

**2013 -- S 0641 SUBSTITUTE A**

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LC01653/SUB A  
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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

(Administration)

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, 39-26.2-7, 39-26.2-8 and 39-  
2   26.2-12 of the General Laws in Chapter 39-26.2 entitled "Distributed Generation Standard  
3   Contracts" are hereby 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~~ three megawatts (~~5 MW~~) (3 MW) nameplate capacity.

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

18 ~~(9)~~(10) "Program year" means a calendar year beginning January 1 and ending  
19 December 31.

20 ~~(10)~~(11) "Renewable energy classes" means categories for different renewable energy  
21 technologies using eligible renewable energy resources as defined by section 39-26-5. For each  
22 program year, the board shall determine the renewable energy classes as are reasonably feasible  
23 for use in meeting distributed generation objectives from renewable energy resources and are  
24 consistent with the goal of meeting the annual target for the program year. For the program year  
25 ending December 31, 2012, there shall be at least four (4) technology classes and at least two (2)  
26 shall be for solar generation technology, and at least one shall be for wind. The board may add,  
27 eliminate, or adjust renewable energy classes for each program year with public notice given at  
28 least sixty (60) days previous to any renewable energy class change becoming effective. For each  
29 program year, the board shall set renewable energy class targets for each class established. Class  
30 targets are the total program-year target amounts of nameplate capacity reserved for standard  
31 contracts for each renewable energy class. The sum of all the class targets shall equal the annual  
32 target.

33 ~~(11)~~(12) "Renewable energy credit" means a New England Generation Information  
34 System renewable energy certificate as defined in subdivision 39-26-2(15);

1           ~~(12)~~(13) "Small distributed generation project" means a distributed generation renewable  
2 energy project that has a nameplate capacity ~~no larger than~~ within the following: Solar: fifty  
3 kilowatts (50 KW) to five hundred kilowatts (500 KW); Wind: fifty kilowatts (50 KW) to one and  
4 one-half megawatts (1.5 MW). For technologies other than solar and wind, the board shall set the  
5 nameplate capacity size limits, but such limits may not exceed one megawatt. The board may  
6 lower the nameplate capacity from year to year for any of these categories, but may not increase  
7 the capacity beyond what is specified in this definition. In no case may a project developer be  
8 allowed to segment a distributed generation project into smaller sized projects in order to fall  
9 under this definition.

10           ~~(13)~~(14) "Standard contract" means a contract with a term of fifteen (15) years at a fixed  
11 rate for the purchase of all capacity, energy, and attributes generated by a distributed generation  
12 facility. A contract may have a different term if it is mutually agreed to by the seller and the  
13 electric distribution company and it is approved by the commission. The terms of the standard  
14 contract for each program year and for each renewable energy class shall be set pursuant to the  
15 provisions of this chapter.

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

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

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

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

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

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

1 (b) By October 15, 2011 and each calendar year following until October 15, 2013, the  
2 board may recommend to the commission that the annual target for the following program year  
3 be adjusted upward to reflect any shortfalls in meeting the previous program year's annual target  
4 or to reflect any standard contracts entered into during prior program years that are voided. The  
5 board may also recommend to the commission that the annual target for the following program  
6 year be adjusted downward by any amounts that the previous program year's annual targets were  
7 exceeded by the standard contracts entered into during that program year.

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

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

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

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

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

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

15 (b) For small distributed generation projects, the electric distribution company ~~on a first-~~  
16 ~~come, first served basis, shall enter into standard contracts at the applicable standard contract~~  
17 ~~ceiling price~~ shall select projects for standard contracts based on the lowest proposal prices  
18 received with any distributed generation project which meets the requirements of all applicable  
19 tariffs and regulations, and meets the criteria of a renewable energy class in effect, until the class  
20 target is met. Enrollment periods will be governed by a solicitation and enrollment process rules  
21 that shall be filed with the commission each October 15 by the electric distribution company, and  
22 approved by the commission within sixty (60) days of such filing.

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

30 (d) If there are more projects than what is specified for a class target at the same price,  
31 the electric distribution company shall review the applications submitted and select first those  
32 projects that appear to be the furthest along in development and likely to be deployed in  
33 consultation with the office. Those projects that are likely to be deployed on the earliest timelines  
34 shall be selected. To the extent the electric distribution company is unable to make a clear

1 distinction on this basis, the electric company shall report the results to the board and not enter  
2 into contracts with those projects that are tied on pricing. In such case, the board may take such  
3 action as it deems appropriate for the selection of projects, including seeking more information  
4 from the projects. Alternatively, the board may consider adjustments to the ceiling price and a  
5 rebid, or simply wait until the next enrollment.

