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LC005162/SUB A/4

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2014

A N A C T

RELATING TO PUBLIC UTILITIES AND CARRIERS

Introduced By: Representatives Kennedy, Serpa, Marshall, San Bento, and Lally

Date Introduced: March 27, 2014

Referred To: House Corporations

(Governor)

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 following chapter:

3 CHAPTER 31

4 AFFORDABLE CLEAN ENERGY SECURITY ACT

5 **39-31-1. Legislative Findings. --** The general assembly finds and declares:

6 (1) The state and New England face significant short and long-term energy system
7 challenges that may undermine the reliable operation of the bulk electric system and spur
8 unsustainable levels of price volatility, and that these challenges may have a substantial impact on
9 energy affordability for ratepayers and undermine the economic competitiveness of our state by
10 serving as a detriment to capital investment and job growth; and

11 (2) Planned retirements of fossil-fuel, nuclear, and other electric generators, along with
12 lack of new interstate natural gas pipeline infrastructure and capacity into the region, may
13 exacerbate these conditions; and

14 (3) Rhode Island benefits from a holistic energy strategy that pursues both local
15 investment in clean energy resources, such as energy efficiency and renewable distributed
16 generation, and regional investment in energy infrastructure projects that strengthen system
17 reliability and diversify our supply portfolio. The combination of these strategies advance our
18 economic development interests and environmental quality; and

19 (4) Rhode Island is committed to the increased use of no and low carbon energy

1 resources that diversify our energy supply portfolio, provide affordable energy to consumers, and
2 strengthen our shared quality of life and environment, and new energy infrastructure investments
3 may help facilitate the development and interconnection of such resources; and

4 (5) Rhode Island is part of an integrated, regional energy system and addressing these
5 challenges, while meeting state policy goals, requires a coordinated, multi-state approach built
6 upon collaboration and utilizing appropriate expertise and stakeholder processes of regional
7 entities including, but not limited to, the New England State's Committee on Electricity, ISO-
8 New England, Inc. and The New England Power Pool that takes into account affordability,
9 energy security, reliability, fuel diversity, and environmental sustainability.

10 **39-31-2. Purpose.** -- The purpose of this chapter is to:

11 (1) Secure the future of the Rhode Island and New England economies, and their shared
12 environment, by making coordinated, cost-effective, strategic investments in energy resources
13 and infrastructure such that the New England states improve energy system reliability and
14 security; enhance economic competitiveness by reducing energy costs to attract new investment
15 and job growth opportunities; and protect the quality of life and environment for all residents and
16 businesses;

17 (2) Utilize coordinated competitive processes, in collaboration with other New England
18 states and their instrumentalities, to advance strategic investment in energy infrastructure and
19 energy resources, provided that the total energy security, reliability, environmental, and economic
20 benefits to the state of Rhode Island and its ratepayers exceed the costs of such projects, and
21 ensure that the benefits and costs of such energy infrastructure investments are shared
22 appropriately among the New England States; and

23 (3) Encourage a multi-state or regional approach to energy policy that advances the
24 objectives of achieving a reliable, clean energy future that is consistent with meeting regional
25 greenhouse gas reduction goals at reasonable cost to ratepayers.

26 **39-31-3. Commercially reasonable defined.** -- When used in this chapter "commercially
27 reasonable" means terms and pricing that are reasonably consistent with what an experienced
28 power market analyst would expect to see in transactions involving regional energy resources and
29 regional energy infrastructure. Commercially reasonable shall include having a credible project
30 operation date, as determined by the commission, but a project need not have completed the
31 requisite permitting process to be considered commercially reasonable. Commercially reasonable
32 shall require a determination by the commission that the benefits to Rhode Island exceed the cost
33 of the project. The commission shall determine, based on the preponderance of the evidence, that
34 the total energy security, reliability, environmental and economic benefits to the state of Rhode

1 Island and its ratepayers exceed the costs of such projects. If there is a dispute about whether any
2 terms or pricing are commercially reasonable, the commission shall make the final determination
3 after evidentiary hearings.

