

2010 -- S 2735

LC01986

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2010

A N A C T

RELATING TO PUBLIC UTILITIES AND CARRIERS - RENEWABLE ENERGY
STANDARD

Introduced By: Senators Miller, Sosnowski, and Walaska

Date Introduced: March 25, 2010

Referred To: Senate Environment & Agriculture

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 39-26-2, 39-26-5 and 39-26-6 of the General Laws in Chapter 39-
2 26 entitled "Renewable Energy Standard" are hereby amended to read as follows:

3 **39-26-2. Definitions.** – When used in this chapter:

4 (1) "Alternative compliance payment" means a payment to the Renewable Energy
5 Development Fund of fifty dollars (\$50.00) per megawatt-hour of renewable energy obligation, in
6 2003 dollars, adjusted annually up or down by the consumer price index, which may be made in
7 lieu of standard means of compliance with this statute;

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

9 (3) "Compliance year" means a calendar year beginning January 1 and ending December
10 31, for which an obligated entity must demonstrate that it has met the requirements of this statute;

11 (4) "Customer-sited generation facility" means a generation unit that is interconnected on
12 the end-use customer's side of the retail electricity meter in such a manner that it displaces all or
13 part of the metered consumption of the end-use customer;

14 (5) "Educational institution" means any public school, approved private non-profit
15 school, or institution of higher education as defined in 20 U.S.C. Chapter 28, Subchapter 1, Part
16 A section 1001 (a).

17 (6) "Electrical energy product" means an electrical energy offering, including, but not
18 limited to, last resort and standard offer service, that can be distinguished by its generation

1 attributes or other characteristics, and that is offered for sale by an obligated entity to end-use
2 customers;

3 (7) "Eligible biomass fuel" means fuel sources including clean wood from sustainably
4 managed sources such as brush, stumps, lumber ends and trimmings, ~~wood pallets~~, bark, wood
5 chips, shavings, slash and other clean wood that is not mixed with construction and demolition
6 debris or other solid wastes; unadulterated wood pallets; agricultural crop waste, food and
7 vegetative material; sustainably grown and harvested energy crops; landfill methane; or biogas
8 derived from such sources. ~~;or neat bio-diesel and other neat liquid fuels that are derived from~~
9 ~~such fuel sources;~~ Neat liquid fuels do not qualify as eligible biomass even where derived from
10 clean and sustainably harvested fuel sources unless their use will result in zero net GHG
11 emissions.

12 (8) "Eligible renewable energy resource" means resources as defined in section 39-26-5;

13 (9) "Eligible net-metered energy system" means a self generator using an eligible
14 renewable energy resource or combined heat and power;

15 ~~(9)~~(10) "End-use customer" means a person or entity in Rhode Island that purchases
16 electrical energy at retail from an obligated entity;

17 ~~(10)~~(11) "Existing renewable energy resources" means generation units using eligible
18 renewable energy resources and first going into commercial operation before December 31, 1997;

19 ~~(11)~~(12) "Farm" shall be defined in accordance with section 44-27-2, except that all
20 buildings associated with the farm shall be eligible for net metering credits as long as: (i) the
21 buildings are owned by the same entity operating the farm or persons associated with operating
22 the farm; and (ii) the buildings are on the same farmland as the renewable generation on either a
23 tract of land contiguous with such farmland or across a public way from such farmland.

24 ~~(12)~~(13) "Generation attributes" means the nonprice characteristics of the electrical
25 energy output of a generation unit including, but not limited to, the unit's fuel type, emissions,
26 vintage and policy eligibility;

27 ~~(13)~~(14) "Generation unit" means a facility that converts a fuel or an energy resource
28 into electrical energy;

29 ~~(14)~~(15) "NE-GIS" means the generation information system operated by NEPOOL, its
30 designee or successor entity, which includes a generation information database and certificate
31 system, and that accounts for the generation attributes of electrical energy consumed within
32 NEPOOL;

33 ~~(15)~~(16) "NE-GIS certificate" means an electronic record produced by the NE-GIS that
34 identifies the relevant generation attributes of each megawatt-hour accounted for in the NE-GIS;

