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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2009

A N A C T

RELATING TO PUBLIC UTILITIES AND CARRIERS -- RENEWABLE ENERGY
STANDARD

Introduced By: Representatives Segal, Ruggiero, A Rice, Edwards, and Kennedy

Date Introduced: February 12, 2009

Referred To: House Environment and Natural Resources

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 39-26-2 and 39-26-6 of the General Laws in Chapter 39-26
2 entitled "Renewable Energy Standard" are hereby amended to read as follows:

3 **39-26-2. Definitions.** – When used in this chapter:

4 (1) "Alternative compliance payment" means a payment to the Renewable Energy
5 Development Fund of fifty dollars (\$50.00) per megawatt-hour of renewable energy obligation, in
6 2003 dollars, adjusted annually up or down by the consumer price index, which may be made in
7 lieu of standard means of compliance with this statute;

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

9 (3) "Compliance year" means a calendar year beginning January 1 and ending December
10 31, for which an obligated entity must demonstrate that it has met the requirements of this statute;

11 (4) "Customer-sited generation facility" means a generation unit that is interconnected on
12 the end-use customer's side of the retail electricity meter in such a manner that it displaces all or
13 part of the metered consumption of the end-use customer;

14 (5) "Educational institution" means any public school, approved private non-profit
15 school, or institution of higher education as defined in 20 U.S.C. Chapter 28, Subchapter 1, Part
16 A section 1001 (a).

17 (6) "Electrical energy product" means an electrical energy offering, including, but not
18 limited to, last resort and standard offer service, that can be distinguished by its generation

1 attributes or other characteristics, and that is offered for sale by an obligated entity to end-use
2 customers;

3 (7) "Eligible biomass fuel" means fuel sources including brush, stumps, lumber ends and
4 trimmings, wood pallets, bark, wood chips, shavings, slash and other clean wood that is not
5 mixed with other solid wastes; agricultural waste, food and vegetative material; energy crops;
6 landfill methane; biogas; or neat bio-diesel and other neat liquid fuels that are derived from such
7 fuel sources;

8 (8) "Eligible renewable energy resource" means resources as defined in section 39-26-5;

9 (9) "End-use customer" means a person or entity in Rhode Island that purchases
10 electrical energy at retail from an obligated entity;

11 (10) "Existing renewable energy resources" means generation units using eligible
12 renewable energy resources and first going into commercial operation before December 31, 1997;

13 (11) "Farm" shall be defined in accordance with section 44-27-2, except that all
14 buildings associated with the farm shall be eligible for net metering credits as long as: (i) the
15 buildings are owned by the same entity operating the farm or persons associated with operating
16 the farm; and (ii) the buildings are on the same farmland as the renewable generation on either a
17 tract of land contiguous with such farmland or across a public way from such farmland.

18 (12) "Generation attributes" means the nonprice characteristics of the electrical energy
19 output of a generation unit including, but not limited to, the unit's fuel type, emissions, vintage
20 and policy eligibility;

21 (13) "Generation unit" means a facility that converts a fuel or an energy resource into
22 electrical energy;

23 (14) "NE-GIS" means the generation information system operated by NEPOOL, its
24 designee or successor entity, which includes a generation information database and certificate
25 system, and that accounts for the generation attributes of electrical energy consumed within
26 NEPOOL;

27 (15) "NE-GIS certificate" means an electronic record produced by the NE-GIS that
28 identifies the relevant generation attributes of each megawatt-hour accounted for in the NE-GIS;

29 (16) "NEPOOL" means the New England Power Pool or its successor;

30 (17) "Net metering" means the process of measuring the difference between electricity
31 delivered by an electrical distribution company and electricity generated by a solar-net-metering
32 facility or wind-net-metering facility, and fed back to the distribution company;

33 (18) "New renewable energy resources" means generation units using eligible renewable
34 energy resources and first going into commercial operation after December 31, 1997; or the

1 incremental output of generation units using eligible renewable energy resources that have
2 demonstrably increased generation in excess of ten percent (10%) using eligible renewable
3 energy resources through capital investments made after December 31, 1997; but in no case
4 involve any new impoundment or diversion of water with an average salinity of twenty (20) parts
5 per thousand or less;

