

**2010 -- S 2819 SUBSTITUTE A**

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**STATE OF RHODE ISLAND**

**IN GENERAL ASSEMBLY**

**JANUARY SESSION, A.D. 2010**

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A N A C T

RELATING TO PUBLIC UTILITIES AND CARRIERS -- CONTRACTING STANDARD FOR  
RENEWABLE ENERGY

Introduced By: Senators Sosnowski, Miller, Felag, Ruggerio, and McCaffrey

Date Introduced: April 28, 2010

Referred To: Senate Environment & Agriculture

It is enacted by the General Assembly as follows:

1           SECTION 1. Section 39-26.1-7 of the General Laws in Chapter 39-26.1 entitled "Long-  
2   Term Contracting Standard for Renewable Energy" is hereby amended to read as follows:  
3           **39-26.1-7. Town of New Shoreham Project.** -- (a) The general assembly finds it is in  
4 the public interest for the state to facilitate the construction of a small-scale offshore wind  
5 demonstration project off the coast of Block Island, including an undersea transmission cable that  
6 interconnects Block Island to the mainland in order to: position the state to take advantage of the  
7 economic development benefits of the emerging offshore wind industry; promote the  
8 development of renewable energy sources that increase the nation's energy independence from  
9 foreign sources of fossil fuels; reduce the adverse environmental and health impacts of traditional  
10 fossil fuel energy sources; and provide the Town of New Shoreham with an electrical connection  
11 to the mainland. To effectuate these goals, and notwithstanding any other provisions of the  
12 general or public laws to the contrary, the Town of New Shoreham project, its associated power  
13 purchase agreement, transmission arrangements, and related costs are authorized pursuant to the  
14 process and standards contained in this section. The Narragansett Electric Company is hereby  
15 authorized to enter into an amended power purchase agreement with the developer of offshore  
16 wind for the purchase of energy, capacity, and any other environmental and market attributes, on  
17 terms that are consistent with the power purchase agreement that was filed with the commission  
18 on December 9, 2009 in docket 4111, and amendments changing dates and deadlines, provided

1 that the pricing terms of such agreement are amended as more fully described in subsection 39-  
2 26.1-7(e), in addition to other amendments that are made to take into account the provisions of  
3 this section as amended since the filing of the agreement in docket 4111. Any amendments shall  
4 ensure that the pricing can only be lower, and never exceed, the original pricing included in the  
5 power purchase agreement that was reviewed in docket 4111. ~~On or before August 15, 2009, the~~  
6 ~~electric distribution company shall solicit proposals for one newly developed renewable energy~~  
7 ~~resources project of ten (10) megawatts or less that includes a proposal to enhance the electric~~  
8 ~~reliability and environmental quality of the Town of New Shoreham. The electric distribution~~  
9 ~~company shall select a project for negotiating a contract that shall be conditioned upon approval~~  
10 ~~by the commission. Negotiations shall proceed in good faith to achieve a commercially~~  
11 ~~reasonable contract. Should the distribution company and the selected party agree to a contract,~~  
12 ~~the contract shall be filed with the commission no later than October 15, 2009 for commission~~  
13 ~~approval. The commission shall review the contract and issue an order approving or disapproving~~  
14 ~~the contract on or before January 31, 2010. If the parties are unable to reach agreement on a~~  
15 ~~contract prior to October 15, 2009, an unsigned copy shall be filed by the electric distribution~~  
16 ~~company prior to that same date, and the commission shall have the discretion to order the parties~~  
17 ~~to arbitrate the dispute on an expedited basis. Notwithstanding anything in this section to the~~  
18 ~~contrary, and notwithstanding any solicitation made pursuant to this section, the distribution~~  
19 ~~company and the selected party may agree to a contract for a~~ The demonstration project subject to  
20 the amended power purchase agreement shall ~~that includes~~ include up to (but not exceeding) eight  
21 (8) wind turbines with aggregate nameplate capacity of no more than thirty (30) megawatts,  
22 ~~subject to and conditioned upon the approval of the commission,~~ even if the actual capacity factor  
23 of the project results in the project technically exceeding ten (10) megawatts.

