

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: THE RHODE ISLAND DISTRIBUTED :
GENERATION BOARD’S REPORT AND : DOCKET NO. 4892
RECOMMENDATIONS RELATING TO THE 2019 :
RENEWABLE ENERGY GROWTH CLASSES, :
CEILING PRICES, AND CAPACITY TARGETS :

**THE RHODE ISLAND OFFICE OF ENERGY RESOURCES’ AND NATIONAL GRID’S
JOINT BRIEF REGARDING SOLAR CARPORTS AS RENEWABLE ENERGY
CLASSES**

INTRODUCTION

The Rhode Island Office of Energy Resources (OER) and National Grid¹ hereby submit this joint brief in response to the following question issued by the Rhode Island Public Utilities Commission (PUC) on January 9, 2019: *What is the statutory authority in the Renewable Energy Growth Program, or other authority, to create a separate solar carport category of the same size as another solar category?* As detailed herein, the Rhode Island Distributed Generation Board (DG Board) is authorized to recommend and the PUC is authorized to approve the creation of new renewable energy classes within the Renewable Energy (RE) Growth Program for solar carports.

PROCEDURAL HISTORY

On October 19, 2018, the DG Board, in consultation with OER, submitted recommendations to the PUC regarding the renewable energy classes, ceiling prices, target allocations, and tariff term lengths for the 2019 RE Growth Program year. On November 15, 2018, National Grid filed proposed changes to RE Growth Program tariffs and rules to go into effect for the 2019 RE Growth Program year. The PUC is reviewing the two filings in Docket No. 4892. A hearing on the classes, ceiling prices, and capacity targets is scheduled for January 28, 2019, and a hearing on the tariffs and rules is scheduled for January 29, 2019. In advance of those

¹ The Narragansett Electric Company d/b/a National Grid (National Grid or Company).

hearings, PUC counsel posed the above-referenced briefing question to counsel for OER, National Grid, and the Rhode Island Division of Public Utilities and Carriers (Division) regarding the legal authority to create new renewable energy classes within the RE Growth Program for solar carports. At an open meeting on September 6, 2018, the PUC offered commentary regarding whether the RE Growth Program law permitted the addition of solar carport classes. However, at this time, no determination has been made by the PUC.

FACTUAL BACKGROUND

Since the inception of the RE Growth Program, the DG Board has submitted annual recommendations to the PUC regarding renewable energy classes and ceiling prices. See PUC Docket Numbers: 4892 (Program Year (“PY”) 2019); 4774 (PY 2018); 4672 (PY 2017); 4589-B (PY 2016); and 4536-B (PY 2015). For the 2019 RE Growth Program year, the DG Board recommended the addition of solar carports as new renewable energy classes. See PUC Docket No. 4892, DG 2019 Packet - Page 005. The DG Board also recommended that the solar carport renewable-energy classes have their own ceiling prices. See PUC Docket No. 4892, DG 2019 Packet - Page 009.

Solar carports were added based on feedback from various stakeholders, including municipal planning boards and town council officials. See PUC Docket No. 4892, DG 2019 Packet - Page 031. Solar carports provide siting value that traditional solar projects may lack because the projects will be located within new or existing parking lots. See PUC Docket No. 4892, DG Board’s Responses to PUC’s First Set of Data Requests, 1-11. In general, it is more expensive to install solar carports than to install traditional roof and ground mount solar structures. See PUC Docket No. 4892, DG 2019 Packet - Page 031. If the DG Board were to include the additional costs associated with carports into the existing solar classes, the ceiling prices for the existing solar

classes would increase, and ratepayers would be harmed. See id. In addition, that increase in solar ceiling prices would not likely result in more solar carports because developers would still be incentivized to install the less-expensive traditional roof and ground mount solar structures. See id.

