

2010 -- S 2819

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2010

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 all related costs are authorized pursuant to
14 the process and standards contained in this section. The Narragansett electric company is hereby
15 authorized to enter into a power purchase agreement with the state's preferred developer of
16 offshore wind for the purchase of energy, capacity, and any other environmental and market
17 attributes, on terms that are consistent with the power purchase agreement that was filed with the
18 commission on December 9, 2009 in docket 4111, provided that the pricing terms of such

1 agreement are amended as more fully described in subsection 39-26.1-7(b), in addition to other
2 amendments that are made to take into account the provisions of this section as amended since the
3 filing of the agreement in docket 4111. ~~On or before August 15, 2009, the electric distribution~~
4 ~~company shall solicit proposals for one newly developed renewable energy resources project of~~
5 ~~ten (10) megawatts or less that includes a proposal to enhance the electric reliability and~~
6 ~~environmental quality of the Town of New Shoreham. The electric distribution company shall~~
7 ~~select a project for negotiating a contract that shall be conditioned upon approval by the~~
8 ~~commission. Negotiations shall proceed in good faith to achieve a commercially reasonable~~
9 ~~contract. Should the distribution company and the selected party agree to a contract, the contract~~
10 ~~shall be filed with the commission no later than October 15, 2009 for commission approval. The~~
11 ~~commission shall review the contract and issue an order approving or disapproving the contract~~
12 ~~on or before January 31, 2010. If the parties are unable to reach agreement on a contract prior to~~
13 ~~October 15, 2009, an unsigned copy shall be filed by the electric distribution company prior to~~
14 ~~that same date, and the commission shall have the discretion to order the parties to arbitrate the~~
15 ~~dispute on an expedited basis. Notwithstanding anything in this section to the contrary, and~~
16 ~~notwithstanding any solicitation made pursuant to this section, the distribution company and the~~
17 ~~selected party may agree to a contract for a The demonstration project subject to the power~~
18 ~~purchase agreement shall ~~that includes~~ include up to (but not exceeding) eight (8) wind turbines~~
19 ~~with aggregate nameplate capacity of no more than thirty (30) megawatts, ~~subject to and~~~~
20 ~~~~conditioned upon the approval of the commission,~~ even if the actual capacity factor of the project~~
21 ~~results in the project technically exceeding ten (10) megawatts. The power purchase agreement~~
22 ~~shall be reviewed by the administrator of the division of public utilities and carriers, the executive~~
23 ~~director of the Rhode Island economic development corporation, the director of the office of~~
24 ~~energy resources and the director of the department of administration. Verified copies of the~~
25 ~~executed agreement shall be provided to each agency by the Narragansett electric company, and~~
26 ~~published on the website of the division of public utilities and carriers for public inspection.~~
27 ~~Members of the public shall have fifteen (15) days to submit written comments to each of the four~~
28 ~~(4) agencies for the respective agency consideration; however, no evidentiary hearings shall be~~
29 ~~required. Within thirty (30) days of receipt of the agreement each of the four (4) agencies shall~~
30 ~~issue a certification or decline certification in writing. Such certifications or declinations shall be~~
31 ~~final and conclusive as a matter of law and not subject to appeal. The respective certification~~
32 ~~determinations shall be made to the division of public utilities and carriers as follows:~~
33 ~~(1) The administrator of the division of public utilities and carriers shall certify the~~
34 ~~agreement if the administrator determines that the agreement has been amended consistent with~~

1 the provisions of this section, including a provision that complies with subsection 39-26.1-7(b)
2 below;

3 (2) The executive director of the Rhode Island economic development corporation shall
4 certify the agreement if the executive director determines that the project encourages and
5 facilitates the creation of jobs in Rhode Island in the renewable energy sector as a demonstration
6 project;

7 (3) The director of the office of energy resources shall certify the agreement if the
8 director determines that the agreement fulfills the declared policy of this chapter and this section.