1 ~~(16)~~(17) "NEPOOL" means the New England Power Pool or its successor;

2 ~~(17)~~(18) "Net metering" means the process of measuring the difference between
3 electricity delivered by an electrical distribution company and electricity generated by a ~~solar net-~~
4 ~~metering facility or wind net metering facility~~, an eligible net-metered energy system and fed
5 back to the distribution company;

6 ~~(18)~~(19) "New renewable energy resources" means generation units using eligible
7 renewable energy resources and first going into commercial operation after December 31, 1997;
8 or the incremental output of generation units using eligible renewable energy resources that have
9 demonstrably increased generation in excess of ten percent (10%) using eligible renewable
10 energy resources through capital investments made after December 31, 1997; but in no case
11 involve any new impoundment or diversion of water with an average salinity of twenty (20) parts
12 per thousand or less;

13 ~~(19)~~(20) "Non-profit affordable housing" shall mean a housing development or housing
14 project as defined by section 42-55-3 undertaken by a non-profit entity where the residential units
15 taking electric service are either in the same building in close proximity to the renewable energy
16 source or, if not within the same building, are within one-half (1/2) of a mile radius from the
17 renewable energy source; provided, however, that the application has been filed with and
18 reviewed by the division of public utilities and carriers and the division has certified the
19 development or project as eligible. The division shall promulgate regulations setting forth an
20 application process and eligibility criteria to assure that the net metering allowed will benefit the
21 low income affordable housing residents only. The renewable generation or combined heat and
22 power credit applicable for nonprofit affordable housing shall be calculated based on the rate
23 class applicable to residential units.

24 ~~(20)~~(21) "Obligated entity" means a person or entity that sells electrical energy to end-
25 use customers in Rhode Island, including, but not limited to: nonregulated power producers and
26 electric utility distribution companies, as defined in section 39-1-2, supplying standard offer
27 service, last resort service, or any successor service to end-use customers; including Narragansett
28 Electric, but not to include Block Island Power Company as described in section 39-26-7 or
29 Pascoag Utility District;

30 ~~(21)~~(22) "Off-grid generation facility" means a generation unit that is not connected to a
31 utility transmission or distribution system;

32 ~~(22)~~(23) "Renewable generation credit" or "combined heat and power credit" means
33 credit equal to the excess ~~kWhs~~ kilowatthours (kWhs) by the time of use billing period (if
34 applicable) multiplied by the sum of the distribution company's:

1 (i) standard offer service kWh charge for the rate class applicable to the net metering
2 customer;

3 (ii) distribution kWh charge;

4 (iii) transmission kWh charge; and

5 (iv) transition kWh charge. This does not include any charges relating to conservation
6 and load management, demand side management, and renewable energy.

7 ~~(23)~~(24) "Reserved certificate" means a NE-GIS certificate sold independent of a
8 transaction involving electrical energy, pursuant to Rule 3.4 or a successor rule of the operating
9 rules of the NE-GIS;

10 ~~(24)~~(25) "Reserved certificate account" means a specially designated account established
11 by an obligated entity, pursuant to Rule 3.4 or a successor rule of the operating rules of the NE-
12 GIS, for transfer and retirement of reserved certificated from the NE-GIS;

13 ~~(25)~~(26) "Self-generator" means an end-use customer in Rhode Island that displaces all
14 or part of its retail electricity consumption, as metered by the distribution utility to which it
15 interconnects, through the use of a customer-sited generation facility, the ownership of any such
16 facility shall not be considered an obligated entity as a result of any such ownership arrangement;

17 ~~(26)~~(27) "Small hydro facility" means a facility employing one or more hydroelectric
18 turbine generators and with an aggregate capacity not exceeding thirty (30) megawatts. For
19 purposes of this definition, "facility" shall be defined in a manner consistent with Title 18 of the
20 Code of Federal Regulations, section 92.201 et seq.; provided, however, that the size of the
21 facility is limited to thirty (30) megawatts, rather than eighty (80) megawatts.