24 (b) The amended power purchase agreement shall be filed with the Public Utilities  
25 Commission. Upon the filing of the amended power purchase agreement, the commission shall  
26 open a new docket. The commission shall allow the parties to docket 4111 to become parties in  
27 the new docket who may file testimony within fifteen (15) days of the filing of the amended  
28 agreement. The commission may allow other interventions on an expedited basis, provided they  
29 comply with the commission standards for intervention. The developer shall provide funding for  
30 the economic development corporation to hire an expert experienced in power markets,  
31 renewable energy project financing, and power contracts who shall provide testimony regarding  
32 the terms and conditions of the power purchase agreement to assist the commission in its review,  
33 provided that the developer shall be precluded from influencing the choice of expert, which shall  
34 be in the sole discretion of the economic development corporation. This testimony shall be filed

1 within twenty (20) days after the filing of the amended power purchase agreement. The parties  
2 shall have the right to respond to the testimony of this expert through oral examination at the  
3 evidentiary hearings. The commission shall hold one public comment hearing within five (5) days  
4 after the filing of the expert testimony. Evidentiary hearings shall commence no later than thirty  
5 (30) days from the filing of the amended power purchase agreement.

6 (c) The commission shall review the amended power purchase agreement taking into  
7 account the state's policy intention to facilitate the development of a small offshore wind project  
8 in Rhode Island waters, while at the same time interconnecting Block Island to the mainland. The  
9 commission shall review the amended power purchase agreement and shall approve it if:

10 (i) The amended agreement contains terms and conditions that are commercially  
11 reasonable;

12 (ii) The amended agreement contains provisions that provide for a decrease in pricing if  
13 savings can be achieved in the actual cost of the project pursuant to subsection 39-26.1-7(e);

14 (iii) The amended agreement is likely to provide economic development benefits,  
15 including: facilitating new and existing business expansion and the creation of new renewable  
16 energy jobs; the further development of Quonset Business Park; and, increasing the training and  
17 preparedness of the Rhode Island workforce to support renewable energy projects; and

18 (iv) The amended power purchase agreement is likely to provide environmental benefits,  
19 including the reduction of carbon emissions. An advisory opinion on the findings of economic  
20 benefit set forth in (iii) above shall be provided by the Rhode Island economic development  
21 corporation and an advisory opinion on the environmental benefits set forth in (iv) above shall be  
22 filed by the Rhode Island department of environmental management. The advisory opinions shall  
23 be filed with the commission within twenty (20) days of filing of the amended power purchase  
24 agreement. The commission shall give substantial deference to the factual and policy conclusions  
25 set forth in the advisory opinions in making the required findings. Notwithstanding any other  
26 provisions of the general laws to the contrary, for the purposes of this section, "commercially  
27 reasonable" shall mean terms and pricing that are reasonably consistent with what an experienced  
28 power market analyst would expect to see for a project of a similar size, technology and location,  
29 and meeting the policy goals in subsection (a) of this section.

30 (d) The commission shall issue a written decision to accept or reject the amended power  
31 purchase agreement, without conditions, no later than forty-five (45) days from the filing of the  
32 amended power purchase agreement, without delay or extension of the timeframes contained in  
33 this section. Any review of the commission's decision shall be according to chapter 5 of title 39,  
34 and the supreme court shall advance any proceeding under this section so that the matter is