4 **39-31-4. Regional energy planning.--** (a) Consistent with the purposes of this chapter
5 and utilizing regional stakeholder processes where appropriate, the office of energy resources in
6 consultation and coordination with the division of public utilities and carriers, the public utility
7 company that provides electric distribution as defined in § 39-1-2(12) as well as natural gas as
8 defined in § 39-1-2(20), the New England States' Committee on Electricity (NESCOE), ISO-New
9 England Inc. and the other New England states is authorized to:

10 (1) Participate in the development and issuance of regional or multi-state competitive
11 solicitation(s) for the development and construction of regional electric transmission projects that
12 would allow for the reliable transmission of large or small scale domestic or international
13 hydroelectric power to New England load centers that will benefit the state of Rhode Island and
14 its ratepayers, and that such solicitations may be issued by The New England States' Committee
15 on Electricity or the electric or natural gas distribution company to further the purposes of this
16 chapter;

17 (2) Participate in the development and issuance of regional or multi-state competitive
18 solicitation(s) for the development and construction of regional electric transmission projects that
19 would allow for the reliable transmission of eligible renewable energy resources, as defined by §
20 39-26-5(a), to New England load centers that will benefit the state of Rhode Island and its
21 ratepayers, and that such solicitations may be issued by The New England States' Committee on
22 Electricity or the electric or natural gas distribution company to further the purposes of this
23 chapter; and

24 (3) Participate in the development and issuance of regional or multi-state competitive
25 solicitation(s) for the development and construction of regional natural gas pipeline infrastructure
26 and capacity that will benefit the State of Rhode Island and its ratepayers by strengthening energy
27 system reliability and security and, in doing so, potentially mitigate energy price volatility that
28 threatens the economic vitality and competitiveness of Rhode Island residents and businesses, and
29 that such solicitations may be issued by The New England States' Committee on Electricity or the
30 electric or natural gas distribution company to further the purposes of this chapter; and that such
31 solicitations may request proposals that are priced in increments to allow for the evaluation of
32 project costs and benefits associated with adding various levels of additional, natural gas pipeline
33 capacity into New England and that assist with the optimization of energy system reliability,
34 economic, and other benefits consistent with the purposes of this chapter.

1 (4) As part of any such regional or multi-state competitive solicitation processes
2 conducted pursuant to this chapter, the office of energy resources shall work jointly with the
3 division of public utilities and carriers, and with the electric distribution company as appropriate,
4 to identify incremental natural gas pipeline infrastructure and capacity and/or electric
5 transmission projects that optimize energy reliability, economic, environmental, and ratepayer
6 impacts for Rhode Island, consistent with the legislative findings and purpose of this chapter.
7 The office of energy resources and division of public utilities and carriers shall be authorized to
8 utilize expert consultants, as needed, to assist in any regional, multi-state, or state-level
9 determination related to the procurement activities identified in § 39-31-5.

10 (b) Prior to any binding commitments being made by any agencies of the state, the
11 electric distribution company, or any other entity that would result in costs being incurred
12 directly, or indirectly, by Rhode Island electric and/or gas consumers through distribution or
13 commodity rates, the office of energy resources and division of public utilities and carriers shall
14 jointly file any energy infrastructure project recommendation(s) with the public utilities
15 commission and may make such filing jointly with the electric or natural gas distribution
16 company as appropriate. The public utilities commission shall consider any such
17 recommendation(s) as specified under § 39-31-7.

18 (c) A copy of the filing made under subsection (b) of this section shall be provided to the
19 governor, the president of the senate, the speaker of the house, the department of environmental
20 management, and the commerce corporation.

21 (d) The electric distribution company shall be provided with a copy of any filing made
22 under this section at least ten (10) business days in advance of its filing with the public utilities
23 commission and the electric or gas distribution utility may file separate comments when the filing
24 is made.

25 (e) As part of any office of energy resources and division of public utilities and carriers
26 filing made pursuant to this chapter, the agencies shall identify the expected energy reliability,
27 energy security, and ratepayer impacts that are expected to result from commitments being made
28 in connection with the proposed project(s).

29 (f) The office of energy resources and division of public utilities and carriers reserve the
30 right to determine that energy infrastructure projects submitted in any regional or multi-state
31 competitive solicitation process are not in Rhode Island's energy reliability, energy security,
32 and/or ratepayer interests, and shall make such findings available to the governor, the president of
33 the senate, and the speaker of the house. The electric or gas distribution utility may attach a
34 separate opinion to those findings, at its election.