6 (19) "Non-profit affordable housing" shall mean a housing development or housing
7 project as defined by section 42-55-3 undertaken by a non-profit entity where the residential units
8 taking electric service are either in the same building in close proximity to the renewable energy
9 source or, if not within the same building, are within one-half (1/2) of a mile radius from the
10 renewable energy source; provided, however, that the application has been filed with and
11 reviewed by the division of public utilities and carriers and the division has certified the
12 development or project as eligible. The division shall promulgate regulations setting forth an
13 application process and eligibility criteria to assure that the net metering allowed will benefit [the](#)
14 low income ~~residential electric customers~~ [affordable housing residents](#) only. [The renewable](#)
15 [generation credit applicable for nonprofit affordable housing shall be calculated based on the rate](#)
16 [class applicable to residential units.](#)

17 (20) "Obligated entity" means a person or entity that sells electrical energy to end-use
18 customers in Rhode Island, including, but not limited to: nonregulated power producers and
19 electric utility distribution companies, as defined in section 39-1-2, supplying standard offer
20 service, last resort service, or any successor service to end-use customers; including Narragansett
21 Electric, but not to include Block Island Power Company as described in section 39-26-7 or
22 Pascoag Utility District;

23 (21) "Off-grid generation facility" means a generation unit that is not connected to a
24 utility transmission or distribution system;

25 (22) "Renewable generation credit" means credit equal to the excess kWhs by the time of
26 use billing period (if applicable) multiplied by the sum of the distribution company's:

27 (i) standard offer service kWh charge for the rate class applicable to the net metering
28 customer;

29 (ii) distribution kWh charge;

30 (iii) transmission kWh charge; and

31 (iv) transition kWh charge. This does not include any charges relating to conservation
32 and load management, demand side management, and renewable energy.

33 (23) "Reserved certificate" means a NE-GIS certificate sold independent of a transaction
34 involving electrical energy, pursuant to Rule 3.4 or a successor rule of the operating rules of the

1 NE-GIS;

2 (24) "Reserved certificate account" means a specially designated account established by
3 an obligated entity, pursuant to Rule 3.4 or a successor rule of the operating rules of the NE-GIS,
4 for transfer and retirement of reserved certificated from the NE-GIS;

5 (25) "Self-generator" means an end-use customer in Rhode Island that displaces all or
6 part of its retail electricity consumption, as metered by the distribution utility to which it
7 interconnects, through the use of a customer-sited generation facility, the ownership of any such
8 facility shall not be considered an obligated entity as a result of any such ownership arrangement;

9 (26) "Small hydro facility" means a facility employing one or more hydroelectric turbine
10 generators and with an aggregate capacity not exceeding thirty (30) megawatts. For purposes of
11 this definition, "facility" shall be defined in a manner consistent with Title 18 of the Code of
12 Federal Regulations, section 92.201 et seq.; provided, however, that the size of the facility is
13 limited to thirty (30) megawatts, rather than eighty (80) megawatts.

14 (27) "Towns and cities" means any Rhode Island town or city with the powers set forth in
15 title 45 of the general laws, which may exercise all such powers, including those set forth in
16 chapter 45-40.1, in developing, owning, operating or maintaining energy generation units
17 utilizing eligible renewable energy resources.

18 **39-26-6. Duties of the commission. --** The commission shall:

19 (a) Develop and adopt regulations on or before December 31, 2005, for implementing a
20 renewable energy standard, which regulations shall include, but be limited to, provisions for:

21 (1) Verifying the eligibility of renewable energy generators and the production of energy
22 from such generators, including requirements to notify the commission in the event of a change in
23 a generator's eligibility status.

24 (2) Standards for contracts and procurement plans for renewable energy resources, to
25 achieve the purposes of this chapter.

26 (3) Flexibility mechanisms for the purposes of easing compliance burdens, facilitating
27 bringing new renewable resources on-line, and avoiding and/or mitigating conflicts with state
28 level source disclosure requirements and green marketing claims throughout the region; which
29 flexibility mechanisms shall allow obligated entities to: (i) demonstrate compliance over a
30 compliance year; (ii) bank excess compliance for two (2) subsequent compliance years, capped at
31 thirty percent (30%) of the current year's obligation; and (iii) allow renewable energy generated
32 during 2006 to be banked by an obligated entity as early compliance, usable towards meeting an
33 obligated entity's 2007 requirement. Generation used for early compliance must result in the
34 retirement of NE-GIS certificate in a reserved certificate account designated for such purposes.

1 (4) Annual compliance filings to be made by all obligated entities within one month after
2 NE-GIS reports are available for the fourth (4th) quarter of each calendar year. All electric utility
3 distribution companies shall cooperate with the commission in providing data necessary to assess
4 the magnitude of obligation and verify the compliance of all obligated entities.

