

**2014 -- S 2690 SUBSTITUTE A**

=====  
LC004420/SUB A/3  
=====

**STATE OF RHODE ISLAND**

**IN GENERAL ASSEMBLY**

**JANUARY SESSION, A.D. 2014**

—————  
A N A C T

RELATING TO PUBLIC UTILITIES AND CARRIERS - THE CLEAN ENERGY JOBS  
PROGRAM

Introduced By: Senators Sosnowski, Walaska, Conley, Cool Rumsey, and Bates

Date Introduced: March 05, 2014

Referred To: Senate Environment & Agriculture

It is enacted by the General Assembly as follows:

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

3 CHAPTER 26.6

4 THE RENEWABLE ENERGY GROWTH PROGRAM

5 **39-26.6-1. Purpose. --** The purpose of this chapter is to facilitate and promote installation  
6 of grid-connected generation of renewable energy; support and encourage development of  
7 distributed renewable energy generation systems; reduce environmental impacts; reduce carbon  
8 emissions that contribute to climate change by encouraging the siting of renewable energy  
9 projects in the load zone of the electric distribution company; diversify the energy generation  
10 sources within the load zone of the electric distribution company; stimulate economic  
11 development; improve distribution system resilience and reliability within the load zone of the  
12 electric distribution company; and reduce distribution system costs.

13 **39-26.6-2. Renewable energy growth program established. --** To carry out these  
14 purposes, a tariff-based renewable energy distributed generation financing program, hereinafter  
15 referred to as the renewable energy growth program, is hereby established with the intention of  
16 continuing the development of renewable energy distributed generation in the load zone of the  
17 electric distribution company at reasonable cost. The program shall be designed to finance the  
18 development, construction, and operation of renewable energy distributed generation projects

1 over five (5) years through a performance based incentive system that is designed to achieve  
2 specified megawatt targets at reasonable cost through competitive processes. The renewable  
3 energy growth program shall be implemented by the electric distribution company, and guided by  
4 the distributed generation board, in consultation with the office of energy resources, subject to the  
5 review and supervision of the commission.

6 **39-26.6-3. Definitions. --** When used in this chapter, the following terms shall have the  
7 following meanings:

8 (1) "Commission" means the Rhode Island public utilities commission.

9 (2) "Board" shall mean the distributed generation board as established pursuant to the  
10 provisions of § 39-26.2-10 under the title distributed generation standard contract board, but shall  
11 also fulfill the responsibilities set forth in this chapter.

12 (3) "Commercial scale solar project" means a solar distributed generation project with the  
13 nameplate capacity specified in section 7 of this chapter.

14 (4) "Distributed generation facility" means an electrical generation facility located in the  
15 electric distribution company's load zone with a nameplate capacity no greater than five  
16 megawatts (5 MW), using eligible renewable energy resources as defined by § 39-26-5, including  
17 biogas created as a result of anaerobic digestion, but, specifically excluding all other listed  
18 eligible biomass fuels, and connected to an electrical power system owned, controlled, or  
19 operated by the electric distribution company. For purposes of this chapter, a distributed  
20 generation facility must be a new resource that:

21 (i) Has not begun operation;

22 (ii) Is not under construction, but excluding preparatory site work that is less than twenty-  
23 five percent (25%) of the estimated total project cost; and

24 (iii) Except for small scale solar projects, does not have in place investment or lending  
25 agreements necessary to finance the construction of the facility prior to the submittal of an  
26 application or bid for which the payment of performance based incentives are sought under this  
27 chapter except to the extent that such financing agreements are conditioned upon the project  
28 owner being awarded performance based incentives under the provisions of this chapter. For  
29 purposes of this definition, pre-existing hydro generation shall be exempt from the provisions of  
30 subsection (i) of this section, regarding operation, if the hydro generation facility will need a  
31 material investment to restore or maintain reliable and efficient operation and meet all regulatory,  
32 environmental or operational requirements. For purposes of this provision, "material investment"  
33 shall mean investment necessary to allow the project to qualify as a new renewable energy  
34 resource under § 39-26-2(2). To be eligible for this exemption, the hydro project developer at the

1 time of submitting a bid in the applicable procurement must provide reasonable evidence with its  
2 bid application showing the level of investment needed along with any other facts that support a  
3 finding that the investment is material, the determination of which shall be a part of the bid  
4 review process set forth in § 39-26.6-16 for the award of bids.

5 (5) "Distributed generation project" means a distinct installation of a distributed  
6 generation facility. An installation will be considered distinct if it does not violate the  
7 segmentation prohibition set forth in § 39-26.6-9.

8 (6) "Electric distribution company" means a company defined in § 39-1-2(12), supplying  
9 standard offer service, last resort service, or any successor service to end-use customers, but not  
10 including the Block Island Power Company or the Pascoag Utility District.

11 (7) "ISO-NE" means Independent System Operator-New England, the Regional  
12 Transmission Organization for New England designated by the Federal Energy Regulatory  
13 Commission.

14 (8) "Large distributed generation project" means a distributed generation project that has  
15 a nameplate capacity that exceeds the size of a small distributed generation project in a given  
16 year, but is no greater than five megawatts (5 MW) nameplate capacity.

17 (9) "Large scale solar project" means a solar distributed generation project with the  
18 nameplate capacity specified in § 39-26.6-7.

19 (10) "Medium scale solar project" means a solar distributed generation project with the  
20 nameplate capacity specified in § 39-26.6-7.

21 (11) "Office" means the Rhode Island office of energy resources.

22 (12) "Program year" means a year beginning April 1 and ending March 31 except for the  
23 first program year, which may commence after April 1, 2015, subject to commission approval.

24 (13) "Renewable energy classes" means categories for different renewable energy  
25 technologies using eligible renewable energy resources as defined by § 39-26-5 , including biogas  
26 created as a result of anaerobic digestion, but, specifically excluding all other listed eligible  
27 biomass fuels specified in § 39-26-2(6). For each program year, in addition to the classes of solar  
28 distributed generation specified in § 39-26.6-7, the board shall determine the renewable energy  
29 classes as are reasonably feasible for use in meeting distributed generation objectives from  
30 renewable energy resources and are consistent with the goal of meeting the annual target for the  
31 program year. The board may make recommendations to the commission to add, eliminate, or  
32 adjust renewable energy classes for each program year, provided that the solar classifications set  
33 forth in § 39-26.6-7 shall remain in effect for at least the first two (2) program years and no  
34 distributed generation project may exceed five megawatts (5MW) of nameplate capacity.

1           (14) "Renewable energy certificate" means a New England Generation Information  
2 System renewable energy certificate as defined in § 39-26-2(13).

3           (15) "Small scale solar project" means a solar distributed generation project with the  
4 nameplate capacity specified in § 39-26.6-7.

5           (16) "Small distributed generation project" means a distributed generation renewable  
6 energy project that has a nameplate capacity within the following: Wind: fifty kilowatts (50 KW)  
7 to one and one-half megawatts (1.5 MW); small scale solar projects and medium scale solar  
8 projects with the capacity limits as specified in § 39-26.6-7. For technologies other than solar and  
9 wind, the board shall set the nameplate capacity size limits, but such limits may not exceed one  
10 (1MW) megawatt.

11           (17) "Ceiling price" means the bidding price cap applicable to an enrollment for a given  
12 distributed generation class, which shall be approved annually for each renewable energy class  
13 pursuant to the procedure established in this chapter. The ceiling price for each technology should  
14 be a price that would allow a private owner to invest in a given project at a reasonable rate of  
15 return, based on recently reported and forecast information on the cost of capital, and the cost of  
16 generation equipment. The calculation of the reasonable rate of return for a project shall include,  
17 where applicable, any state or federal incentives including, but not limited to, tax incentives.

18           **39-26.6-4. Continuation of Board.** -- (a) The distributed generation standard contract  
19 board shall remain fully constituted and authorized as provided in chapter 26.2 of title 39  
20 provided, however, that the name shall be changed to the "distributed generation board."  
21 Additional purposes of the board shall be to:

22           (1) Evaluate and make recommendations to the commission regarding ceiling prices and  
23 annual targets, the make-up of renewable energy classifications eligible under the distributed  
24 generation growth program, the terms of the tariffs, and other duties as set forth in this chapter;

25           (2) Provide consistent, comprehensive, informed and publicly accountable involvement  
26 by representatives of all interested stakeholders affected by, involved with, or knowledgeable  
27 about the development of distributed generation projects that are eligible for performance-based  
28 incentives under the distributed generation growth program; and

29           (3) Monitor and evaluate the effectiveness of the distributed generation growth program.