Both OER and Sustainable Energy Advantage, LLC (SEA) (the DG Board's and OER's consultant), are in support of adding solar carports as renewable-energy classes. See PUC Docket No. 4892, DG 2019 Packet - Pages 030-032; Pages 054-055. In addition, the Acadia Center, Audubon Society of Rhode Island, Conservation Law Foundation Rhode Island, Green Energy Consumers Alliance, Grow Smart Rhode Island, and Save the Bay submitted a joint letter in support of the DG Board's recommendations. See PUC Docket No. 4892, Joint Letter dated October 18, 2018 (Filed October 19, 2018). Specifically, the joint letter provides that "our organizations support the addition in the 2019 REG Program of new categories for Commercial and Large Solar Carports." See id.

ANALYSIS

1. The DG Board possesses express statutory authority to evaluate and make recommendations to the PUC regarding ceiling prices and the make-up of renewable-energy classifications.

In 2014, the General Assembly established the RE Growth Program to promote the development of renewable-energy distributed generation (DG) projects. See R.I. Pub. Laws Ch. 200, § 1 (2014). Subject to the review and supervision of the PUC, National Grid is responsible for implementing the RE Growth Program with guidance from the DG Board and OER. See R.I. Gen. Laws § 39-26.6-2. The scope of the DG Board's authority and responsibilities regarding the RE Growth Program are governed by statute. See R.I. Gen. Laws § 39-26.6-1 et seq. Pertinent to the matter at hand, the DG Board has the express statutory authority to "[e]valuate and make

recommendations to the commission regarding ceiling prices and annual targets, the make-up of renewable-energy classifications eligible under the distributed-generation growth program, the terms of the tariffs, and other duties as set forth in [the RE Growth Program law].” See R.I. Gen. Laws § 39-26.6-4.

2. The DG Board may recommend the addition of new renewable energy classes, and each renewable energy class may have its own ceiling price.

The DG Board has express statutory authority to make recommendations to add new renewable energy classes. “The board may make recommendations to the commission **to add**, eliminate, or adjust **renewable-energy classes** for each program year, provided that the solar classifications set forth in § 39-26.6-7 shall remain in effect for at least the first two (2) program years and no distributed-generation project may exceed five megawatts (5MW) of nameplate capacity.” R.I. Gen. Laws § 39-26.6-3(15) (emphasis added). Each renewable-energy class shall have a ceiling price that is approved annually. See R.I. Gen. Laws § 39-26.6-3(2) (emphasis added), which provides that “[c]eiling price means the bidding price cap applicable to an enrollment for a given distributed generation class, **that shall be approved annually for each renewable-energy class** pursuant to the procedure established in this chapter.” Accordingly, the DG Board may recommend the addition of new renewable energy classes, and each renewable energy class may have its own ceiling price.

3. The definition of a renewable-energy class is set forth in the RE Growth Program statute, and solar carports fits within the definition.

Solar carports fit within the definition of a renewable energy class. The General Assembly has expressly defined the term renewable-energy classes as follow:

‘Renewable energy classes’ means **categories for different renewable-energy technologies using eligible renewable-energy resources** as defined by § 39-26-5, including biogas created as a

result of anaerobic digestion, but, specifically excluding all other listed eligible biomass fuels specified in § 39-26-2(6).

See R.I. Gen. Laws § 39-26.6-3(15) (emphasis added).

Based on commentary offered by the PUC on September 6, 2018, the emphasized phrase above may be read in two different ways. It could mean that (1) classes are renewable-energy resources broken up by technology or (2) classes are renewable-energy technologies broken up by categories or particular shared characteristics². As explained herein, interpretation (2) is more appropriate.

When determining which interpretation to apply, deference should be given to the DG Board as the entity that has the statutory authority to evaluate and make recommendations to the make-up of renewable-energy classes. See *In re Review of Proposed New Shoreham Project*, 25 A.3d 482, 505 (R.I. 2011) (“[t]o resolve which of the two or more permissible statutory interpretations will control, we ‘give deference to an agency’s interpretation of an ambiguous statute that it has been charged with administering and enforcing, provided that the agency’s construction is neither clearly erroneous nor unauthorized.’” See also *In re Review of Proposed New Shoreham Project*, 25 A.3d 482, 505 (R.I. 2011) quoting *Rossi v. Employees’ Retirement System*, 895 A.2d 106, 113 (R.I. 2006).

