

2017 -- H 6184

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2017

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A N A C T

RELATING TO PUBLIC UTILITIES AND CARRIERS -- PUBLIC UTILITIES COMMISSION

Introduced By: Representative Raymond H. Johnston

Date Introduced: May 03, 2017

Referred To: House Corporations

(Lieutenant Governor)

It is enacted by the General Assembly as follows:

1           SECTION 1. Section 39-1-27 of the General Laws in Chapter 39-1 entitled "Public  
2 Utilities Commission" is hereby amended to read as follows:

3           **39-1-27. Electric distribution companies required to file restructuring plans.**

4           (a) Each electric distribution company shall file with the commission a plan for  
5 transferring ownership of generation facilities into a separate affiliate of the electric distribution  
6 company. The transmission facilities owned by the electric distribution company also may be  
7 transferred to an affiliated electric transmission company at a price that shall equal the book value  
8 of the transmission facilities on the electric distribution company's accounts net of depreciation  
9 and deferred taxes as the date of transfer, but such a transfer is not required. The generation plant,  
10 equipment, and facilities owned by an electric distribution company shall be transferred to an  
11 affiliate that is a nonregulated power producer at a price that shall equal the book value of the  
12 generation plant, equipment, and facilities on the electric distribution company's accounts net of  
13 depreciation and deferred taxes as of the date of the transfer. Consistent with the schedule for  
14 implementing retail access in § 39-1-27.3, each electric transmission company shall file tariffs  
15 with the federal energy regulatory commission (FERC) and electric distribution companies shall  
16 file tariffs with the commission. The tariffs will provide the terms, conditions and rates for  
17 nondiscriminatory access to transmission and distribution facilities to wholesale and retail  
18 customers and to nonregulated power producers. The tariffs shall (1) conform to the standards,  
19 policies, and requirements of the federal energy regulatory commission or the commission as

1 appropriate with respect to nondiscriminatory access to transmission and distribution services, (2)  
2 fulfill such standards with respect to both transmission and distribution services for the benefit of  
3 both wholesale and retail customers and their suppliers, and (3) provide retail access in  
4 accordance with the schedule set forth in § 39-1-27.3. For purposes of this section,  
5 "nondiscriminatory access" means access to transmission and distribution services on rates, terms  
6 and conditions found to be reasonable by the FERC or the commission as appropriate and applied  
7 consistently to all customers in a rate class regardless of their supplier. When establishing terms  
8 and conditions for distribution service, the commission shall implement standards, policies, and  
9 requirements consistent with those established by the federal energy regulatory commission for  
10 transmission service unless it determines that alternative terms and conditions are in the public  
11 interest.

12 (b) The commission shall review the plan within six (6) months of filing and if the plan is  
13 in compliance with chapter 3 of this title, shall authorize the property transfers, securities  
14 issuances, and affiliate transactions pursuant to this title and shall grant all necessary regulatory  
15 approvals. All existing state and local rights, authorizations, and approvals, including but not  
16 limited to, permits, licenses, locations, indentures, leases, orders, or similar rights associated with  
17 the ownership and operation of plant and equipment, shall be deemed transferred with the  
18 associated plant and equipment upon the commission's authorization of the transfer effective as of  
19 the date of transfer. Notwithstanding any provisions of this section, if the electric distribution  
20 company's wholesale power supplier chooses to transfer its generation assets to a nonaffiliate of  
21 the electric distribution company for purposes of carrying out the market valuation required by §  
22 39-1-27.4(g), and such transfer to a nonaffiliate is specified in the electric distribution company's  
23 restructuring plan filed with the commission pursuant to subsection (a) of this section, the transfer  
24 of the electric distribution company's interest in the generation facilities may be made directly to  
25 the nonaffiliate. In the case of such a transfer directly to a nonaffiliate, all of the state and local  
26 rights, authorizations and approvals, including those enumerated above, shall be deemed  
27 transferred with the associated plant and equipment upon the commission's authorization of the  
28 transfer effective as of the date of the transfer.

29 (c) The electric distribution company shall implement the corporate reorganizations and  
30 property transfers specified in such restructuring plan, terminate its all requirements contract with  
31 its wholesale power supplier on the terms set forth in § 39-1-27.4 and provide retail access for all  
32 customers in Rhode Island with a standard offer as set forth in § 39-1-27.3 no later than three (3)  
33 months after retail access is available to forty percent (40%) or more of the kilowatt-hour sales in  
34 New England. The commission may extend this time if it determines that additional time is

1 necessary to implement the transactions on reasonable terms and in accordance with a reasonable  
2 schedule; provided, however, that nothing in this section shall be construed to limit the effect of §  
3 39-1-27.3 or permit the commission to unduly discriminate in providing retail access among or  
4 within rate classes.

5 (d) Following the complete implementation of the restructuring plans, electric  
6 distribution companies shall be prohibited from selling electricity at retail and from owning,  
7 operating, or controlling generating facilities, although such facilities may be owned by affiliates  
8 of electric distribution companies. For purposes of this paragraph providing the standard offer  
9 service and last resort power supply in accordance with subsections (d) and (f) of § 39-1-27.3  
10 shall not be construed as selling electricity at retail.