30           (b) The office, in consultation with the board, shall be authorized to hire or to request the  
31 electric distribution company to hire the services of qualified consultants to perform ceiling price  
32 studies subject to commission approval which shall be granted or denied within sixty (60) days of  
33 receipt of such request from the office. The cost of such studies shall be recoverable through the  
34 rate reconciliation provisions of the electric distribution company set forth in § 39-26.6-25,

1 subject to commission approval. In addition, the office, in consultation with the board, may  
2 request the commission to approve other costs incurred by the board or the electric distribution  
3 company to perform any other studies and reports, subject to the review and approval of the  
4 commission, which shall be granted or denied within one hundred twenty (120) days of receipt of  
5 such request from the office, and which shall be recoverable through the same reconciliation  
6 provisions.

7 **39-26.6-5. Tariffs Proposed and Approved.** -- (a) Each year for a period of at least five  
8 (5) program years, the electric distribution company shall file tariffs with the commission that are  
9 designed to provide a multi-year stream of performance-based incentives to eligible renewable  
10 distributed generation projects for a term of years, under terms and conditions set forth in the  
11 tariffs and approved by the commission. The tariffs shall set forth the rights and obligations of the  
12 owner of the distributed generation project and the conditions upon which payment of  
13 performance-based incentives by the electric distribution company will be paid. The tariffs shall  
14 include the non-price conditions set forth in §§ 39-26.2-7(2)(i) – (vii) for small distributed  
15 generation projects (other than small and medium scale solar), and large distributed generation  
16 projects; provided, however, that the time periods for such projects to reach ninety percent (90%)  
17 of output shall be extended to twenty-four (24) months (other than eligible anaerobic digestion  
18 projects which shall be thirty-six (36) months and eligible small-scale hydro which shall be forty-  
19 eight (48) months). The non-price conditions in the tariffs for small and medium scale solar shall  
20 take into account the different circumstances for distributed generation projects of the smaller  
21 sizes.

22 (b) In addition to the tariff(s) the filing shall include the rules governing the solicitation  
23 and enrollment process. The solicitation rules will be designed to ensure the orderly functioning  
24 of the distributed generation growth program and shall be consistent with the legislative purposes  
25 of this chapter.

26 (c) In proposing the tariff(s) and solicitation rules applicable to each year, the tariff(s) and  
27 rules shall be developed by the electric distribution company and will be reviewed by the office  
28 and the board before being sent to the commission for its approval. The proposed tariffs shall  
29 include the ceiling prices and term lengths for each tariff that are recommended by the board. The  
30 term lengths shall be from fifteen (15) to twenty (20) years, provided, however, that the board  
31 may recommend shorter terms for small scale solar projects. Whatever term lengths between  
32 fifteen (15) and twenty (20) years are chosen for any given tariff, the evaluation of the bids for  
33 that tariff shall be done on a consistent basis such that the same term lengths for competing bids  
34 are used to determine the winning bids.

1           (d) The board shall use the same standards for setting ceiling prices as set forth in § 39-  
2 26.2-5. In setting the ceiling prices, the board may specifically consider:

3           (1) Transactions for newly developed renewable energy resources, by technology and  
4 size, in the ISO-NE control area and the northeast corridor;

5           (2) Pricing from bids received during the previous program year;

6           (3) Environmental benefits, including, but not limited to, reducing carbon emissions;

7           (4) System benefits; and

8           (5) Cost effectiveness.

9           (e) At least forty-five (45) days before filing the tariff(s) and solicitation rules, the  
10 electric distribution company shall provide the tariff(s) and rules in draft form to the board for  
11 review. The commission shall have the authority to determine the final terms and conditions in  
12 the tariff and rules. Once approved, the commission shall retain exclusive jurisdiction over the  
13 performance based incentive payments, terms, conditions, rights, enforcement, and  
14 implementation of the tariffs and rules, subject to appeals pursuant to chapter 5 of title 39.

15           **39-26.6-6. Permanence of Tariff Terms Once Set. --** It is the intention of the general  
16 assembly in enacting this chapter that the developers, owners, investors, customers, and lenders  
17 of the distributed generation projects receiving performance based incentives under the tariffs be  
18 able to rely on the tariffs for the entire term of the applicable tariff for purposes of obtaining  
19 financing. Consistent with that intention and expectation, the terms under the tariffs for a given  
20 program year, once approved by the commission, shall not be altered in any way that would  
21 undermine such reliance on those tariffs during the applicable terms of the tariffs; and in no  
22 circumstance will the performance-based incentive rate paid to a renewable energy project  
23 developer or owner be reduced during the term of the tariff once a renewable energy project has  
24 qualified to receive a tariff under the terms of this chapter.

25           **39-26.6-7. Solar Project Size Categories.** – (a) Tariff(s) shall be proposed for each of  
26 the following solar distributed generation classes:

27           (1) Small scale solar projects;

28           (2) Medium scale solar projects;

29           (3) Commercial scale solar projects; and

30           (4) Large scale solar projects.

31           (b) Such classes of solar distributed generation projects shall be established based on  
32 nameplate megawatt size as follows:

33           (1) Large scale: solar projects from one megawatt (1 MW) up to and including five  
34 megawatts (5MW) nameplate capacity;

1           (2) Commercial scale: solar projects greater than two hundred fifty kilowatts (250 kW),  
2 but less than one megawatt (1 MW) nameplate capacity;

3           (3) Medium scale: solar projects greater than twenty-five kilowatts (25 kW) up to and  
4 including two hundred fifty kilowatts (250 kW) nameplate capacity; and

5           (4) Small scale: solar projects up to and including twenty-five kilowatts (25 kW)  
6 nameplate capacity.

7           (c) Other classifications of solar projects may also be proposed by the board, subject to  
8 the approval of the commission. After the second program year, the board may make  
9 recommendations to the commission to adjust the size categories of the solar classes, provided  
10 that the medium scale solar projects may not exceed two hundred fifty kilowatts (250 kW).

11           **39-26.6-8. Renewable Technologies Other Than Solar.** -- Tariffs also shall be proposed  
12 for on-shore wind and any other distributed generation technologies permissible under this  
13 chapter that the board, in its discretion, recommends; provided, however, that no project shall  
14 exceed five megawatts (5 MW) nameplate capacity. The electric distribution company shall file  
15 tariffs for each technology and size categories recommended by the board pursuant to the  
16 procedures set forth in this chapter.

17           **39-26.6-9. Project Segmentation Prohibition.** -- In no case may a project developer be  
18 allowed to segment a distributed generation project on the same parcel or contiguous parcels into  
19 smaller sized projects in order to fall under a smaller size project classification. Notwithstanding  
20 this prohibition, a project developer may designate a generation unit on the same parcel or  
21 contiguous parcel for net metering or other means of participating in electricity markets, provided  
22 that such unit or portion of such unit designated for net metering or other market participation is  
23 not receiving performance-based incentives under this chapter, is capable of being segregated  
24 electrically, is configured with such electrical segregation, and is separately metered. Further, a  
25 project shall not be considered to have been segmented if:

26           (1) There is a lapse of at least twenty-four (24) months between: (i) The commencement  
27 of construction of new distributed generation units on a parcel that is the same as or is contiguous  
28 with a parcel upon which a distributed generation project has already been constructed; and (ii)  
29 The operation date of the pre-existing project; or

30           (2) The new project is a different renewable technology.

31           **39-26.6-10. Timing and Schedule of Tariff Filings.** -- (a) The electric distribution  
32 company shall file with the commission the first set of tariffs and solicitation rules pursuant to  
33 this chapter no later than November 15, 2014. Thereafter, the electric distribution company shall  
34 make annual tariff and solicitation rules filings with the commission no later than November 15

1 prior to the beginning of the applicable program year, which tariffs and rules shall be applicable  
2 for the next program year.

3 (b) Upon receiving the filing from the electric distribution company, the commission  
4 shall open a docket to consider the filing. The commission shall issue an order approving the  
5 proposed tariffs and solicitation rules; provided, however, that the commission may make any  
6 modifications that it deems appropriate consistent with the legislative purposes of this chapter as  
7 set forth herein.