9 (4) The director of the department of administration shall certify the agreement if the
10 director determines that the contractual terms of the agreement are reasonable and in the best
11 interest of the state in accordance with the provisions of this chapter and section.

12 Within five (5) days of receipt of the certifications by the division, the division shall file
13 the agreement with the commission. Upon such filing, the agreement shall be deemed accepted
14 and fully enforceable and the act of having entered into this agreement and its terms and pricing
15 shall be deemed prudent for purposes of any future regulatory proceedings before the commission
16 or any other state agency having jurisdiction and recovery of the costs incurred in making
17 payments under the terms of the agreement shall not be subject to challenge in any future
18 regulatory proceedings. Upon receipt of the certifications, the division shall review such
19 certifications and confirm that each is in conformance with this section. If one or more of the
20 certifications is not received by the division within the thirty (30) day period established by this
21 section, the division shall, within fifteen (15) days, consider the reasons, if any, provided by the
22 agency not providing such certification and the division shall, within such fifteen (15) day period,
23 make a final determination on the question originally assigned to the non-certifying agency. If the
24 division determines that notwithstanding the lack of certification from the non-certifying agency
25 such certification should be issued, the division shall make such certification, which certification
26 shall have the same effect as if it had been made by the agency which first considered such
27 question. If, in the case of a lack of certification from an agency, the division determines that such
28 certifications should not be issued, then the division shall not file the agreement with the
29 commission and the agreement shall have no effect. ~~Upon approval of the contract, the~~ The

30 provisions of section 39-26.1-4 and the provisions of paragraphs (a), (b), (c), (d), and (f) of
31 section 39-26.1-5 shall apply, and all costs incurred in the negotiation, administration,
32 enforcement, transmission engineering, and implementation of the project and agreement shall be
33 recovered annually by the electric distribution company in electric distribution rates. ~~To the~~
34 extent that there are benefits for customers of the Block Island Power Company or its successor,

1 ~~the commission shall determine an allocation of cost responsibility between customers of the~~
2 ~~electric distribution company and customers of Block Island Power Company or its successor~~
3 ~~after the cost estimates are filed with the commission, but the commission need not determine the~~
4 ~~final cost allocation at the time the commission considers and/or approves the contract between~~
5 ~~the electric distribution company and the project developer. The allocation of costs shall assure~~
6 ~~that individual customers in the Town of New Shoreham pay higher charges related to the project~~
7 ~~on their individual bills than any charges for the same project that may be included in individual~~
8 ~~bills of customers of the electric distribution company. The commission shall provide for an~~
9 ~~appropriate rate design and billing method between the electric distribution company and Block~~
10 ~~Island Power Company at the appropriate time. The pricing under the agreement shall not have~~
11 ~~any precedential effect for purposes of determining whether other long-term contracts entered~~
12 ~~into pursuant tot his chapter are commercially reasonable.~~

13 (b) The power purchase agreement subject to subsection 39-26.1-7(a) shall be amended
14 to provide for a decrease in the pricing if savings can be achieved in the actual cost of the project,
15 with all realized savings allocated to the benefit of ratepayers. The power purchase agreement
16 shall also be amended to provide that the initial fixed price contained in the signed power
17 purchase agreement submitted in docket 4111 shall be the maximum initial price, and any
18 realized savings shall reduce such price. After making any such reduction to the initial price
19 based on realized savings, the price for each year of the power purchase agreement shall be fixed
20 by the terms of the power purchase agreement. The power purchase agreement shall require that
21 the costs of the project shall be certified by the developer and an independent third-party
22 acceptable to the division of public utilities and carriers shall, within thirty (30) days, verify the
23 accuracy of such costs at the completion of the construction of the project. The cost of
24 verification, up to twenty-five thousand dollars (\$25,000), shall be paid for by the developer.
25 Upon receipt of such third party verification, the division shall notify the Narragansett electric
26 company of the final costs, the initial price shall be the maximum price contained in the signed
27 power purchase agreement submitted in docket 4111.