22 (28) "Sustainably" means that the relevant management practice enhances efficiency
23 while maintaining or improving the quality and environmental functions of the natural ecosystem
24 base, including biological diversity, productive capacity of ecosystems, ecosystem health,
25 conservation of solid and water resources, biological carbon sequestration capacity and long-term
26 multiple socio-economic benefits to meet the needs of society.

27 ~~(27)~~(29) "Towns and cities" means any Rhode Island town or city with the powers set
28 forth in title 45 of the general laws, which may exercise all such powers, including those set forth
29 in chapter 45-40.1, in developing, owning, operating or maintaining energy generation units
30 utilizing eligible renewable energy resources.

31 **39-26-5. Eligible renewable energy resources.** -- (a) For the purposes of the regulations
32 promulgated under this chapter, eligible renewable energy resources are generation units in the
33 NEPOOL control area using:

34 (1) Direct solar radiation;

- 1 (2) The wind;
- 2 (3) Movement or the latent heat of the ocean;
- 3 (4) The heat of the earth;
- 4 (5) Small hydro facilities;
- 5 (6) Biomass facilities using eligible biomass fuels and maintaining compliance with
- 6 current air permits; eligible biomass fuels may be co-fired with fossil fuels, provided that only the
- 7 renewable energy fraction of production from multi-fuel facilities shall be considered eligible;
- 8 (7) Fuel cells using the renewable resources referenced above in this section;
- 9 (8) Waste-to-energy combustion of any sort or manner shall in no instance be considered
- 10 eligible except for fuels identified in ~~section 39-26-2(6)~~ [subdivision 39-26-2\(7\)](#).

11 (b) A generation unit located in an adjacent control area outside of the NEPOOL may
12 qualify as an eligible renewable energy resource, but the associated generation attributes shall be
13 applied to the renewable energy standard only to the extent that the energy produced by the
14 generation unit is actually delivered into NEPOOL for consumption by New England customers.
15 The delivery of such energy from the generation unit into NEPOOL must be generated by:

- 16 (1) A unit-specific bilateral contract for the sale and delivery of such energy into
- 17 NEPOOL; and
- 18 (2) Confirmation from ISO-New England that the renewable energy was actually settled
- 19 in the NEPOOL system; and
- 20 (3) Confirmation through the North American Reliability Council tagging system that
- 21 the import of the energy into NEPOOL actually occurred; or
- 22 (4) Any such other requirements as the commission deems appropriate.

23 (c) NE-GIS certificates associated with energy production from off-grid generation and
24 customer-sited generation facilities certified by the commission as eligible renewable energy
25 resources may also be used to demonstrate compliance, provided that the facilities are physically
26 located in Rhode Island.

27 **39-26-6. Duties of the commission.** -- The commission shall:

- 28 (a) Develop and adopt regulations on or before December 31, 2005, for implementing a
- 29 renewable energy standard, which regulations shall include, but be limited to, provisions for:
 - 30 (1) Verifying the eligibility of renewable energy generators and the production of energy
 - 31 from such generators, including requirements to notify the commission in the event of a change in
 - 32 a generator's eligibility status.
 - 33 (2) Standards for contracts and procurement plans for renewable energy resources, to
 - 34 achieve the purposes of this chapter.

1 (3) Flexibility mechanisms for the purposes of easing compliance burdens, facilitating
2 bringing new renewable resources on-line, and avoiding and/or mitigating conflicts with state
3 level source disclosure requirements and green marketing claims throughout the region; which
4 flexibility mechanisms shall allow obligated entities to: (i) demonstrate compliance over a
5 compliance year; (ii) bank excess compliance for two (2) subsequent compliance years, capped at
6 thirty percent (30%) of the current year's obligation; and (iii) allow renewable energy generated
7 during 2006 to be banked by an obligated entity as early compliance, usable towards meeting an
8 obligated entity's 2007 requirement. Generation used for early compliance must result in the
9 retirement of NE-GIS certificate in a reserved certificate account designated for such purposes.

10 (4) Annual compliance filings to be made by all obligated entities within one month after
11 NE-GIS reports are available for the fourth (4th) quarter of each calendar year. All electric utility
12 distribution companies shall cooperate with the commission in providing data necessary to assess
13 the magnitude of obligation and verify the compliance of all obligated entities.

