

2014 -- S 2435

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2014

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A N A C T

RELATING TO PUBLIC UTILITIES AND CARRIERS -- DISTRIBUTED GENERATION
STANDARD CONTRACTS

Introduced By: Senators Bates, Conley, Sosnowski, and Miller

Date Introduced: February 27, 2014

Referred To: Senate Environment & Agriculture

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 39-26.2-2, 39-26.2-3, 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 **39-26.2-2. Purpose. --** The purpose of this chapter is to facilitate and promote installation
5 of grid-connected generation of renewable energy; support and encourage development of
6 distributed renewable energy generation systems; reduce environmental impacts; reduce carbon
7 emissions that contribute to climate change by encouraging the local siting of renewable energy
8 projects; [encourage the reuse and redevelopment of contaminated property](#); diversify the state's
9 energy generation sources; stimulate economic development; improve distribution system
10 resilience and reliability; and reduce distribution system costs.

11 **39-26.2-3. Definitions. --** When used in this chapter, the following terms shall have the
12 following meanings:

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

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

16 (3) "Board" shall mean the distributed generation standard contract board established
17 pursuant to the provisions of chapter 39-26.2-9, or the office of energy resources. Until such time
18 as the board is duly constituted, the office of energy resources shall serve as the board with the

1 same powers and duties pursuant to this chapter.

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

7 (5) "Distributed generation facility" means an electrical generation facility that is a
8 newly developed renewable energy resource as defined in section 39-26.1-2, located in the
9 electric distribution company's load zone with a nameplate capacity no greater than five
10 megawatts (5 MW), using eligible renewable energy resources as defined by section 39-26-5,
11 including biogas created as a result of anaerobic digestion, but, specifically excluding all other
12 listed eligible biomass fuels, and connected to an electrical power system owned, controlled, or
13 operated by the electric distribution company.

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

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

21 (8) "Large distributed generation project" means a distributed generation project that has
22 a nameplate capacity that exceeds the size of a small distributed generation project in a given
23 year, but is no greater than three megawatts (3 MW) nameplate capacity.

24 (9) "Office" means the Rhode Island office of energy resources.

25 (10) "Program year" means a calendar year beginning January 1 and ending December
26 31.

27 (11) "Renewable energy classes" means categories for different renewable energy
28 technologies using eligible renewable energy resources as defined by section 39-26-5. For each
29 program year, the board shall determine the renewable energy classes as are reasonably feasible
30 for use in meeting distributed generation objectives from renewable energy resources and are
31 consistent with the goal of meeting the annual target for the program year. For the program year
32 ending December 31, 2012, there shall be at least four (4) technology classes and at least two (2)
33 shall be for solar generation technology, and at least one shall be for wind. The board may add,
34 eliminate, or adjust renewable energy classes for each program year with public notice given at

1 least sixty (60) days previous to any renewable energy class change becoming effective. For each
2 program year, the board shall set renewable energy class targets for each class established. Class
3 targets are the total program-year target amounts of nameplate capacity reserved for standard
4 contracts for each renewable energy class. The sum of all the class targets shall equal the annual
5 target.

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

8 (13) "Small distributed generation project" means a distributed generation renewable
9 energy project that has a nameplate capacity within the following: Solar: fifty kilowatts (50 KW)
10 to five hundred kilowatts (500 KW); Wind: fifty kilowatts (50 KW) to one and one-half
11 megawatts (1.5 MW). For technologies other than solar and wind, the board shall set the
12 nameplate capacity size limits, but such limits may not exceed one megawatt. The board may
13 lower the nameplate capacity from year to year for any of these categories, but may not increase
14 the capacity beyond what is specified in this definition. In no case may a project developer be
15 allowed to segment a distributed generation project into smaller sized projects in order to fall
16 under this definition.

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

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

28 (16) "Contaminated property" means property that has been or is currently disposed of in
29 landfill as defined in § 23-19.1-4, or a site as defined in § 23-19.14-3, or land contaminated by the
30 use, storage, release, or disposal of hazardous material, and all suitable areas in very close
31 proximity to these sites, where an investigation or remedial action is required pursuant to
32 applicable hazardous waste or solid waste laws.

33 **39-26.2-6. Standard contract enrollment program.** -- (a) Each electric distribution
34 company shall conduct at least three (3) standard contract enrollments during each program year;

1 however, during 2011 the electric distribution company need only conduct one enrollment. Each
2 enrollment shall be open for a two (2) week period during which the electric distribution
3 company is required to receive standard short-form applications requesting standard contracts for
4 distributed generation energy projects. The short-form applications shall require the applicant to
5 provide the project owner's identity and the project's proposed location, nameplate capacity, and
6 renewable energy class and allow for additional information relative to the permitting, financial
7 feasibility, ability to build, and timing for deployment of the proposed projects. For small
8 distributed generation projects, the applicant must submit an affidavit confirming that the project
9 is not a segment of a larger project being planned for enlargement over time; provided, however,
10 that for small or large distributed generation projects proposed for the reuse and redevelopment of
11 contaminated property the applicant may seek enrollment at the same site for new additions to an
12 existing distributed generation project. For large distributed generation projects, the short-form
13 application shall also require the applicant to bid a bundled price for the sale of the energy,
14 capacity, renewable energy certificates, and all other environmental attributes and market
15 products that are available or may become available from the distributed generation facility, on a
16 per kilowatt-hour basis for the output of the project. Subject to the provisions of subsections (b)
17 and (c) below, the electric distribution company shall not be required to enter into standard
18 contracts in excess of the annual target for the applicable program year and shall not be required
19 to enter into standard contracts in excess of any limit set by the board and approved by the
20 commission for a given enrollment. However, the electric distribution company may voluntarily
21 exceed an enrollment period limit as long as it does not exceed an annual target for the applicable
22 program year.

