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LC02700
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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2006

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A N A C T

RELATING TO PUBLIC UTILITIES AND CARRIERS

Introduced By: Senators Walaska, Sosnowski, Paiva-Weed, Tassoni, and J Montalbano

Date Introduced: March 08, 2006

Referred To: Senate Financial, Technology, Regulatory

It is enacted by the General Assembly as follows:

1 SECTION 1. This act shall be known as and may be cited as the "Gas and Electric
2 System Reliability and Least-Cost Pricing Act of 2006". The general purposes of this act are to:
3 (1) strengthen system reliability through diversification of energy resources used for distributed
4 generation and demand response and load/management; (2) provide for least-cost procurement
5 for gas and electric supply, which includes cost-effective energy efficiency and energy
6 conservation measures; (3) extends through the year 2020 aggregated purchasing for residential
7 customers and commercial industrial customers that are not served by the competitive market;
8 and (4) establish an open process with legislative oversight for implementation of the foregoing
9 purposes.

10 SECTION 2. Sections 39-1-1 and 39-1-27.3 of the General Laws in Chapter 39-1 entitled
11 "Public Utilities Commission" are hereby amended to read as follows:

12 **39-1-1. Declaration of policy -- Purposes.** -- (a) The general assembly finds and
13 therefore declares that:

14 (1) The businesses of distributing electrical energy, producing and transporting
15 manufactured and natural gas, operating water works and furnishing supplies of water for
16 domestic, industrial, and commercial use, offering to the public transportation of persons and
17 property, furnishing and servicing telephonic and wireless audio and visual communication
18 systems, and operation of community antenna television systems are affected with a public
19 interest;

1 (2) Supervision and reasonable regulation by the state of the manner in which such
2 businesses construct their systems and carry on their operations within the state are necessary to
3 protect and promote the convenience, health, comfort, safety, accommodation, and welfare of the
4 people, and are a proper exercise of the police power of the state;

5 (3) Preservation of the state's resources, commerce, and industry requires the assurance
6 of adequate public transportation and communication facilities, water supplies, and an abundance
7 of energy, all supplied to the people with reliability, at economical cost, and with due regard for
8 the preservation and enhancement of the environment, the conservation of natural resources,
9 including scenic, historic, and recreational assets, and the strengthening of long-range, land-use
10 planning.

11 (b) It is hereby declared to be the policy of the state to provide fair regulation of public
12 utilities and carriers in the interest of the public, to promote availability of adequate, efficient and
13 economical energy, communication, and transportation services and water supplies to the
14 inhabitants of the state, to provide just and reasonable rates and charges for such services and
15 supplies, without unjust discrimination, undue preferences or advantages, or unfair or destructive
16 competitive practices, and to co-operate with other states and agencies of the federal government
17 in promoting and coordinating efforts to achieve realization of this policy.

18 (c) To this end, there is hereby vested in the public utilities commission and the division
19 of public utilities and carriers the exclusive power and authority to supervise, regulate, and make
20 orders governing the conduct of companies offering to the public in intrastate commerce energy,
21 communication, and transportation services and water supplies for the purpose of increasing and
22 maintaining the efficiency of the companies, according desirable safeguards and convenience to
23 their employees and to the public, and protecting them and the public against improper and
24 unreasonable rates, tolls and charges by providing full, fair, and adequate administrative
25 procedures and remedies, and by securing a judicial review to any party aggrieved by such an
26 administrative proceeding or ruling.

27 (d) The legislature also finds and declares, [as of 1996](#), the following:

28 (1) That lower retail electricity rates would promote the state's economy and the health
29 and general welfare of the citizens of Rhode Island;

30 (2) That current research and experience indicates that greater competition in the
31 electricity industry would result in a decrease in electricity rates over time;

32 (3) That greater competition in the electricity industry would stimulate economic growth;

33 (4) That it is in the public interest to promote competition in the electricity industry and
34 to establish performance based ratemaking for regulated utilities;

1 (5) That in connection with the transition to a more competitive electric utility industry,
2 public utilities should have a reasonable opportunity to recover transitional costs associated with
3 commitments prudently incurred in the past pursuant to their legal obligations to provide reliable
4 electric service at reasonable costs;

5 (6) That it shall be the policy of the state to encourage, through all feasible means and
6 measures, states where fossil-fueled electric generating units producing air emissions affecting
7 Rhode Island air quality are located to reduce such emissions over time to levels that enable cost
8 effective attainment of environmental standards within Rhode Island;

9 (7) That in a restructured electrical industry the same protections currently afforded to
10 low income customers shall continue.