11 [\(1\) The commission shall not approve ratepayer-backed, long-term contracts by electric](#)  
12 [distribution companies for gas capacity; and](#)

13 [\(2\) The commission shall not approve any rate increase for an electric distribution](#)  
14 [company to finance the construction or expansion of natural gas pipelines or related facilities.](#)

15 (e) Following the termination of the electric distribution company's contracts with its  
16 wholesale power supplier, the wholesale power supplier shall become a nonregulated power  
17 producer, and shall be free, subject to the requirements of the standard offer set forth in § 39-1-  
18 27.3(e) and retail electric licensing commission plan requirements pursuant to § 39-1-27.1 to sell  
19 electricity generated from each of its facilities on either the wholesale or retail markets at market  
20 prices, either directly or through an affiliate, which shall also become a nonregulated power  
21 producer. The former wholesale power supplier and its affiliates shall be free to apply to become  
22 exempt wholesale generators pursuant to section 32 of the Public Utility Holding Company Act  
23 of 1935, 15 U.S.C. § 79z-5a, and other federal law, rules and regulations, and each and every  
24 generating facility of the former wholesale power supplier shall become an eligible facility  
25 pursuant to that statute. Accordingly, the legislature hereby finds and declares that the division  
26 has sufficient regulatory authority, resources, access to books and records to exercise its duties;  
27 and that the full participation of former wholesale power suppliers and affiliated nonregulated  
28 power producers in the market and the designation of each of the former wholesale power  
29 supplier's facilities as eligible facilities will benefit consumers, is consistent with state law, will  
30 not provide any unfair competitive advantage by virtue of their status as a former wholesale  
31 power supplier or as affiliates of electric distribution companies, and is in the public interest.

32 (f) Although reducing air emissions from power plants is a goal of electricity industry  
33 restructuring, power plants in Rhode Island already have low emissions relative to their  
34 counterparts in other states. For this reason, it is unnecessary for the restructuring plans required

1 by this section to address in-state air emission reductions. However, to the extent a wholesale  
2 power supplier receiving contract termination fees pursuant to § 39-1-27.4(b)(4) owns and  
3 operates as of December 31, 1995 fossil fired generation in another state which does not meet air  
4 emission standards applicable as of that date to new electric generating facilities in that state, such  
5 wholesale power suppliers shall cooperate with the appropriate environmental officials in the  
6 state or states where such generating facilities are located to develop a plan for reducing the  
7 emissions of nitrogen oxides, sulfur dioxide, and particulate matter from such plants on an overall  
8 basis through retirements, replacements, controls or offsets or any combination of the above  
9 toward the air emissions standards applicable to new electric generating facilities in effect in the  
10 state or states where the plants are located as of January 1, 1996. Such plans shall be implemented  
11 in connection with electric industry restructuring in the state or states where the generating  
12 facilities are located.

13 (g) An electric distribution company, whether public, quasi-municipal or investor owned,  
14 that as of January 1, 1996 did not purchase power at wholesale from a wholesale power supplier  
15 under an all requirements contract shall include proposals for recovering transition costs  
16 consistent with the elements which would be comparable in nature to the elements included in  
17 termination fees pursuant to § 39-1-27.4(b) through (g) and for providing a standard offer  
18 consistent with requirements of § 39-1-27.3(d) in its plan filed with the commission pursuant to  
19 this section. The filing by an electric distribution company that is a quasi-municipal corporation  
20 shall also address any unique circumstances affecting the electric distribution company including  
21 special contract requirements or charter restrictions and the conditions that the quasi-municipal  
22 corporation must satisfy in order to participate in retail competition. In reviewing the filing and  
23 determining the appropriate level of transition cost recovery, the commission shall apply  
24 standards consistent with those contained in § 39-1-27.4(b) through (g) and with this subsection.  
25 The commission shall be authorized to take any action or to grant any approval necessary to  
26 maintain hydro-electric power purchases from the Niagara and St. Lawrence power projects by  
27 quasi-municipal corporations. Notwithstanding any other provision of this section, quasi-  
28 municipal electric distribution companies that purchase hydro-electric power from the Niagara  
29 and St. Lawrence power projects shall be authorized to continue to resell such power to  
30 residential customers within their service territories. After notice and public hearing, the  
31 commission may exempt electric distribution companies subject to this paragraph from: (1) the  
32 requirement to transfer ownership of generation and transmission facilities to affiliated companies  
33 pursuant to subsection (a); and (2) the prohibition against selling electricity at retail pursuant to  
34 subsection (d) of this section with respect to sales within the service territory of such electric

1 distribution company, if it determines that such exemptions are in the public interest.

2 (h) With the exception of the requirements of the standard offer set forth in § 39-1-  
3 27.3(e) and (f) and retail electric licensing commission plan requirements pursuant to § 39-1-27.1,  
4 nothing in this section shall be construed or interpreted to constrain the application of anti-trust  
5 laws to nonregulated power producers, whether affiliated or not with an electric distribution  
6 company.

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

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
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1           This act would preclude electric distribution companies from including their gas  
2 transmission contracts or cost of facilities in the rate base for electricity customers.

3           This act would take effect upon passage.

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