

2010 -- H 8083 SUBSTITUTE A AS AMENDED

LC02500/SUB A/3

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2010

A N A C T

RELATING TO PUBLIC UTILITIES AND CARRIERS -- CONTRACTING STANDARD FOR
RENEWABLE ENERGY

Introduced By: Representatives JP O'Neill, Walsh, and Jackson

Date Introduced: May 05, 2010

Referred To: House Environment and Natural Resources

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 39-26.1-7 of the General Laws in Chapter 39-26.1 entitled "Long-
2 Term Contracting Standard for Renewable Energy" is hereby amended to read as follows:
3 **39-26.1-7. Town of New Shoreham Project.** -- (a) The general assembly finds it is in
4 the public interest for the state to facilitate the construction of a small-scale offshore wind
5 demonstration project off the coast of Block Island, including an undersea transmission cable that
6 interconnects Block Island to the mainland in order to: position the state to take advantage of the
7 economic development benefits of the emerging offshore wind industry; promote the
8 development of renewable energy sources that increase the nation's energy independence from
9 foreign sources of fossil fuels; reduce the adverse environmental and health impacts of traditional
10 fossil fuel energy sources; and provide the Town of New Shoreham with an electrical connection
11 to the mainland. To effectuate these goals, and notwithstanding any other provisions of the
12 general or public laws to the contrary, the Town of New Shoreham project, its associated power
13 purchase agreement, transmission arrangements, and related costs are authorized pursuant to the
14 process and standards contained in this section. The Narragansett Electric Company is hereby
15 authorized to enter into an amended power purchase agreement with the developer of offshore
16 wind for the purchase of energy, capacity, and any other environmental and market attributes, on
17 terms that are consistent with the power purchase agreement that was filed with the commission
18 on December 9, 2009 in docket 4111, and amendments changing dates and deadlines, provided

1 that the pricing terms of such agreement are amended as more fully described in subsection 39-
2 26.1-7(e), in addition to other amendments that are made to take into account the provisions of
3 this section as amended since the filing of the agreement in docket 4111. Any amendments shall
4 ensure that the pricing can only be lower, and never exceed, the original pricing included in the
5 power purchase agreement that was reviewed in docket 4111. ~~On or before August 15, 2009, the~~
6 ~~electric distribution company shall solicit proposals for one newly developed renewable energy~~
7 ~~resources project of ten (10) megawatts or less that includes a proposal to enhance the electric~~
8 ~~reliability and environmental quality of the Town of New Shoreham. The electric distribution~~
9 ~~company shall select a project for negotiating a contract that shall be conditioned upon approval~~
10 ~~by the commission. Negotiations shall proceed in good faith to achieve a commercially~~
11 ~~reasonable contract. Should the distribution company and the selected party agree to a contract,~~
12 ~~the contract shall be filed with the commission no later than October 15, 2009 for commission~~
13 ~~approval. The commission shall review the contract and issue an order approving or disapproving~~
14 ~~the contract on or before January 31, 2010. If the parties are unable to reach agreement on a~~
15 ~~contract prior to October 15, 2009, an unsigned copy shall be filed by the electric distribution~~
16 ~~company prior to that same date, and the commission shall have the discretion to order the parties~~
17 ~~to arbitrate the dispute on an expedited basis. Notwithstanding anything in this section to the~~
18 ~~contrary, and notwithstanding any solicitation made pursuant to this section, the distribution~~
19 ~~company and the selected party may agree to a contract for a The demonstration project subject to~~
20 ~~the amended power purchase agreement shall ~~that includes~~ include up to (but not exceeding) eight~~
21 (8) wind turbines with aggregate nameplate capacity of no more than thirty (30) megawatts,
22 ~~subject to and conditioned upon the approval of the commission,~~ even if the actual capacity factor
23 of the project results in the project technically exceeding ten (10) megawatts.

24 (b) The amended power purchase agreement shall be filed with the Public Utilities
25 Commission. Upon the filing of the amended power purchase agreement, the commission shall
26 open a new docket. The commission shall allow the parties to docket 4111 to become parties in
27 the new docket who may file testimony within fifteen (15) days of the filing of the amended
28 agreement. The commission shall allow other interventions on an expedited basis, provided they
29 comply with the commission standards for intervention. The developer shall provide funding for
30 the economic development corporation to hire an expert experienced in power markets,
31 renewable energy project financing, and power contracts who shall provide testimony regarding
32 the terms and conditions of the power purchase agreement to assist the commission in its review,
33 provided that the developer shall be precluded from influencing the choice of expert, which shall
34 be in the sole discretion of the economic development corporation. This testimony shall be filed

1 within twenty (20) days after the filing of the amended power purchase agreement. The parties
2 shall have the right to respond to the testimony of this expert through oral examination at the
3 evidentiary hearings. The commission shall hold one public comment hearing within five (5) days
4 after the filing of the expert testimony. Evidentiary hearings shall commence no later than thirty
5 (30) days from the filing of the amended power purchase agreement.

