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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 -- THE ENERGY REFORM ACT
OF 2013

Introduced By: Senator V. Susan Sosnowski

Date Introduced: May 02, 2013

Referred To: Senate Environment & Agriculture

(Governor)

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 39-26-2, 39-26-4 and 39-26-5 of the General Laws in Chapter 39-
2 26 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) "Electrical energy product" means an electrical energy offering, including, but not
15 limited to, last resort and standard offer service, that can be distinguished by its generation
16 attributes or other characteristics, and that is offered for sale by an obligated entity to end-use
17 customers;

18 (6) "Eligible biomass fuel" means fuel sources including brush, stumps, lumber ends and

1 trimmings, wood pallets, bark, wood chips, shavings, slash and other clean wood that is not
2 mixed with other solid wastes; agricultural waste, food and vegetative material; energy crops;
3 landfill methane; biogas; or neat bio-diesel and other neat liquid fuels that are derived from such
4 fuel sources;

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

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

8 (9) "Existing renewable energy resources" means generation units using eligible
9 renewable energy resources and first going into commercial operation before ~~December 31, 1997~~
10 January 1, 2005, with the exception of a large-scale hydropower facility as defined under
11 subdivision 39-26-2(12);

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

15 (11) "Generation unit" means a facility that converts a fuel or an energy resource into
16 electrical energy;

17 (12) "Large-scale hydropower facility" means an existing or new facility greater than
18 thirty megawatts (30 MW) and which includes one or more hydroelectric turbine generators. An
19 existing or new large-scale hydropower facility shall be eligible to apply under the long-term
20 contracting standard as defined under chapter 39-26.1, but is not eligible to apply under section
21 39-26-4.

22 ~~(12)~~(13) "NE-GIS" means the generation information system operated by NEPOOL, its
23 designee or successor entity, which includes a generation information database and certificate
24 system, and that accounts for the generation attributes of electrical energy consumed within
25 NEPOOL;

26 ~~(13)~~(14) "NE-GIS certificate" means an electronic record produced by the NE-GIS that
27 identifies the relevant generation attributes of each megawatt-hour accounted for in the NE-GIS;

28 ~~(14)~~(15) "NEPOOL" means the New England Power Pool or its successor;

29 ~~(15)~~(16) "New renewable energy resources" means generation units using eligible
30 renewable energy resources and first going into commercial operation after ~~December 31, 1997~~
31 January 1, 2005, with the exception of a large-scale hydropower facility, which is only eligible to
32 apply under chapter 39-26.1; or the incremental output of generation units using eligible
33 renewable energy resources that have demonstrably increased generation in excess of ten percent
34 (10%) using eligible renewable energy resources through capital investments made after

1 ~~December 31, 1997~~ [January 1, 2005](#); but in no case involve any new impoundment or diversion
2 of water with an average salinity of twenty (20) parts per thousand or less;

3 ~~(16)~~[\(17\)](#) "Obligated entity" means a person or entity that sells electrical energy to end-
4 use customers in Rhode Island, including, but not limited to: nonregulated power producers and
5 electric utility distribution companies, as defined in section 39-1-2, supplying standard offer
6 service, last resort service, or any successor service to end-use customers; including Narragansett
7 Electric, but not to include Block Island Power Company as described in section 39-26-7 or
8 Pascoag Utility District;

9 ~~(17)~~[\(18\)](#) "Off-grid generation facility" means a generation unit that is not connected to a
10 utility transmission or distribution system;

11 [\(19\) "Office" means the Rhode Island office of energy resources;](#)

12 ~~(18)~~[\(20\)](#) "Reserved certificate" means a NE-GIS certificate sold independent of a
13 transaction involving electrical energy, pursuant to Rule 3.4 or a successor rule of the operating
14 rules of the NE-GIS;

15 ~~(19)~~[\(21\)](#) "Reserved certificate account" means a specially designated account established
16 by an obligated entity, pursuant to Rule 3.4 or a successor rule of the operating rules of the NE-
17 GIS, for transfer and retirement of reserved certificated from the NE-GIS;

18 ~~(20)~~[\(22\)](#) "Self-generator" means an end-use customer in Rhode Island that displaces all
19 or part of its retail electricity consumption, as metered by the distribution utility to which it
20 interconnects, through the use of a customer-sited generation facility, the ownership of any such
21 facility shall not be considered an obligated entity as a result of any such ownership arrangement;

22 ~~(21)~~[\(23\)](#) "~~Small-hydro~~ [Small-scale hydropower](#) facility" means a facility employing one
23 or more hydroelectric turbine generators and with an aggregate capacity not exceeding thirty (30)
24 megawatts. For purposes of this definition, "facility" shall be defined in a manner consistent with
25 Title 18 of the Code of Federal Regulations, section 92.201 et seq.; provided, however, that the
26 size of the facility is limited to thirty (30) megawatts, rather than eighty (80) megawatts.

