 39-26.4-1 (emphasis added). If consistent with the purpose of the net metering law, a virtual/remote net metering facility must be a customer-sited, grid-connected renewable energy generation unit.

¹⁵ A review of Massachusetts Electric Company's treatment of these types of facilities is relevant in light of a recent decision by the Commission. In August 2018, the PUC considered a question about whether a previously approved facility that had reconfigured its wiring such that it raised a question of whether the

For these reasons, the Commission finds that all net metering installations should be treated the same for consideration under the RES, whether traditional behind-the-meter or virtual/remote net metered. This means that only net metering facilities located in Rhode Island can qualify as eligible renewable energy resources under the RES. To hold that all net metering installations should not be treated similarly under the current statutory construct could invite a challenge under federal law.

Accordingly, it is

(23710) ORDERED:

1. The Kearsarge GB Generation Unit, solely because it is a net metering facility located outside of Rhode Island, does not meet the requirements for eligibility as a New, Solar Renewable Energy Resource with its 1.44 MW AC, Grid-Connected Generation Unit having a Commercial Operation Date of August 20, 2018 and located within the NEPOOL control area in Great Barrington, Massachusetts.

2. The Kearsarge Uxbridge Generation Unit, solely because it is a net metering facility located outside of Rhode Island, does not meet the requirements for eligibility as a New, Solar Renewable Energy Resource with its 1.416 MW AC, Grid-Connected

facility now had customer-sited load. If that was the case, the PUC would have had to consider decertification of the facility. The Company submitted a request for consideration to approve new electrical wiring configuration of the Athens Energy facility. Athens Energy is a grid connected eligible biomass facility located in Maine. The Company rewired a breaker so to allow certain power plant equipment, used in their affiliated pellet plant operation, to be serviced by Athens Energy. This resulted in non-service station load provided by Athens Energy. The Company sought a finding that the wiring configuration meets the intent of the Commission's rules and that its eligibility meets the requirement as non-customer sited generation facility. The PUC reviewed supporting documentation from the facility's local distribution company which confirmed that all on-site load served by the generation unit is: "appropriate and acceptable and is viewed as station service load and is not Net Metering. [And further,] that this is not a "behind-the-meter" application as defined by CMP's rules and Rules." (Docket No. 4569; <http://www.ripuc.org/eventsactions/docket/4569page.html>). On this basis, the PUC found that the Athens Energy facility was not in violation of the RES Rules based on the representation from the local distribution company that under the current re-wired configuration, the local distribution does not believe the facility is engaged in net metering. With the same standards, for the same purposes, the PUC would not want to make a finding that is different from the facility's local distribution company.

Generation Unit having a Commercial Operation Date of August 20, 2018 and located within the NEPOOL control area in Uxbridge, Massachusetts.

EFFECTIVE AT WARWICK, RHODE ISLAND ON NOVEMBER 5, 2019
PURSUANT TO AN OPEN MEETING DECISION. WRITTEN ORDER ISSUED ON
NOVEMBER 12, 2019.



PUBLIC UTILITIES COMMISSION

Margaret E. Curran

Margaret E. Curran, Chairperson

Marion S. Gold

Marion S. Gold, Commissioner

Abigail Anthony

Abigail Anthony, 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 seven 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.