

2010 -- S 2842

LC02521

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2010

A N A C T

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

Introduced By: Senators Maselli, Connors, Miller, Ruggerio, and McCaffrey

Date Introduced: April 29, 2010

Referred To: Senate Environment & Agriculture

It is enacted by the General Assembly as follows:

1 SECTION 1. Legislative findings. -- The general assembly hereby finds and declares as  
2 follows:

3 (1) The cost effective safe collection, processing and destruction of landfill gas produced  
4 from the natural decomposition of municipal solid waste at the central landfill in Johnston, Rhode  
5 Island is essential to the health and welfare of the residents of Rhode Island;

6 (2) The construction and operation of a new landfill gas fueled electric generating facility  
7 is an integral component of the cost-effective collection, processing and destruction of landfill  
8 gas;

9 (3) A new landfill gas fueled electric generating facility could qualify as a new renewable  
10 energy resource pursuant to section 39-26-2;

11 (4) The construction and operation of a new landfill gas fueled electric generating facility  
12 at the central landfill would result in direct economic benefits to Rhode Island, including:

13 (i) An investment of more than one hundred million dollars (\$100,000,000) in a new  
14 renewable energy generating facility located entirely within the state of Rhode Island;

15 (ii) Very near-term benefits with the start of construction of the facility in calendar year  
16 2010;

17 (iii) Creation and retention of jobs during the construction and operating phases of the  
18 facility;

1 (iv) Reduction in capital and operating costs that would otherwise be born by the Rhode  
2 Island Resource Recovery Corporation;

3 (v) Increases in taxes or payments-in-lieu-of-taxes to the town of Johnston;

4 (vi) Enabling the timely decommissioning of existing generation facilities at the central  
5 landfill that would free up valuable landfilling space worth more than two hundred million dollars  
6 (\$200,000,000); and

7 (vii) Providing substantial amounts of renewable energy to Rhode Island in furtherance of  
8 the state's policies of increasing diversity of energy resources, reducing reliance on fossil fuels  
9 and reducing the state's carbon footprint.

10 (5) The financing plan for the construction of a new landfill gas fueled electric generating  
11 facility is supported by more than fifty million dollars (\$50,000,000) of federal government  
12 grants, which are only available if construction of the facility is actually commenced before the  
13 end of the calendar year 2010;

14 (6) In order to complete the financing plan and secure the federal government grants that  
15 are necessary for the financing and construction of the facility, the owner/builder of the facility  
16 must obtain a long-term contract for the sale of the output of the facility;

17 (7) Under the current process, set forth in this chapter, relating to long-term renewable  
18 energy contracts, the owner/builder will not be able to obtain an executed long-term contract and  
19 otherwise complete the financing plan for the facility in sufficient time to meet the end of the  
20 calendar year 2010 requirement of the federal government grants;

21 (8) The development of an electric generating facility fueled by landfill gas from the  
22 central landfill will provide unique benefits to Rhode Island ratepayers and residents that are not  
23 reasonably available from other alternatives; and

24 (9) The amendments to the process for obtaining long-term renewable energy contracts as  
25 set forth herein are necessary in order to ensure that the owner/builder of the facility can promptly  
26 obtain a long-term renewable energy contract otherwise consistent with the provisions of this  
27 section to support the financing and construction of the facility, for the aforesaid legitimate local  
28 purposes including, without limitation, the benefit of Rhode Island ratepayers.

29 SECTION 2. Chapter 39-26.1 of the General Laws entitled "Long-Term Contracting  
30 Standard for Renewable Energy" is hereby amended by adding thereto the following section:

31 **39-26.1-9. Town of Johnston Project.** -- [Notwithstanding any other provisions of this](#)  
32 [chapter to the contrary:](#)

33 [\(1\) The Narragansett Electric Company is hereby authorized, at its sole discretion, to](#)  
34 [procure a commercially reasonable long-term contract for a newly developed renewable energy](#)

1 resource fueled by landfill gas from the central landfill in the town of Johnston on a timetable  
2 earlier than is otherwise set forth in this chapter.