23 (b) For small distributed generation projects, the electric distribution company shall
24 select projects for standard contracts based on the lowest proposal prices received with any
25 distributed generation project which meets the requirements of all applicable tariffs and
26 regulations, and meets the criteria of a renewable energy class in effect, until the class target is
27 met. Enrollment periods will be governed by a solicitation and enrollment process rules that shall
28 be filed with the commission each October 15 by the electric distribution company, and approved
29 by the commission within sixty (60) days of such filing.

30 (c) For large distributed generation projects, the electric distribution company shall
31 select projects for standard contracts based on the lowest proposed prices received, but not to
32 exceed the applicable standard contract ceiling price, provided, that the selected projects meet the
33 requirements of all applicable tariffs and regulations and meet the criteria of a renewable energy
34 class in effect until the class target is met. Except for 2011, no enrollment period shall seek to

1 enroll more than one-third (1/3) of the annual goal for the distribution company for large
2 distributed generation projects.

3 (d) If there are more projects than what is specified for a class target at the same price,
4 the electric distribution company shall review the applications submitted and select first those
5 projects that appear to be the furthest along in development and likely to be deployed in
6 consultation with the office. Those projects that are likely to be deployed on the earliest timelines
7 shall be selected. To the extent the electric distribution company is unable to make a clear
8 distinction on this basis, the electric company shall report the results to the board and not enter
9 into contracts with those projects that are tied on pricing. In such case, the board may take such
10 action as it deems appropriate for the selection of projects, including seeking more information
11 from the projects. Alternatively, the board may consider adjustments to the ceiling price and a
12 rebid, or simply wait until the next enrollment.

13 (e) Should an electric distribution company determine that it has entered into sufficient
14 standard contracts to achieve a program-year class target, it shall immediately report this to the
15 board, the office of energy resources, and the commission, and cease entering into standard
16 contracts for that renewable energy class for the remainder of the program year. An electric
17 distribution company may exceed the renewable energy class target if the last standard contract
18 entered into may cause the total purchased to exceed the target. The office and the electric
19 distribution company shall enter into a memorandum of understanding regarding the sharing of
20 the information and data related to the distributed generation program.

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

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

1 **39-26.2-7. Standard contract -- Form and provisions.** -- The following process shall be
2 implemented to establish the non-price terms and conditions of the standard contract:

3 (1) A working group ("contract working group") shall be established and supervised by
4 the board, consisting of the following members: (i) The director of the office of energy resources;
5 (ii) A designee from the division of public utilities and carriers; (iii) Two (2) designees of the
6 electric distribution company; (iv) Two (2) individuals designated by the office of energy
7 resources who are experienced developers of renewable generation projects; (v) One individual
8 designated by the office of energy resources who represents a customer of the electric distribution
9 company; and (vi) A lawyer designated by the office of energy resources who has at least three
10 (3) years of experience in negotiating and/or developing power purchase agreements. With
11 respect to the lawyer designated in (vi) above, the electric distribution company shall enter into a
12 cost reimbursement agreement with such lawyer, to compensate the lawyer for the time spent
13 serving in the contract working group at the reasonable hourly rate negotiated by the office of
14 energy resources. The costs incurred by the electric distribution company under the
15 reimbursement agreement shall be recovered in rates by the electric distribution company in the
16 year incurred or the year following incurrence through an appropriate filing with the commission.
17 The contract working group shall be an advisory group that is not to be considered to be an
18 agency for purposes of the administrative procedures act or any other laws pertaining to public
19 bodies.

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

34 (i) Hold the distributed generation facility owner liable for the cost of interconnection

1 from the distributed generation facility to the interconnect point with the distribution system, and
2 for any upgrades to the existing distributed generation system that may be required by the electric
3 distribution company. However, a distributed generation facility owner may appeal to the
4 commission to reduce any required system upgrade costs to the extent such upgrades can be
5 shown to benefit other customers of the electric distribution company and the balance of such
6 costs shall be included in rates by the electric distribution company for recovery in the year
7 incurred or the year following incurrence;

8 (ii) Require the distributed generation facility owner to make a performance guarantee
9 deposit to the electric distribution company of fifteen dollars (\$15.00) for small distributed
10 generation projects or twenty-five dollars (\$25.00) for large distributed generation projects for
11 every renewable energy certificate estimated to be generated per year under the contract, but at
12 least five hundred dollars (\$500) and not more than seventy-five thousand dollars (\$75,000), paid
13 at the time of contract execution;

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

17 (iv) Provide that if the distributed generation facility has not generated ninety percent
18 (90%) of the output proposed in its enrollment application within eighteen (18) months after
19 execution of the contract, the contract shall be terminated and the performance guarantee shall be
20 forfeited. An eligible small-scale hydropower distributed generation facility [or a distributed](#)
21 [generation facility project proposed for the reuse and redevelopment of contaminated or formerly](#)
22 [contaminated property](#) that has not generated ninety percent (90%) of the output proposed in its
23 enrollment application within forty-eight (48) months after execution of the contract shall result
24 in the contract being terminated and the performance guarantee being forfeited. Any forfeited
25 performance guarantee deposits shall be credited to all distribution customers in rates and not
26 retained by the electric distribution company;

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

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

1 renewable energy credit measurement and accounting system or procedure to the distributed
2 generation facility owner, and the distributed generation facility owner may, at its discretion, use
3 the electric distribution company's program, or use that of an independent third party, approved
4 by the commission, and the costs of such measurement and accounting are paid for by the
5 distributed generation facility owner.

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

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

22 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 add to the purpose of distributed generation standard contracts so that it
- 2 would encourage the reuse and redevelopment of contaminated property as defined in this act.
- 3 This act would take effect upon passage.

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