11 (e) The legislature further finds and declares as of 2006:

12 (1) That prices of energy, including especially fossil-fuels and electricity, are rising faster
13 than the cost of living and are subject to sharp fluctuations, which conditions create hardships for
14 many households, institutions, organizations, and businesses in the state;

15 (2) That while utility restructuring has brought some benefits, notably in transmission and
16 distribution costs and more efficient use of generating capacities, it has not resulted in
17 competitive markets for residential and small commercial industrial customers, lower overall
18 prices, or greater diversification of energy resources used for electrical generation;

19 (3) That the state's economy and the health and general welfare of the people of Rhode
20 Island benefit when energy supplies are reliable and least-cost; and

21 (4) That it is a necessary move beyond basic utility restructuring in order to secure for
22 Rhode Island, to the maximum extent reasonably feasible, the benefits of reasonable and stable
23 rates, least-cost procurement, and system reliability that includes energy resource diversification,
24 distributed generation, and load management.

25 **39-1-27.3. Electric distribution companies required to provide retail access,**
26 **standard offer and last resort service.** -- (a) To promote economic development and the
27 creation and preservation of employment opportunities within the state, each electric distribution
28 company shall offer retail access from nonregulated power producers to all customers.

29 (b) Through year 2009, and effective July 1, 2007, through year 2020, each electric
30 distribution company shall arrange for a standard power supply offer ("standard offer") to
31 customers that have not elected to enter into power supply arrangements with other nonregulated
32 power suppliers. The rates that are charged by the electric distribution company to customers for
33 standard offer service shall be approved by the commission and shall be designed to recover the
34 electric distribution company's costs and no more than the electric distribution company's costs;

1 provided, that the commission may establish and/or implement a rate that averages the costs over
2 periods of time. The electric distribution company shall not be entitled to recover any profit
3 margin on the sale of standard offer power, except with approval of the commission as may be
4 necessary to implement effectively, system reliability and least-cost procurement. The electric
5 distribution company will be entitled to recover its costs incurred from providing the standard
6 offer arising out of: (1) wholesale standard offer supply agreements with power suppliers in effect
7 prior to January 1, 2002; (2) power supply arrangements that are approved by the commission
8 after January 1, 2002; (3) power supply arrangements made pursuant to section 39-1-27.3.1; and
9 (4) any other power supply related arrangements prudently made after January 1, 2002 to provide
10 standard offer supply or to mitigate standard offer supply costs, including costs for system
11 reliability, procurement and least-cost procurement, as provided for in section 39-1-27.7;
12 provided, however, to the extent there are any cost recovery matters relating to the provision of
13 standard offer service that have been deferred and are pending before the commission as of the
14 effective date of this section, such cost recovery matters shall be governed by the statutory
15 provisions in effect on the date of the action of the commission to defer its decision on the cost
16 recovery matter. Subject to commission approval, the electric distribution company may enter
17 into financial contracts designed to hedge fuel-related or other variable costs associated with
18 power supply arrangements and the costs of any such financial contracts shall be recoverable in
19 standard offer rates. The electric distribution company's standard offer revenues and its standard
20 offer costs shall be accounted for and reconciled with interest at least annually. Except as
21 otherwise may be directed by the commission in order to accomplish purposes established by law,
22 any ~~Any~~ over recoveries shall be refunded and any under recoveries shall be recovered by the
23 electric distribution company through a uniform adjustment factor approved by the commission.
24 The commission shall have the discretion to apply such adjustment factor in any given instance to
25 all customers or to such specific class of customers that the commission deems equitable under
26 the circumstances provided that the distribution company recovers any under recovery in its
27 entirety. Once a customer has elected to enter into a power supply arrangement with a
28 nonregulated power producer, the electric distribution company shall not be required to arrange
29 for the standard offer to such customer except as provided in section 39-1-27.3.1. No customer
30 who initially elects the standard offer and then chooses an alternative supplier shall be required to
31 pay any withdrawal fee or penalty to the provider of the standard offer unless such a penalty or
32 withdrawal fee was agreed to as part of a contract; however, no residential customer shall be
33 required to pay a penalty or withdrawal fee for choosing an alternative supplier. Nothing in this
34 subsection shall be construed to restrict the right of any nonregulated power producer to offer to