3 (2) Any such contract executed on or before May 19, 2010 shall be legal, binding and  
4 enforceable and shall not be subject to commission approval if:

5 (i) Such resource has a gross nameplate capacity rating of less than thirty-seven (37)  
6 megawatts; and

7 (ii) such contract is:

8 (A) for a term not in excess of twenty (20) years; and

9 (B) contains such other terms and conditions as may be approved by the director of the  
10 department of administration, such approval to be indicated by written confirmation of the  
11 director delivered to an electric distribution company prior to such contract becoming effective.

12 (3) The power purchase agreement shall be reviewed by the administrator of the division  
13 of public utilities and carriers, the executive director of the Rhode Island economic development  
14 corporation, the administrator of the office of energy resources, and the director of the department  
15 of administration. Certified copies of the executed agreement shall be provided to each agency by  
16 the Narragansett Electric Company and published on the website of the division of public utilities  
17 and carriers for public inspection. Members of the public shall have fifteen (15) days to submit  
18 written comments to the four (4) agencies for the respective agency consideration; however, no  
19 evidentiary hearings shall be required.

20 (4) Within thirty (30) days of receipt of the agreement each of the four (4) agencies in  
21 subsection (c) shall issue a certification or decline certification in writing. Such certifications or  
22 declinations shall be final and conclusive as a matter of law and not subject to appeal. The  
23 respective certification determinations shall be made to the division of public utilities and carriers  
24 as follows:

25 (i) The administrator of the division of public utilities and carriers shall certify the  
26 agreement if the administrator determines that the agreement is consistent with the provisions of  
27 this chapter and this section;

28 (ii) The executive director of the Rhode Island economic development corporation shall  
29 certify the agreement if the executive director determines that the project encourages and  
30 facilitates the creation of jobs in Rhode Island in the renewable energy sector;

31 (iii) The administrator of the office of energy resources shall certify the agreement if the  
32 administrator determines that the agreement fulfills the declared policy of this chapter and this  
33 section.

34 (iv) The director of the department of administration shall certify the agreement if the

1 director determines that the contractual terms of the agreement are reasonable and in the best  
2 interest of the state in accordance with this chapter and section.

3 (5) Upon receipt of the certifications pursuant to subsection (d) the division shall review  
4 such certifications and confirm that each is in conformance with this section.

5 (6) Within five (5) days of receipt of the certifications by the division, the division shall  
6 file the agreement with the commission. Upon such filing, the agreement shall be deemed  
7 accepted and fully enforceable.

8 (7) If one or more of the certifications is not received by the division within the thirty  
9 (30) day period established by this section, the division shall, within fifteen (15) days, consider  
10 the reasons, if any, provided by the agency not providing such certification and the division shall,  
11 within such fifteen (15) day period, make a final determination on the question originally  
12 assigned to the non-certifying agency. If the division determines that, notwithstanding the lack of  
13 certification from the non-certifying agency, such certification should be issued, the division shall  
14 make such certification, which certification shall have the same effect as if it had been made by  
15 the agency which first considered such question. If, in the case of a lack of certification from an  
16 agency, the division determines that such certifications shall not be issued, then the division shall  
17 not file the agreement with the commission and the agreement shall have no effect.

18 (8) The Narragansett Electric Company's act of having entered into this agreement and its  
19 terms and pricing shall be deemed prudent for purposes of any future regulatory proceedings  
20 before the commission and recovery of the costs incurred in making payments under the terms of  
21 the agreement shall not be subject to challenge in any future commission proceedings. The  
22 provisions of section 39-26.1-4 and the provisions of subsections (b), (c), (d), and (f) of section  
23 39-26.1-5 shall apply, and all costs incurred in, or savings resulting from, the administration and  
24 implementation of the agreement shall be recovered annually by the electric distribution company  
25 and its customers in electric distribution rates. Any contract entered into pursuant to this section  
26 shall count as part of the minimum long-term contract capacity.

27 (9) The provisions of this section shall be severable from the other provisions of this  
28 chapter, and shall remain in effect regardless of any judicial challenge to other sections of this  
29 chapter.

30 SECTION 3. 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 - LONG -TERM CONTRACTING  
STANDARD FOR RENEWABLE ENERGY

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1           This act would authorize the construction and operation of a new landfill gas fueled  
2 electric generation facility at the central landfill in Johnston. This project is a renewable energy  
3 resource which reduces our reliance on fossil fuels, while creating jobs among other benefits to  
4 the state.

5           This act would take effect upon passage.

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