

**2009 -- H 5002 SUBSTITUTE A**

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LC00102/SUB A/2  
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**STATE OF RHODE ISLAND**

**IN GENERAL ASSEMBLY**

**JANUARY SESSION, A.D. 2009**

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A N A C T

RELATING TO PUBLIC UTILITIES AND CARRIERS

Introduced By: Representative Gordon D. Fox

Date Introduced: January 06, 2009

Referred To: House Environment and Natural Resources

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 26.1

4 LONG-TERM CONTRACTING STANDARD FOR RENEWABLE ENERGY

5 **39-26.1-1. Purpose.** – The purpose of this chapter is to encourage and facilitate the  
6 creation of commercially reasonable long-term contracts between electric distribution companies  
7 and developers or sponsors of newly developed renewable energy resources with the goals of  
8 stabilizing long-term energy prices, enhancing environmental quality, creating jobs in Rhode  
9 Island in the renewable energy sector, and facilitating the financing of renewable energy  
10 generation within the jurisdictional boundaries of the state or adjacent state or federal waters or  
11 providing direct economic benefit to the state.

12 **39-26.1-2. Definitions.** – Terms not defined in this chapter shall have the same meaning  
13 as contained in chapter 26 of title 39 of the general laws. When used in this chapter:

14 (1) "Commercially reasonable" means terms and pricing that are reasonably consistent  
15 with what an experienced power market analyst would expect to see in transactions of a similar  
16 nature. Commercially reasonable shall include having a credible project operation date, as  
17 determined by the commission, but a project need not have completed the requisite permitting  
18 process to be considered commercially reasonable. If there is a dispute about whether any terms  
19 or pricing are commercially reasonable, the commission shall make the final determination after

1 evidentiary hearings;

2 (2) "Commission" means the Rhode Island public utilities commission;

3 (3) "Electric distribution company" means a company defined in subsection 39-1-2(12),  
4 supplying standard offer service, last resort service, or any successor service to end-use  
5 customers, but not including the Block Island Power Company or the Pascoag Utility District;

6 (4) "Eligible renewable energy resource" means resources as defined in section 39-26-5  
7 and any references therein;

8 (5) "Long-term contract" means a contract of not less than ten (10) years;

9 (6) "Newly developed renewable energy resources" means electrical generation units that  
10 use exclusively an eligible renewable energy resource, and that have neither begun operation, nor  
11 have the developers of the units implemented investment or lending agreements necessary to  
12 finance the construction of the unit; provided, however, that any projects using eligible renewable  
13 energy resources and located within the state of Rhode Island which obtain project financing on  
14 or after January 1, 2009, shall qualify as newly developed renewable energy resources for  
15 purposes of the first solicitation under this chapter;

16 (7) "Minimum long-term contract capacity" means ninety (90) megawatts of which three  
17 (3) megawatts must be solar or photovoltaic projects located in the state of Rhode Island. In  
18 determining whether the minimum long-term contract capacity has been reached, the capacity  
19 under contract shall be adjusted by the capacity factor of each renewable generator as determined  
20 by the ISO-NE rules, as they may change from time to time. By way of example, a contract with  
21 a one hundred (100) megawatt facility with a thirty percent (30%) capacity factor would be  
22 counted as providing thirty (30) megawatts to the minimum long-term contract capacity  
23 requirement.

24 **39-26.1-3. Long-term contract standard.** – (a) Beginning on or before July 1, 2010,  
25 each electric distribution company shall be required to annually solicit proposals from renewable  
26 energy developers and, provided commercially reasonable proposals have been received, enter  
27 into long-term contracts with terms of up to fifteen (15) years for the purchase of capacity, energy  
28 and attributes from newly developed renewable energy resources. Subject to commission  
29 approval, the electric distribution company may enter into contracts for term lengths longer than  
30 fifteen (15) years. Notwithstanding any other provisions of this chapter, on or before August 15,  
31 2009, the electric distribution company shall solicit proposals for one newly developed renewable  
32 energy resources project as required in section 39-26.1-7. Proposals for the sale of output from an  
33 offshore wind project received under the provisions of this section shall be diligently and fully  
34 considered without prejudice, regardless of the status of any proceedings under sections 39-26.1-7

1 or 39-26.1-8.

