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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

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A N A C T

RELATING TO PUBLIC UTILITIES AND CARRIERS - DISTRIBUTED GENERATION
STANDARD CONTRACTS

Introduced By: Senators Walaska, Miller, Paiva Weed, Ruggerio, and DiPalma

Date Introduced: March 06, 2013

Referred To: Senate Environment & Agriculture

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 39-26.2-3, 39-26.2-4, 39-26.2-6 and 39-26.2-7 of the General
2 Laws in Chapter 39-26.2 entitled "Distributed Generation Standard Contracts" are hereby
3 amended to read as follows:

4 **39-26.2-3. Definitions.** -- When used in this chapter, the following terms shall have the
5 following meanings:

6 (1) "Annual target" means the target for total renewable energy nameplate capacity of
7 new distributed generation standard contracts set out in section 39-26.2-3.

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

9 (3) "Board" shall mean the distributed generation standard contract board established
10 pursuant to the provisions of chapter 39-26.2-9, or the office of energy resources. Until such time
11 as the board is duly constituted, the office of energy resources shall serve as the board with the
12 same powers and duties pursuant to this chapter.

13 (4) "Distributed generation contract capacity" means ten percent (10%) of an electric
14 distribution company's minimum long-term contract capacity under the long-term contracting
15 standard for renewable energy in section 39-26.1-2, inclusive of solar capacity. The distributed
16 generation contract capacity shall be reserved for acquisition by the electric distribution company
17 through standard contracts pursuant to the provisions of this chapter.

18 (5) "Distributed generation facility" means an electrical generation facility that is a

1 newly developed renewable energy resource as defined in section 39-26.1-2, located in the
2 electric distribution company's load zone with a nameplate capacity no greater than five
3 megawatts (5 MW), using eligible renewable energy resources as defined by section 39-26-5,
4 including biogas created as a result of anaerobic digestion, but, specifically excluding all other
5 listed eligible biomass fuels, and connected to an electrical power system owned, controlled, or
6 operated by the electric distribution company.

7 (6) "Distributed generation project" means a distinct installation of a distributed
8 generation facility. An installation will be considered distinct if it is installed in a different
9 geographical location and at a different time, or if it involves a different type of renewable energy
10 class.

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

14 (8) "Large distributed generation project" means a distributed generation project that has
15 a nameplate capacity that exceeds the size of a small distributed generation project in a given
16 year, but is no greater than five megawatts (5 MW) nameplate capacity.

17 (9) "Program year" means a calendar year beginning January 1 and ending December 31.

18 (10) "Renewable energy classes" means categories for different renewable energy
19 technologies using eligible renewable energy resources as defined by section 39-26-5. For each
20 program year, the board shall determine the renewable energy classes as are reasonably feasible
21 for use in meeting distributed generation objectives from renewable energy resources and are
22 consistent with the goal of meeting the annual target for the program year. For the program year
23 ending December 31, 2012, there shall be at least four (4) technology classes and at least two (2)
24 shall be for solar generation technology, and at least one shall be for wind. The board may add,
25 eliminate, or adjust renewable energy classes for each program year with public notice given at
26 least sixty (60) days previous to any renewable energy class change becoming effective. For each
27 program year, the board shall set renewable energy class targets for each class established. Class
28 targets are the total program-year target amounts of nameplate capacity reserved for standard
29 contracts for each renewable energy class. The sum of all the class targets shall equal the annual
30 target.

31 (11) "Renewable energy credit" means a New England Generation Information System
32 renewable energy certificate as defined in subdivision 39-26-2(15);

33 (12) "Small distributed generation project" means a distributed generation [renewable](#)
34 [energy](#) project that has a nameplate capacity ~~no larger than~~ [within](#) the following: Solar: [fifty](#)

1 [kilowatts \(50 KW\) to](#) five hundred kilowatts (500 KW); Wind: [fifty kilowatts \(50 KW\) to](#) one and
2 one-half megawatts (1.5 MW). For technologies other than solar and wind, the board shall set the
3 nameplate capacity size limits, but such limits may not exceed one megawatt. The board may
4 lower the nameplate capacity from year to year for any of these categories, but may not increase
5 the capacity beyond what is specified in this definition. In no case may a project developer be
6 allowed to segment a distributed generation project into smaller sized projects in order to fall
7 under this definition.

8 (13) "Standard contract" means a contract with a term of fifteen (15) years at a fixed rate
9 for the purchase of all capacity, energy, and attributes generated by a distributed generation
10 facility. A contract may have a different term if it is mutually agreed to by the seller and the
11 electric distribution company and it is approved by the commission. The terms of the standard
12 contract for each program year and for each renewable energy class shall be set pursuant to the
13 provisions of this chapter.