27 ~~(22)~~[\(24\)](#) "Renewable energy resource" means any one or more of the renewable energy
28 resources described in subsection 39-26-5(a) of this chapter.

29 **39-26-4. Renewable energy standard.** -- (a) Starting in compliance year 2007, all
30 obligated entities shall obtain at least three percent (3%) of the electricity they sell at retail to
31 Rhode Island end-use customers, adjusted for electric line losses, from eligible renewable energy
32 resources, [with the exception of a large-scale hydropower facility, which is only eligible to apply](#)
33 [under chapter 39-26.1](#), escalating, according to the following schedule:

34 (1) At least three percent (3%) of retail electricity sales in compliance year 2007;

1 (2) An additional one half of one percent (0.5%) of retail electricity sales in each of the
2 following compliance years 2008, 2009, 2010;

3 (3) An additional one percent (1%) of retail electricity sales in each of the following
4 compliance years 2011, 2012, 2013, 2014, provided that the commission has determined the
5 adequacy, or potential adequacy, of renewable energy supplies to meet these percentage
6 requirements;

7 (4) An additional one and one half percent (1.5%) of retail electricity sales in each of the
8 following compliance years 2015, 2016, 2017, 2018 and 2019, provided that the commission has
9 determined the adequacy, or potential adequacy of renewable energy supplies to meet these
10 percentage requirements;

11 (5) In 2020 and each year thereafter, the minimum renewable energy standard
12 established in 2019 shall be maintained unless the commission, in consultation with the office,
13 shall determine that such maintenance is no longer necessary for either amortization of
14 investments in new renewable energy resources or for maintaining targets and objectives for
15 renewable energy.

16 (b) For each obligated entity and in each compliance year, the amount of retail electricity
17 sales used to meet obligations under this statute that is derived from existing renewable energy
18 resources shall not exceed two percent (2%) of total retail electricity sales.

19 (c) The minimum renewable energy percentages set forth in subsection (a) above shall be
20 met for each electrical energy product offered to end-use customers, in a manner that ensures that
21 the amount of renewable energy of end-use customers voluntarily purchasing renewable energy is
22 not counted toward meeting such percentages.

23 (d) To the extent consistent with the requirements of this chapter, compliance with the
24 renewable energy standard may be demonstrated through procurement of NE-GIS certificates
25 relating to generating units certified by the commission as using eligible renewable energy
26 sources, as evidenced by reports issued by the NE-GIS administrator. Procurement of NE-GIS
27 certificates from off-grid and customer-sited generation facilities, if located in Rhode Island and
28 verified by the commission as eligible renewable energy resources, may also be used to
29 demonstrate compliance. With the exception of contracts for generation supply entered into prior
30 to 2002, initial title to NE-GIS certificates from off-grid and customer-sited generation facilities
31 and from all other eligible renewable energy resources shall accrue to the owner of such a
32 generation facility, unless such title has been explicitly deemed transferred pursuant to contract or
33 regulatory order.

34 (e) In lieu of providing NE-GIS certificates pursuant to subsection (d) of this section, an

1 obligated entity may also discharge all or any portion of its compliance obligations by making an
2 alternative compliance payment to the Renewable Energy Development Fund established
3 pursuant to section 39-26-7.

4 (f) The electric distribution company shall, in consultation with the office and the
5 commission, participate in regional procurements for renewable energy resources.

6 **39-26-5. Renewable energy resources.** -- (a) Renewable energy resources are:

- 7 (1) Direct solar radiation;
- 8 (2) The wind;
- 9 (3) Movement or the latent heat of the ocean;
- 10 (4) The heat of the earth;
- 11 (5) ~~Small hydro~~ Small-scale hydropower facilities;

12 (6) Large-scale hydropower facilities, as defined in subdivision 39-26-2(12);

13 ~~(6)(7)~~ Biomass facilities using eligible biomass fuels and maintaining compliance with
14 current air permits; eligible biomass fuels may be co-fired with fossil fuels, provided that only the
15 renewable energy fraction of production from multi-fuel facilities shall be considered eligible;

16 ~~(7)(8)~~ Fuel cells using the renewable resources referenced above in this section;

17 ~~(8)(9)~~ Waste-to-energy combustion of any sort or manner shall in no instance be
18 considered eligible except for fuels identified in section 39-26-2(6).