In practice, the DG Board’s actions have aligned with interpretation (2) and utilizing interpretation (2) is neither clearly erroneous nor unauthorized. In prior years, the DG Board has broken up renewable energy technologies (i.e. solar projects and wind projects) into classes based on categories (i.e. nameplate capacity or size). The resulting classes have been renewable-energy technologies broken up by the category of size. In this docket, the DG Board is again breaking up

² Categories is not defined by statute. The dictionary definition of “categories” is defined as “a class or division of people or things regarded as having **particular shared characteristics**.” See online Oxford Dictionary <https://en.oxforddictionaries.com/definition/category> (emphasis added).

renewable-energy technologies by categories, only this time the categories are a combination of size and construction type. The resulting solar carport classes are consistent with the definition for renewable energy classes in that they are renewable-energy technologies broken up by particular shared characteristics.

4. The legislative mandate of certain solar classes does not prevent the DG Board from adding new solar classes.

The legislature mandated that certain solar categories be included as renewable-energy classes within the RE Growth Program. See R.I. Gen. Laws § 39-26.6-7(a). However, the existence of mandated solar classes does not prevent the DG Board from adding new solar classes. See R.I. Gen. Laws § 39-26.6-7(c) (emphasis added) (stating in part that “[o]**ther classifications of solar projects may also be proposed** by the board, subject to the approval of the commission.” Beginning with the third RE Growth Program year, the DG Board has also had the express authority to adjust the mandated solar categories. See R.I. Gen. Laws § 39-26.6-7(c) (emphasis added) (stating in part that “[a]fter the second program year, the board may make recommendations to the commission **to adjust the size categories** of the solar classes”

5. Renewable-energy classes may be formed based upon categories other than or in addition to size.

The solar classes mandated by statute were formed based on the category of size. See R.I. Gen. Laws § 39-26.6-7(b). However, the language of R.I. Gen. Laws § 39-26.6-7(c) implies that renewable-energy classes may be formed based on categories other than size:

Other classifications of solar projects may also be proposed by the board, subject to the approval of the commission. After the second program year, the board may make recommendations to the commission to adjust the **size categories** of the solar classes, provided that the medium-scale solar projects may not exceed two hundred fifty kilowatts (250 kW); and/or allocated capacity to community distributed-generation facilities, allowing them to compete or enroll under a distinct ceiling price.

See R.I. Gen. Laws § 39-26.6-7(c) (emphasis added).

The use of the phrase “other classifications” to describe potential new classes and the use of the phrase “size categories” to describe the mandated classes implies that classes may be formed based on attributes other than size. Had the General Assembly intended for classes to be categorized exclusively by size, the statutory language would have granted the DG Board the limited authority to propose other “size classifications” as opposed to the broader power to propose “other classifications”. In addition, had the General Assembly intended for all classes to be based on size, it would not have needed to include the word “size” to describe the existing categories. Rather, the General Assembly could have simply stated that the DG Board may “adjust the categories.” Accordingly, the DG Board may recommend the formation of new classes based on categories other than size.

6. The recommended renewable-energy classes for solar carports are reasonable and advance the goals of the RE Growth Program.

The DG Board may recommend new classes if they are “reasonably feasible for use in meeting distributed-generation objectives from renewable-energy resources and are consistent with the goal of meeting the annual target for the program year.” See R.I. Gen. Laws § 39-26.6-3(15). In this case, renewable energy classes for solar carports are reasonable and advance the program’s goals and objectives. As previously noted, solar carports provide siting value that traditional ground mount and roof mount solar projects may lack. In addition, the DG Board recommended the carport classes after an extensive stakeholder process, which included feedback from various municipal officials.

CONCLUSION

For the reasons detailed herein, the DG Board is authorized to recommend, and the PUC is authorized to approve, the creation of new renewable energy classes within the RE Growth

Program for solar carports.

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