1 sell power to customers at a price comparable to that of the standard offer specified pursuant to
2 this subsection. The electric distribution company may not terminate an existing standard offer
3 wholesale supply agreement without the written consent of the division.

4 (c) In recognition that electricity is an essential service, each electric distribution
5 company shall arrange for a last resort power supply for customers who have left the standard
6 offer for any reason and are not otherwise receiving electric service from nonregulated power
7 producers. The electric distribution company shall procure last resort service supply from
8 wholesale power suppliers. Prior to acquiring last resort supply, the electric distribution company
9 will file with the commission a supply acquisition plan or plans that include the acquisition
10 procedure, the pricing options being sought, and a proposed term of service for which last resort
11 service will be acquired. The term of service may be short or long term and acquisitions may
12 occur from time to time and for more than one supplier for segments of last resort service load
13 over different terms, if appropriate. All the components of the acquisition plans, however, shall be
14 subject to commission review and approval. Once an acquisition plan is approved by the
15 commission, the electric distribution company shall be authorized to acquire last resort service
16 supply consistent with the approved acquisition plan and recover its costs incurred from
17 providing last resort service pursuant to the approved acquisition plan. The commission may
18 periodically review the acquisition plan to determine whether it should be prospectively modified
19 due to changed market conditions. The commission shall have the authority and discretion to
20 approve special tariff conditions and rates proposed by the electric distribution company that the
21 commission finds are in the public interest, including without limitation: (1) short and long term
22 optional service at different rates; (2) term commitments or notice provisions before individual
23 customers leave last resort service; (3) last resort service rates for residential or any other special
24 class of customers that are different than the rates for other last resort customers; and/or (4) last
25 resort service rates that are designed to encourage any class of customers to return to the market.
26 The electric distribution company's last resort service revenues and its last resort service costs
27 shall be accounted for and reconciled with interest at least annually. Any over recoveries shall be
28 refunded and any under recoveries shall be recovered by the electric distribution company
29 through a uniform adjustment factor approved by the commission. The commission shall have the
30 discretion to apply such adjustment factor in any given instance to all customers or to such
31 specific class of customers that the commission deems equitable under the circumstances
32 provided that the distribution company recovers any under recovery in its entirety. Nothing in this
33 section shall be construed to prohibit an electric distribution company from terminating service
34 provided hereunder in accordance with commission rules and regulations in the event of

1 nonpayment of this service. The commission may promulgate regulations to implement this
2 section including the terms and conditions upon which last resort service is offered and provided
3 to customers.

4 (d) If a customer being served by a nonregulated power producer pays any taxes assessed
5 for electric service to the electric distribution company and the electric distribution company
6 forwards such tax payment for the power portion of the bill to a nonregulated power producer for
7 payment by the nonregulated power producer to the state, neither the customer nor the electric
8 distribution company shall be liable for such taxes forwarded if the nonregulated power producer
9 fails to remit such taxes to the state for any reason.