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

28 (c)(1) No electric distribution company shall be obligated to enter into long-term  
29 contracts for newly developed renewable energy resources on terms which the electric  
30 distribution company reasonably believes to be commercially unreasonable; provided, however, if  
31 there is a dispute about whether these terms are commercially unreasonable, the commission shall  
32 make the final determination after an evidentiary hearing. The electric distribution company shall  
33 not be obligated to enter into long-term contracts pursuant to this section that would, in the  
34 aggregate, exceed the minimum long-term contract capacity, but may do so voluntarily subject to

1 commission approval. As long as the electric distribution company has entered into long-term  
2 contracts in compliance with this section, the electric distribution company shall not be required  
3 by regulation or order to enter into contracts with terms of more than three (3) years in meeting its  
4 applicable annual renewable portfolio standard requirements set forth in section 39-26-4.

5 (2) Except as provided in section 39-26.1-7 and 39-26.1-8, an electric distribution  
6 company shall not be required to enter into long-term contracts for newly developed renewable  
7 energy resources that exceed the following four (4) year phased schedule:

8 By December 30, 2010: Twenty-five percent (25%) of the minimum long-term contract capacity;  
9 By December 30, 2011: Fifty percent (50%) of the minimum long-term contract capacity;  
10 By December 30, 2012: Seventy-five percent (75%) of the minimum long-term contract capacity;  
11 By December 30, 2013: One hundred percent (100%) of the minimum long-term contract  
12 capacity; but may do so earlier voluntarily, subject to commission approval.

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

20 (e) After the adoption of the rules and regulations implemented in this chapter, an electric  
21 distribution company may, at its sole election, immediately and from time to time, procure  
22 additional commercially reasonable long-term contracts for newly developed renewable energy  
23 resources on an earlier timetable or above the minimum long-term contract capacity, subject to  
24 commission approval.

25 **39-26.1-4. Financial remuneration and incentives.** – In order to achieve the purposes  
26 of this chapter, electric distribution companies shall be entitled to financial remuneration and  
27 incentives for long-term contracts for newly developed renewable energy resources, which are  
28 over and above the base rate revenue requirement established in its cost of service for distribution  
29 ratemaking. Such remuneration and incentives shall compensate the electric distribution company  
30 for accepting the financial obligation of the long-term contracts. The financial remuneration and  
31 incentives described in this subsection shall apply only to long-term contracts for newly  
32 developed renewable energy resources. The financial remuneration and incentives shall be in the  
33 form of annual compensation, equal to three percent (3%) of the actual annual payments made  
34 under the contracts for those projects that are commercially operating.

1           **39-26.1-5. Commission approvals and regulations.** – (a) Electric distribution  
2 companies shall submit to the commission for review and approval all long-term contracts for  
3 newly developed renewable energy resources proposed to be entered into in accordance with this  
4 chapter.

5           (b) Unless the commission approves otherwise, all energy and capacity purchased by an  
6 electric distribution company pursuant to this chapter shall be immediately sold by the electric  
7 distribution company into the wholesale spot market; provided, however, that all such sales shall  
8 be made through arms-length transactions.

9           (c) Unless the commission approves otherwise, any attributes including NE-GIS  
10 certificates purchased by an electric distribution company pursuant to this chapter shall be sold  
11 through a competitive bidding process in a commercially reasonable manner.

12           (d) Notwithstanding any term or provision to the contrary contained in subsection (b) or  
13 (c) hereof, subject to commission approval, electric distribution companies shall be permitted, but  
14 shall not be required: (1) to use the energy, capacity and other attributes purchased for resale to  
15 customers; and/or (2) to use the NE-GIS certificates for purposes of meeting the obligations set  
16 forth in chapter 26 of title 39; provided, however, that the commission finds that such sales would  
17 not have a detrimental impact on energy markets, on the market for NE-GIS certificates, and is  
18 otherwise in the interest of utility customers.