14 (14) "Standard contract ceiling price" means the standard contract price for the output of
15 a distributed generation facility which price is approved annually for each renewable energy class
16 pursuant to the procedure established in this chapter, for the purchase of energy, capacity,
17 renewable energy certificates, and all other environmental attributes and market products that are
18 available or may become available from the distributed generation facility.

19 **39-26.2-4. Standard contracts -- Annual targets.** -- (a) To the extent eligible projects
20 are available and submit conforming applications, an electric distribution company shall enter
21 into standard contracts for an aggregate nameplate capacity of at least forty megawatts (40 MW)
22 of distributed generation projects by the end of 2014, unless such schedule is extended by the
23 board. The contracting shall be spread over four (4) years, based on the annual targets, aggregated
24 to reflect annual targets from prior program years, contained in the following four (4) year phased
25 schedule, unless such schedule is adjusted by the board in any given year:

26 (1) By December 30, 2011: a minimum of five megawatts (5 MW) nameplate;

27 (2) By December 30, 2012: a minimum aggregate of twenty megawatts (20 MW)
28 nameplate;

29 (3) By December 30, 2013: a minimum aggregate of thirty megawatts (30 MW)
30 nameplate;

31 (4) By December 30, 2014: a minimum aggregate of forty megawatts (40 MW)
32 nameplate.

33 (b) By October 15, 2011 and each calendar year following until October 15, 2013, the
34 board may recommend to the commission that the annual target for the following program year

1 be adjusted upward to reflect any shortfalls in meeting the previous program year's annual target
2 or to reflect any standard contracts entered into during prior program years that are voided. The
3 board may also recommend to the commission that the annual target for the following program
4 year be adjusted downward by any amounts that the previous program year's annual targets were
5 exceeded by the standard contracts entered into during that program year.

6 (c) The board may, based on market data and other information available to it including
7 pricing for standard contracts received during previous program years, recommend a reduction of
8 the annual target for the upcoming program year where the board determines that market
9 conditions would be likely to produce unfavorably high target pricing for standard contracts
10 during that upcoming program year. In considering such issues, the board may take into account
11 the reasonableness of current pricing and its impact on all electric distribution customers who will
12 be paying for the output for up to twenty (20) years at such prices. The board ~~may also~~ and the
13 commission may recommend an extension of time to achieve the forty megawatt (40 MW) ~~target~~
14 targets, to allow for contracting to occur after 2014, if necessary.

15 (d) The electric distribution company must contract for at least forty megawatts (40
16 MW) of nameplate capacity distributed generation projects by the end of 2014, unless such
17 schedule is extended by the board. The electric distribution company may not be required to
18 contract for more than forty megawatts (40 MW) or the distributed generation contract capacity,
19 but may do so voluntarily, subject to commission approval.

20 (e) Each year, the board shall file its recommendations relating to the schedule, along
21 with its report and recommendations regarding ceiling prices, for the commission's review and
22 approval as specified in subsection 39-26.2-5(b).

23 (f) Nothing in this chapter shall derogate from the statutory authority of the commission
24 or the division, including, but not limited to, the authority to protect ratepayers from unreasonable
25 rates.

26 **39-26.2-6. Standard contract enrollment program.** -- (a) Each electric distribution
27 company shall conduct at least three (3) standard contract enrollments during each program year;
28 however, during 2011 the electric distribution company need only conduct one enrollment. Each
29 enrollment shall be open for a two (2) week period during which the electric distribution
30 company is required to receive standard short-form applications requesting standard contracts for
31 distributed generation energy projects. The short-form applications shall require the applicant to
32 provide the project owner's identity and the project's proposed location, nameplate capacity, and
33 renewable energy class and allow for additional information relative to the permitting, financial
34 feasibility, ability to build, and timing for deployment of the proposed projects. For small

1 distributed generation projects, the applicant must submit an affidavit confirming that the project
2 is not a segment of a larger project being planned for enlargement over time. For large distributed
3 generation projects, the short-form application shall also require the applicant to bid a bundled
4 price for the sale of the energy, capacity, renewable energy certificates, and all other
5 environmental attributes and market products that are available or may become available from the
6 distributed generation facility, on a per kilowatt-hour basis for the output of the project. Subject
7 to the provisions of subsections (b) and (c) below, the electric distribution company shall not be
8 required to enter into standard contracts in excess of the annual target for the applicable program
9 year and shall not be required to enter into standard contracts in excess of any limit set by the
10 board and approved by the commission for a given enrollment. However, the electric distribution
11 company may voluntarily exceed an enrollment period limit as long as it does not exceed an
12 annual target for the applicable program year.

13 (b) For small distributed generation projects, the electric distribution company on a first-
14 come, first-served basis, shall enter into standard contracts ~~at~~ [based on the lowest proposed price](#)
15 [received for the approved technology classes, but not to exceed](#) the applicable standard contract
16 ceiling price with any distributed generation project which meets the requirements of all
17 applicable tariffs and regulations, and meets the criteria of a renewable energy class in effect,
18 until the class target is met. Enrollment periods will be governed by a solicitation and enrollment
19 process rules that shall be filed with the commission each October 15 by the electric distribution
20 company, and approved by the commission within sixty (60) days of such filing.

