

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

IN RE: PETITION OF ENERGY DEVELOPMENT :
PARTNERS, LLC FOR DECLARATORY JUDGMENT : **DOCKET NO. 4917**
ON R.I. GEN. LAWS § 39-26.4 (SITE CONTROL) :

DECLARATORY RULING

On December 21, 2018, Energy Development Partners, 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, educational institution, hospital, or municipality is satisfied by granting an irrevocable license over the property.¹

In support of the petition, Petitioner contended that a license that is irrevocable by its terms, granted to a public entity, educational institution, hospital, or municipality, giving that entity the right to exercise control over the subject property should satisfy the site control element of the Net Metering Act. Petitioner submitted that an irrevocable license 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. Petitioner represented that it is unable to offer either a ground lease or easement to the relevant public entity given certain restrictions in place on the subject land.² Petitioner averred that an irrevocable license “is the functional equivalent of an

¹ Pet. at 1; [http://www.ripuc.org/eventsactions/docket/4917-EnergyDevPartners-DJ\(12-21-18\).pdf](http://www.ripuc.org/eventsactions/docket/4917-EnergyDevPartners-DJ(12-21-18).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 2.

easement,” which the PUC has previously found to meet the site control requirements.³ According to Petitioner, while the Rhode Island Supreme Court has not ruled on the characteristics of an irrevocable license, other jurisdictions have found that irrevocable licenses should be construed no differently than easements.⁴ A finding in favor of Petitioner’s position would advance the purpose of the public entity net metering arrangements by allowing for financing of such projects.⁵

On January 9, 2019, the PUC propounded data requests to Petitioner seeking additional information about the instrument. In responses received on January 22, 2019, Petitioner represented that the irrevocable license would attach to the land giving the license holder the right to control the property. The license holder becomes the dominant estate. The notice of license for each parcel is recorded in the land evidence records.⁶ The irrevocable license has an initial term of twenty-five years with an option to renew for up to two five-year periods.⁷ The irrevocable license could only be terminated upon an event of default, a force majeure event where an amended license cannot be agreed to, or termination of the net metering credit sale.⁸ Petitioner also provided a copy of an irrevocable license.⁹ Finally, Petitioner represented that The Narragansett Electric Company d/b/a National Grid (National Grid) had issued interconnection services agreements which have all been fully executed.¹⁰

On January 25, 2019, 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 February 1, 2019.¹¹ No comments were received

³ *Id.* at 5.

⁴ *Id.* at 5-6.

⁵ *Id.* at 7.

⁶ Response to PUC 1-4, PUC 1-9; http://www.ripuc.org/eventsactions/docket/4917-EDP-DR-PUC1_1-22-19.pdf.

⁷ Response to PUC 1-5.

⁸ Response to PUC 1-6.

⁹ Response to PUC 1-8.

¹⁰ Response to PUC 1-10.

¹¹ Notice; <http://www.ripuc.org/eventsactions/docket/4917-notice.pdf>.

in response to the Notice. The deadline for National Grid and the Division of Public Utilities and Carriers (Division) to submit positions was February 8, 2019.

On February 8, 2019, National Grid submitted comments in this matter. National Grid agreed that the irrevocable license described in the Petition and provided in response to PUC 1-10 satisfies the site control requirements set forth in the Net Metering Act.¹²

Also on February 8, 2019, the Division submitted comments supporting a PUC declaration that the granting of an irrevocable license by Petitioner to the public entity is sufficient means for satisfying the site control requirements of the Net Metering Act.¹³ The Division conditioned its recommendation on the following requirements: (1) that the license instrument be expressly irrevocable by its terms; (2) that it be granted to a public entity, educational institution, hospital, or one of the municipalities, as applicable; (3) that it grant to the public entity, educational institution, hospital, or one of the municipalities, the right to exercise control of the property in question; (4) that the license instrument expressly state that the irrevocable license runs with the land; and (5) that the license instrument is recorded in the land evidence records of the city or town where the subject property is located, together with a recitation of the relevant plat and lot number of the subject property set forth therein.¹⁴ The Division posited that such an irrevocable license is enforceable under common law principles and has been recognized as such by the Rhode Island Superior Court.¹⁵ Furthermore, the Division noted that finding in favor of Petitioner would further the purposes of the Net Metering Act.¹⁶

¹² National Grid Comments at 2; [http://www.ripuc.org/eventsactions/docket/4917-NGrid-Comments\(2-8-19\).pdf](http://www.ripuc.org/eventsactions/docket/4917-NGrid-Comments(2-8-19).pdf).

¹³ Division Comments at 5; http://www.ripuc.org/eventsactions/docket/4917-DIV-Comments_2-8-19.pdf.

¹⁴ *Id.*

¹⁵ *Id.* at 4.

¹⁶ *Id.* at 4-5.

At an Open Meeting held on February 15, 2019, the PUC considered the filings and found that for purposes of entering into a Public Entity Net Metering Financing Arrangement as defined in the Net Metering Act, the requirement that an eligible net metering resource be located on property owned or controlled by a public entity, educational institution, hospital, or municipality is satisfied by granting an irrevocable license, in this case, to the developer with an irrevocable sublicense to the eligible net metering customer. 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, National Grid has already accepted the licenses and the PUC finds the licenses submitted in this case satisfy the “owned or controlled” requirement in the Net Metering Act.

The governing statute, R.I. Gen. Laws § 39-26.4-4, by its own terms requires that it 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.”¹⁷ Finding that a properly worded, executed, and recorded irrevocable license 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:

(23454) 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

¹⁷ R.I. Gen. Laws § 39-26.4-1.

entity, educational institution, hospital, or municipality is satisfied by granting an irrevocable license, in this case, to the developer with an irrevocable sublicense to the eligible net metering customer.

2. The irrevocable licenses submitted in this matter are sufficient to meet the requirements of the statute.

EFFECTIVE AT WARWICK, RHODE ISLAND, ON FEBRUARY 15, 2019,
PURSUANT TO AN OPEN MEETING DECISION. WRITTEN ORDER FILED WITH THE
SECRETARY OF STATE'S OFFICE ON MARCH 8, 2019

PUBLIC UTILITIES COMMISSION



Margaret E. Curran, Chairperson

*Marion S. Gold, Commissioner

Abigail Anthony, Commissioner

*Commissioner Gold concurs with the decision but is unavailable for signature.

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.