6 (c) The commission shall review the amended power purchase agreement taking into
7 account the state's policy intention to facilitate the development of a small offshore wind project
8 in Rhode Island waters, while at the same time interconnecting Block Island to the mainland. The
9 commission shall review the amended power purchase agreement and shall approve it if:

10 (i) The amended agreement contains terms and conditions that are commercially
11 reasonable;

12 (ii) The amended agreement contains provisions that provide for a decrease in pricing if
13 savings can be achieved in the actual cost of the project pursuant to subsection 39-26.1-7(e);

14 (iii) The amended agreement is likely to provide economic development benefits,
15 including: facilitating new and existing business expansion and the creation of new renewable
16 energy jobs; the further development of Quonset Business Park; and, increasing the training and
17 preparedness of the Rhode Island workforce to support renewable energy projects; and

18 (iv) The amended power purchase agreement is likely to provide environmental benefits,
19 including the reduction of carbon emissions. An advisory opinion on the findings of economic
20 benefit set forth in (iii) above shall be provided by the Rhode Island economic development
21 corporation and an advisory opinion on the environmental benefits set forth in (iv) above shall be
22 filed by the Rhode Island department of environmental management. The advisory opinions shall
23 be filed with the commission within twenty (20) days of filing of the amended power purchase
24 agreement. The commission shall give substantial deference to the factual and policy conclusions
25 set forth in the advisory opinions in making the required findings. Notwithstanding any other
26 provisions of the general laws to the contrary, for the purposes of this section, "commercially
27 reasonable" shall mean terms and pricing that are reasonably consistent with what an experienced
28 power market analyst would expect to see for a project of a similar size, technology and location,
29 and meeting the policy goals in subsection (a) of this section.

30 (d) The commission shall issue a written decision to accept or reject the amended power
31 purchase agreement, without conditions, no later than forty-five (45) days from the filing of the
32 amended power purchase agreement, without delay or extension of the timeframes contained in
33 this section. Any review of the commission's decision shall be according to chapter 5 of title 39,
34 and the supreme court shall advance any proceeding under this section so that the matter is

1 afforded precedence on the calendar and shall be heard and determined with as little delay as
2 possible. ~~Upon approval of the contract, the~~ The provisions of section 39-26.1-4 and the
3 provisions of ~~paragraphs (a); subsections~~ (b), (c), (d), and (f) of section 39-26.1-5 shall apply, and
4 all costs incurred in the negotiation, administration, enforcement, transmission engineering
5 associated with the design of the cable, and implementation of the project and agreement shall be
6 recovered annually by the electric distribution company in electric distribution rates. ~~To the~~
7 ~~extent that there are benefits for customers of the Block Island Power Company or its successor,~~
8 ~~the commission shall determine an allocation of cost responsibility between customers of the~~
9 ~~electric distribution company and customers of Block Island Power Company or its successor~~
10 ~~after the cost estimates are filed with the commission, but the commission need not determine the~~
11 ~~final cost allocation at the time the commission considers and/or approves the contract between~~
12 ~~the electric distribution company and the project developer. The allocation of costs shall assure~~
13 ~~that individual customers in the Town of New Shoreham pay higher charges related to the project~~
14 ~~on their individual bills than any charges for the same project that may be included in individual~~
15 ~~bills of customers of the electric distribution company. The commission shall provide for an~~
16 ~~appropriate rate design and billing method between the electric distribution company and Block~~
17 ~~Island Power Company at the appropriate time.~~ The pricing under the agreement shall not have
18 any precedential effect for purposes of determining whether other long-term contracts entered
19 into pursuant to this chapter are commercially reasonable.

20 (e) Cap and lower price. (i) The amended power purchase agreement subject to
21 subsection 39-26.1-7(a) shall provide for terms that shall decrease the pricing if savings can be
22 achieved in the actual cost of the project, with all realized savings allocated to the benefit of
23 ratepayers. (ii) The amended power purchase agreement shall also provide that the initial fixed
24 price contained in the signed power purchase agreement submitted in docket 4111 shall be the
25 maximum initial price, and any realized savings shall reduce such price. After making any such
26 reduction to the initial price based on realized savings, the price for each year of the amended
27 power purchase agreement shall be fixed by the terms of said agreement. (iii) The amended
28 power purchase agreement shall require that the costs of the project shall be certified by the
29 developer. An independent third-party acceptable to the division of public utilities and carriers
30 shall within thirty (30) days of this certification by the developer, verify the accuracy of such
31 costs at the completion of the construction of the project. All reasonable costs of this verification
32 shall be paid for by the developer. Upon receipt of such third-party verification, the division shall
33 notify the Narragansett Electric Company of the final costs. The public utilities commission shall
34 reduce the expense to ratepayers consistent with a verified reduction in the project costs.