10 SECTION 3. Chapter 39-1 of the General Laws entitled "Public Utilities Commission" is
11 hereby amended by adding thereto the following sections:

12 **39-1-27.7. System reliability and least-cost procurement.** – (a) The commission shall
13 establish not later than July 1, 2008, standards for energy supply procurement and system
14 reliability, which shall include standards and guidelines for:

15 (1) System reliability procurement, including, but not limited to:

16 (i) Procurement of energy supply from diverse sources, including, but not limited to,
17 renewable energy resources as defined in chapter 39-26;

18 (ii) Distributed generation, including, but not limited to, renewable energy resources and
19 combined heat and power systems;

20 (iii) Demand response, including, but not limited to, distributed generation, back-up
21 generation and on-demand usage reduction;

22 (iv) To effectuate the purposes of this division, the commission may establish standards
23 and/or rates: (i) for qualifying distributed generation, demand response, and renewable energy
24 resources; (ii) for net-metering at non-discriminatory rates; (iii) for back-up power and/or standby
25 rates that reasonably facilitate the development of distribute generation; and (iv) for such other
26 matters as the commission may find necessary or appropriate.

27 (2) Least-cost procurement, which shall include procurement of energy efficiency and
28 energy conservation measures that are prudent and reliable when such measures are lower cost
29 than acquisition of additional supply, including supply for periods of high demand;

30 (b) The standards and guidelines provided for by subsection (a) shall be subject to
31 periodic review and as appropriate amendment by the commission, which review will conducted
32 not less frequently than every three (3) years after the adoption of the standards and guidelines.

33 (c) The commission shall make findings and recommendations not later than July 1,
34 2008, with regard to implementing provisions, programs, and/or rates based on the cost of supply

1 and of least-cost procurement during periods and times of high demand for the purposes of
2 mitigating and/or reducing peak demand and increasing load factors.

3 (d) The commissioner of the office of energy resources and the energy resources council,
4 either jointly or separately, shall provide the commission findings and recommendations with
5 regard to system reliability procurement, least-cost procurement, and time of use pricing on or
6 before March 1, 2008, and triennially on or before March 1 thereafter through March 1, 2017.

7 **39-1-27.8. Supply procurement portfolio.** – (a) Each electric distribution company and
8 each company providing gas to end-users and/or retail customers shall submit a proposed supply
9 portfolio to the commission not later than October 1, 2008, and each October 1 thereafter through
10 October 1, 2019, which shall include proposed procurements to be made in accordance with the
11 standards and guidelines of the commission for least-cost procurement and, as applicable, for
12 system reliability procurement. Said procurement portfolio shall consider the acquisition of
13 energy efficiency programs and projects as a resource equal to energy supply. Said procurement
14 portfolios shall be subject to the review and approval of the commission.

15 (b) If the commission shall determine that the implementation of a procurement portfolio
16 has caused or is likely to cause under-recovery of overhead and fixed costs of the company
17 implementing said procurement portfolio, the commission may establish a mandatory rate
18 adjustment clause for the company so effected in order to provide for full recovery of reasonable
19 and prudent overhead and fixed costs.

20 **39-1-27.9. Office of energy resources participation.** – In any inquiry into, or
21 examination of, any matter wherein tariffs, rates, or charges for or the cost of or the quality,
22 standard, or extent of any service or commodities by a gas or electric utility are requested by the
23 division or the commission, and in every formal hearing conducted by the commission, the office
24 of energy resources shall be deemed to be an interested party for all purposes, and as such, shall
25 receive all notices and may file complaints, institute proceedings, participate as a party in
26 administrative hearings.

27 **39-1-27.10. Utility restructuring oversight commission.** – (a) There is hereby created
28 an oversight commission to be known as the energy oversight commission, consisting of eight (8)
29 members: four (4) of whom shall be appointed from the house of representatives to be appointed
30 by the speaker, at least one of whom shall be from the minority party; and four (4) of whom shall
31 be appointed from the senate to be appointed by the president of the senate, at least one of whom
32 shall be from the minority party. From the house members of the commission, the speaker shall
33 designate a house co-chairperson, and from the senate members of the commission, the president
34 shall designate a senate co-chairperson.