5 (b) Authorize rate recovery by electric utility distribution companies of all prudent
6 incremental costs arising from the implementation of this chapter, including, without limitation,
7 the purchase of NE-GIS certificates, the payment of alternative compliance payments, required
8 payments to support the NE-GIS, assessments made pursuant to section 39-26-7(c) and the
9 incremental costs of complying with energy source disclosure requirements.

10 (c) Certify eligible renewable energy resources by issuing statements of qualification
11 within ninety (90) days of application. The commission shall provide prospective reviews for
12 applicants seeking to determine whether a facility would be eligible.

13 (d) Determine, on or before January 1, 2010, the adequacy, or potential adequacy, of
14 renewable energy supplies to meet the increase in the percentage requirement of energy from
15 renewable energy resources to go into effect in 2011 and determine on or before January 1, 2014,
16 the adequacy or potential adequacy, of renewable energy supplies to meet the increase in the
17 percentage requirement of energy from renewable energy resources to go into effect in 2015. In
18 making such determinations the commission shall consider among other factors the historical use
19 of alternative compliance payments in Rhode Island and other states in the NEPOOL region. In
20 the event that the commission determines an inadequacy or potential inadequacy of supplies for
21 scheduled percentage increases, the commission shall delay the implementation of the scheduled
22 percentage increase for a period of one year or recommend to the general assembly a revised
23 schedule of percentage increases, if any, to achieve the purposes of this chapter.

24 (e) Establish sanctions for those obligated entities that after investigation have been
25 found to fail to reasonably comply with the commission's regulations. No sanction or penalty
26 shall relieve or diminish an obligated entity from liability for fulfilling any shortfall in its
27 compliance obligation; provided, however, that no sanction shall be imposed if compliance is
28 achieved through alternative compliance payments. The commission may suspend or revoke the
29 certification of generation units, certified in accordance with subsection (c) above, that are found
30 to provide false information, or that fail to notify the commission in the event of a change in
31 eligibility status or otherwise comply with its rules. Financial penalties resulting from sanctions
32 from obligated entities shall not be recoverable in rates.

33 (f) Report, by February 15, 2006, and by February 15 each year thereafter, to the
34 governor, the speaker of the house and the president of the senate on the status of the

1 implementation of the renewable energy standards in Rhode Island and other states, and which
2 report shall include in 2009, and each year thereafter, the level of use of renewable energy
3 certificates by eligible renewable energy resources and the portion of renewable energy standards
4 met through alternative compliance payments, and the amount of rate increases authorized
5 pursuant to subsection (b) above.

6 (g) Implement the following changes regarding distributed generation from renewable
7 energy systems by ~~January~~ June 1, 2009.

8 (1) Increase the maximum allowable distributed generation capacity for eligible net-
9 metered energy systems to 1.65 megawatts (MW); except that for eligible net-metered renewable
10 energy systems developed but not owned by cities and towns, located on city or town owned land,
11 and providing power solely to the city or town that the project is located in, increase said
12 maximum to 2.25 megawatts; and except that for eligible net-metered renewable energy systems
13 owned by cities and towns of Rhode Island, ~~and~~ the Narragansett Bay Commission and state
14 agencies, increase said maximum to 3.5 megawatts (MW).

15 (2) Increase the aggregate amount of net metering to a maximum of two percent (2%) of
16 peak load, provided that at least one megawatt is reserved for projects less than twenty-five (25)
17 kW.

18 (3)(i) ~~If~~ With the exception of those customers described in subsection (ii), if the
19 electricity generated by the renewable generation facility during a billing period exceeds the
20 customer's kilowatt-hour usage during the billing period, the customer shall upon a request of the
21 customer be billed for zero kilowatt-hour usage and the excess renewable generation credits shall
22 be credited to the customer's account for the following billing period. ~~Any Rhode Island city or~~
23 ~~town, educational institution, farm, or the Narragansett Bay Commission may elect to apply any~~
24 ~~such credits earned to another account owned by it. Non-profit affordable housing may elect to~~
25 ~~apply any such credits earned to other accounts within the eligible affordable housing~~
26 ~~development.~~ Unless otherwise requested by the customer, the customer shall be compensated
27 monthly by a check from the electric distribution company for the excess renewable generation
28 credits pursuant to the rate specified in subdivision 39-26-2(22).