8 (c) For the first program year, the commission shall issue its order approving tariff(s) and  
9 solicitation rules by no later than March 31, 2015. Thereafter, the commission shall approve them  
10 by February 15 of each succeeding year.

11 (d) During the course of any program year, the electric distribution company may, at any  
12 time, in consultation with the office and the board, propose tariff or solicitation rules  
13 modifications. The commission shall consider such proposed modifications through an already  
14 open or new docket, and shall issue its order within one hundred five (105) days of the filing of  
15 the proposed modification. If approved, the proposed modification shall take effect for the next  
16 enrollment event following the issuance of the commission's order.

17 **39-26.6-11. Power Purchase Agreements Not Required.** -- The distributed generation  
18 growth program shall be implemented and administered exclusively through the tariff structure  
19 and procedures set forth in this chapter, and the electric distribution company shall not be  
20 required to execute power purchase agreements for the procurement of the renewable energy  
21 distributed generation capacity requirements set forth in this chapter.

22 **39-26.6-12. Annual Bidding and Enrollments.** -- (a) With the exception of the first  
23 program year (2015), the electric distribution company, in consultation with the board and office,  
24 shall conduct at least three (3) tariff enrollments for each distributed generation class each  
25 program year. For the first program year, the board may recommend that either two (2) or three  
26 (3) enrollments be conducted.

27 (b) During each program year the tariff enrollments shall have both an annual targeted  
28 amount of nameplate megawatts ("annual MW target") and a nameplate megawatt target for each  
29 separate enrollment event ("enrollment MW target"). The enrollment MW target shall comprise  
30 the specific portion of the annual MW target sought to be obtained in that enrollment. The  
31 enrollment MW targets shall be recommended by the board each year, subject to commission  
32 approval. The board shall also recommend a megawatt target for each class ("class MW target")  
33 that comprises a specified portion of the enrollment MW target, subject to commission approval.  
34 If the electric distribution company, the office, and the board mutually agree, they may reallocate



1 megawatts during an enrollment from one class to another without commission approval if there  
2 is an over-subscription in one class and an under-subscription in another, provided that the annual  
3 MW Target is not being exceeded, except as provided in § 39-26.6-7.

4 (c) The annual MW targets shall be established as follows; provided, however that at  
5 least three megawatts (3 MW) of nameplate capacity shall be carved out exclusively for small  
6 scale solar projects in each of the first four (4) program years:

7 (1) For the first program year (2015), the annual MW target shall be twenty-five (25)  
8 nameplate megawatts;

9 (2) For the second program year, the annual targets shall be forty (40) nameplate  
10 megawatts;

11 (3) For the third and fourth program years, the annual target shall be forty (40) nameplate  
12 megawatts, subject to the conditions set forth in § 39-26.6-12(f) having been met for the  
13 applicable prior program year as determined in the manner specified in § 39-26.6-12(g); and

14 (4) For the fifth program year, the annual target shall be set to obtain the balance of  
15 capacity needed to achieve one hundred sixty (160) nameplate megawatts within the five (5) year  
16 distributed generation growth program, subject to § 39-26.6-12(e) and the conditions set forth in §  
17 39-26.6-12(f) having been met for the fourth program year as determined in the manner specified  
18 in § 39-26.6-12(g).

19 (d) During the fifth year of the distributed generation growth program, the board may  
20 recommend to the commission an extension of time in the event that additional time is required to  
21 achieve the full one hundred sixty (160) nameplate megawatt target of the program. The  
22 commission shall approve the recommendation of the board; provided, however, that the  
23 commission may make any modifications to the board's recommendation that the commission  
24 deems appropriate, consistent with the legislative purposes of this chapter as set forth herein.

25 (e) To the extent there was a shortfall of capacity procured under chapter 26.2 of title 39  
26 from distributed generation procurements in 2014, such shortfall amount may be added to the one  
27 hundred sixty megawatt (160MW) target for acquisition in the fifth program year under this  
28 chapter. In no event shall the electric distribution company be required to exceed the aggregate  
29 amount of one hundred sixty (160) nameplate capacity plus any such shortfall amount over the  
30 five (5) years, but may do so voluntarily, in consultation with the board and subject to  
31 commission approval.

32 (f) The conditions specified in subsections (c)(3) and (c)(4) of this section are as follows:

33 (1) That it is reasonable to conclude that the bid prices submitted in the procurements for the  
34 large scale solar and commercial scale solar classes were reasonably competitive in the

1 immediately preceding program year; (2) That it is reasonable to conclude that the annual MW  
2 target specified for the next program year is reasonably achievable; and (3) That the electric  
3 distribution company was able to, or with reasonably prudent efforts should have been able to,  
4 perform the studies and system upgrades on a timely basis necessary to accommodate the number  
5 of applications associated with the targets without materially adversely affecting other electric  
6 distribution construction projects needed to provide reliable and safe electric distribution service.  
7 To the extent the board or the commission concludes that any of these conditions have not been  
8 met for the applicable program year, the board may recommend and/or the commission may  
9 adopt a new annual MW target, based on the factors set forth in § 39-26.6-12(h).

10 (g) Before the third, fourth, and fifth program years, each year the board shall review the  
11 conditions specified in § 39-26.6-12(f) and make a recommendation to the commission for  
12 findings as to whether they have been met for the applicable year. The recommendation shall be  
13 filed with the commission, with copies to the office and the electric distribution company, and  
14 any person who has made a written request to the commission to be included in such notification,  
15 such list which may be obtained from the commission clerk, and a notice of such filing shall be  
16 posted by the commission on its website. If no party files an objection to the recommended  
17 findings within ten (10) business days of the posting, the commission may accept them without  
18 hearings. If an objection is filed with a reasonable explanation for its basis, the commission shall  
19 hold hearings and make the factual determination of whether the conditions have been met.

20 (h) In the event that the conditions in § 39-26.6-12(f) have not been met for any program  
21 year, then the board and the commission shall take into account the factors set forth below in  
22 setting the annual MW target for the following year. In addition, for every program year the board  
23 and the commission shall take into account these factors in setting the class MW targets, and the  
24 enrollment MW targets for the following year: (1) That the new annual, class, and enrollment  
25 levels reasonably assure that competition among projects for the applicable bidding  
26 classifications remains robust and likely to yield reasonable and competitive program costs; (2)  
27 That, assuming prudent management of the program, the electric distribution company should be  
28 able to perform the studies and system upgrades on a timely basis necessary to accommodate the  
29 number of applications associated with the targets without materially adversely affecting other  
30 electric distribution construction projects needed to provide reliable and safe electric distribution  
31 service; and (3) Any other reasonable factors that are consistent with the legislative purpose of  
32 this chapter as set forth herein, including the program purpose to facilitate the development of  
33 renewable distributed generation in the load zone of the electric distribution company at  
34 reasonable cost.

1           (i) The renewable energy growth program is intended to achieve at least an aggregate  
2 amount of one hundred sixty (160) nameplate megawatts over five (5) years, plus any shortfall  
3 amount added in pursuant to § 39-26.6-12(e). However, after the second program year the board  
4 may, based on market data and other information available to it, including pricing received during  
5 previous program years, recommend changes to the annual target for any program year above or  
6 below the specified targets in § 39-26.6-12(c) if the board concludes that market conditions are  
7 likely to produce favorably low or unfavorably high target pricing during the upcoming program  
8 year, provided that the recommendation may not result in the five (5)-year one hundred sixty  
9 megawatt (160MW) nameplate target, plus any shortfall added pursuant to § 39-26.6-12(e), being  
10 exceeded. Any megawatt reduction in an annual target shall be added to the target in the fifth year  
11 of the program (and any subsequent years if necessary) such that the overall program target of  
12 one hundred sixty megawatt (160MW) nameplate capacity, plus any shortfall added pursuant to §  
13 39-26.6-12(e), is achieved. In considering such issues, the board and the commission may take  
14 into account the reasonableness of current pricing and its impact on all electric distribution  
15 customers and the legislative purpose of this chapter as set forth herein, including the program  
16 purpose to facilitate the development of renewable distributed generation in the load zone of the  
17 electric distribution company at reasonable cost.

