

**STATE OF RHODE ISLAND
PUBLIC UTILITIES COMMISSION**

In Re: Petition of Nautilus Solar Energy, LLC :
For Declaratory Judgment on : **Docket No. 5122**
R.I. Gen. Laws § 39-26.4, :
The Net Metering Act :

DECISION AND ORDER

On January 25, 2021, Nautilus Solar Energy, LLC (Nautilus) filed a Petition for Declaratory Judgment with the Rhode Island Public Utilities Commission (Commission) pursuant to 815-RICR-00-00-1.11(c) of the Commission’s Rules of Practice and Procedure and R.I. Gen. Laws § 42-35-8. The Petition asked the Commission for declarations that 1) a single eligible net-metering system may be owned and operated by a renewable-generation developer on behalf of more than one public entity, educational institution, hospital, nonprofit or multi-municipal collaborative and 2) a group of public housing authorities are eligible to enter into a multi-municipal collaborative for the purposes of entering into a net-metering financing arrangement. For the reasons stated herein, the Commission denies the request for the first declaration, but grants the petition for the second declaration.

Nautilus is a renewable energy developer with solar projects developed or under development in the United States and Canada. It responded to a Request for Proposals issued by the Public Housing Association of Rhode Island (PHARI) to enter into one or more net-metering financing arrangements with City and Town Housing Authorities. The arrangements would allow Nautilus, through three affiliates, to own and operate an eligible net-metering resource on behalf of the Housing Authorities. The three affiliates are Renew Solar RI Exeter Mail, LLC, Renew Solar RI Exeter Ten, LLC, and Islander Solar, LLC. Nautilus is developing three facilities that will accommodate eleven Housing Authorities. Two of the facilities will be sized to produce

electricity that is equal to or less than the three-year average annual consumption of four Housing Authorities, and the other facility will be sized to produce electricity that is equal to or less than the three-year average annual consumption of three Housing Authorities.¹

Nautilus asserts that the statute, R.I. Gen. Laws § 39-26.4-2(5) is ambiguous as to whether a single eligible net metering system can be owned and operated on behalf of more than one Housing Authority. In support of this assertion, it makes two arguments. First it argues that use of the article “a” in the definition of eligible net-metering resource as set forth in R.I. Gen. Laws § 39-26.4-2(5)(ii) should be interpreted to mean “one or more” and not “a single one.” This means that the statute should be interpreted to read any eligible net-metering resource owned or operated by a renewable energy developer on behalf of one or more public entities, one or more educational institutions, etc. It argues that because the Act calls for liberal interpretation, reading the language to limit only one account on an eligible net metering system is contrary to the purpose of the Act set forth in R.I. Gen. Laws § 39-26.4-1, because it would result in increased costs that would discourage local siting and economic development.²

Nautilus’ second argument in support of its position that multiple housing authorities should be able to designate accounts for net metering on an eligible net metering system is that a municipal housing authority is eligible to enter into a multi-municipal collaborative because it qualifies as a “public entity.” It cited a prior Commission decision which held that “public housing authorities established pursuant to Chapters 25 and 26 of Title 45 of the Rhode Island General Laws are public entities under the Net Metering Act....”³ It states that both the Division of Public Utilities and Carriers and National Grid have expressed that a public housing authority falls within

¹ Petition at 2 (Jan. 25, 2021).

² *Id.* at 3-6.

³ *Id.* at 6-8; Docket No. 4670, Order No. 22641.

the definition of municipality which is defined in R.I. Gen. Laws § 39-26.4-2(11) to include any agency or instrumentality of a city or town. Nautilus asserts that the housing authorities are agencies and as such are municipalities under the statute. Because they fall within the definition of “municipality” they are eligible under the multi-municipal collaboration provision of the law.⁴

On January 26, 2021, the Public Housing Association of Rhode Island filed a letter in support of Nautilus’ petition and asking the Commission to approve it. The letter noted that the Nautilus systems will be able to provide enough energy to satisfy the demands of eleven housing authorities. It stated that it would likely be cost prohibitive if the eleven housing authorities were required to separate to eleven systems, and that by combining they systems, they are able to take advantage of economies of scale and share resources in participating in the contracting process.⁵

