

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
PUBLIC UTILITIES COMMISSION

IN RE: CLEAN ECONOMY DEVELOPMENT, LLC'S :  
PETITION FOR DECLARATORY JUDGMENT ON : DOCKET NO. 4670  
RHODE ISLAND GENERAL LAWS § 39-26.4 NET METERING:

ORDER

On November 2, 2016, Clean Economy Development, LLC (CED) filed with the Public Utilities Commission (PUC) a Petition for Declaratory Judgment (petition) seeking a declaration that public housing authorities fall within the definition of public entity set forth in R.I. Gen. Laws § 39-26.4-2(12) (Net Metering Act) and are eligible to participate in the existing public entity net metering and, therefore, are not subject to the 30 MW cap on the recently instituted community net metering pilot program. Designation as a public entity for purposes of the Net Metering Act allows that entity to enter into financial arrangements with developers to develop a renewable energy project. CED is a consulting firm providing financial and project development expertise to the renewable energy industry, including some Rhode Island municipalities. According to CED, those municipalities are considering whether *their* public housing authorities should enter into remote net metering agreements.<sup>1</sup>

Declaratory judgment actions are generally filed by the person or entity to whom the declaration would apply. That is not the case here; Petitioner CED is not seeking a judgment declaring it to be a public entity. Rather, CED is seeking a judgment declaring municipal public housing authorities (in Rhode Island) to be public entities under the Net Metering Act. One would ordinarily expect such petitions to be filed by the municipalities themselves. In the interest of administrative efficiency, however, rather than requiring each municipality to seek a declaration for their own respective municipal housing authority, the PUC accepted CED's filing for review.

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<sup>1</sup> CED's Response to PUC-1-1 (emphasis added).

At an Open Meeting held on December 20, 2016, after reviewing the filing; the law; comments of Representative Aaron Regunberg; and analyses received from Rhode Island Housing, The Narragansett Electric Company d/b/a National Grid (National Grid), and the Division of Public Utilities and Carriers (Division), the PUC declared that public housing authorities established pursuant to Chapters 25 and 26 of Title 45 are public entities under the Net Metering Act.

In support of the petition, CED relied on the enabling laws for city housing authorities set forth in Chapters 25 and 26 of Title 45 of the Rhode Island General Laws. Specifically, R.I. Gen. Laws §§ 45-25-1 to 35.1 is entitled City Housing Authorities; R.I. Gen. Laws §§ 45-26-1 to 13 applies to Town Housing Authorities. In each instance, the municipal council is required to pass a resolution establishing the public housing authority, appoint the members of the authority and record the certificate of incorporation with the Rhode Island Secretary of State. As explained in CED's petition, after all of the steps have been followed, "the authority shall constitute a public body and a body corporate and politic."<sup>2</sup> CED also cited various Rhode Island Supreme Court opinions recognizing municipally created housing authorities as public bodies.<sup>3</sup>

In their respective analyses, Rhode Island Housing, National Grid, and the Division each concluded that municipal housing authorities created under Chapter 25 or 26 of Title 45 of the Rhode Island General Laws are public entities under the Net Metering Act. Therefore, they concluded that such entities should not be subject to the 30 MW cap on the community net metering pilot program. The PUC agrees with the analysis of CED, Rhode Island Housing, National Grid, and the Division and declares such housing authorities to be public entities within

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<sup>2</sup> Pet. at 3, quoting R.I. Gen. Laws § 45-25-8. See R.I. Gen. Laws §§ 45-25-15(a), 45-26-2.

<sup>3</sup> Pet. at 4.

the meaning of the Net Metering Act eligible for financial arrangements applicable to these entities. Additionally, municipal housing authorities are not subject to the 30 MW cap.

Accordingly, it is hereby

(22641) ORDERED:


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 and are not subject to the 30 MW cap in the community net metering pilot program.

EFFECTIVE AT WARWICK, RHODE ISLAND ON DECEMBER 20, 2016 PURSUANT TO AN OPEN MEETING DECISION. WRITTEN ORDER ISSUED DECEMBER 29, 2016.

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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