18           (j) The provisions of § 39-26.1-4 shall apply to the annual value of performance based  
19 incentives (actual payments plus the value of net metering credits, as applicable) provided by the  
20 electric distribution company to all the distributed generation projects under this chapter, subject  
21 to the following conditions:

22           (1) The targets set for the applicable program year for the applicable project  
23 classifications were met or, if not met, such failure was due to factors beyond the reasonable  
24 control of the electric distribution company;

25           (2) The electric distribution company has processed applications for service and  
26 completed interconnections in a timely and prudent manner for the projects under this chapter,  
27 taking into account factors within the electric distribution company's reasonable control. The  
28 commission is authorized to establish more specific performance standards to implement the  
29 provisions of this chapter; and

30           (3) The incentive shall be one and three-quarters percent (1.75%) of the annual value of  
31 performance-based incentives. The commission is authorized to establish more specific  
32 performance standards to implement the provisions of this paragraph.

33           **39-26.6-13. Cost reconciliation.** -- To the extent the electric distribution company incurs  
34 incremental costs to meet the program objectives or make billing system improvements that are

1 required to facilitate payments of performance-based incentives and administering net metering,  
2 the electric distribution company may elect to recover those incremental costs through the annual  
3 charge set forth in § 39-26.6-25, subject to commission review and approval that assures such  
4 costs were properly and prudently incurred.

5 **39-26.6-14. Existing powers of agencies and advocacy rights of parties unchanged. --**

6 Nothing in this chapter shall be construed to derogate from the statutory authority of the  
7 commission or the division of public utilities and carriers, including, but not limited to, the  
8 authority to protect ratepayers from unreasonable rates. Nothing in this chapter shall be construed  
9 to preclude any party from advocating a position in commission proceedings that differs from the  
10 recommendations made by the board to the commission or in any filing with the commission  
11 relating to this chapter, including without limitation (1) Individual or organizational members of  
12 the board; (2) Participants in board deliberations; (3) The office; and (4) The electric distribution  
13 company, unless such party has consented by vote to the execution or executed a settlement  
14 agreement agreeing to the terms, policy proposals, or any other matter proposed to the  
15 commission.

16 **39-26.6-15. Bidding and Incentive Award Processes for Solar DG Projects. -- (a)**

17 Large scale and commercial scale solar projects and distributed generation projects for other  
18 eligible technologies shall bid a price per kilowatt-hour for the entire output of the facility (net of  
19 any station service), which price shall not exceed the applicable ceiling price. Small-scale and  
20 medium-scale solar projects will submit an enrollment application to receive a standard  
21 performance-based incentive for the period of years in the applicable tariff, which shall be a price  
22 per kilowatt-hour for the entire output of the facility. Except for megawatts that may be allocated  
23 to the energy efficiency program pursuant to § 39-26.6-19, small and medium scale projects shall  
24 be selected on a first come, first served basis, or by means of a commission-approved lottery  
25 system, or such other method as may be recommended by the board and approved by the  
26 commission.

27 (b) Except for the first program year, the board shall determine, subject to commission  
28 approval, the standard performance based incentive for small and medium sized solar projects  
29 from the average bid price from the last two (2) procurement enrollments conducted in the  
30 commercial scale and/or large scale solar projects class. For the first program year, the board may  
31 derive the standard performance incentive for small and medium sized solar projects from the  
32 bidding data obtained from the distributed generation program in effect in 2014 under the  
33 provisions of chapter 26.2 of title 39, until there is bidding data from the first procurement under  
34 the new program which shall then be used to set a new standard performance incentive. The

1 standard performance incentive may be set at a higher rate than payments for commercial scale  
2 and large scale solar projects in order to take into account the potentially higher per-unit cost of  
3 smaller projects. The standard performance incentive also shall be adjusted upward or downward,  
4 as needed, in order to take into account the term length over which the incentive shall be paid for  
5 the small and medium scale solar projects if such terms are different than the terms applicable to  
6 the classes from which the standard performance incentive was derived.

7 (c) For each program year, the board shall recommend to the commission a standard  
8 performance incentive for each of the small scale and medium scale solar project classifications.  
9 Upon receiving the recommendations from the board, the commission shall open a docket to  
10 consider the recommendations or address the recommendations in its approval process for the  
11 program year in a consolidated docket, as provided in § 39-26.6-10. The commission shall issue  
12 its order approving the recommendations no later than concurrently with approval of the entire  
13 program and tariffs applicable to the program year; provided, however, that the commission may  
14 make modifications or changes to the board's recommendations consistent with the legislative  
15 purposes of this chapter.

16 (d) If after the first program year the applications for the medium scale solar projects are  
17 significantly over-subscribed, then the board and the electric distribution company, in  
18 consultation with the office, may propose to the commission a bidding process for medium scale  
19 projects or a subset of the medium scale projects under which project selections would be made  
20 based on the lowest bids rather than first come first served or such other method previously  
21 approved by the commission. The commission shall approve the proposal from the board and  
22 electric company within ninety (90) days; provided, however, that the commission may make  
23 changes to the proposal consistent with the legislative purposes of this chapter.

24 (e) The commission shall approve the bidding process for medium scale solar projects  
25 recommended by the board only if the commission finds that such bidding process is in a  
26 sufficiently simple form that is not administratively burdensome to bidders, and will not have the  
27 effect of discouraging participation in the distributed generation growth program by developers of  
28 medium scale solar projects who may be unrepresented by counsel.

29 **39-26.6-16. Enrollment Program.** -- (a) Each enrollment shall be open for a two (2)  
30 week period during which the electric distribution company is required to receive standard short-  
31 form applications. The standard short-form application shall require the applicant to provide the  
32 following information: the project owner's identity; the location of the proposed project; the  
33 nameplate capacity of the proposed project; and renewable energy class of the proposed project.  
34 The standard short-form application shall allow project owners to provide additional information

1 relative to the permitting, financial feasibility, ability to build, and timing for deployment of the  
2 proposed projects. The applicant must submit an affidavit with the standard short-form  
3 application confirming that the project is not in violation of the rules that prohibit project  
4 segmentation, as set forth in § 39-26.6-9.

5 (b) For large distributed generation projects only, the standard short-form application  
6 shall also require the applicant to bid a bundled price that applies to the energy, renewable energy  
7 certificates, and all other environmental attributes and market products that are available or may  
8 become available from the distributed generation facility, on a per kilowatt-hour basis measured  
9 from the output of the project. At the election of the electric distribution company, and subject to  
10 the approval of the commission, the bid may be required to include the sale of capacity.

11 (c) For (i) Small distributed generation projects other than small scale and medium scale  
12 solar projects; and (ii) Large distributed generation projects, the electric distribution company  
13 shall select projects based on the lowest proposed prices received that do not exceed the ceiling  
14 price from the distributed generation projects which meet the requirements of all applicable tariffs  
15 and regulations, and meet the criteria of the renewable energy class in effect, until the class target  
16 is met. Performance based incentives shall be awarded to the winning bidders based on their bids  
17 submitted.

18 (d) For small scale and medium scale solar projects, awards shall be made in the manner  
19 set forth in §§ 39-26.6-15 and 39-26.6-19.

20 (e) If there are more projects bidding at the same price than the capacity that is specified  
21 for a class target, the electric distribution company shall, in consultation with the board and the  
22 office, select first those projects that appear to be the furthest along in development and that are  
23 most likely to be deployed. Those projects that are likely to be deployed at the earliest time shall  
24 be selected first. To the extent the electric distribution company is unable to make a clear  
25 distinction on this basis, the electric distribution company shall report its findings to the board  
26 and not award bids for those projects that are tied on pricing. In such case, the board may take  
27 such action as it deems appropriate for the selection of projects, including seeking more  
28 information from the projects.

29 (f) Should the electric distribution company determine that it has made sufficient awards  
30 to achieve a program-year class target, it shall immediately report this fact to the board, the  
31 office, and the commission, and may cease making awards for that renewable energy class for the  
32 remainder of the program year. In any event, the electric distribution company may exceed the  
33 renewable energy class target if the last award may cause the total purchased to exceed the target.

34 (g) The board, the office, and the electric distribution company shall enter into a

1 memorandum of understanding regarding the sharing of the information and data related to the  
2 renewable energy growth program, including, without limitation, information on bids received,  
3 details regarding project ownership, and pricing. At the request of the board, the office, or the  
4 electric distribution company, the commission shall have the authority to protect from public  
5 disclosure individual bid information for any projects that have not been awarded performance  
6 based incentives.

