May 12, 2022

Rhode Island House Committee on Municipal Government & House Committee
Rhode Island State House
82 Smith Street
Providence, RI 02903

Re: Helen Anthony in Support of H8220 An Act Relating to Taxation – Levy and Assessment of Local Taxes H8220

Honorable Committee Members:

Handy Law has worked on energy policy for many years and is committed to the new energy economy. This will be my first time testifying before any Committee regarding energy policy as Seth Handy of my firm usually handles the advocacy. I handle the siting and permitting of renewable energy projects and more recently the tax appeals. I am here to testify in support of House Bill 8220.

As many can attest, building renewable energy projects in Rhode Island is difficult and expensive. Often the profit margins are thin and uncertainty in costs can kill a project. Tax treatment of renewable energy projects should be consistent and predictable. Unfortunately, it is not.

R.I. Gen. Laws §44-5-3(c) states that cities and towns may tax renewable energy resources and associated equipment only pursuant to rules and regulations that will be established by the Office of Energy Resources in consultation with the division of taxation after the rules are adopted no later than October 30, 2016. The rules will provide consistent and foreseeable tax treatment of renewable energy to facilitate and promote installation of grid connected renewable energy.

The Office of Energy Resources promulgated rules and regulations governing how municipalities can tax renewable energy entitled “Rules and Regulations for Commercial Renewable Energy System Tangible Tax Value”, effective January 1, 2017. The Rules allow municipalities to establish a tangible tax rate using the formula $5.00 per Kilowatt AC Capacity. Most municipalities have enacted ordinances that adopt the OER Rules. I’d like to illustrate how this formula works by using a renewable energy project that is currently operating in Hopkinton, RI. The nameplate capacity of a project is 10.63 MW, using the OER formula, the annual tangible bill is $53,100.

This tangible tax formula is predictable and consistent, and renewable energy developers can factor this cost into their project. Several years ago, municipalities also began to double tax these projects by also assigning a new valuation to the real property beneath the projects. For instance, again using the Hopkinton, RI example, the renewable energy project is located on 67 acres of land. Prior to the solar development the land was valued at $2,700 per acre for a total valuation of $180,900. After the renewable energy project was built and operational, the Town increased the assessment to $45,000 per acre with a notation “Solar Farm”. The new valuation for the 67 acres is $3,015,000. Using an average tax rate of $18.41 per thousand, the increase in the annual property taxes for the 67 acres is $52,175.78. Combine that figure with the tangible tax, the taxes for the renewable energy project totals $105,275.78.
Our firm currently has 17 tax appeals pending in Superior Court and one pending in the Supreme Court. We have attached our supreme court memorandum on what we submit to be the proper application of existing law in this context, for your reference in case helpful. In our opinion the intent of the language in R.I. Gen. Laws §44-5-3(c) is clear. These appeals are obviously extremely onerous and are unwarranted given the existing language in R.I. Gen. Laws §44-5-3(c). This bill will eliminate disparate and unpredictable tax treatment across the state by reaffirming and restoring the General Assembly’s intent with regard to the proper taxation of renewable energy facilities in Rhode Island, putting an end to its double taxation. Municipalities may only apply the tangible tax formula of $5 per Kw pursuant to the rules promulgated by OER and not also assess additional property taxes. Obviously, not everyone shares our opinion.

House Bill 8220 reaffirms and make clear that the OER Rules govern the tax treatment of renewable energy projects. Please support the Bill. I’d like to thank Representative Handy for introducing it and thank you for considering these comments.

Sincerely,

Helen Anthony