1 **(b) The purposes of the commission shall be: (1) to study all aspects of the extension of**
2 **standard offer service through 2020, the development and implementation of system reliability**
3 **procurement, least-cost procurement, time of use pricing and load management, and programs of**
4 **assistance to low income households; (2) to monitor the establishment and development of the**
5 **office of energy resources; and (3) to recommend any changes in the law that may be needed or**
6 **desirable.**

7 **(c) Forthwith upon the passage of this act, the members shall meet at the call of the co-**
8 **chairs. Vacancies in said commission shall be filled in the manner as the original appointment.**
9 **Five (5) members of the commission shall constitute a quorum.**

10 **(d) The commission is empowered to appoint committees, which may include persons**
11 **who are not members of the commission.**

12 **(e) All departments and agencies of the state shall furnish such advice and information,**
13 **documentary and otherwise, to said commission and its agents as necessary or desirable to**
14 **accomplish the purpose set forth in this section. The speaker is hereby authorized and directed to**
15 **provide suitable quarters for the commission. The commission shall report findings and**
16 **recommendations to the general assembly annually on or before Februarys 15, 2007. The**
17 **commission shall expire on March 31, 2009.**

18 SECTION 4. Sections 39-2-1.2 and 39-2-1.4 of the General Laws in Chapter 39-2
19 entitled "Duties of Utilities and Carriers" are hereby amended to read as follows:

20 **39-2-1.2. Utility base rate -- Advertising, demand side management and renewables.**

21 **-- (a) In addition to costs prohibited in section 39-1-27.4(b), no public utility distributing or**
22 **providing heat, electricity, or water to or for the public shall include as part of its base rate any**
23 **expenses for advertising, either direct or indirect, which promotes the use of its product or**
24 **service, or is designed to promote the public image of the industry. No public utility may furnish**
25 **support of any kind, direct, or indirect, to any subsidiary, group, association, or individual for**
26 **advertising and include the expense as part of its base rate. Nothing contained in this section shall**
27 **be deemed as prohibiting the inclusion in the base rate of expenses incurred for advertising,**
28 **informational or educational in nature, which is designed to promote public safety conservation of**
29 **the public utility's product or service. The public utilities commission shall promulgate such rules**
30 **and regulations as are necessary to require public disclosure of all advertising expenses of any**
31 **kind, direct or indirect, and to otherwise effectuate the provisions of this section.**

32 **(b) Effective as of January 1, 2003, and for a period of ten (10) years thereafter, each**
33 **electric distribution company shall include charges of 2.0 mills per kilowatt-hour delivered to**
34 **fund demand side management programs and 0.3 mills per kilowatt-hour delivered to fund**

1 renewable energy programs. Existing charges for these purposes and their method of
2 administration shall continue through December 31, 2002. Thereafter, the electric distribution
3 company shall establish two (2) separate accounts, one for demand side management programs,
4 which shall be administered and implemented by the distribution company, subject to the
5 regulatory reviewing authority of the commission, and one for renewable energy programs, which
6 shall be administered by the state energy office.

7 During the ten (10) year period the commission may, in its discretion, after notice and
8 public hearing, increase the sums for demand side management and renewable resources;
9 thereafter, the commission shall, after notice and public hearing, determine the appropriate charge
10 for these programs. The energy office and the administrator of the renewable energy programs
11 shall seek to secure for the state an equitable and reasonable portion of renewable energy credits
12 or certificates created by projects funded through those programs. As used in this section,
13 "renewable energy resources" shall mean power generation technologies as defined in section 39-
14 26-5, "eligible renewable energy resources". Technologies for converting solar energy for space
15 heating or generating domestic hot water may also be funded through the renewable energy
16 programs, so long as these technologies are installed on housing projects that have been certified
17 by the executive director of the Rhode Island housing and mortgage finance corporation as
18 serving low-income Rhode Island residents. Fuel cells may be considered an energy efficiency
19 technology to be included in demand sided management programs. Special rates for low income
20 customers in effect as of August 7, 1996 shall be continued, and the costs of all of these discounts
21 shall be included in the distribution rates charged to all other customers. Nothing in this section
22 shall be construed as prohibiting an electric distribution company from offering any special rates
23 or programs for low income customers which are not in effect as of August 7, 1996, subject to the
24 approval by the commission.