1 ~~(b)(f)~~ The ~~solicitation shall require that each proposal include provisions for~~ project shall
2 include a transmission cable between the Town of New Shoreham and the mainland of the state.
3 The electric distribution company, at its option, may elect ~~propose~~ to own, operate, or otherwise
4 participate in such transmission cable project; ~~subject to commission approval~~. The electric
5 distribution company, however, has the option to decline to own, operate, or otherwise participate
6 in the transmission cable project; ~~even if the commission approves such arrangements~~. The
7 electric distribution company may elect to purchase the transmission cable and related facilities
8 from the developer or an affiliate of the developer, pursuant to the terms of a transmission
9 facilities purchase agreement negotiated between the electric distribution company and the
10 developer or its affiliate, an unexecuted copy of which shall be provided to the division of public
11 utilities and carriers for the division's consent to execution. The division shall have twenty (20)
12 days to review the agreement. If the division independently determines that the terms and pricing
13 of the agreement are reasonable, taking into account the intention of the legislature to advance the
14 project as a policy-making matter, the division shall provide its written consent to the execution
15 of the transmission facilities purchase agreement. Once written consent is provided, the electric
16 distribution company and its transmission affiliate are authorized to make a filing with the federal
17 energy regulatory commission to put into effect transmission rates to recover all of the costs
18 associated with the purchase of the transmission cable and related facilities and the annual
19 operation and maintenance. The revenue requirement for the annual cable costs shall be
20 calculated in the same manner that the revenue requirement is calculated for other transmission
21 facilities in Rhode Island for local network service under the jurisdiction of the federal energy
22 regulatory commission. The division shall be authorized to represent the State of Rhode Island in
23 those proceedings before the federal energy regulatory commission, including the authority to
24 enter into any settlement agreements on behalf of the state to implement the intention of this
25 section. The division shall support transmission rates and conditions that allow for the costs
26 related to the transmission cable and related facilities to be charged in transmission rates in a
27 manner that socializes the costs throughout Rhode Island. Should the electric distribution
28 company own, operate, and maintain the cable, the annual costs incurred by the electric
29 distribution company directly or through transmission charges shall be recovered annually
30 through a fully reconciling rate adjustment from customers of the electric distribution company
31 and/or from the Block Island Power Company or its successor, subject to any federal approvals
32 that may be required by law; ~~provided, however, the parties shall use all reasonable efforts to~~
33 ~~obtain socialization of the costs of the cable in New England transmission rates administered by~~
34 ~~the ISO New England, to the extent permitted.~~ The allocation of the costs related to the

1 transmission cable through transmission rates or otherwise shall be structured so that the
2 estimated impact on the typical residential customer bill for such transmission costs for customers
3 in the Town of New Shoreham shall be higher than the estimated impact on the typical residential
4 customer bill for customers on the mainland of the electric distribution company. This higher
5 charge for the customers in the Town of New Shoreham shall be developed by allocating the
6 actual cable costs based on the annual peak demands of the Block Island Power Company and the
7 electric distribution company, and these resultant costs recovered in the per kWh charges of each
8 company. In any event, the difference in the individual charge per kWh or per customer/month
9 shall not exceed the ratio of average demand to peak demand for Block Island Power Company
10 relative to the electric distribution company, currently at 1.8 to 1.0 respectively. To the extent that
11 any state tariffs or rates must be put into effect in order to implement the intention of this section,
12 the public utilities commission shall accept filings of the same and shall approve them. ~~costs shall~~
13 ~~be determined by the commission and assure that individual customers in the Town of New~~
14 ~~Shoreham pay higher charges related to the cable on their individual bills than any charges for the~~
15 ~~same project that may be included in individual bills of customers of the electric distribution~~
16 ~~company.~~

17 ~~(e)~~(g) Any charges incurred by the Block Island Power Company or its successor
18 pursuant to this section or other costs incurred by the Block Island Power Company in
19 implementing this section, including the cost of participation in regulatory proceedings in the
20 state or at the federal energy regulatory commission shall be recovered annually in rates through a
21 fully reconciling rate adjustment, subject to approval by the commission. If the electric
22 distribution company owns, operates, or otherwise participates in the transmission cable project,
23 pursuant to subsection 39-26.1-7(b) the provisions of section 39-26.1-4 shall not apply to the
24 cable cost portion of the Town of New Shoreham Project.

25 ~~(h)~~(h) Any contract entered into pursuant to this section shall count as part of the
26 minimum long-term contract capacity.

27 (i) If the electric distribution company elects not to own the transmission cable, the
28 developer may elect to do so directly, through an affiliate, or a third-party and the power purchase
29 agreement pricing shall be adjusted to allow the developer, an affiliate or a third-party, to recover
30 the costs (including financing costs) of the transmission facilities, subject to complying with the
31 terms as set forth in the power purchase agreement between the developer and the electric
32 distribution company.

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

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LC02500/SUB A/3
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO PUBLIC UTILITIES AND CARRIERS -- CONTRACTING STANDARD FOR
RENEWABLE ENERGY

1 This act would authorize the Narragansett Electric Company to enter into an amended
2 agreement with the developer of offshore wind for the purchase of energy, capacity and other
3 environmental and market attributes as long as the provisions of the general laws pertaining to the
4 Town of New Shoreham project are complied with.

5 This act would take effect upon passage.

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