21 (c) For large distributed generation projects, the electric distribution company shall
22 select projects for standard contracts based on the lowest proposed prices received, but not to
23 exceed the applicable standard contract ceiling price, provided, that the selected projects meet the
24 requirements of all applicable tariffs and regulations and meet the criteria of a renewable energy
25 class in effect until the class target is met. Except for 2011, no enrollment period shall seek to
26 enroll more than one-third (1/3) of the annual goal for the distribution company for large
27 distributed generation projects.

28 (d) If there are more projects than what is specified for a class target at the same price,
29 the electric distribution company shall review [in consultation with the office of energy resources](#)
30 the applications submitted and select first those projects that appear to be the furthest along in
31 development and likely to be deployed. Those projects that are likely to be deployed on the
32 earliest timelines shall be selected. To the extent the electric distribution company is unable to
33 make a clear distinction on this basis, the electric company shall report the results to the board
34 and not enter into contracts with those projects that are tied on pricing. In such case, the board

1 may take such action as it deems appropriate for the selection of projects, including seeking more
2 information from the projects. Alternatively, the board may consider adjustments to the ceiling
3 price and a rebid, or simply wait until the next enrollment. [The office of energy resources is](#)
4 [authorized to request copies of submitted applications from the distribution company in order to](#)
5 [verify accuracy of the reported data and information.](#)

6 (e) Should an electric distribution company determine that it has entered into sufficient
7 standard contracts to achieve a program-year class target, it shall immediately report this to the
8 board, the office of energy resources, and the commission, and cease entering into standard
9 contracts for that renewable energy class for the remainder of the program year. An electric
10 distribution company may exceed the renewable energy class target if the last standard contract
11 entered into may cause the total purchased to exceed the target.

12 (f) The electric distribution company is authorized to enter into standard contracts up to
13 the applicable ceiling price. As long as the terms of the standard contract are materially the same
14 as the standard contract terms approved by the commission and the pricing is no higher than the
15 applicable ceiling price, such contracts shall be deemed prudent and approved by the commission
16 for purposes of recovering the costs in rates.

17 (g) A distributed generation project that also is being employed by a customer for net
18 metering purposes may submit an application to sell the excess output from its distributed
19 generation project. In such case, however, at the election of the self-generator all of the renewable
20 energy certificates and environmental attributes pertaining to the energy consumed on site may be
21 sold to the electric distribution company on a month-to-month basis outside of the terms of the
22 standard contract. In such case, the portion of the renewable energy certificates that pertain to the
23 energy consumed on site during the net metering billing period shall be priced at the average
24 market price of renewable energy certificates, which may be determined by using the price of
25 renewable energy certificates purchased or sold by the electric distribution company.

26 **39-26.2-7. Standard contract -- Form and provisions.** -- The following process shall be
27 implemented to establish the non-price terms and conditions of the standard contract:

28 (1) A working group ("contract working group") shall be established and supervised by
29 the board, consisting of the following members: (i) The director of the office of energy resources;
30 (ii) A designee from the division of public utilities and carriers; (iii) Two (2) designees of the
31 electric distribution company; (iv) Two (2) individuals designated by the office of energy
32 resources who are experienced developers of renewable generation projects; (v) One individual
33 designated by the office of energy resources who represents a customer of the electric distribution
34 company; and (vi) A lawyer designated by the office of energy resources who has at least three

1 (3) years of experience in negotiating and/or developing power purchase agreements. With
2 respect to the lawyer designated in (vi) above, the electric distribution company shall enter into a
3 cost reimbursement agreement with such lawyer, to compensate the lawyer for the time spent
4 serving in the contract working group at the reasonable hourly rate negotiated by the office of
5 energy resources. The costs incurred by the electric distribution company under the
6 reimbursement agreement shall be recovered in rates by the electric distribution company in the
7 year incurred or the year following incurrence through an appropriate filing with the commission.
8 The contract working group shall be an advisory group that is not to be considered to be an
9 agency for purposes of the administrative procedures act or any other laws pertaining to public
10 bodies.