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

1 from the developer or an affiliate of the developer, pursuant to the terms of a transmission
2 facilities purchase agreement negotiated between the electric distribution company and the
3 developer or its affiliate, an unexecuted copy of which shall be provided to the division of public
4 utilities and carriers for the division's consent to execution. The division shall have twenty (20)
5 days to review the agreement. As long as the division believes that that the terms and pricing of
6 the agreement are reasonable, taking into account the intention of the legislature to advance the
7 project as a policy-making matter, the division shall provide its written consent to the execution
8 of the transmission facilities purchase agreement. Once written consent is provided, the electric
9 distribution company and its transmission affiliate are authorized to make a filing with the federal
10 energy regulatory commission to put into effect transmission rates to recover all of the costs
11 associated with the purchase of the transmission cable and related facilities and the annual
12 operation and maintenance. The revenue requirement for the annual cable costs shall be
13 calculated in the same manner that the revenue requirement is calculated for other transmission
14 facilities in Rhode Island for local network service under the jurisdiction of the federal energy
15 regulatory commission. The division shall be authorized to represent the State of Rhode Island in
16 those proceedings before the federal energy regulatory commission, including the authority to
17 enter into any settlement agreements on behalf of the state to implement the intention of this
18 section. The division shall support transmission rates and conditions that allow for all the costs
19 related to the transmission cable and related facilities to be charged in transmission rates in a
20 manner that socializes the costs throughout Rhode Island. Should the electric distribution
21 company own, operate, and maintain the cable, the annual costs incurred by the electric
22 distribution company directly or through transmission charges shall be recovered annually
23 through a fully reconciling rate adjustment from customers of the electric distribution company
24 and/or from the Block Island Power Company or its successor, subject to any federal approvals
25 that may be required by law; ~~provided, however, the parties shall use all reasonable efforts to~~
26 ~~obtain socialization of the costs of the cable in New England transmission rates administered by~~
27 ~~the ISO New England, to the extent permitted.~~ The allocation of all of the costs related to the
28 transmission cable through transmission rates or otherwise shall be structured so that the
29 estimated impact on the typical residential customer bill for such transmission costs for customers
30 in the Town of New Shoreham shall be higher than the estimated impact on the typical residential
31 customer bill for customers on the mainland of the electric distribution company. To the extent
32 that any state tariffs or rates must be put into effect in order to implement the intention of this
33 section, the public utilities commission shall accept filings of the same and approve them. ~~costs~~
34 ~~shall be determined by the commission and assure that individual customers in the Town of New~~

1 ~~Shoreham pay higher charges related to the cable on their individual bills than any charges for the~~
2 ~~same project that may be included in individual bills of customers of the electric distribution~~
3 ~~company.~~

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

12 ~~(d)~~(e) Any contract entered into pursuant to this section shall count as part of the
13 minimum long-term contract capacity.

14 (f) The electric distribution company shall be authorized upon appropriate notice and
15 filing with the commission, to allocate all products purchased under any power purchase
16 agreements entered into pursuant to chapter 39-26.1 to its standard offer service customers at the
17 market price and to allocate any difference, whether positive or negative, between the costs of the
18 power purchase agreement and the market price of the products purchased under the power
19 purchase agreement to all of its electric distribution customers.

20 (g) If the electric distribution company elects not to own the transmission cable, the
21 developer may elect to do so directly, through an affiliate, or a third-party and the power purchase
22 agreement pricing shall be adjusted to allow the developer, an affiliate or a third-party, to recover
23 the costs (including financing costs) of the transmission facilities, subject to complying with the
24 terms as set forth in the power purchase agreement between the developer and the electric
25 distribution company.

26 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 -- CONTRACTING STANDARD FOR
RENEWABLE ENERGY

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

5 This act would take effect upon passage.

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