19           (e) The commission shall promulgate regulations by April 1, 2010, that shall, as a  
20 condition of contract approval, require all approved projects, regardless of their location, to  
21 provide other direct economic benefits to Rhode Island, such as job creation, increased property  
22 tax revenues or other similar revenues, deemed substantial by the commission.

23           (f) The electric distribution company shall file tariffs with the commission for  
24 commission review and approval that net the cost of payments made to projects under the long-  
25 term contracts against the proceeds obtained from the sale of energy, capacity, RECs or other  
26 attributes. The difference shall be credited or charged to all distribution customers through a  
27 uniform fully reconciling annual factor in distribution rates, subject to review and approval of the  
28 commission. The reconciliation shall be designed so that customers are credited with any net  
29 savings resulting from the long-term contracts and the electric distribution company recovers all  
30 costs incurred under such contracts, as well as, recovery of the financial remuneration and  
31 incentives specified in section 39-26.1-4.

32           **39-26.1-6. Interaction with other laws.** – The long-term contract standard set forth in  
33 this chapter shall be separate and distinct from the renewable energy standard set forth in chapter  
34 26 of title 39.

1           **39-26.1-7. Town of New Shoreham Project.**– (a) On or before August 15, 2009, the  
2 electric distribution company shall solicit proposals for one newly developed renewable energy  
3 resources project of ten (10) megawatts or less that includes a proposal to enhance the electric  
4 reliability and environmental quality of the Town of New Shoreham. The electric distribution  
5 company shall select a project for negotiating a contract that shall be conditioned upon approval  
6 by the commission. Negotiations shall proceed in good faith to achieve a commercially  
7 reasonable contract. Should the distribution company and the selected party agree to a contract,  
8 the contract shall be filed with the commission no later than October 15, 2009 for commission  
9 approval. The commission shall review the contract and issue an order approving or disapproving  
10 the contract on or before December 31, 2009. If the parties are unable to reach agreement on a  
11 contract prior to October 15, 2009, an unsigned copy shall be filed by the electric distribution  
12 company prior to that same date, and the commission shall have the discretion to order the parties  
13 to arbitrate the dispute on an expedited basis. Upon approval of the contract, the provisions of  
14 section 39-26.1-4 and the provisions of paragraphs (a), (b), (c), (d), and (f) of section 39-26.1-5  
15 shall apply, and all costs incurred in the negotiation, administration, enforcement, and  
16 implementation of the agreement shall be recovered annually by the electric distribution company  
17 in electric distribution rates. To the extent that there are benefits for customers of the Block Island  
18 Power Company or its successor, the commission shall determine an allocation of cost  
19 responsibility between customers of the electric distribution company and customers of Block  
20 Island Power Company or its successor after the cost estimates are filed with the commission, but  
21 the commission need not determine the final cost allocation at the time the commission considers  
22 and/or approves the contract between the electric distribution company and the project developer.  
23 The allocation of costs shall assure that individual customers in the Town of New Shoreham pay  
24 higher charges related to the project on their individual bills than any charges for the same project  
25 that may be included in individual bills of customers of the electric distribution company. The  
26 commission shall provide for an appropriate rate design and billing method between the electric  
27 distribution company and Block Island Power Company at the appropriate time.

28           (b) The solicitation shall require that each proposal include provisions for a transmission  
29 cable between the Town of New Shoreham and the mainland of the state. The electric distribution  
30 company, at its option, may propose to own, operate, or otherwise participate in such  
31 transmission cable project, subject to commission approval. The electric distribution company,  
32 however, has the option to decline to own, operate, or otherwise participate in the transmission  
33 cable project, even if the commission approves such arrangements. Should the electric  
34 distribution company own, operate, and maintain the cable, the annual costs incurred by the

1 electric distribution company shall be recovered annually through a fully reconciling rate  
2 adjustment from customers of the electric distribution company and/or from the Block Island  
3 Power Company or its successor, subject to any federal approvals that may be required by law;  
4 provided, however, the parties shall use all reasonable efforts to obtain socialization of the costs  
5 of the cable in New England transmission rates administered by the ISO New England, to the  
6 extent permitted. The allocation of the cable costs shall be determined by the commission and  
7 assure that individual customers in the Town of New Shoreham pay higher charges related to the  
8 cable on their individual bills than any charges for the same project that may be included in  
9 individual bills of customers of the electric distribution company.