11 (2) The contract working group shall work in good faith to develop standard contracts
12 that would be applicable for various technologies for both small and large distributed generation
13 projects. The standard contracts should balance the need for the project to obtain financing
14 against the need for the distribution company to protect itself and its distribution customers
15 against unreasonable risks. The standard contract should be developed from contracting terms
16 typically utilized in the wholesale power industry, taking into account the size of each project and
17 the technology. The standard contracts shall provide for the purchase of energy, capacity,
18 renewable energy certificates, and all other environmental attributes and market products that are
19 available or may become available from the distributed generation facility. However, the electric
20 distribution company shall retain the right to separate out pricing for each market product under
21 the contracts for administrative and accounting purposes to avoid any detrimental accounting
22 effects or for administrative convenience, provided that such accounting as specified in the
23 contract does not affect the price and financial benefits to the seller as a seller of a bundled
24 product. The standard contract also shall:

25 (i) Hold the distributed generation facility owner liable for the cost of interconnection
26 from the distributed generation facility to the interconnect point with the distribution system, and
27 for any upgrades to the existing distributed generation system that may be required by the electric
28 distribution company. However, a distributed generation facility owner may appeal to the
29 commission to reduce any required system upgrade costs to the extent such upgrades can be
30 shown to benefit other customers of the electric distribution company and the balance of such
31 costs shall be included in rates by the electric distribution company for recovery in the year
32 incurred or the year following incurrence;

33 (ii) Require the distributed generation facility owner to make a performance guarantee
34 deposit to the electric distribution company of fifteen dollars (\$15.00) for small distributed

1 generation projects or twenty-five dollars (\$25.00) for large distributed generation projects for
2 every renewable energy certificate estimated to be generated per year under the contract, but at
3 least five hundred dollars (\$500) and not more than seventy-five thousand dollars (\$75,000), paid
4 at the time of contract execution;

5 (iii) Require the electric distribution company to refund the performance guarantee
6 deposit on a pro-rated basis of renewable energy credits actually delivered by the distributed
7 generation facility over the course of the first year of the project's operation, paid quarterly;

8 (iv) Provide that if the distributed generation facility ~~has not generated the output~~
9 ~~proposed in its enrollment application~~, with the exception of hydroelectric facilities, is not fully
10 operational within eighteen (18) months after execution of the contract, the contract is
11 automatically voided and the performance guarantee is forfeited. Eligible hydroelectric
12 distribution generation facilities that are not fully operational within thirty (30) months after the
13 execution of the contract, the contract is automatically voided and the performance guarantee is
14 forfeited. Any forfeited performance guarantee deposits shall be credited to all distribution
15 customers in rates and not retained by the electric distribution company; all projects that have
16 executed contracts with the distribution company shall be required to have their distributed
17 generation system produce ninety percent (90%) of the kilowatt or megawatt output in the
18 submitted application, and shall be verified by the distribution company within eighteen (18)
19 months after the execution of the contract. Any distributed generation facility that fails this output
20 requirement shall result in the contract automatically being voided and the performance guarantee
21 forfeited.

22 (v) Provide for flexible payment schedules that may be negotiated between the buyer and
23 seller, but shall be no longer than quarterly if an agreement cannot be reached;

24 (vi) Require that an electric meter which conforms with standard industry norms be
25 installed to measure the electrical energy output of the distributed generation facility, and require
26 a system or procedure by which the distributed generation facility owner shall demonstrate
27 creation of renewable energy credits, in a manner recognized and accounted for by the GIS; such
28 demonstration of renewable energy credit creation to be at the distributed generation facility
29 owner's expense. The electric distribution company may, at its discretion, offer to provide such a
30 renewable energy credit measurement and accounting system or procedure to the distributed
31 generation facility owner, and the distributed generation facility owner may, at its discretion, use
32 the electric distribution company's program, or use that of an independent third party, approved
33 by the commission, and the costs of such measurement and accounting are paid for by the
34 distributed generation facility owner.

1 (vii) All distributed generation projects that have executed contracts will be required to
2 submit quarterly reports on the progress of the project to the distribution company and the office
3 of energy resources. Failure to submit these quarterly progress reports may result in the
4 termination of the contract.

5 (3) If the contract working group reaches agreement on the terms of standard contracts,
6 the board shall file the contracts with the commission for approval. If there are any
7 disagreements, they shall be identified to the commission. The commission shall review the
8 standard contracts for conformance with the standards set forth in subsection (2). Should there be
9 any disputes, the commission shall issue an order resolving them. To the extent the commission
10 needs expert assistance to resolve any disagreements noted in the filing, the commission is
11 authorized to hire a consultant to assist it in the proceedings, the costs of which shall be recovered
12 from electric distribution customers pursuant to a uniform factor established by the commission
13 in rates for recovery by the electric distribution company in the year incurred or the year
14 following incurrence, as requested through a filing by the electric distribution company. The
15 commission shall issue an order approving standard forms of contract within sixty (60) days of
16 the filing.

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

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

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RELATING TO PUBLIC UTILITIES AND CARRIERS - DISTRIBUTED GENERATION
STANDARD CONTRACTS

- 1 This act would amend the definition of small distributed generation project, and would
- 2 allow hydroelectric projects to participate in the standard contract enforcement program.
- 3 This act would take effect upon passage.

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