19 (b) For the purposes of the regulations promulgated under this chapter, eligible
20 renewable energy resources are generation units in the NEPOOL control area using renewable
21 energy resources as defined in this section.

22 (c) A generation unit located in an adjacent control area outside of the NEPOOL may
23 qualify as an eligible renewable energy resource, but the associated generation attributes shall be
24 applied to the renewable energy standard only to the extent that the energy produced by the
25 generation unit is actually delivered into NEPOOL for consumption by New England customers.

26 The delivery of such energy from the generation unit into NEPOOL must be generated by:

27 (1) A unit-specific bilateral contract for the sale and delivery of such energy into
28 NEPOOL; and

29 (2) Confirmation from ISO-New England that the renewable energy was actually settled
30 in the NEPOOL system; and

31 (3) Confirmation through the North American Reliability Council tagging system that
32 the import of the energy into NEPOOL actually occurred; or

33 (4) Any such other requirements as the commission deems appropriate.

34 (d) NE-GIS certificates associated with energy production from off-grid generation and

1 customer-sited generation facilities certified by the commission as eligible renewable energy
2 resources may also be used to demonstrate compliance, provided that the facilities are physically
3 located in Rhode Island.

4 SECTION 2. Sections 39-26.1-2, 39-26.1-3, 39-26.1-4, 39-26.1-5 and 39-26.1-8 of the
5 General Laws in Chapter 39-26.1 entitled "Long-Term Contracting Standard for Renewable
6 Energy" are hereby amended to read as follows:

7 **39-26.1-2. Definitions.** -- Terms not defined in this chapter shall have the same meaning
8 as contained in chapter 26 of title 39 of the general laws. When used in this chapter:

9 (1) "Commercially reasonable" means terms and pricing that are reasonably consistent
10 with what an experienced power market analyst would expect to see in transactions involving
11 newly developed renewable energy resources. Commercially reasonable shall include having a
12 credible project operation date, as determined by the commission, but a project need not have
13 completed the requisite permitting process to be considered commercially reasonable. If there is a
14 dispute about whether any terms or pricing are commercially reasonable, the commission shall
15 make the final determination after evidentiary hearings;

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

17 (3) "Consultation" means seeking the advice and opinion of the Rhode Island office of
18 energy resources, the Rhode Island division of public utilities and carriers, and the commission;

19 (4) "Division" means the Rhode Island division of public utilities and carriers;

20 ~~(3)~~(5) "Electric distribution company" means a company defined in subsection 39-1-
21 2(12), supplying standard offer service, last resort service, or any successor service to end-use
22 customers, but not including the Block Island Power Company or the Pascoag Utility District;

23 ~~(4)~~(6) "Eligible renewable energy resource" means resources as defined in section 39-26-
24 5 and any references therein;

25 ~~(5)~~(7) "Long-term contract" means a contract of not less than ten (10) years;

26 ~~(6)~~(8) "Newly developed renewable energy resources" means electrical generation units,
27 with the exception of large-scale hydropower facilities as defined under subdivision 39-26-2(12),
28 that use exclusively an eligible renewable energy resource, and that have neither begun operation,
29 nor have the developers of the units implemented investment or lending agreements necessary to
30 finance the construction of the unit; provided, however, that any projects using eligible renewable
31 energy resources and located within the state of Rhode Island which obtain project financing on
32 or after January 1, 2009, shall qualify as newly developed renewable energy resources for
33 purposes of the first solicitation under this chapter;

34 ~~(7)~~(9) "Minimum long-term contract capacity" means ninety (90) megawatts of which

1 three (3) megawatts must be solar or photovoltaic projects located in the state of Rhode Island. In
2 determining whether the minimum long-term contract capacity has been reached, the capacity
3 under contract shall be adjusted by the capacity factor of each renewable generator as determined
4 by the ISO-NE rules, as they may change from time to time. By way of example, a contract with a
5 one hundred (100) megawatt facility with a thirty percent (30%) capacity factor would be counted
6 as providing thirty (30) megawatts to the minimum long-term contract capacity requirement.

