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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2012

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A N A C T

RELATING TO PUBLIC UTILITIES AND CARRIERS - TELEPHONE REGULATION
MODERNIZATION ACT

Introduced By: Representatives O'Neill, Jackson, Petrarca, Winfield, and Ucci

Date Introduced: February 15, 2012

Referred To: House Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 39-1-2 of the General Laws in Chapter 39-1 entitled "Public
2 Utilities Commission" is hereby amended to read as follows:

3 **39-1-2. Definitions. --** Terms used in this title shall be construed as follows, unless
4 another meaning is expressed or is clearly apparent from the language or context:

5 (1) "Administrator" means the administrator of the division of public utilities and
6 carriers;

7 (2) "Airport" and "landing field" mean and include all airports and landing fields other
8 than those owned by the state;

9 (3) "Chairperson" means the chairperson of the public utilities commission;

10 (4) "Charter carrier" means and includes all carriers for hire or compensation within this
11 state not included in the definition of common carrier;

12 (5) "Commission" means the public utilities commission;

13 (6) "Commissioner" means a member of the public utilities commission;

14 (7) "Common carrier", except when used in chapters 12, 13, and 14 of this title, means
15 and includes all carriers for hire or compensation including railroads, street railways, express,
16 freight and freight line companies, dining car companies, steam boat, motor boat, power boat,
17 hydrofoil, and ferry companies and all other companies operating any agency or facility for
18 public use in this conveyance over fixed routes, or between fixed termini within this state or

1 persons or property by or by a combination of land, air, or water;

2 (8) "Company" means and includes a person, firm, partnership, corporation, quasi-
3 municipal corporation, association, joint stock association or company, and his, her, its, or their
4 lessees, trustees, or receivers appointed by any court;

5 (9) "Customer" means a company taking service from an electric distribution company at
6 a single point of delivery or meter location;

7 (10) "Distribution facility" means plant or equipment used for the distribution of
8 electricity and which is not a transmission facility;

9 (11) "Division" means the division of public utilities and carriers;

10 (12) "Electric distribution company" means a company engaging in the distribution of
11 electricity or owning, operating, or controlling distribution facilities and shall be a public utility
12 pursuant to section 39-1-2(20);

13 (13) "Electric transmission company" means a company engaging in the transmission of
14 electricity or owning, operating, or controlling transmission facilities. An electric transmission
15 company shall not be subject to regulation as a public utility except as specifically provided in the
16 general laws, but shall be regulated by the federal energy regulatory commission and shall
17 provide transmission service to all nonregulated power producers and customers, whether
18 affiliated or not, on comparable, nondiscriminatory prices and terms. Electric transmission
19 companies shall have the power of eminent domain exercisable following a petition to the
20 commission pursuant to section 39-1-31;

21 (14) "Liquefied natural gas" means a fluid in the liquid state composed predominantly of
22 methane and which may contain minor quantities of ethane, propane, nitrogen, or other
23 components normally found in natural gas;

24 (15) "Manufacturing customers" means all customers that have on file with an electric
25 distribution company a valid certificate of exemption from the Rhode Island sales tax indicating
26 the customer's status as a manufacturer pursuant to section 44-18-30;

27 (16) "Motor carriers" means any carrier regulated by the administrator pursuant to
28 Chapters 3, 11, 12, 13 and 14 of this title;

29 (17) "Natural gas" means the combustible gaseous mixture of low-molecular-weight,
30 paraffin hydrocarbons, generated below the surface of the earth containing mostly methane and
31 ethane with small amounts of propane, butane, and hydrocarbons, and sometimes nitrogen,
32 carbon dioxide, hydrogen sulfide, and helium;

33 (18) "Nonprofit housing development corporation" means a nonprofit corporation, which
34 has been approved as a section 501(c)(3), 26 U.S.C. section 501(c)(3), corporation by the internal

1 revenue service, and which is organized and operated primarily for the purpose of providing
2 housing for low and moderate income persons;