1 afforded precedence on the calendar and shall be heard and determined with as little delay as  
2 possible. ~~Upon approval of the contract, the~~ The provisions of section 39-26.1-4 and the  
3 provisions of ~~paragraphs (a); subsections~~ (b), (c), (d), and (f) of section 39-26.1-5 shall apply, and  
4 all costs incurred in the negotiation, administration, enforcement, transmission engineering, and  
5 implementation of the project and agreement shall be recovered annually by the electric  
6 distribution company in electric distribution rates. ~~To the extent that there are benefits for~~  
7 ~~customers of the Block Island Power Company or its successor, the commission shall determine~~  
8 ~~an allocation of cost responsibility between customers of the electric distribution company and~~  
9 ~~customers of Block Island Power Company or its successor after the cost estimates are filed with~~  
10 ~~the commission, but the commission need not determine the final cost allocation at the time the~~  
11 ~~commission considers and/or approves the contract between the electric distribution company and~~  
12 ~~the project developer. The allocation of costs shall assure that individual customers in the Town~~  
13 ~~of New Shoreham pay higher charges related to the project on their individual bills than any~~  
14 ~~charges for the same project that may be included in individual bills of customers of the electric~~  
15 ~~distribution company. The commission shall provide for an appropriate rate design and billing~~  
16 ~~method between the electric distribution company and Block Island Power Company at the~~  
17 ~~appropriate time.~~ The pricing under the agreement shall not have any precedential effect for  
18 purposes of determining whether other long-term contracts entered into pursuant to this chapter  
19 are commercially reasonable.

20 (e) Cap and lower price. (i) The amended power purchase agreement subject to  
21 subsection 39-26.1-7(a) shall provide for terms that shall decrease the pricing if savings can be  
22 achieved in the actual cost of the project, with all realized savings allocated to the benefit of  
23 ratepayers. (ii) The amended power purchase agreement shall also provide that the initial fixed  
24 price contained in the signed power purchase agreement submitted in docket 4111 shall be the  
25 maximum initial price, and any realized savings shall reduce such price. After making any such  
26 reduction to the initial price based on realized savings, the price for each year of the amended  
27 power purchase agreement shall be fixed by the terms of said agreement. (iii) The amended  
28 power purchase agreement shall require that the costs of the project shall be certified by the  
29 developer. An independent third-party acceptable to the division of public utilities and carriers  
30 shall within thirty (30) days of this certification by the developer, verify the accuracy of such  
31 costs at the completion of the construction of the project. The costs of this verification, up to  
32 twenty-five thousand dollars (\$25,000), shall be paid for by the developer. Upon receipt of such  
33 third-party verification, the division shall notify the Narragansett Electric Company of the final  
34 costs. The public utilities commission shall reduce the expense to ratepayers consistent with a

1 verified reduction in the project costs.

2 ~~(b)(f) The solicitation shall require that each proposal include provisions for~~ project shall  
3 include a transmission cable between the Town of New Shoreham and the mainland of the state.  
4 The electric distribution company, at its option, may ~~elect propose~~ to own, operate, or otherwise  
5 participate in such transmission cable project, ~~subject to commission approval~~. The electric  
6 distribution company, however, has the option to decline to own, operate, or otherwise participate  
7 in the transmission cable project, ~~even if the commission approves such arrangements~~. The  
8 electric distribution company may elect to purchase the transmission cable and related facilities  
9 from the developer or an affiliate of the developer, pursuant to the terms of a transmission  
10 facilities purchase agreement negotiated between the electric distribution company and the  
11 developer or its affiliate, an unexecuted copy of which shall be provided to the division of public  
12 utilities and carriers for the division's consent to execution. The division shall have twenty (20)  
13 days to review the agreement. If the division independently determines that the terms and pricing  
14 of the agreement are reasonable, taking into account the intention of the legislature to advance the  
15 project as a policy-making matter, the division shall provide its written consent to the execution  
16 of the transmission facilities purchase agreement. Once written consent is provided, the electric  
17 distribution company and its transmission affiliate are authorized to make a filing with the federal  
18 energy regulatory commission to put into effect transmission rates to recover all of the costs  
19 associated with the purchase of the transmission cable and related facilities and the annual  
20 operation and maintenance. The revenue requirement for the annual cable costs shall be  
21 calculated in the same manner that the revenue requirement is calculated for other transmission  
22 facilities in Rhode Island for local network service under the jurisdiction of the federal energy  
23 regulatory commission. The division shall be authorized to represent the State of Rhode Island in  
24 those proceedings before the federal energy regulatory commission, including the authority to  
25 enter into any settlement agreements on behalf of the state to implement the intention of this  
26 section. The division shall support transmission rates and conditions that allow for the costs  
27 related to the transmission cable and related facilities to be charged in transmission rates in a  
28 manner that socializes the costs throughout Rhode Island. Should the electric distribution  
29 company own, operate, and maintain the cable, the annual costs incurred by the electric  
30 distribution company directly or through transmission charges shall be recovered annually  
31 through a fully reconciling rate adjustment from customers of the electric distribution company  
32 and/or from the Block Island Power Company or its successor, subject to any federal approvals  
33 that may be required by law; ~~provided, however, the parties shall use all reasonable efforts to~~  
34 ~~obtain socialization of the costs of the cable in New England transmission rates administered by~~

