AN ACT
RELATING TO PUBLIC UTILITIES AND CARRIERS

Introduced By: Senator William A. Walaska
Date Introduced: February 27, 2014
Referred To: Senate Environment & Agriculture
(Governor)

It is enacted by the General Assembly as follows:

SECTION 1. Title 39 of the general laws entitled, "PUBLIC UTILITIES AND CARRIERS is hereby amended by adding thereto following chapter:

CHAPTER 31

AFFORDABLE CLEAN ENERGY SECURITY ACT

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

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

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

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

(4) Rhode Island is committed to the increased use of no and low carbon energy
resources that diversify our energy supply portfolio, provide affordable energy to consumers, and
strengthen our shared quality of life and environment, and new energy infrastructure investments
may help facilitate the development and interconnection of such resources; and

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

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

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

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

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

39-31-3. Commercially reasonable defined.-- When used in this chapter "commercially
reasonable" means terms and pricing that are reasonably consistent with what an experienced
power market analyst would expect to see in transactions involving regional energy resources and
regional energy infrastructure. Commercially reasonable shall include having a credible project
operation date, as determined by the commission, but a project need not have completed the
requisite permitting process to be considered commercially reasonable. Commercially reasonable
shall require a determination by the commission that the benefits to Rhode Island exceed the cost
of the project. The commission shall determine, based on the preponderance of the evidence, that
the total energy security, reliability, environmental and economic benefits to the state of Rhode
Island and its ratepayers exceed the costs of such projects. If there is a dispute about whether any
terms or pricing are commercially reasonable, the commission shall make the final determination
after evidentiary hearings.

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

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

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

(3) Participate in the development and issuance of regional or multi-state competitive
solicitation(s) for the development and construction of regional natural gas pipeline infrastructure
and capacity that will benefit the State of Rhode Island and its ratepayers by strengthening energy
system reliability and security and, in doing so, potentially mitigate energy price volatility that
threatens the economic vitality and competitiveness of Rhode Island residents and businesses, and
that such solicitations may be issued by The New England States' Committee on Electricity or the
electric or natural gas distribution company to further the purposes of this chapter; and that such
solicitons may request proposals that are priced in increments to allow for the evaluation of
project costs and benefits associated with adding various levels of additional, natural gas pipeline
capacity into New England and that assist with the optimization of energy system reliability,
economic, and other benefits consistent with the purposes of this chapter.
(4) As part of any such regional or multi-state competitive solicitation processes conducted pursuant to this chapter, the office of energy resources shall work jointly with the division of public utilities and carriers, and with the electric distribution company as appropriate, to identify incremental natural gas pipeline infrastructure and capacity and/or electric transmission projects that optimize energy reliability, economic, environmental, and ratepayer impacts for Rhode Island, consistent with the legislative findings and purpose of this chapter. The office of energy resources and division of public utilities and carriers shall be authorized to utilize expert consultants, as needed, to assist in any regional, multi-state, or state-level determination related to the procurement activities identified in § 39-31-5.

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

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

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

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

(f) The office of energy resources and division of public utilities and carriers reserve the right to determine that energy infrastructure projects submitted in any regional or multi-state competitive solicitation process are not in Rhode Island's energy reliability, energy security, and/or ratepayer interests, and shall make such findings available to the governor, the president of the senate, and the speaker of the house. The electric or gas distribution utility may attach a separate opinion to those findings, at its election.
39-31-5. Regional energy procurement.-- (a) Consistent with the purposes of this chapter the public utility company that provides electric distribution as defined in § 39-1-2(12), as well as natural gas as defined in § 39-1-2(20), in consultation with the office of energy resources and the division of public utilities and carriers is authorized to voluntarily participate in multi-state or regional efforts to:

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

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

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

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

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

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

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

(i) The electric distribution company may, subject to review and approval of the
commission, select a reasonable, open, and competitive method of soliciting proposals from renewable energy developers, including domestic or international large-or small-scale hydroelectric power, that may include public solicitations and individual negotiations.

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

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

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

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

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

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

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

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

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

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

(C) Advisory opinions issued by agencies designated under (vi)(A) of this paragraph shall not be considered as final decisions of the agencies making the opinions, and shall not be subject
to judicial review under § 42-35-15, or any other provision of the general laws.

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

(A) The contract is commercially reasonable;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) A determination issued by the commission shall constitute the sole, final, binding, and
determinative regulatory decision within the state for the purpose of authorizing the state to
support a proposed, regional-energy infrastructure project(s) that is funded through The Federal Energy Regulation Commission approved tariffs on a regional and/or multi-state basis pursuant to this chapter. Appeals shall be governed by § 39-5-1.

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

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

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

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

SECTION 2. This act shall take effect upon passage.
EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
AN ACT
RELATING TO PUBLIC UTILITIES AND CARRIERS

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

This act would take effect upon passage.

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