3 (19) "Nonregulated power producer" means a company engaging in the business of
4 producing, manufacturing, generating, buying, aggregating, marketing or brokering electricity for
5 sale at wholesale or for retail sale to the public; provided however, that companies which
6 negotiate the purchase of electric generation services on behalf of customers and do not engage in
7 the purchase and resale of electric generation services shall be excluded from this definition. A
8 nonregulated power producer shall not be subject to regulation as a public utility except as
9 specifically provided in the general laws;

10 (20) "Public utility" means and includes every company that is an electric distribution
11 company and every company operating or doing business in intrastate commerce and in this state
12 as a railroad, street railway, common carrier, gas, liquefied natural gas, water, telephone,
13 telegraph, and pipeline company, and every company owning, leasing, maintaining, managing, or
14 controlling any plant or equipment or any part of any plant or equipment within this state for
15 manufacturing, producing, transmitting, distributing, delivering, or furnishing natural or
16 manufactured gas, directly or indirectly to or for the public, or any cars or equipment employed
17 on or in connection with any railroad or street railway for public or general use within this state,
18 or any pipes, mains, poles, wires, conduits, fixtures, through, over, across, under, or along any
19 public highways, parkways or streets, public lands, waters, or parks for the transmission,
20 transportation, or distribution of gas for sale to the public for light, heat, cooling, or power for
21 providing audio or visual telephonic or telegraphic communication service within this state or any
22 pond, lake, reservoir, stream, well, or distributing plant or system employed for the distribution of
23 water to the consuming public within this state including the water supply board of the city of
24 Providence; provided, that, except as provided in section 39-16-9 and in chapter 2072 of the
25 public laws, 1933, as amended, this definition shall not be construed to apply to any public
26 waterworks or water service owned and furnished by any city, town, water district, fire district, or
27 any other municipal or quasi-municipal corporation, excepting the water supply board of the city
28 of Providence, unless any city, town, water district, fire district, municipal, or quasi-municipal
29 corporation obtains water from a source owned or leased by the water resources board, either
30 directly or indirectly, or obtains a loan from the board pursuant to the provisions of chapter 15 of
31 title 46, or sells water, on a wholesale or retail basis, inside and outside the territorial limits of the
32 city or town, water district, fire district, municipal or quasi-municipal corporation, except,
33 however, that a public waterworks or water service owned and furnished by any city, town, water
34 district, fire district, or any other municipal or quasi-municipal corporation which sells water, on

1 a wholesale or retail basis, inside and outside its territorial limits shall not be construed as a
2 public utility if it has fewer than one-thousand five hundred (1500) total customer service
3 connections and provided outside sales do not exceed ten percent (10%) of the total water service
4 connections or volumetric sales and provided the price charged to outside customers, per unit of
5 water, is not greater than the price charged to inside customers for the same unit of water, nor to
6 the Rhode Island public transit authority, or to the production and/or distribution of steam, heat,
7 or water by Rhode Island port authority and economic development corporation in the town of
8 North Kingstown; and the term "public utility" shall also mean and include the Narragansett Bay
9 water quality management district commission; and provided that the ownership or operation of a
10 facility by a company which dispenses alternative fuel or energy sources at retail for use as a
11 motor vehicle fuel or energy source, and the dispensing of alternative fuel or energy sources at
12 retail from such a facility, does not make the company a public utility within the meaning of this
13 title solely because of that ownership, operation, or sale; and provided further that this exemption
14 shall not apply to presently regulated public utilities which sell natural gas or are dispensers of
15 other energy sources; and provided further, that the term "public utility" shall not include any
16 company;

17 (i) Producing or distributing steam or heat from a fossil fuel fired cogeneration plant
18 located at the university of Rhode Island South Kingstown, Rhode Island ~~and~~; or

19 (ii) Producing and/or distributing thermal energy and/or electricity to a state owned
20 facility from a plant located on an adjacent site regardless of whether steam lines cross a public
21 highway; ~~or~~ or

22 (iii) Providing wireless service.