10 (c) Any charges incurred by the Block Island Power Company or its successor pursuant  
11 to this section shall be recovered annually in rates through a fully reconciling rate adjustment,  
12 subject to approval by the commission. If the electric distribution company owns, operates, or  
13 otherwise participates in the transmission cable project, pursuant to subsection 39-26.1-7(b) the  
14 provisions of section 39-26.1-4 shall not apply to the cable cost portion of the Town of New  
15 Shoreham Project.

16 **39-26.1-8. Utility-Scale Offshore Wind Project – Separate Proceedings.--** (a) Upon  
17 certification by the department of administration identifying the developer selected by the state to  
18 develop a utility-scale offshore wind farm, such developer may file an application under this  
19 section within one hundred eighty (180) days of such certification by the department. For the  
20 purposes of this section, “utility-scale offshore wind farm” shall mean a wind power project  
21 located offshore in the waters of Rhode Island or adjacent federal waters of at least one hundred  
22 (100) megawatts but not more than one hundred fifty (150) megawatts. The purpose of the  
23 application shall be for the applicant to request that the commission require a long term contract  
24 with the electric distribution company. Should the commission approve a contract pursuant to this  
25 section 39-26.1-8, it shall not be counted towards the minimum long-term contract capacity  
26 specified in section 39-26.1-2(7).

27 (b) The commission shall hold proceedings to review the proposal contained in the  
28 application. In reviewing the application, the commission shall determine whether the proposal is  
29 in the best interests of electric distribution customers in Rhode Island. In making this  
30 determination, the commission shall consider the following factors: (i) The economic impact and  
31 potential risks, if any, of the proposal on rates to be charged by the electric distribution company;  
32 (ii) The potential benefits of stabilizing long-term energy prices; (iii) Any other factor the  
33 commission determines necessary to be in the best interest of the rate payers.

34 (c) The application will contain the following information:

- 1           (i) A complete description of the proposed project,
- 2           (ii) A description of the legal entity that will enter into a long term contract,
- 3           (iii) A time line for permitting, licensing, and construction,
- 4           (iv) Pricing projected under the long term contract being sought, including prices for all  
5 market products that would be sold under the proposed long term contract, subject to any contract  
6 negotiations between the applicant and the electric distribution company,
- 7           (v) Projected electrical energy production profiles,
- 8           (vi) The proposed term for the long term contract,
- 9           (vii) Economic justification for the proposal, including projection of market prices,
- 10          (viii) A description of the economic benefits to Rhode Island, including the creation of  
11 jobs in Rhode Island,
- 12          (ix) All filings with state and federal regulatory agencies related to the proposal,
- 13          (x) All interconnection filings related to the proposal,
- 14          (xi) A proposed initial term sheet for a long-term contract between the applicant and the  
15 electric distribution company.
- 16          The information submitted in the application shall be subject to modification as a result  
17 of any negotiation of a contract ordered by the commission.
- 18          (d) The commission shall promulgate rules and regulations governing the proceedings  
19 outlined in this section by April 30, 2010.
- 20          (e) The applicant must serve copies of the application to the electric distribution company  
21 with whom the applicant is seeking a long term contract, the division of public utilities and  
22 carriers, the office of energy resources, the department of administration, the economic  
23 development corporation and the attorney general. Prior to the filing of any information, the  
24 applicant may seek a protective order to protect the confidentiality of information for good cause  
25 shown, to the extent that such information is proprietary or confidential business information, but  
26 unredacted copies of the entire filing must be provided to the parties identified in this paragraph,  
27 who shall be bound by any protective order that may be issued regarding further disclosure.
- 28          (f) The electric distribution company, the division of public utilities and carriers and the  
29 office of energy resources shall be mandatory parties to the proceeding. The applicant must pay  
30 for the reasonable costs of consultants or counsel that may be hired by the commission and the  
31 division for the proceeding, but in no case shall the applicant be liable for the costs in excess of  
32 \$100,000 for the division and \$100,000 for the commission, respectively.
- 33          (g) The commission shall issue a final order in the proceedings required by section 39-  
34 26.1-8(b) within eight (8) months of the filing of the application. If the commission determines