On March 3, 2020, National Grid filed a Motion to Intervene asserting that it has an interest in the proceedings that may be directly affected by the Commission’s decision. It asserted that it intends to offer an additional perspective of the Net Metering Act and the Company’s tariffs. It also asserted that the Commission’s approval of Nautilus’ petition will affect both the management of its customer accounts and net metering credits and its interpretation and application of its net metering tariff provisions.⁶

On March 3, 2021, Green Development, LLC, WED GW Solar, LLC, WED Portsmouth One, LLC, GD Hopkinton Main I, LLC, WED SHUN I, LLC, and WED Green Hill, LLC (Green) filed a Motion to Intervene and accompanying memorandum supporting Nautilus’ position.

⁴ Petition at 7-8.

⁵ Letter Public Housing Association of Rhode Island at 1-2 (Jan. 26, 2021).

⁶ National Grid Motion to Intervene at 1-3 (Mar. 3, 2021). National Grid never filed a letter of memorandum offering an additional perspective of the Net Metering Act or the Company’s tariffs.

Green, like Nautilus, asserts that the statutory language is clear and unambiguous. It made the same two arguments as Nautilus in support of Nautilus' position.⁷

On March 22, 2021, the Division of Public Utilities and Carriers filed a reply to Nautilus' Petition for Declaratory Judgment. The Division's reply concluded that because the Commission had previously found public housing authorities to be public entities and because the definition of public entity includes municipalities, the public housing authorities identified by Nautilus were eligible to participate in a multi-municipal collaboration.⁸

At an Open Meeting on March 29, 2021, the Commission granted the motions to intervene filed by both National Grid and Green. Based on the reasoning set forth below, the Commission denied the petition in part and granted it in part.

Decision

The Commission finds Nautilus' first argument to be without merit. Specifically, the argument that that the article "a" in the definition of "eligible net metering resource" as set forth in R.I. Gen. Laws § 39-26.4-2(5)(ii) means one or more as opposed to a single one is overreaching. Further, in the same sentence in the law, the General Assembly used the singular term "the public entity." When the General Assembly used the terms "a public entity" and "the public entity" in the same sentence, it can logically have only one interpretation – it is intended to mean the singular. This reasoning is further reinforced by the fact that interpreting these references in the plural would create a large loophole in the statute that is inconsistent with the fairly clear intent of the Net

⁷ Green Mem. at 2-5 (Mar. 3, 2021).

⁸ Division Reply at 2-5 (Mar. 22, 2021).

Metering Act to place reasonable limits around eligibility. Thus, as to this argument, the Commission denies Nautilus' request for the first declaration.

With regard to Nautilus' second argument, however, the Commission agrees and grants the request for the declaration. Specifically, because the municipal housing authorities are public entities and municipalities are defined to include public entities, the municipal housing authorities are eligible to participate in multi-municipal collaboratives. Municipal housing authorities are municipal agencies. For that reason, it is logical to treat them in a manner consistent with a group of municipalities and the Commission finds that public housing authorities organized under R.I. Gen. Laws § 45-25 or R.I. Gen. Laws § 45-26 are eligible to enter into multi-municipal collaboratives for the purpose of entering into a net metering financing arrangement.

Accordingly, the petition is denied in part and granted in part, and it is hereby

(24023) DECLARED:

Public housing authorities organized under R.I. Gen. Laws § 45-25 or R.I. Gen. Laws § 45-26 are eligible to enter into multi-municipal collaboratives for the purpose of entering into a net metering financing arrangement.

EFFECTIVE AT WARWICK, RHODE ISLAND ON MARCH 29, 2021 PURSUANT TO AN OPEN MEETING DECISION ON MARCH 29, 2021. WRITTEN ORDER ISSUED APRIL 6, 2021.

PUBLIC UTILITIES COMMISSION



Ronald T. Gerwatowski, Chairman



Marion S. Gold, Commissioner



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 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.