1 **39-31-5. Regional energy procurement.--** (a) Consistent with the purposes of this
2 chapter the public utility company that provides electric distribution as defined in § 39-1-2(12), as
3 well as natural gas as defined in § 39-1-2(20), in consultation with the office of energy resources
4 and the division of public utilities and carriers is authorized to voluntarily participate in multi-
5 state or regional efforts to:

6 (1) Procure domestic or international large or small scale hydroelectric power and
7 eligible renewable energy resources, including wind, as defined by § 39-26-5(a), on behalf of
8 electric ratepayers; provided, however, that large scale hydroelectric power shall not be eligible
9 under the renewable energy standard established by chapter 26 of title 39;

10 (2) Procure incremental, natural gas pipeline infrastructure and capacity into New
11 England to help strengthen energy system reliability and facilitate the economic interests of the
12 state and its ratepayers;

13 (3) Support the development and filing of necessary tariffs and other appropriate cost
14 recovery mechanisms, as proposed by the office of energy resources or the division of public
15 utilities and carriers, that allocate the costs of new, electric transmission and natural gas pipeline
16 infrastructure and capacity projects selected pursuant to the provisions of this chapter to
17 ratepayers, such that costs are shared among participating states in an equitable manner; and

18 (4) To the extent that the public utility company that provides electric distribution as
19 defined in § 39-1-2(12), as well as natural gas as defined in § 39-1-2(20), pursues the objectives
20 identified above, the public utility company shall utilize all appropriate competitive processes,
21 and maintain compliance with applicable federal and state siting laws.

22 (b) Any procurement authorized under this section shall be commercially reasonable.

23 **39-31-6. Utility filings with the public utilities commission.--** (a) Pursuant to the
24 procurement activities in § 39-31-5, the public utility company that provides electric distribution
25 as defined in § 39-1-2(12), as well the public utilities that distribute natural gas as provided by §
26 39-1-2(20), are authorized to voluntarily file proposals with the public utilities commission for
27 approval to implement these policies and achieve the purposes of this chapter. The company's
28 proposals may include but are not limited to the, following authorizations:

29 (1) Subject to review and approval of the commission, to enter into long-term contracts
30 through appropriate competitive processes for large-or small-scale hydroelectric power and/or
31 renewable energy resources that are eligible under the renewable energy standard established by
32 chapter 26 of title 39; provided, however, that large scale hydroelectric power shall not be eligible
33 under the renewable energy standard established by chapter 26 of title 39, and provided that:

34 (i) The electric distribution company may, subject to review and approval of the

1 commission, select a reasonable, open, and competitive method of soliciting proposals from
2 renewable energy developers, including domestic or international large-or small-scale
3 hydroelectric power, that may include public solicitations and individual negotiations.

4 (ii) The solicitation process shall permit a reasonable amount of negotiating discretion for
5 the parties to engage in arms-length negotiations over final contract terms.

6 (iii) Each long-term contract entered into pursuant to this section shall contain a condition
7 that it shall not be effective without commission review and approval.

8 (iv) The electric distribution company shall file such contract(s), along with a
9 justification for its decision, within a reasonable time after it has executed the contract following
10 a solicitation or negotiation.

11 (v) Subject to review and approval of the public utilities commission, to enter into long-
12 term contracts for natural gas pipeline infrastructure and capacity that are commercially
13 reasonable and advance the purposes of this chapter at levels beyond those commitments
14 necessary to serve local gas distribution customers, and may do so either directly, or in
15 coordination with, other New England states and instrumentalities; utilities; generators; or other
16 appropriate contracting parties.

17 (vi) The commission shall accept public comment on any contracts filed by the
18 distribution utility, as authorized under this section, for a period no less than thirty (30) days.

19 (A) During this public comment period, the contracts shall be reviewed by the following
20 state agencies, which shall provide advisory opinions to the public utilities commission on the
21 topics specified, and the public utilities commission shall give due consideration to the advisory
22 opinions filed:

23 (I) The department of environmental management (DEM) shall provide an advisory
24 opinion on the expected greenhouse gas emissions and statewide environmental impacts resulting
25 from the proposed contract (s).

26 (II) The commerce corporation shall provide an advisory opinion on the expected
27 statewide economic impacts resulting from the proposed contract(s).

28 (III) The office of energy resources shall provide an advisory opinion on the expected
29 energy security, reliability, environmental, and economic impacts resulting from the contract(s).

30 (B) The commission shall notify the aforementioned agencies upon the filing of any
31 contract filed by the distribution utility pursuant to this chapter, and notify them of any related
32 hearings and/or proceedings.

33 (C) Advisory opinions issued by agencies designated under (vi)(A) of this paragraph shall
34 not be considered as final decisions of the agencies making the opinions, and shall not be subject

1 to judicial review under § 42-35-15, or any other provision of the general laws.

