

**Petition of Clarkson University for a Declaratory)  
Ruling Regarding Eligibility of Leased )  
Non-residential Micro-hydroelectric Generating )  
Equipment for Remote Net Metering Pursuant )  
to Section 66-j of the Public Service Law )**

**PETITION  
OF  
CLARKSON UNIVERSITY  
FOR A DECLARATORY RULING  
REGARDING ELIGIBILITY OF LEASED NON-RESIDENTIAL MICRO-  
HYDROELECTRIC GENERATING EQUIPMENT FOR REMOTE NET  
METERING  
PURSUANT TO PSL SECTION 66-J**

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**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

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**Case 13-E-\_\_\_\_\_**

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**INTRODUCTION AND SUMMARY OF RULING REQUESTED**

Clarkson University, a private educational institution (the “University”) respectfully petitions the New York State Public Service Commission (“Commission”) for a declaratory ruling pursuant to Part 8 of the Commission’s Rules, 16 N.Y.C.R.R. Part 8, that (i) the lessee of non-residential micro-hydroelectric generating equipment is eligible to participate in remote net metering where the lessor remains the owner and operator of such equipment, pursuant to Section 66-j of the Public Service Law (“PSL”); and (ii) addresses the statutory inconsistency created by the omission of the term “leases” from the definition of those customer-generators that may designate net metering credits generated by non-residential micro-hydroelectric generating equipment to meters at any property owned or leased by such customer-generator (*i.e.*, remote net metering). See PSL § 66-j(1)(a).

## **BACKGROUND**

Under PSL §66-j(1)(a)(viii), a non-residential micro-hydroelectric customer-generator of an electric corporation is defined as one which owns or operates micro-hydroelectric generating equipment located and used at its premises. Under PSL §66-j(1)(h)(i)(B) and PSL §66-j(1)(h)(ii), qualifying non-residential micro-hydroelectric generating equipment must have a rated capacity of not more than two thousand kilowatts (2,000 kW), be manufactured, installed and operated in accordance with applicable government and industry standards, and be connected to the electric system and operated in conjunction with an electric corporation's transmission and distribution facilities.

Under PSL §66-j(3)(f), a non-residential customer-generator that locates micro-hydroelectric generating equipment with a net energy meter on property owned or leased by such customer-generator may designate all or a portion of the net metering credits generated by such equipment to meters at any property owned or leased by such customer-generator that is within the service territory of the same electric corporation to which the customer-generator's net energy meters are interconnected, and within the same load zone as determined by the location based marginal price as of the date of initial request by the customer-generator to conduct net metering.

The University desires to lease the West Dam Hydroelectric Project (the "Project")<sup>1</sup> located on the Raquette River in the Village of Potsdam (the "Village") and apply net metering credits generated by the Project to other properties owned or leased by the University where the University is the electric customer of record with Niagara Mohawk Power Corporation d/b/a National Grid ("National Grid" or the "Company"). The Village will continue to own and operate

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<sup>1</sup> The Project consists of an intake rack, powerhouse containing 2-430kW vertical Kaplan turbines/generators, controls, switchgear, a 1250 KVA 3 phase transformer and interconnection to the utility grid; it is a qualifying facility under 18 C.F.R. § 292.207(a).

the Project. In preliminary discussions with National Grid, the Company expressed its reluctance to deem the University eligible for remote net metering, given the PSL § 66-j definition of a micro-hydroelectric customer-generator as one who “owns or operates” micro-hydroelectric generating equipment. The absence of the word “leases” in the PSL § 66-j definition of micro-hydroelectric customer-generator creates for the Company an ambiguity that prevents the University from applying net metering credits from the Project to other University accounts taking electric service from National Grid. Therefore, the University is seeking clarification from the Commission on this point.

## **DISCUSSION**

### **I. The Language of The Statute Creates an Internal Inconsistency.**

New subsection (3)(f) of PSL §66-j expressly provides remote net metering benefits to customer-generators who locate micro-hydroelectric generating equipment on property they either own or lease. The lease option is referred to twice in the subsection. However, the customer-generator lessee to whom such benefits are expressly provided in subsection (3)(f), is defined in subsection (1)(a) to be one who only owns or operates the benefit-providing equipment. This creates an internal inconsistency that must be remedied. The inclusion of the lease option in subsection (3)(f) cannot be read to be meaningless. The express language of a statute is the best evidence of its intent. See Majewski v. Broadalbin-Perth Cent. Sch. Dist., 91 N.Y.2d 577, 583 (1998) (“As the clearest indicator of legislative intent is the statutory text, the starting point in any case of interpretation must always be the language itself, giving effect to the plain meaning thereof.”); see also Roberts v. Tishman Speyer Prop., 13 N.Y.3d 270, 289-90 (2009) (“We generally assume that every word in a statute contributes something to its meaning.”); Sanders v. Winship, 57 N.Y.2d 391, 396 (1982) (“Under well-established principles

