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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2009

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A N A C T

RELATING TO PUBLIC UTILITIES -- LONG-TERM CONTRACTING FOR RENEWABLE
ENERGY

Introduced By: Senators Bates, Walaska, and Ciccone

Date Introduced: February 25, 2009

Referred To: Senate Environment & Agriculture

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 39 of the General Laws entitled "PUBLIC UTILITIES AND
2 CARRIERS" is hereby amended by adding thereto the following chapter:

3 CHAPTER 26.1

4 LONG-TERM CONTRACTING STANDARD FOR RENEWABLE ENERGY

5 **39-26.1-1. Purpose.** – The purpose of this chapter is to encourage and facilitate the
6 creation of commercially viable, cost-effective long-term contracts between electric distribution
7 companies and developers or sponsors of renewable energy resources with the goals of stabilizing
8 long-term energy prices, enhancing environmental quality, creating jobs in Rhode Island in the
9 renewable energy sector, and facilitating the financing of renewable energy generation within the
10 jurisdictional boundaries of the state or adjacent state or federal waters or providing direct
11 economic and electric system benefits to the state.

12 **39-26.1-2. Definitions.** – Terms not defined in this chapter shall have the same meaning
13 as contained in chapter 26 of title 39 of the general laws. When used in this chapter:

14 (1) "Commercially viable" means that the project can demonstrate to the commission that
15 it has:

16 (i) A credible project operation date, as determined by the commission;

17 (ii) A project needs to have completed the requisite permitting process; and

18 (iii) A project needs to demonstrate financing capability.

1 (2) "Commission" means the Rhode Island public utilities commission;

2 (3) "Cost-effective" means energy pricing that, over the term of the contract, provides a
3 measurable decrease in locational marginal pricing within the Rhode Island load zone.

4 (4) "Electric distribution company" means a company defined in section 39-1-2,
5 supplying standard offer service, last resort service, or any successor service to end-use
6 customers, but not including the Block Island Power Company or the Pascoag Utility District;

7 (5) "Eligible renewable energy resource" means resources as defined in section 39-26-5
8 and any references therein;

9 (6) "Long-term contract" means a contract of not less than ten (10) years;

10 (7) "Newly developed renewable energy resources" means electrical generation units that
11 use exclusively an eligible renewable energy resource, and that have neither begun operation, nor
12 have the developers of the units implemented investment or lending agreements necessary to
13 finance the construction of the unit; provided, however, that any projects using eligible renewable
14 energy resources and located within the state of Rhode Island which obtain project financing on
15 or after January 1, 2010, shall qualify as newly developed renewable energy resources for
16 purposes of the first solicitation under this chapter;

17 (8) "Minimum long-term contract capacity" means fifteen percent (15%) of the electric
18 distribution company's standard offer load in Rhode Island, measured on a megawatt-hour basis.

19 **39-26.1-3. Long-term contract standard.** – (a) Beginning on or before July 1, 2010,
20 each electric distribution company shall be required to annually solicit proposals from renewable
21 energy developers and, provided commercially viable proposals have been received, enter into
22 long-term contracts with terms of up to fifteen (15) years for the purchase of capacity, energy
23 attributes from newly developed renewable energy resources. Subject to commission approval,
24 the electric distribution company may enter into contracts for term lengths longer than fifteen (15)
25 years. To qualify, the commission must issue findings that the project:

26 (1) Is located within the jurisdictional boundaries of the state including state waters, or in
27 adjacent federal waters;

28 (2) Will sell energy at demonstrably cost-effective pricing;

29 (3) Will provide enhanced electricity reliability within the state;

30 (4) Will contribute to moderating system peak load requirements within the state;

31 (5) Is qualified to provide renewable energy credits within the state; and

32 (6) Will create additional employment within the state.

33 (b) The timetable and method for solicitation and execution of such contracts shall be
34 proposed by the electric distribution company, and shall be subject to review and approval by the

1 commission prior to issuance by the company; provided that the timetable is reasonably designed
2 to result in the electric distribution company having the minimum long-term contract capacity
3 under contract within four (4) years of the date of the first solicitation; it is not necessary that the
4 projects associated with these contracts be operational within these four (4) years, as the
5 operational dates shall be specified in the contract. The electric distribution company shall,
6 subject to review and approval of the commission, select a reasonable method of soliciting
7 proposals from renewable energy developers, which shall include, at a minimum, an annual
8 public solicitation, but may also include individual negotiations. The solicitation process shall
9 permit a reasonable amount of negotiating discretion for the parties to engage in commercially
10 reasonable arms-length negotiations over final contract terms. Each long-term contract entered
11 into pursuant to this section shall contain a condition that it shall not be effective without
12 commission review and approval. The electric distribution company shall file such contract,
13 along with a justification for its decision, within a reasonable time after it has executed the
14 contract following a solicitation or negotiation. The commission shall hold public hearings to
15 review the contract within forty-five (45) days of the filing and issue a written order approving or
16 rejecting the contracting within sixty (60) days of the filing; in rejecting a contract the
17 commission may advise the parties of the reason for the contract being rejected and direct the
18 parties to attempt to address the reasons for rejection in a revised contract within a specified
19 period not to exceed ninety (90) days. The commission shall approve the contract if it finds that:
20 (1) The contract provides cost-effective renewable energy to Rhode Island electric consumers, the
21 project is commercially viable and after that the requirements of subsection 39-26.1-3(a) have
22 been met; (2) The requirements for the annual solicitation have been met; and (3) The contract is
23 consistent with the purposes of this section. A report on each solicitation shall be filed with the
24 commission each year within a reasonable time after decisions are made by the electric
25 distribution company regarding the solicitation results, even if no contracts are executed
26 following the solicitation.