2 (vii) The commission may approve the contract(s) if it determines that:

3 (A) The contract is commercially reasonable;

4 (B) The requirements for the solicitation have been met;

5 (C) The contract is consistent with the region's greenhouse gas reduction targets; and

6 (D) The contract is consistent with the purposes of this chapter.

7 (viii) Participate in a multi-state or regional sharing of costs through The Federal Energy
8 Regulation Commission approved tariffs for the costs of electric transmission and natural gas
9 pipeline infrastructure projects pursued under this chapter.

10 (b) The commission shall hold evidentiary hearings and public hearings to review any
11 contract filing that may be made pursuant to this section and issue a written order approving or
12 rejecting the contract within one hundred twenty (120) days of the filing; in rejecting a contract
13 the commission may advise the parties of the reason for the contract being rejected and provide
14 an option for the parties to attempt to address the reasons for rejection in a revised contract within
15 a specified period not to exceed ninety (90) days.

16 **39-31-7. Duties of the commission.--** (a) The commission may approve any proposals
17 made by the electric and gas distribution company that are commercially reasonable and advance
18 the purposes of this chapter. The commission's authority shall include, without limitation, the
19 authority to:

20 (1) Approve long-term contracts entered into pursuant to the goals and provisions of this
21 chapter for large-or small-scale hydroelectric power and renewable energy resources that are
22 eligible under the renewable energy standard established by chapter 26 of title 39; provided,
23 however, that large scale hydroelectric power shall not be eligible under the renewable energy
24 standard established by chapter 26 of title 39;

25 (2) Approve long-term contracts for natural gas pipeline infrastructure and capacity
26 consistent with the purposes of this chapter;

27 (3) Approve rate-recovery mechanisms proposed by the electric and gas distribution
28 companies relating to costs incurred under this chapter by the electric and gas distribution
29 company that facilitate the multi-state or regional sharing of costs necessary to implement electric
30 transmission and natural gas pipeline infrastructure projects pursued under this chapter, including
31 any costs incurred through The Federal Energy Regulation Commission approved tariffs related
32 to such multi-state or regional energy infrastructure procurements;

33 (4) Address any proposed changes to standard offer procurements, standard offer pricing
34 and retail choice rules;

1 (5) Provide for the recovery of reasonable costs from all distribution customers incurred
2 by the electric and gas distribution company in furtherance of the purposes of this chapter that
3 may include, but are not limited to, costs incurred under any contracts approved by the
4 commission under this section and costs associated with the management of incremental capacity
5 resulting from interstate gas pipeline expansion projects pursued pursuant to this chapter and
6 costs associated with investments in local gas distribution network assets necessary to implement
7 such interstate gas pipeline expansion projects;

8 (6) Approve cost allocation proposals filed by the gas distribution company and/or the
9 electric distribution company that appropriately allocate natural gas infrastructure and capacity
10 costs incurred under § 39-31-6 between electric and gas distribution customers of the electric and
11 gas distribution company in a manner proportional to the energy benefits accrued by Rhode
12 Island's gas and electric customers from making such investments. In making its determination,
13 the commission shall consider projected reductions in regional, wholesale electric prices as a
14 benefit that accrues to electric ratepayers. The allocation of costs shall include all distribution
15 customers, regardless from whom they are purchasing their commodity service; and

16 (7) Approve any other proposed regulatory or ratemaking changes that reasonably
17 advance the goals set forth herein.

18 (b) The grant of authorizations under this chapter shall not be construed as creating a
19 mandate or obligation on the part of the electric and gas distribution company to enter into any
20 contracts or file any proposals pursuant to this chapter.

21 (c) The public utilities commission shall docket any proposals made by the office of
22 energy resources and division of public utilities and carriers pursuant to § 39-31-4. Docket
23 materials shall be posted and maintained on the commission's website. The commission shall
24 conduct proceedings, as provided below, solely for the purpose of determining whether the
25 proposed infrastructure projects, if implemented, are in the public interest and no commitments
26 shall be valid or authorized without such finding being made by the commission. The validity
27 and approval of any commitments made by the electric or gas distribution company in furtherance
28 of the purposes of this chapter shall be separate and subject to § 39-31-5. The docket opened
29 pursuant to this paragraph shall proceed as follows:

30 (1) The following state agencies shall provide advisory opinions to the commission on
31 the topics specified below within sixty (60) days from the docketing date:

32 (i) The department of environmental management (DEM) shall provide an advisory
33 opinion on the expected greenhouse gas emissions and statewide environmental impacts resulting
34 from the proposed project(s).