7 (h) The electric distribution company is authorized to award bids up to the applicable  
8 ceiling price. As long as the terms of the tariff are met and the pricing is no higher than the  
9 applicable ceiling price, such awards shall be deemed prudent and approved by the commission  
10 for purposes of recovering the costs in rates.

11 (i) With respect to any procurement that includes bids from pre-existing hydro-electric  
12 generation, the electric distribution company, in consultation with the office, shall have the  
13 authority to accept the applicant's representation that its investment is material, within the  
14 meaning of § 39-26.6-3(4). However, if the electric distribution company or the office questions  
15 whether the material investment standard has been met or the application is otherwise rejected,  
16 the application shall be submitted to the board for review and the board shall draw its own  
17 conclusion and make a recommendation to the commission at the time the commission is  
18 approving awards from the procurement to which the application pertains. The commission shall  
19 have the final authority to make the determination as to whether the material investment standard  
20 has been met. Nothing in this paragraph shall preclude a project developer from seeking a  
21 preliminary confirmation of eligibility for the material investment exemption from the electric  
22 distribution company, the office, and the board prior to the submittal of a bid. In such case, if  
23 there is any disagreement, the final determination shall be submitted to the commission.

24 **39-26.6-17. Excess enrollment not required. --** The electric distribution company shall  
25 not be required to award bids in excess of the annual target for the applicable program year and  
26 shall not be required to procure projects in excess of any limit set by the board and approved by  
27 the commission for a given enrollment. However, the electric distribution company, in  
28 consultation with the board and the office, may voluntarily exceed an enrollment period limit as  
29 long as it does not exceed an annual target for the applicable program year. At its election, the  
30 electric distribution company may exceed an annual target for the applicable program year after  
31 review by the board and approval by the commission.

32 **39-26.6-18. Utility Right to Separately Meter. --** Owners of medium scale, commercial  
33 scale, and large scale solar projects and other distributed generation technologies shall be required  
34 to provide at their cost a revenue quality meter to standards approved by the division of public

1 utilities and carriers and provide access to the information from the meter to the electric  
2 distribution company to measure the output of the generation. The electric distribution company  
3 shall have the discretion to install the second meter in a parallel configuration to the retail meter  
4 or behind the meter, provided that a parallel installation shall have no effect on the right of the  
5 customer to net meter using the net of the two meters. The electric distribution company also  
6 shall have the right to install its own revenue quality meter for small scale solar projects if not  
7 being supplied by the owner. The electric distribution company shall recover the installation and  
8 capital cost of the separate meters it installs for small scale solar projects in the annual  
9 reconciliation of solar costs under § 39-26.6-25.

10 **39-26.6-19. Coordination with Energy Efficiency Programs. --** (a) In consultation with  
11 the office, the electric distribution company may make a request to the commission that up to half  
12 of the megawatts for the small and medium scale solar project enrollments be allocated by the  
13 commission for selection through a process coordinated with the energy efficiency program in  
14 order that specified solar incentives may be tied with energy efficiency program incentives in  
15 order to allow the electric distribution company to implement a coordinated energy efficiency and  
16 solar program offering. In such case, the electric distribution company will propose criteria for  
17 eligibility for performance based incentives for solar that requires certain energy efficiency  
18 standards be met at the customer location in order to be eligible for performance based incentives  
19 for a small scale and/or medium scale solar installation.

20 (b) The electric distribution company must also include program parameters that do not  
21 disrupt competition among small-scale and/or medium-scale solar developers, including, without  
22 limitation, safeguards against any one or subset of developers in this market being given  
23 exclusive rights or other market advantages over competitors. In approving the proposal, the  
24 commission must find that there is no such small and medium solar-market disruption.

25 (c) The commission shall approve the request of the distribution company within ninety  
26 (90) days, making such modifications as it deems reasonable, provided such modifications are  
27 consistent with the legislative purposes of this chapter and the state's energy efficiency goals.

28 (d) The allocation of megawatts is for implementation purposes only and shall not  
29 authorize funds to be shifted from the distributed generation growth program to energy efficiency  
30 programs, nor will implementation of the electric distribution company's request cause a  
31 reduction of the annual or cumulative capacity goals established for the distributed generation  
32 growth program. To the extent that the megawatts allocated to the energy efficiency program  
33 pursuant to this section are not committed during a program year, such uncommitted megawatts  
34 shall be allocated back to the distributed generation growth program in the following year or such



1 year the board recommends to the commission. Funding for the energy efficiency measures that  
2 are tied to the solar installations must be obtained separately from the energy efficiency program  
3 budget funded through applicable energy efficiency charges.

4 (e) Should the small-scale and medium-scale project classes in the renewable energy  
5 growth program be oversubscribed in two (2) consecutive enrollments and there are megawatts  
6 that have not been committed through the process coordinated with the energy efficiency program  
7 after the second enrollment, the board, after consultation with the office and the electric  
8 distribution company, shall have the authority to move all or a portion of the uncommitted  
9 megawatts out of the coordinated program back to the renewable energy growth program to meet  
10 the demand of the oversubscription, subject to commission approval. If, in such case, the board  
11 does not exercise the authority, any party may file a petition to the commission requesting action  
12 to be taken

13 **39-26.6-20. Issuance of certificates and right to incentive payments. --** (a) For small  
14 scale and medium scale solar projects, the electric distribution company shall provide certificates  
15 of eligibility to the selected projects without commission confirmation of approval ("distribution  
16 company awarded certificates"), subject to the review and consent of the office. The electric  
17 distribution company shall file with the commission a list of all such distribution company  
18 awarded certificates.

19 (b) For commercial-scale and large-scale solar and all other distributed generation  
20 projects, the electric distribution company shall file with the commission a list of the distributed  
21 generation projects selected together with the corresponding pricing information. Within sixty  
22 (60) days of receipt of the list, the commission shall issue an order awarding certificates of  
23 eligibility to the distributed generation projects ("PUC awarded certificates").

24 (c) Upon receipt of a PUC awarded certificate or a distribution company certificate, a  
25 distributed generation project shall be entitled to receive, and the electric distribution company  
26 shall pay and/or credit (as applicable), the performance-based incentives for the specified term  
27 and under the terms and conditions of the applicable tariff in the manner set forth below.

28 (d) The performance based incentive shall be the price per kilowatt-hour that was bid and  
29 awarded or established as a standard incentive, as applicable. The performance-based incentive  
30 shall be applied as a price per kilowatt-hour for all kilowatt-hours actually produced from the  
31 distributed generation (net of station service, if any) for the term of years specified in the  
32 applicable tariff, less the value of any kilowatt-hour charges that were offset by any net metering  
33 (if applicable) for the host customer associated with the distributed generation for the billing  
34 month; provided, however, if the value of kilowatt-hour charges that otherwise would be offset by

1 net metering in a given month exceeds the total value of the performance-based incentive for the  
2 month, the customer shall not be subject to any additional charge nor receive any additional net  
3 metering credit for the difference between the performance-based incentive value and net  
4 metering value for the month.

5 (e) Except as provided herein for residential small-scale solar projects, in every case  
6 where a distributed generation project can be configured for net metering, it shall be the election  
7 of the owner of such generation to choose one of two (2) separate methods through which the  
8 owner will be compensated for the performance based incentive:

9 (1) The owner is compensated solely through direct payments under the performance-  
10 based incentive provisions of this chapter for the life of the tariff term with no net metering  
11 implemented; or

12 (2) The owner is compensated through a combination of direct payments and the bill  
13 credit value of net metering for the life of the term of the tariff under the provisions of this  
14 chapter.

15 In the case of residential small-scale solar projects, only option (2) shall be available.

16 In either option, the total value of the performance incentive per kilowatt-hour is the  
17 same. An owner shall have a one-time right to switch the compensation methods after the  
18 generation commences operation, provided that at least sixty (60) days notice is given to the  
19 electric distribution company. Thereafter, any further compensation method switches shall be at  
20 the sole discretion of the electric distribution company if requested again by the owner.