1 that the proposal meets the standard outlined in section 39-26.1- 8 (b), the commission shall  
2 require the electric distribution company to negotiate a long-term contract with the applicant. The  
3 applicant, however, may decline to continue with the project for any reason at any time during the  
4 process outlined in this section. The commission may require changes to the applicant’s proposal  
5 as a condition to a long-term contract, as the commission determines are just and reasonable. The  
6 contract shall contain terms that are commercially reasonable. The contract also shall require that  
7 the electric distribution company purchase all of the output of the entire project, unless otherwise  
8 authorized by the commission. The parties shall present a proposed contract for review by the  
9 commission within three (3) months of the order requiring negotiations. If the parties are unable  
10 to reach agreement on a contract within three (3) months of the order requiring negotiations the  
11 commission shall have the discretion to order the parties to arbitrate the dispute on an expedited  
12 basis. Once the contract terms are finalized by negotiation or arbitration, the contract shall be  
13 filed with the commission for review and approval. The commission shall approve the contract  
14 upon a finding that the contract is consistent with the purposes of this chapter and the standards  
15 set forth in section 39-26.1-1.8(b). The commission shall issue its final decision on the proposed  
16 contract within sixty (60) days of receiving the proposed contract. Upon execution of the contract,  
17 the provisions of sections 39-26.1-4 and 39-26.1-5 shall apply, and all costs incurred in the  
18 negotiation, administration, enforcement, and implementation of the agreement shall be recovered  
19 annually by the electric distribution company in electric distribution rates. To the extent the  
20 application cites significant economic benefits to Rhode Island that require commitments from  
21 the applicant outside of the long term contract to achieve such benefits, and those economic  
22 benefits are ultimately relied upon by the commission in authorizing a long term contract to be  
23 negotiated, the commission may require that appropriate legally binding commitments be made  
24 by the applicant as a condition to a long term contract, unless the commission finds that such  
25 commitments are not necessary.

26 (h) Notwithstanding any other provision of this section, the application process does not  
27 convey a legal entitlement to the applicant to a long term contract. Rather, the purpose of the  
28 proceeding is to leave the final decision as to whether a long term contract should be required to  
29 the discretion of the commission, subject to the standards outlined in this section and the purposes  
30 of this chapter.

31 (i) An applicant under this section shall not be permitted to submit a proposal under the  
32 solicitations required in section 39-26.1-3, except that such applicant shall be permitted to submit  
33 a proposal under section 39-26.1-7.

34 (j) Should a proceeding pursuant to this section result in the commission not ordering the

1 distribution company to enter into a long-term contract for a utility-scale offshore wind project, or  
2 should the certified developer fail to file an application with the commission within one hundred  
3 eighty (180) days of certification, the certification shall be deemed void. In such case, if the  
4 commission determines it is in the interest of electric distribution customers to have another  
5 utility-scale project considered for a long term contract, the commission has the discretion to  
6 request the department of administration to certify a different developer to make another proposal  
7 for a utility-scale offshore wind project per this section, provided that the commission makes such  
8 request within ninety (90) days of the certification becoming void. If the commission makes such  
9 request, the department of administration may, but is not required to, certify another project and  
10 shall have ninety days to submit another certification. If such certification is not made within the  
11 time allowed, no further action shall be taken by the commission pursuant to this section. Under  
12 no circumstances is a distribution company required to enter into more than one contract under  
13 this section 39-26.1-8.

14 (k) Approval of a contract under this section shall not be interpreted to prevent, hinder or  
15 diminish the ability of any offshore wind project or developer to pursue, finance, seek the  
16 development of, or secure permits or electrical interconnection for offshore wind projects in or  
17 adjacent to the state, or whose output may be utilized in the state.

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

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LC00102/SUB A/2  
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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO PUBLIC UTILITIES AND CARRIERS

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1           This act would create long-term contracting standards for the development of renewable  
2 energy.

3           This act would take effect upon passage.

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LC00102/SUB A/2  
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