of interpretation, effect and meaning should be given to the entire statute and every part and word thereof.”) Further, the language of the statute that actually provides the specific benefit must be given priority in its significance over the more general definitional section. See People v. Zephrein, 13 N.Y.3d 296, 301 (2010) (“[W]e have held on numerous occasions that a specific statutory provision governs over a more general provision.”) Subsection (1)(a) must be read to include the lease option. Otherwise, it would take away a right specifically granted in subsection 3(f).

The Commission appears to interpret subsection 3(f) in the way requested herein in its recently issued Order Modifying Standardized Interconnection Requirements and Modifying and Approving Tariffs<sup>2</sup> (the “Order”), wherein the Commission specifically associates remote net metering benefits with micro-hydroelectric generating equipment “on property that [customer-generators] own or lease . . .” Order, at p. 20. Unfortunately, the language of the Order places the substance of subsections 3(e) (having to do with customers who own or operate farm operations, and non-residential customer-generators using solar or farm waste generating systems) and (f) (dealing with customers who own or operate farm operations, and non-residential customer-generators using micro-hydroelectric systems) in the context of “residential customers”, leaving the application to non-residential customer-generators unaddressed.

**II. By Amending PSL §66-j, the Legislature Clearly Intended to Expand the Use of Alternate Forms of Energy Generation and Enjoyment of Associated Customer Benefits.**

Net metering was established in New York for small, residential solar facilities in 1998 with the enactment of PSL §66-j. It permitted customers to produce for their own use much needed electricity through alternative, environmentally-friendly generation technologies. In

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<sup>2</sup> Case 12-E-0393, et al., Tariff Filings to Effectuate Amendments to the Public Service Law §66-j (Remote Net Metering for Micro-Hydro Electric Generating Systems) and Conforming and Reforming Changes to Standardized Interconnection Requirements (SIR), Order issued March 15, 2013.

addition, unused, excess energy from these facilities could be delivered into the local utility distribution system to meet customer demand. PSL §66-j has since been amended numerous times to add emerging technologies and new circumstances, all with the intent to make more broadly available these environmental and economic benefits. See, e.g., Case 11-E-0318, et al., Tariff Filings to Effectuate Amendments to Public Service Law §66-j and §66-l (Remote, Micro-hydroelectric, and Fuel Cell Net Metering) and Conforming Changes to Standardized Interconnection Requirements, Order Modifying and Authorizing Remote Net Metering Tariffs, Modifying Standardized Interconnection Requirements, and Requiring Micro-hydroelectric and Fuel Cell Tariff Filings (issued November 21, 2011), and Case 12-E-0343, Petition of Hudson Valley Clean Energy, Inc. to Increase Central Hudson Gas & Electric Corporation's Net Metering Limit, Order Raising Net Metering Limit (issued October 22, 2012).

Unfortunately, this piecemeal approach has resulted in inconsistencies which the Commission is in the best position to clarify. One of the inconsistencies the Commission can help clarify is identified in the preceding section.

Permitting net metering benefits to customer-generator lessees is fully consistent with the original intent of PSL §66-j, its legislative development, and the energy policy of this State. Therefore, any perceived inconsistency should be interpreted by the Commission with a declaration that lessees may enjoy the benefits of net metering, including the credits available under PSL §66-j(3)(f).

## **CONCLUSION**

The University asserts that the Commission is in the best position to interpret PSL § 66-j regarding the applicability of remote net metering to those customers, such as the University, desiring to lease micro-hydroelectric generating equipment and apply net metering credits to

other properties owned or leased by such customers, is in the best interest of both customers and the electric utilities and will provide needed consistency to the remote net metering process.

WHEREFORE, for the above stated reasons, the University respectfully requests that the Commission issue a declaratory ruling that the lessee of non-residential micro-hydroelectric generating equipment is eligible to participate in remote net metering where the lessor remains the owner and operator of such equipment pursuant to PSL §66-j and in so doing, addresses the statutory inconsistency created by the omission of the term “leases” from the definition of those customer-generators that may designate all or a portion of the net metering credits generated by non-residential micro-hydroelectric generating equipment to meters at any property owned or leased by such customer-generator.

Respectfully submitted,

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Dated: April 4, 2013

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