21 (f) Every owner who elects the compensation method shall:

22 (1) Receive compensation solely in the form of a check from the electric distribution  
23 company or such other payment method that is mutually agreed between the electric distribution  
24 company and the owner; and

25 (2) Shall receive compensation in the form of offsets against its electricity bill from the  
26 electric distribution company from net metering and the balance in the form of a check from the  
27 electric distribution company or such other payment method that is mutually agreed upon  
28 between the electric distribution company and the owner; provided, however, that no owner of a  
29 distributed generation project may be compensated twice for the same kilowatt hour of electricity,  
30 and that every self-generator shall receive the full pecuniary benefit of its election to participate  
31 in the performance-based incentive program.

32 (g) Every owner of a distributed generation project that can be configured for net  
33 metering that elects the first option for compensation under the provisions of § 39-26.6-20(e)  
34 shall become eligible to net meter its output in conformity with the provisions of existing law

1 upon the completion of the full term of the applicable tariff. Nothing in this section shall preclude  
2 a customer from electing not to participate in the performance based program and electing simply  
3 to net meter under the provisions of existing law; provided, however, once an election is made to  
4 participate, the customer will remain subject to the performance based tariff conditions and may  
5 not terminate the arrangement without the consent of the electric distribution company.

6 (h) As provided in § 39-26.6-9, any project developer may designate a generation unit on  
7 the same parcel or contiguous parcel for net metering, provided that such unit or portion of such  
8 unit designated for net metering is not receiving performance-based incentives under this chapter,  
9 is capable of being segregated electrically, is configured with such electrical segregation, and is  
10 separately metered.

11 (i) All distributed generation projects accepting certificates shall be obligated to abide by  
12 all the terms and conditions of the approved applicable tariff.

13 **39-26.6-21. Ownership of output, other attributes, and renewable energy**  
14 **certificates. -- (a) Except as provided herein for residential small-scale solar projects, distributed**  
15 **generation projects participating in the renewable energy growth program shall transfer to the**  
16 **electric distribution company the rights and title to:**

17 (1) Those renewable energy certificates generated by the project during the term of the  
18 applicable performance-based incentive tariff;

19 (2) All energy produced by the generation that is not otherwise consumed on site under a  
20 net metering arrangement; and

21 (3) Rights to any other environmental attributes or market products that are created or  
22 produced by the project; provided, however, that it shall be the election of the electric distribution  
23 company whether it chooses to acquire the capacity of the distributed generation projects under  
24 the tariffs set forth in this chapter and no ceiling prices recommended by the board and approved  
25 by the commission will be adjusted downward in light of the electric distribution company's  
26 election. The electric distribution company shall sell any products acquired and credit them to the  
27 reconciliation account specified in § 39-26.6-25. When a generator reverts to net metering after  
28 the end of the tariff term under the renewable energy growth program, the net metering generator  
29 shall retain title to the renewable energy certificates generated by the project. In the case of  
30 residential small-scale projects, title to all energy and capacity produced from the solar generation  
31 shall remain with the residential customer, shall not be transferred to the electric distribution  
32 company, and shall be deemed consumed by the residential customer on-site during the  
33 applicable distribution service billing period with no sale or purchase between the residential  
34 customer and the electric distribution company.

1           (b) For the accounting purposes of the electric distribution company in treating the  
2 performance-based incentives, the cost of the energy that is procured shall be the real time market  
3 price of energy and the balance of the performance-based incentive shall be attributable to the  
4 purchase of environmental and any other attributes acquired. This accounting shall have no effect  
5 on the total bundled performance-based incentive to which the distributed generation project is  
6 entitled under the provisions of this chapter.

7           **39-26.6-22. Zonal and other incentive payments.** -- In order to provide the electric  
8 distribution company with the flexibility to encourage distributed generation projects to be  
9 located in designated geographical areas within its load zone where there is an identifiable system  
10 benefit, reliability benefit, or cost savings to the distribution system in that geographical area, the  
11 electric distribution company, in consultation with board and office, may propose to include an  
12 incentive payment adder to the bid price of any winning bidder that proposes a distributed  
13 generation project in the desired geographical area. The electric distribution company also may  
14 propose other incentive payments to achieve other technical or public policy objectives that  
15 provide identifiable benefits to customers. Any incentive payment adders must be approved by  
16 the commission, and shall not be counted as part of the bid price when the bids are selected at an  
17 enrollment event.

18           **39-26.6-23. Intersection of distributed generation and net metering.** -- (a) Net  
19 metering credits for excess generation shall not be credited during the term of the tariff when the  
20 distributed generation project is receiving performance-based incentive payments under the tariff.  
21 After the end of the term of the performance-based incentive tariff applicable to a distributed  
22 generation project, net metering credits for excess generation in any given month shall be credited  
23 to the net metered account at the applicable rate allowed under the law.

24           (b) All distributed generation projects that had begun development prior to the date the  
25 commission approves the first set of ceiling price recommendations from the board and that are in  
26 operation by no later than July 1, 2016, shall be eligible to continue operation under the net  
27 metering rules that would have been applicable to that self-generation project absent the change  
28 in law set forth in this section, provided that such project does not otherwise participate in the  
29 performance based incentive program set forth in this chapter.

30           **39-26.6-24. Rate design review by the commission.** -- (a) On or after July 1, 2015, the  
31 commission shall open a docket to consider rate design and distribution cost allocation among  
32 rate classes in light of net metering and the changing distribution system that is expected to  
33 include more distributed energy resources, including, but not limited to, distributed generation.  
34 The commission will determine the appropriate cost responsibility and contributions to the

1 operation, maintenance, and investment in the distribution system that is relied upon by all  
2 customers, including, without limitation, non-net metered and net metered customers. In that  
3 docket, the commission shall require the electric distribution company to file a revenue-neutral  
4 allocated cost of service study for all rate classes and a proposal for new rates for all customers in  
5 each rate class. The electric distribution company shall use the distribution revenue requirement  
6 upon which the then-current distribution rates were set. The electric distribution company may  
7 use the allocated cost of service that was filed with the compliance filing from the rate case when  
8 the then current distribution rates were set. The commission may also address the rate design for  
9 the equitable recovery of costs associated with energy efficiency and any renewable energy  
10 programs that are recovered in rates.

11 (b) In establishing any new rates the commission may deem appropriate, the commission  
12 shall take into account and balance the following factors:

13 (1) The benefits of distributed energy resources;

14 (2) The distribution services being provided to net metered customers when the  
15 distributed generation is not producing electricity;

16 (3) Simplicity, understandability and transparency of rates to all customers, including  
17 non-net metered and net-metered customers;

18 (4) Equitable ratemaking principles regarding the allocation of the costs of the  
19 distribution system;

20 (5) Cost causation principles;

21 (6) The general assembly's legislative purposes in creating the distributed generation  
22 growth program; and

23 (7) Any other factors the commission deems relevant and appropriate in establishing a  
24 fair rate structure. The rates shall be designed for each proposed rate class in accordance with  
25 industry-standard cost allocation principles. The commission may consider any reasonable rate  
26 design options, including without limitation, fixed charges, minimum monthly charges, demand  
27 charges, volumetric charges, or any combination thereof, with the purpose of assuring recovery of  
28 costs fairly across all rate classes.

29 (c) The commission shall issue an order in the docket by no later than December 1, 2015.  
30 Any new rates shall take effect for usage on and after January 1, 2016; provided, however, that  
31 the electric distribution company may seek an extension if necessary to make the billing system  
32 changes necessary to implement a new rate structure. After new revenue-neutral rates are set in  
33 the docket specified above, the commission may approve changes to the rate design in any future  
34 distribution base rate cases when a fully allocated embedded cost of service study is being

1 reviewed in the rate case, subject to the principles set forth in subsection (b) of this section.