1 (ii) The commerce corporation shall provide an advisory opinion on the expected
2 statewide economic impacts resulting from the proposed project(s).

3 (2) The commission shall notify the aforementioned agencies upon the filing of any
4 proposal made under this section, and notify them of any related hearings and/or proceedings.

5 (3) Advisory opinions issued by agencies designated under (c)(1) of this section shall not
6 be considered as final decisions of the agencies making the opinions and shall not be subject to
7 judicial review under § 42-35-15, or any other provision of the general laws.

8 (4) Upon completion of the sixty-day (60) advisory opinion period, the commission shall
9 provide for a thirty day (30) public comment period on any energy infrastructure project(s)
10 selected pursuant to this chapter and hold evidentiary hearings. In addition to evidentiary
11 hearings, the commission shall also hold at least one public hearing to accept public comment on
12 the proposal(s) prior to an open meeting held pursuant to this section.

13 (5) The commission shall hold an open meeting no later than one hundred twenty (120)
14 days from the date of filing by the office of energy resources and division of public utilities and
15 carriers filing and shall certify that the proposed project(s) are in the public interest if, in the
16 commission's determination, and in consideration of filed advisory opinions and the opinion of
17 the electric or gas distribution utility, the proposed infrastructure project(s):

18 (i) Are consistent with the findings and purposes of this chapter;

19 (ii) Will benefit Rhode Island by improving local and regional energy system reliability
20 and security;

21 (iii) Will benefit Rhode Island ratepayers by offering the potential for reduced energy
22 price volatility and reduction of energy-supply costs in the context of an integrated regional
23 energy system;

24 (iv) Will not cause unacceptable harm to the environment and are consistent with the
25 region's greenhouse gas reduction goals; and

26 (v) Will enhance the economic fabric of the state.

27 (6) The commission shall issue a written determination of its findings within ten (10)
28 business days of its open meeting decision and provide copies of that determination, along with
29 copies of all advisory opinions, public comment, and any other materials deemed relevant to the
30 commission determination, to the governor, the president of the senate, the speaker of the house,
31 the commissioner of the office of energy resources, and the administrator of the division of public
32 utilities and carriers.

33 (d) A determination issued by the commission shall constitute the sole, final, binding, and
34 determinative regulatory decision within the state for the purpose of authorizing the state to

1 support a proposed, regional-energy infrastructure project(s) that is funded through The Federal
2 Energy Regulation Commission approved tariffs on a regional and/or multi-state basis pursuant
3 to this chapter. Appeals shall be governed by § 39-5-1.

4 (e) Upon issuance of a written determination by the commission finding that the proposed
5 project(s) is in the public interest, the office of energy resources and division of public utilities
6 and carriers shall, on behalf of the state, be authorized to support any regional and/or multi-state
7 process necessary to implement the project(s), including, without limitation, supporting any
8 necessary and related Federal Energy Regulation Commission filings; provided, however, that
9 any commitments made by the electric or gas distribution company to implement the proposals
10 remain voluntary and subject to § 39-31-5.

11 (f) Nothing in this section shall be construed to preclude the electric or gas distribution
12 company from making a filing under § 39-31-6, simultaneous with a filing under this section by
13 the office of energy resources and the division of public utilities, in which case the filings made
14 under §§ 39-31-6 and 39-31-7 of this chapter shall be consolidated.

15 **39-31-8. Verification of energy generation and attributes of imported electricity.--**
16 Energy generation and the attributes of electricity imported into New England shall be tracked
17 and verified through the expansion of the New England Pool-Generation Information System or
18 the development of another appropriate tracking and verification mechanism.

19 **39-31-9. Siting of Regional Energy Infrastructure.--** All regional or multi-state energy
20 infrastructure projects authorized under this chapter shall respect and maintain compliance with
21 the individual project host state's siting authority and requirements. Any projects selected
22 pursuant to this chapter must maintain compliance with Rhode Island energy facility siting act
23 requirements, where applicable, as authorized under chapter 98 of title 42.

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

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LC005162/SUB A/4
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO PUBLIC UTILITIES AND CARRIERS

1 This act would create the "Affordable Clean Energy Security Act" to establish a
2 framework for the state, in coordination with other New England states, to make strategic
3 investments in resources and infrastructure to achieve a clean, reliable energy future.

4 This act would take effect upon passage.

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