14 (b) Authorize rate recovery by electric utility distribution companies of all prudent
15 incremental costs arising from the implementation of this chapter, including, without limitation,
16 the purchase of NE-GIS certificates, the payment of alternative compliance payments, required
17 payments to support the NE-GIS, assessments made pursuant to section 39-26-7(c) and the
18 incremental costs of complying with energy source disclosure requirements.

19 (c) Certify eligible renewable energy resources by issuing statements of qualification
20 within ninety (90) days of application. The commission shall provide prospective reviews for
21 applicants seeking to determine whether a facility would be eligible.

22 (d) Determine, on or before January 1, 2010, the adequacy, or potential adequacy, of
23 renewable energy supplies to meet the increase in the percentage requirement of energy from
24 renewable energy resources to go into effect in 2011 and determine on or before January 1, 2014,
25 the adequacy or potential adequacy, of renewable energy supplies to meet the increase in the
26 percentage requirement of energy from renewable energy resources to go into effect in 2015. In
27 making such determinations the commission shall consider among other factors the historical use
28 of alternative compliance payments in Rhode Island and other states in the NEPOOL region. In
29 the event that the commission determines an inadequacy or potential inadequacy of supplies for
30 scheduled percentage increases, the commission shall delay the implementation of the scheduled
31 percentage increase for a period of one year or recommend to the general assembly a revised
32 schedule of percentage increases, if any, to achieve the purposes of this chapter.

33 (e) Establish sanctions for those obligated entities that after investigation have been
34 found to fail to reasonably comply with the commission's regulations. No sanction or penalty

1 shall relieve or diminish an obligated entity from liability for fulfilling any shortfall in its
2 compliance obligation; provided, however, that no sanction shall be imposed if compliance is
3 achieved through alternative compliance payments. The commission may suspend or revoke the
4 certification of generation units, certified in accordance with subsection (c) above, that are found
5 to provide false information, or that fail to notify the commission in the event of a change in
6 eligibility status or otherwise comply with its rules. Financial penalties resulting from sanctions
7 from obligated entities shall not be recoverable in rates.

8 (f) Report, by February 15, 2006, and by February 15 each year thereafter, to the
9 governor, the speaker of the house and the president of the senate on the status of the
10 implementation of the renewable energy standards in Rhode Island and other states, and which
11 report shall include in 2009, and each year thereafter, the level of use of renewable energy
12 certificates by eligible renewable energy resources and the portion of renewable energy standards
13 met through alternative compliance payments, and the amount of rate increases authorized
14 pursuant to subsection (b) above.

15 (g) Implement the following changes regarding distributed generation from renewable
16 energy systems by ~~June 1, 2009~~ October 1, 2010.

17 (1) Increase the maximum allowable distributed generation capacity for eligible net-
18 metered energy systems to ~~1.65~~ twenty (20) megawatts (MW); ~~except that for eligible net-~~
19 ~~metered renewable energy systems developed but not owned by cities and towns, located on city~~
20 ~~or town owned land, and providing power solely to the city or town that the project is located in,~~
21 ~~increase said maximum to 2.25 megawatts; and except that for eligible net metered renewable~~
22 ~~energy systems owned by cities and towns of Rhode Island, the Narragansett Bay Commission~~
23 ~~and state agencies, increase said maximum to 3.5 megawatts (MW).~~

24 (2) Increase the aggregate amount of net metering to a maximum of ~~two~~ five percent
25 ~~(2%)(5%)~~ of peak load, provided that at least ~~one~~ three (3) megawatt is reserved for projects less
26 than twenty-five (25) kW.

27 (3) (i) With the exception of those customers described in subsection (ii), if the
28 electricity generated by the ~~renewable generation facility~~ eligible net-metered energy system
29 during a billing period exceeds the customer's kilowatt-hour usage during the billing period, the
30 customer shall upon a request of the customer be billed for zero kilowatt-hour usage and the
31 excess renewable generation or combined heat and power credits shall be credited to the
32 customer's account for the following billing period. Unless otherwise requested by the customer,
33 the customer shall be compensated monthly by a check from the electric distribution company for
34 the excess renewable generation or combined heat and power credits pursuant to the rate specified

1 in subdivision ~~39-26-2(22)~~ 39-26-2(23).