2 **39-26.6-25. Forecasted rate and reconciliation.** -- (a) Three (3) months prior to the  
3 beginning of the first program year, the electric distribution company shall file a forecast of the  
4 total amount of payments that is likely to be paid out to distributed generation projects in the  
5 coming program year within the electric distribution company's load zone, along with any costs  
6 permitted for recovery pursuant to §§ 39-26.6-4, 39-26.6-13 and 39-26.6-18. The total of all  
7 forecasted payments and costs shall be aggregated, net of forecasted revenues from the sale of the  
8 energy, renewable energy certificates, and any other market products from the distributed  
9 generation projects participating in the performance based incentive program. The forecasted net  
10 aggregate amount shall be used to design a fixed monthly charge per customer to recover the net  
11 forecast in rates charged to all distribution customers during the prospective calendar year, which  
12 fixed charge may be different by rate class in order to reasonably and equitably spread the  
13 program costs across all customer classes. The fixed rate shall stay in effect until changed after  
14 the first reconciliation filing set forth below and the rate reconciliation process shall be repeated  
15 annually, as set forth below. The commission, in its discretion, may move the reconciliation of  
16 costs and credits under § 39-26.1-5(f) into this reconciliation in order to have one reconciliation  
17 of all program costs and credits from the long-term contracting standard, distributed generation  
18 standard contracting, and renewable energy growth program.

19 (b) Within three (3) months after the end of each program year, the electric distribution  
20 company shall reconcile the total amount recovered from distribution customers against the total  
21 of net payments and costs for the program year. The electric distribution company shall file the  
22 reconciliation with a report along with a new forecast of payments to be made for the next twelve  
23 (12) month period, net of forecasted revenues for the resale of energy, renewable energy  
24 certificates, or any other market attributes sold by the electric distribution company. The forecast  
25 shall be used to set a new rate in the same manner as set forth above and the new rate shall remain  
26 in effect until rates are reset in the next annual reconciliation and the reconciliation balance shall  
27 be reflected in the new rate.

28 SECTION 2. Section 39-26.1-3 of the General Laws in Chapter 39-26.1 entitled "Long-  
29 Term Contracting Standard for Renewable Energy" is hereby amended to read as follows:

30 **39-26.1-3. Long-term contract standard.** -- (a) Beginning on or before July 1, 2010,  
31 each electric distribution company shall be required to annually solicit proposals from renewable  
32 energy developers and, provided commercially reasonable proposals have been received, enter  
33 into long-term contracts with terms of up to fifteen (15) years for the purchase of capacity, energy  
34 and attributes from newly developed renewable energy resources. Subject to commission

1 approval, the electric distribution company may enter into contracts for term lengths longer than  
2 fifteen (15) years. Notwithstanding any other provisions of this chapter, on or before August 15,  
3 2009, the electric distribution company shall solicit proposals for one newly developed renewable  
4 energy resources project as required in ~~section~~ § 39-26.1-7. Proposals for the sale of output from  
5 an offshore wind project received under the provisions of this section shall be diligently and fully  
6 considered without prejudice, regardless of the status of any proceedings under ~~sections~~ §§ 39-  
7 26.1-7 or 39-26.1-8.

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

34 (c) (1) No electric distribution company shall be obligated to enter into long-term

1 contracts for newly developed renewable energy resources on terms which the electric  
2 distribution company reasonably believes to be commercially unreasonable; provided, however, if  
3 there is a dispute about whether these terms are commercially unreasonable, the commission shall  
4 make the final determination after an evidentiary hearing. The electric distribution company shall  
5 not be obligated to enter into long-term contracts pursuant to this section that would, in the  
6 aggregate, exceed the minimum long-term contract capacity, but may do so voluntarily subject to  
7 commission approval. As long as the electric distribution company has entered into long-term  
8 contracts in compliance with this section, the electric distribution company shall not be required  
9 by regulation or order to enter into power purchase contracts with renewable generation projects  
10 for power, renewable energy certificates, or any other attributes with terms of more than three (3)  
11 years in meeting its applicable annual renewable portfolio standard requirements set forth in  
12 section 39-26-4 or pursuant to any other provision of the law.

13 (2) Except as provided in section 39-26.1-7 and 39-26.1-8, an electric distribution  
14 company shall not be required to enter into long-term contracts for newly developed renewable  
15 energy resources that exceed the following five (5) year phased schedule:

16 By December 30, 2010: Twenty-five percent (25%) of the minimum long-term contract  
17 capacity;

18 By December 30, 2011: Fifty percent (50%) of the minimum long-term contract  
19 capacity;

20 By December 30, 2012: Seventy-five percent (75%) of the minimum long-term contract  
21 capacity;

22 ~~By~~ After December 30, ~~2014~~ 2013: One hundred percent (100%) of the minimum long-  
23 term contract capacity; ~~but may do so earlier voluntarily, subject to commission approval~~ subject  
24 to subsection (f) of this section.

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

32 (e) After the adoption of the rules and regulations promulgated by the commission  
33 pursuant to this chapter, an electric distribution company may, at its sole election, immediately  
34 and from time to time, procure additional commercially reasonable long-term contracts for newly



1 developed renewable energy resources on an earlier timetable or above the minimum long-term  
2 contract capacity, subject to commission approval.

3 (f) At least once per year beginning in 2014, the electric distribution company shall  
4 conduct solicitations until one hundred percent (100%) of the minimum long-term contract  
5 capacity is met; provided, however, that no contracts shall be awarded unless the pricing under  
6 such contract(s) is below the forecasted market price of energy and renewable energy certificates  
7 over the term of the proposed contract, using industry standard forecasting methodologies as have  
8 been used to evaluate pricing in the past solicitation processes reviewed by the commission under  
9 this section. In such solicitations, the electric distribution company may elect not to acquire  
10 capacity, but shall acquire all environmental attributes and energy.

11 SECTION 3. Section 39-26.4-3 of the General Laws in Chapter 39-26.4 entitled "Net  
12 Metering" is hereby amended to read as follows:

13 **39-26.4-3. Net metering.** -- (a) The following policies regarding net metering of  
14 electricity from eligible net metering systems and regarding any person that is a renewable self-  
15 generator shall apply:

16 (1) The maximum allowable capacity for eligible net metering systems, based on  
17 nameplate capacity, shall be five megawatts (5 mw).

18 ~~(2) The aggregate amount of net metering in Rhode Island shall not exceed three percent~~  
19 ~~(3%) of peak load, provided that at least two megawatts (2 mw) are reserved for projects of less~~  
20 ~~than fifty kilowatts (50 kw).~~ The aggregate amount of net metering in the Block Island Power  
21 Company and the Pascoag Utility District shall not exceed three percent (3%) of peak load for  
22 each utility district.

23 ~~(3)~~(2) For ease of administering net metered accounts and stabilizing net metered  
24 account bills, the electric distribution company may elect (but is not required) to estimate for any  
25 twelve (12) month period:

26 (i) The production from the eligible net metering system; and

27 (ii) Aggregate consumption of the net metered accounts at the eligible net metering  
28 system site and establish a monthly billing plan that reflects the expected credits that would be  
29 applied to the net metered accounts over twelve (12) months. The billing plan would be designed  
30 to even out monthly billings over twelve (12) months, regardless of actual production and usage.  
31 If such election is made by the electric distribution company, the electric distribution company  
32 would reconcile payments and credits under the billing plan to actual production and  
33 consumption at the end of the twelve (12) month period and apply any credits or charges to the  
34 net metered accounts for any positive or negative difference, as applicable. Should there be a

1 material change in circumstances at the eligible net metering system site or associated accounts  
2 during the twelve (12) month period, the estimates and credits may be adjusted by the electric  
3 distribution company during the reconciliation period. The electric distribution company also may  
4 elect (but is not required) to issue checks to any net metering customer in lieu of billing credits or  
5 carry forward credits or charges to the next billing period. For residential eligible net metering  
6 systems twenty-five kilowatts (25 kw) or smaller, the electric distribution company, at its option,  
7 may administer renewable net metering credits month to month allowing unused credits to carry  
8 forward into following billing period.

9 ~~(4)~~(3) If the electricity generated by an eligible net metering system during a billing  
10 period is equal to or less than the net metering customer's usage during the billing period for  
11 electric distribution company customer accounts at the eligible net metering system site, the  
12 customer shall receive renewable net metering credits, which shall be applied to offset the net  
13 metering customer's usage on accounts at the eligible net metering system site.

14 ~~(5)~~(4) If the electricity generated by an eligible net metering system during a billing  
15 period is greater than the net metering customer's usage on accounts at the eligible net metering  
16 system site during the billing period, the customer shall be paid by excess renewable net metering  
17 credits for the excess electricity generated beyond the net metering customer's usage at the  
18 eligible net metering system site up to an additional twenty-five percent (25%) of the renewable  
19 self-generator's consumption during the billing period; unless the electric distribution company  
20 and net metering customer have agreed to a billing plan pursuant to subdivision (3).