23 (21) "Purchasing cooperatives" shall mean any association of electricity consumers
24 which join for the purpose of negotiating the purchase of power from a nonregulated power
25 producer, provided however, that purchasing cooperatives shall not be required to be legal entities
26 and are prohibited from being engaged in the re-sale of electric power;

27 (22) "Railroad" means and includes every railroad other than a street railway, by
28 whatsoever power operated for public use in the conveyance in this state of persons or property
29 for compensation, with all bridges, ferries, tunnels, switches, spurs, tracks, stations, wharves, and
30 terminal facilities of every kind, used, operated, controlled, leased, or owned by or in connection
31 with any railroad;

32 (23) "Retail access" means the use of transmission and distribution facilities owned by
33 an electric transmission company or an electric distribution company to transport electricity sold
34 by a nonregulated power producer to retail customers pursuant to section 39-1-27.3;

1 (24) "Street railway" means and includes every railway by whatsoever power operated or
2 any extension or extensions, branch, or branches thereof, for public use in the conveyance in this
3 state of persons or property for compensation, being mainly upon, along, above, or below any
4 street, avenue, road, highway, bridge, or public place in any city or town, and including all
5 switches, spurs, tracks, rights of trackage, subways, tunnels, stations, terminals and terminal
6 facilities of every kind, used, operated, controlled, or owned by or in connection with any street
7 railway;

8 (25) "Transmission facility" means plant or equipment used for the transmission of
9 electricity as determined by the federal energy regulatory commission pursuant to federal law as
10 of the date of the property transfers pursuant to section 39-1-27(c);

11 (26) Notwithstanding any provision of this section or any provision of the act entitled,
12 "An Act Relating to the Utility Restructuring Act of 1996" (hereinafter "Utility Restructuring
13 Act"), upon request by the affected electric utility, the commission may exempt from the Utility
14 Restructuring Act or any provision(s) thereof, an electric utility which meets the following
15 requirements: (i) the utility is not selling or distributing electricity outside of the service territory
16 in effect for that utility on the date of passage of the Utility Restructuring Act; and (ii) the number
17 of kilowatt hours sold or distributed annually by the utility to the public is less than five percent
18 (5%) of the total kilowatt hours consumed annually by the state. Provided however that nothing
19 contained in this section shall prevent the commission from allowing competition in the
20 generation of electricity in service territories of utilities exempted in whole or in part from the
21 Utility Restructuring Act pursuant to this section, as long as such allowance of competition is
22 conditioned upon payment to the exempted electric utility of a nonbypassable transition charge
23 calculated to recover the elements comparable in nature to the elements in section 39-1-27.4(b)
24 and (c) taking into consideration any unique circumstances applicable to the exempted electric
25 utility.

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

28 CHAPTER 29

29 TELEPHONE REGULATION MODERNIZATION ACT

30 39-29-1. Jurisdiction over wireless service. -- Notwithstanding any provision of general
31 or public laws to the contrary, the commission and the division shall have no jurisdiction or
32 authority over any wireless service.

33 39-29-2. Service requirements offered by telephone companies. -- To the extent that a
34 telephone company is required to offer a local exchange service in any exchange or other

1 geographic area or to any customer upon request, such company may satisfy such requirement by
2 offering any service that includes, at a minimum, access to E911 and the ability to make and
3 receive voice telephone calls, through the use of any available technology, including, but not
4 limited to, wireless service or VoIP service, without thereby subjecting any such technology or
5 service to any greater regulation than would otherwise apply to it.

6 SECTION 3. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

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RELATING TO PUBLIC UTILITIES AND CARRIERS - TELEPHONE REGULATION
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- 1 This act would provide that the public utilities commission not the division of public
- 2 utilities and carriers would have jurisdiction or authority over wireless providers.
- 3 This act would take effect upon passage.

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