2 (ii) If the electricity generated by the ~~renewable-generation-facility~~ eligible net-metered
3 energy system owned by a Rhode Island city or town, educational institution, nonprofit affordable
4 housing, farm, the state or the Narragansett Bay Commission, during a billing period exceeds the
5 customer's kilowatt-hour usage during the billing period, the customer shall be billed for zero-
6 kilowatt-hour usage, and:

7 (A) Upon request of the customer, the excess renewable generation or combined heat
8 and power credits shall be credited to the customer's account for the following billing period; or

9 (B) Upon request of the customer, the excess renewable generation or combined heat and
10 power credits shall be applied to no more than ten (10) other accounts owned by the customer
11 during the billing period; or

12 (C) Unless otherwise requested by the customer, the customer shall be compensated
13 monthly by a check from the distribution company for the excess renewable generation or
14 combined heat and power credits pursuant to the rates specified in subdivisions ~~39-26-2(19) and~~
15 ~~39-26-2(22)~~ 39-26-2(20) and 39-26-2(23).

16 (iii) Nonprofit affordable housing shall use said compensation, pursuant to paragraph
17 (ii), to benefit the residents of the housing development.

18 (4) If the customer's kilowatt-hour usage exceeds the electricity generated by the
19 ~~renewable-generation-facility~~ eligible net-metered energy system during the billing period, the
20 customer shall be billed for the net kilowatt-hour usage at the applicable rate. Any excess credits
21 may be carried forward month to month for twelve (12) month periods as established by the
22 commission. At the end of the applicable twelve (12) month period, if there are unused excess
23 credits on the net metering customer accounts, such credits shall be used to offset recoverable
24 utility costs. Where compensation has been provided for excess renewable generation or
25 combined heat and power credits, no further charge may be made to the customer against said
26 credits.

27 (h) Any prudent and reasonable costs incurred by the electric distribution company
28 pursuant to achieving compliance with subsection (g) and the annual amount of the distribution
29 component of any renewable generation or combined heat and power credits provided to net
30 metering customers shall be aggregated by the distribution company and billed to all customers
31 on an annual basis through a uniform per kilowatt-hour surcharge embedded in the distribution
32 component of the rates reflected on customer bills.

33 (i) Report, by July 1, ~~2010~~ 2012 to the governor, the speaker of the house and the
34 president of the senate on the status of the implementation of subsection (g) and (h), including if

1 said provisions are optimally cost-effective, reliable, prudent and environmentally responsible.

2 (j) Consistent with the public policy objective of developing renewable generation as an
3 option in Rhode Island, the electric distribution company is authorized to propose and implement
4 pilot programs to own and operate no more than fifteen megawatts (15MW) of renewable
5 generation demonstration projects in Rhode Island and include the costs and benefits in rates to
6 distribution customers. At least two (2) demonstration projects shall include renewable generation
7 installed at or in the vicinity of nonprofit affordable housing projects where energy savings
8 benefits are provided to reduce electric bills of the customers at the nonprofit affordable housing
9 projects. Any renewable generation proposals shall be subject to the review and approval of the
10 commission. The commission shall annually make an adjustment to the minimum amounts
11 required under the renewable energy standard under chapter 39-26 in an amount equal to the
12 kilowatt hours generated by such units owned by the electric distribution company. The electric
13 and gas distribution company shall also be authorized to propose and implement smart metering
14 and smart grid demonstration projects in Rhode Island, subject to the review and approval of the
15 commission, in order to determine the effectiveness of such new technologies for reducing and
16 managing energy consumption, and include the costs of such demonstration projects in
17 distribution rates to electric customers to the extent the project pertains to electricity usage and in
18 distribution rates to gas customers to the extent the project pertains to gas usage.

19 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 AND CARRIERS - RENEWABLE ENERGY
STANDARD

- 1 This act would add combined heat and power to those entities eligible to net meter.
- 2 This act would take effect upon passage.

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