1 ~~the ISO New England, to the extent permitted.~~ The allocation of the costs related to the  
2 transmission cable through transmission rates or otherwise shall be structured so that the  
3 estimated impact on the typical residential customer bill for such transmission costs for customers  
4 in the Town of New Shoreham shall be higher than the estimated impact on the typical residential  
5 customer bill for customers on the mainland of the electric distribution company. This higher  
6 charge for the customers in the Town of New Shoreham shall be developed by allocating the  
7 actual cable costs based on the annual peak demands of the Block Island Power Company and the  
8 electric distribution company, and these resultant costs recovered in the per kWh charges of each  
9 company. In any event, the difference in the individual charge per kWh or per customer/month  
10 shall not exceed the ratio of average demand to peak demand for Block Island Power Company  
11 relative to the electric distribution company, currently at 1.8 to 1.0 respectively. To the extent that  
12 any state tariffs or rates must be put into effect in order to implement the intention of this section,  
13 the public utilities commission shall accept filings of the same and shall approve them. ~~costs shall~~  
14 ~~be determined by the commission and assure that individual customers in the Town of New~~  
15 ~~Shoreham pay higher charges related to the cable on their individual bills than any charges for the~~  
16 ~~same project that may be included in individual bills of customers of the electric distribution~~  
17 ~~company.~~

18 (e)(g) Any charges incurred by the Block Island Power Company or its successor  
19 pursuant to this section or other costs incurred by the Block Island Power Company in  
20 implementing this section, including the cost of participation in regulatory proceedings in the  
21 state or at the federal energy regulatory commission shall be recovered annually in rates through a  
22 fully reconciling rate adjustment, subject to approval by the commission. If the electric  
23 distribution company owns, operates, or otherwise participates in the transmission cable project,  
24 pursuant to subsection 39-26.1-7(b) the provisions of section 39-26.1-4 shall not apply to the  
25 cable cost portion of the Town of New Shoreham Project.

26 (h) Any contract entered into pursuant to this section shall count as part of the  
27 minimum long-term contract capacity.

28 (i) If the electric distribution company elects not to own the transmission cable, the  
29 developer may elect to do so directly, through an affiliate, or a third-party and the power purchase  
30 agreement pricing shall be adjusted to allow the developer, an affiliate or a third-party, to recover  
31 the costs (including financing costs) of the transmission facilities, subject to complying with the  
32 terms as set forth in the power purchase agreement between the developer and the electric  
33 distribution company.

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

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO PUBLIC UTILITIES AND CARRIERS -- CONTRACTING STANDARD FOR  
RENEWABLE ENERGY

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1           This act would authorize the Narragansett Electric Company to enter into an amended  
2 agreement with the developer of offshore wind for the purchase of energy, capacity and other  
3 environmental and market attributes as long as the provisions of the general laws pertaining to the  
4 Town of New Shoreham project are complied with.

5           This act would take effect upon passage.

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