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. [The office and the electric  
12 distribution company shall enter into a memorandum of understanding regarding the sharing of  
13 the information and data related to the distributed generation program.](#)

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

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

28 **39-26.2-7. Standard contract -- Form and provisions.** -- The following process shall be  
29 implemented to establish the non-price terms and conditions of the standard contract:

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

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

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

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

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

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

10 (iv) Provide that if the distributed generation facility has not generated ninety percent  
11 (90%) of the output proposed in its enrollment application within eighteen (18) months after  
12 execution of the contract, the contract ~~is automatically voided~~ shall be terminated and the  
13 performance guarantee ~~is~~ shall be forfeited. An eligible small-scale hydropower distributed  
14 generation facility that has not generated ninety percent (90%) of the output proposed in its  
15 enrollment application within thirty-six (36) months after execution of the contract shall result in  
16 the contract being terminated and the performance guarantee being forfeited. Any forfeited  
17 performance guarantee deposits shall be credited to all distribution customers in rates and not  
18 retained by the electric distribution company;

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

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

32 (vii) All distributed generation projects that have executed contracts will be required to  
33 submit quarterly reports on the progress of the project to the distribution company and the office  
34 of energy resources. Failure to submit these quarterly progress reports may result in the



1 [termination of the contract.](#)

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

14 **39-26.2-8. Standard contract -- Reporting.** -- (a) After each enrollment during a  
15 program year the electric distribution companies shall provide a report to the board, office of  
16 energy resources, and the commission of the aggregate amount of project nameplate capacity that  
17 was the subject of standard contracts entered into during that enrollment and the prices under  
18 each of the standard contracts that were executed.

19 (b) Each quarter of a program year, the electric distribution company shall provide an  
20 accounting to office of energy resource, the board, and the commission of the total amount paid to  
21 distributed generation facilities under standard contracts during that quarter, until the forty  
22 megawatt (40 MW) target is met;

23 (c) Until the forty megawatt (40 MW) target is met, the electric distribution company  
24 shall submit preliminary reports to office of energy resources, the board, and the commission  
25 indicating the number of standard contracts and total estimated annual generation, price, class,  
26 and any other relevant information for the purposes of better specifying classes, targets, or  
27 standard contract prices so as to achieve the purposes set forth in this chapter. Such reports shall  
28 be submitted no later than sixty (60) days prior to the end of the calendar year.

29 [\(d\) The electric distribution company shall in consultation with the office utilize uniform](#)  
30 [standard forms for evaluating project proposals and shall rank projects according to uniform](#)  
31 [criteria.](#)

32 [\(e\) At the end of each enrollment, the electric distribution company shall, upon request by](#)  
33 [an applicant, provide said applicant with written feedback on the evaluation of said applicant's](#)  
34 [project proposal.](#)

1           **39-26.2-12. Powers and duties.** -- The board shall have the power to:

2           (1) Develop and recommend to the public utilities commission for review and approval  
3 ceiling prices for standard contracts under the distributed generation standard contracts;

4           (2) Develop and recommend to the commission adjustments up or down to the annual  
5 target for standard contracts for the following program year;

6           (3) Monitor and evaluate performance under the distributed generation standard  
7 contracts act, including an assessment of ratepayer impact [and the project selection process](#), to be  
8 submitted annually in a report to the governor and the general assembly.

9           (4) Participate in proceedings of the public utilities commission that pertain to the  
10 purposes of the board.

11           (5) In order to provide funding for the purposes of engaging consultants and professional  
12 services as necessary and appropriate for the board to fulfill its duties and purposes, an allocation  
13 of no less than fifty thousand dollars (\$50,000) from unused portions of Regional Greenhouse  
14 Gas Initiative ("RGGI") auction proceeds not dedicated to efficiency measures but to overhead  
15 expenses shall be transmitted from the office of energy resources to the board.

16           SECTION 2. 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 - DISTRIBUTED GENERATION  
STANDARD CONTRACTS

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- 1 This act would amend the definition of a 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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