27 (c)(1) No electric distribution company shall be allowed to enter into long-term contracts
28 for newly developed renewable energy resources on terms which the commission reasonably
29 believes not to be commercially viable; provided, however, if there is a dispute about whether a
30 project is commercially viable, the commission shall make the final determination after an
31 evidentiary hearing. The electric distribution company shall not be obligated to enter into long-
32 term contracts pursuant to this section that would, in the aggregate, exceed the minimum long-
33 term contract capacity, but may do so voluntarily subject to commission approval. As long as the
34 electric distribution company has entered into long-term contracts in compliance with this

1 section, the electric distribution company shall not be required by regulation or order to enter into
2 contracts with terms of no more than three (3) years in meeting its applicable annual renewable
3 portfolio standard requirements set forth in section 39-26-4

4 (2) An electric distribution company shall not be required to enter into long-term
5 contracts for renewable energy resources that exceed the following four (4) year phased schedule:

6 (i) By June 30, 2012: twenty-five percent (25%) of the minimum long-term contract
7 capacity;

8 (ii) By June 30, 2013: fifty percent (50%) of the minimum long-term contract capacity;

9 (iii) By June 30, 2014: seventy-five percent (75%) of the minimum long-term contract
10 capacity;

11 (iv) By June 30, 2015: one hundred percent (100%) of the minimum long-term contract
12 capacity; but may do so earlier voluntarily, subject to commission approval.

13 (d) Compliance with the long-term contract standard shall be demonstrated through
14 procurement pursuant to the provisions of a long-term contract of energy, capacity and attributes
15 reflected in NE-GIS certificates relating to generating units certified by the commission as using
16 newly developed renewable energy resources, as evidenced by reports issued by the NE-GIS
17 administrator and the terms of the contract; provided, however, that the NE-GIS certificates were
18 procured pursuant to the provisions of a long-term contract. The electric distribution company
19 also may purchase other attributes from the generator as part of the long-term contract.

20 (e) After the adoption of the rules and regulations an electric distribution company may,
21 at the discretion of the commission, immediately and from time to time, procure additional
22 commercially reasonable long-term contracts for newly developed renewable energy resources on
23 an earlier time table or above the minimum long-term contract capacity, subject to commission
24 approval.

25 **39-26.1-4. Financial remuneration and incentives.** – In order to achieve the purposes
26 of this chapter, electric distribution companies shall be entitled to financial remuneration for costs
27 incurred associated with the financial obligation of the long-term contracts. The commission may
28 consider the cost-effectiveness to Rhode Island electricity consumers of long-term renewable
29 energy contracts in a performance-based rate of return.

30 **39-26.1-5. Commission approvals and regulations.** – (a) Electric distribution
31 companies shall submit to the commission for review and approval all long-term contracts for
32 renewable energy resources proposed to be entered into in accordance with this chapter.

33 (b) Unless the commission approves otherwise, all energy and capacity purchased by an
34 electric distribution company pursuant to this chapter shall be used to satisfy its standard offer

1 load.

2 (c) Unless the commission approves otherwise, any attributes including NE-GIS
3 certificates purchased by an electric distribution company pursuant to this chapter shall be used to
4 satisfy the obligations set forth in chapter 26 of title 39.

5 (d) The commission shall promulgate regulations by April 1, 2010, that shall, as a
6 condition of contract approval, require all approved projects, regardless of their location, to
7 provide other direct economic benefits to Rhode Island, such as job creation, increased property
8 tax revenues or other similar revenues deemed substantial by the commission.

9 (e) The electric distribution company shall file tariffs with the commission for
10 commission review and approval that net the cost of payments made to projects under the long-
11 term contracts against the proceeds obtained from the sale of energy, capacity, RECs or other
12 attributes. The difference shall be credited or charged to all distribution customers through a
13 uniform fully reconciling annual factor in distribution rates, subject to review and approval of the
14 commission. The reconciliation shall be designed so that customers are credited with any net
15 savings resulting from the long-term contracts and the electric distribution company recovers all
16 costs incurred under such contracts, as well as, recovery of the financial remuneration and
17 incentives specified in section 39-26.1-4.

18 **39-26.1-6. Interaction with other laws.** – The long-term contract standard set forth in
19 this chapter shall be separate and distinct from the renewable energy standard set forth in chapter
20 26 of title 39. If any provision of this section is subject to a judicial challenge, the department of
21 public utilities may suspend the applicability of the challenged provision while the judicial action
22 is pending, until final resolution of the challenge and any appeals, and shall issue such orders and
23 take such other actions as are necessary to ensure that the provisions that are not challenged are
24 implemented expeditiously to achieve the public purposes of this provision.

25 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO PUBLIC UTILITIES -- LONG-TERM CONTRACTING FOR RENEWABLE
ENERGY

1 This act would establish a new chapter entitled "Long-Term Contracting Standards For
2 Renewable Energy," the purpose of which would be to promote the creation of cost-effective
3 long-term contracts between electric distribution companies and developers of renewable energy.

4 This act would take effect upon passage.

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