25 (c) The director of the state energy office is authorized and shall enter into a contract
26 with a contractor for the effective administration of the renewable energy programs funded by
27 this section. The director shall initiate the competitive bid process by the issuance and
28 advertisement of specifications and request for proposals, on or before September 1, 2002. The
29 contract resulting from the competitive bid process shall be awarded to become effective for a
30 three (3) year period commencing no later than January 1, 2003. A competitive bid and contract
31 award for administration of the renewable energy programs shall occur every three (3) years
32 thereafter.

33 (d) Effective July 1, 2006, and for a period of seven (7) years thereafter, each gas
34 distribution company shall include, with the approval of the commission, a charge of up to three

1 cents (\$0.03) per therm delivered to demand side management programs, including, but not
2 limited to, programs for cost-effective energy efficiency, energy conservation, combined heat and
3 power systems, and weatherization services for low income households. The commission shall
4 consider as part of any rate proceeding that would reduced rates for gas, establishing a demand
5 side management program for gas of up to three cents (\$0.03) per therm delivered. After July 1,
6 2008, the commission may at its discretion increase the sums for demand side management above
7 three cents (\$0.03) per therm delivered provided that the commission determines that doing so
8 would be cost-effective and would facilitate least-cost procurement. The gas company shall
9 establish a separate account for demand side management programs, which shall be administered
10 and implemented by the distribution company, subject to the regulatory reviewing authority of the
11 commission.

12 (e) The commission, upon the recommendation of the office of energy resources, may
13 provide for the coordinated and/or integrated administration of electric and gas demand side
14 management programs in order to enhance the effectiveness of the programs. Such coordinated
15 and/or integrated administration may be through on or more third-party entities designated by the
16 commission pursuant to a competitive selection process.

17 **39-2-1.4. Reasonable backup or supplemental rates.** -- (a) Electricity produced by
18 cogeneration and small power production can be of benefit to the public as part of the total energy
19 supply of the entire electric grid of the state or consumed by a cogenerator or small power
20 producer. Subject to compliance with applicable rules governing such service, public utilities
21 shall provide transmission or distribution service to enable a retail customer to transmit electrical
22 power generated by the customer at one location to the customer's facilities at another location, if
23 the commission finds that the provision of this service, and the charges, terms, and other
24 conditions associated with the provision of this service, are not likely to result in higher cost
25 electric service to the utility's general body of retail and wholesale customers or adversely affect
26 the adequacy or reliability of electric service to all customers.

27 (b) Each electric distribution company shall provide backup and supplemental service to
28 any customer who is self-generating electricity and meets reasonable interconnection
29 requirements designed to protect the distribution and transmission system. The commission shall
30 ensure that backup and supplemental rates made, exacted, demanded or collected by any public
31 utility from a customer who is self-generating shall be just and reasonable and may not be unduly
32 discriminatory. Any backup and supplemental rate tariffs in effect as of May 2002 may remain in
33 effect as designed through December 31, 2004. Commencing January 1, 2005, the backup and
34 supplemental rates shall be cost based but may be discounted as provided for in subsection (c) of

1 this section; provided, however, that the John O. Pastore Center power plant shall be exempt from
2 said backup or supplemental rates.

3 (c) Notwithstanding the rate design criteria set forth in subsection (b) of this section, the
4 commission may permit or require discounted backup distribution service rates in order to
5 encourage economically efficient cogeneration or small power production projects if it finds these
6 discounts to be in the public interest [and/or contribute to system reliability procurement or least-](#)
7 [cost procurement](#); provided, however, that any revenue not recovered by the electric distribution
8 company as a result of these discounted distribution rates shall be accounted for and recovered in
9 the rates assessed on all customers. The commission shall, in determining the public interest in
10 distributed generating facilities, consider reduced environmental impacts, increased energy
11 efficiency, reduced transmission losses and congestion, effects on electric system reliability and
12 other factors the commission may deem relevant.

13 (d) The provisions of this section shall be effective as of January 1, 2005.

14 SECTION 5. 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

- 1 This act would strengthen system reliability through diversification of energy resources
- 2 and provide for least-cost procurement for gas and electric supply.
- 3 This act would take effect upon passage.

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