21 ~~(6)~~(5) The rates applicable to any net metered account shall be the same as those that  
22 apply to the rate classification that would be applicable to such account in the absence of net  
23 metering including customer and demand charges and no other charges may be imposed to offset  
24 net metering credits.

25 (b) The commission shall exempt electric distribution company customer accounts  
26 associated with an eligible net metering system from back-up or standby rates commensurate with  
27 the size of the eligible net metering system, provided that any revenue shortfall caused by any  
28 such exemption shall be fully recovered by the electric distribution company through rates.

29 (c) Any prudent and reasonable costs incurred by the electric distribution company  
30 pursuant to achieving compliance with subsection (a) and the annual amount of the distribution  
31 component of any renewable net metering credits or excess renewable net metering credits  
32 provided to accounts associated with eligible net metering systems, shall be aggregated by the  
33 distribution company and billed to all distribution customers on an annual basis through a  
34 uniform per kilowatt-hour (kwh) surcharge embedded in the distribution component of the rates

1 reflected on customer bills.

2 ~~(7)~~(6) The billing process set out in this section shall be applicable to electric distribution  
3 companies thirty (30) days after the enactment of this chapter.

4 SECTION 4. Section 39-26.2-7 of the General Laws in Chapter 39-26.2 entitled  
5 "Distributed Generation Standard Contracts" is hereby amended to read as follows:

6 **39-26.2-7. Standard contract -- Form and provisions.** -- The following process shall be  
7 implemented to establish the non-price terms and conditions of the standard contract:

8 (1) A working group ("contract working group") shall be established and supervised by  
9 the board, consisting of the following members:

10 (i) The director of the office of energy resources;

11 (ii) A designee from the division of public utilities and carriers;

12 (iii) Two (2) designees of the electric distribution company;

13 (iv) Two (2) individuals designated by the office of energy resources who are  
14 experienced developers of renewable generation projects;

15 (v) One individual designated by the office of energy resources who represents a  
16 customer of the electric distribution company; and (vi) A lawyer designated by the office of  
17 energy resources who has at least three (3) years of experience in negotiating and/or developing  
18 power purchase agreements. With respect to the lawyer designated in (vi) above, the electric  
19 distribution company shall enter into a cost reimbursement agreement with such lawyer, to  
20 compensate the lawyer for the time spent serving in the contract working group at the reasonable  
21 hourly rate negotiated by the office of energy resources. The costs incurred by the electric  
22 distribution company under the reimbursement agreement shall be recovered in rates by the  
23 electric distribution company in the year incurred or the year following incurrence through an  
24 appropriate filing with the commission. The contract working group shall be an advisory group  
25 that is not to be considered to be an agency for purposes of the administrative procedures act or  
26 any other laws pertaining to public bodies.

27 (2) The contract working group shall work in good faith to develop standard contracts  
28 that would be applicable for various technologies for both small and large distributed generation  
29 projects. The standard contracts should balance the need for the project to obtain financing  
30 against the need for the distribution company to protect itself and its distribution customers  
31 against unreasonable risks. The standard contract should be developed from contracting terms  
32 typically utilized in the wholesale power industry, taking into account the size of each project and  
33 the technology. The standard contracts shall provide for the purchase of energy, capacity,  
34 renewable energy certificates, and all other environmental attributes and market products that are

1 available or may become available from the distributed generation facility. However, the electric  
2 distribution company shall retain the right to separate out pricing for each market product under  
3 the contracts for administrative and accounting purposes to avoid any detrimental accounting  
4 effects or for administrative convenience, provided that such accounting as specified in the  
5 contract does not affect the price and financial benefits to the seller as a seller of a bundled  
6 product. The standard contract also shall:

7 (i) Hold the distributed generation facility owner liable for the cost of interconnection  
8 from the distributed generation facility to the interconnect point with the distribution system, and  
9 for any upgrades to the existing distributed generation system that may be required by the electric  
10 distribution company. However, a distributed generation facility owner may appeal to the  
11 commission to reduce any required system upgrade costs to the extent such upgrades can be  
12 shown to benefit other customers of the electric distribution company and the balance of such  
13 costs shall be included in rates by the electric distribution company for recovery in the year  
14 incurred or the year following incurrence;

15 (ii) Require the distributed generation facility owner to make a performance guarantee  
16 deposit to the electric distribution company of fifteen dollars (\$15.00) for small distributed  
17 generation projects or twenty-five dollars (\$25.00) for large distributed generation projects for  
18 every renewable energy certificate estimated to be generated per year under the contract, but at  
19 least five hundred dollars (\$500) and not more than seventy-five thousand dollars (\$75,000), paid  
20 at the time of contract execution;

21 (iii) Require the electric distribution company to refund the performance guarantee  
22 deposit on a pro-rated basis of renewable energy credits actually delivered by the distributed  
23 generation facility over the course of the first year of the project's operation, paid quarterly;

24 (iv) Provide that if the distributed generation facility has not generated ninety percent  
25 (90%) of the output proposed in its enrollment application within eighteen (18) months after  
26 execution of the contract, the contract shall be terminated and the performance guarantee shall be  
27 forfeited. An eligible small-scale hydropower distributed generation facility that has not  
28 generated ninety percent (90%) of the output proposed in its enrollment application within forty-  
29 eight (48) months after execution of the contract shall result in the contract being terminated and  
30 the performance guarantee being forfeited. An eligible anaerobic digestion distributed generation  
31 facility that has not generated ninety percent (90%) of the output proposed in its enrollment  
32 application within thirty-six (36) months after execution of the contract shall result in the contract  
33 being terminated and the performance guarantee being forfeited. Any forfeited performance  
34 guarantee deposits shall be credited to all distribution customers in rates and not retained by the

1 electric distribution company;

2 (v) Provide for flexible payment schedules that may be negotiated between the buyer and  
3 seller, but shall be no longer than quarterly if an agreement cannot be reached;

4 (vi) Require that an electric meter which conforms with standard industry norms be  
5 installed to measure the electrical energy output of the distributed generation facility, and require  
6 a system or procedure by which the distributed generation facility owner shall demonstrate  
7 creation of renewable energy credits, in a manner recognized and accounted for by the GIS; such  
8 demonstration of renewable energy credit creation to be at the distributed generation facility  
9 owner's expense. The electric distribution company may, at its discretion, offer to provide such a  
10 renewable energy credit measurement and accounting system or procedure to the distributed  
11 generation facility owner, and the distributed generation facility owner may, at its discretion, use  
12 the electric distribution company's program, or use that of an independent third party, approved  
13 by the commission, and the costs of such measurement and accounting are paid for by the  
14 distributed generation facility owner.

15 (vii) All distributed generation projects that have executed contracts will be required to  
16 submit quarterly reports on the progress of the project to the distribution company and the office  
17 of energy resources. Failure to submit these quarterly progress reports may result in the  
18 termination of the contract.

19 (3) If the contract working group reaches agreement on the terms of standard contracts,  
20 the board shall file the contracts with the commission for approval. If there are any  
21 disagreements, they shall be identified to the commission. The commission shall review the  
22 standard contracts for conformance with the standards set forth in subsection (2). Should there be  
23 any disputes, the commission shall issue an order resolving them. To the extent the commission  
24 needs expert assistance to resolve any disagreements noted in the filing, the commission is  
25 authorized to hire a consultant to assist it in the proceedings, the costs of which shall be recovered  
26 from electric distribution customers pursuant to a uniform factor established by the commission  
27 in rates for recovery by the electric distribution company in the year incurred or the year  
28 following incurrence, as requested through a filing by the electric distribution company. The  
29 commission shall issue an order approving standard forms of contract within sixty (60) days of  
30 the filing.

31 SECTION 5. This act shall take effect upon passage.

=====  
LC004420/SUB A/3  
=====

EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

A N A C T

RELATING TO PUBLIC UTILITIES AND CARRIERS - THE CLEAN ENERGY JOBS  
PROGRAM

\*\*\*

1           This act would create a tariff-based renewable energy distributed generation financing  
2 program, or "Renewable Energy Growth Program", to provide for the continuation of the  
3 development of the renewable energy growth program in the load zone of the electric distribution  
4 company at a reasonable cost.

5           This act would take effect upon passage.

=====  
LC004420/SUB A/3  
=====