29 (ii) If the electricity generated by the renewable generation facility owned by a Rhode
30 Island city or town, educational institution, nonprofit affordable housing, farm, the state or the
31 Narragansett Bay Commission, during a billing period exceeds the customer's kilowatt-hour
32 usage during the billing period, the customer shall be billed for zero-kilowatt-hour usage, and:

33 (A) Upon request of the customer, the excess renewable generation credits shall be
34 credited to the customer's account for the following billing period; or

1 (B) Upon request of the customer, the excess renewable generation credits shall be
2 applied to no more than ten (10) other accounts owned by the customer during the billing period;
3 or

4 (C) Unless otherwise requested by the customer, the customer shall be compensated
5 monthly by a check from the distribution company for the excess renewable generation credits
6 pursuant to the rates specified in subdivisions 39-26-2(19) and 39-26-2(22).

7 (iii) Nonprofit affordable housing shall use said compensation, pursuant to paragraph (ii),
8 to benefit the residents of the housing development.

9 (4) If the customer's kilowatt-hour usage exceeds the electricity generated by the
10 renewable generation facility during the billing period, the customer shall be billed for the net
11 kilowatt-hour usage at the applicable rate. Any excess credits may be carried forward month to
12 month for twelve (12) month periods as established by the commission. At the end of the
13 applicable twelve (12) month period, if there are unused excess credits on the net metering
14 customer accounts, such credits shall be ~~transferred to the renewable energy low income fund set~~
15 ~~forth in subsection 39-26-6(j).~~ used to offset recoverable utility costs. Where compensation has
16 been provided for excess renewable generation credits, no further charge may be made to the
17 customer against said credits.

18 (h) Any prudent and reasonable costs incurred by the electric distribution company
19 pursuant to achieving compliance with subsection (g) and the annual amount of the distribution
20 component of any renewable generation credits provided to net metering customers shall be
21 aggregated by the distribution company and billed to all customers on an annual basis through a
22 uniform per kilowatt-hour surcharge embedded in the distribution component of the rates
23 reflected on customer bills.

24 (i) Report, by July 1, 2010 to the governor, the speaker of the house and the president of
25 the senate on the status of the implementation of subsection (g) and (h), including if said
26 provisions are optimally cost-effective, reliable, prudent and environmentally responsible.

27 ~~(j) The commission shall establish a renewable energy low income fund to which unused~~
28 ~~excess renewable credits shall be transferred, as provided in subdivision 39-26-6(g)(4). The~~
29 ~~commission shall direct the electrical distribution utility to apply the credits to reduce the electric~~
30 ~~bills of customers in the low income rate class, by such method as determined by the commission.~~
31 ~~The electric distribution company shall file an annual report disclosing the amount of unused~~
32 ~~credits and propose a method of allocating the credits to the low income rate class. The~~
33 ~~commission shall, after conducting a public hearing, retain discretion to accept the proposal,~~
34 ~~modify it, or direct a different method of allocating the credits to the low income rate class.~~

1 (j) Consistent with the public policy objective of developing renewable generation as
2 an option in Rhode Island, the electric distribution company is authorized to propose and
3 implement pilot programs to own and operate no more than fifteen megawatts (15 MW) of
4 renewable generation demonstration projects in Rhode Island and include the costs and benefits
5 in rates to distribution customers. At least two (2) demonstration projects shall include renewable
6 generation installed at or in the vicinity of nonprofit affordable housing projects where energy
7 savings benefits are provided to reduce electric bills of the customers at the nonprofit affordable
8 housing projects. Any renewable generation proposals shall be subject to the review and approval
9 of the commission. The commission shall annually make an adjustment to the minimum amounts
10 required under the renewable energy standard under chapter 39-26 in an amount equal to the
11 kilowatt hours generated by such units owned by the electric distribution company. The electric
12 and gas distribution company shall also be authorized to propose and implement smart metering
13 and smart grid demonstration projects in Rhode Island, subject to the review and approval of the
14 commission, in order to determine the effectiveness of such new technologies for reducing and
15 managing energy consumption, and include the costs of such demonstration projects in
16 distribution rates to electric customers to the extent the project pertains to electricity usage and in
17 distribution rates to gas customers to the extent the project pertains to gas usage.

18 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 -- RENEWABLE ENERGY
STANDARD

1 This act would allow for a check for credits to be issued on a monthly basis from the
2 electric distribution company to the Rhode Island city or town, education institution, farm, or
3 Narragansett Bay commission.

4 This act would take effect upon passage.

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