7 **39-26.1-3. Long-term contract standard.** -- (a)(1) Beginning on or before July 1, 2010,
8 each electric distribution company shall be required to annually solicit proposals from renewable
9 energy developers and, provided commercially reasonable proposals have been received, enter
10 into long-term contracts with terms of up to fifteen (15) years for the purchase of capacity, energy
11 and attributes from newly developed renewable energy resources. Subject to commission
12 approval, the electric distribution company may enter into contracts for term lengths longer than
13 fifteen (15) years. Notwithstanding any other provisions of this chapter, on or before August 15,
14 2009, the electric distribution company shall solicit proposals for one newly developed renewable
15 energy resources project as required in section 39-26.1-7. Proposals for the sale of output from an
16 offshore wind project received under the provisions of this section shall be diligently and fully
17 considered without prejudice, regardless of the status of any proceedings under sections 39-26.1-7
18 or 39-26.1-8.

19 (2) Beginning on or before July 1, 2013, each electric distribution company shall, in
20 consultation with the office and the division, be required to solicit a power purchase agreement
21 for a one hundred fifty megawatt (150 MW) large-scale hydropower proposal from renewable
22 energy developers and, provided commercially reasonable proposals have been received, enter
23 into long-term contracts with terms of up to fifteen (15) years for the purchase of capacity and
24 energy. The electric distribution company shall, in consultation with the office and the division,
25 identify any opportunities with other states and their electric distribution companies for regional
26 and international procurement of large-scale hydropower.

27 (3) The office, the division, and the commission shall have the authority to allow a power
28 purchase agreement to be below one hundred fifty megawatts (150 MW), if it is determined that a
29 regional or international procurement opportunity does not allow for the full one hundred fifty
30 megawatt (150 MW) obligation to be procured. The electric distribution company shall not be
31 required to acquire beyond the one hundred fifty megawatt (150 MW) target for a large-scale
32 hydropower facility.

33 (b) The timetable and method for solicitation and execution of such contracts shall be
34 proposed by the electric distribution company, and shall be subject to review and approval by the

1 commission in consultation with the office and the division prior to issuance by the company;
2 provided that the timetable is reasonably designed to result in the electric distribution company
3 having the minimum long-term contract capacity under contract within ~~four (4) years of~~ the date
4 of the first solicitation; it is not necessary that the projects associated with these contracts be
5 operational within these ~~four (4) years~~ periods, as the operational dates shall be specified in the
6 contract. The electric distribution company shall, subject to review and approval of the
7 commission, in consultation with the office and the division, select a reasonable method of
8 soliciting proposals from renewable energy developers, which shall include, at a minimum, ~~an~~
9 ~~annual~~ a public solicitation, but may also include individual negotiations. The electric distribution
10 company's solicitation for up to one hundred fifty megawatt (150 MW) large-scale hydropower
11 power purchase agreement shall be posted on the website maintained by the electric distribution
12 company. The solicitation process shall permit a reasonable amount of negotiating discretion for
13 the parties to engage in commercially reasonable arms-length negotiations over final contract
14 terms. ~~Each~~ The long-term contract entered into pursuant to this section shall contain a condition
15 that it shall not be effective without commission review and approval. The electric distribution
16 company shall file such contract, along with a justification for its decision, within a reasonable
17 time after it has executed the contract following a solicitation or negotiation. The commission
18 shall hold public hearings to review the contract within forty-five (45) days of the filing and issue
19 a written order approving or rejecting the contract within sixty (60) days of the filing; in rejecting
20 a contract the commission may advise the parties of the reason for the contract being rejected and
21 direct the parties to attempt to address the reasons for rejection in a revised contract within a
22 specified period not to exceed ninety (90) days. The commission shall approve the contract if it
23 determines that: (1) the contract is commercially reasonable; (2) the requirements for the annual
24 solicitation have been met; and (3) the contract is consistent with the purposes of this chapter. A
25 report on each solicitation shall be filed with the commission each year within a reasonable time
26 after decisions are made by the electric distribution company regarding the solicitation results,
27 even if no contracts are executed following the solicitation.

28 (c)(1) No electric distribution company shall be obligated to enter into long-term
29 contracts for newly developed renewable energy resources on terms which the electric
30 distribution company reasonably believes to be commercially unreasonable; provided, however, if
31 there is a dispute about whether these terms are commercially unreasonable, the commission, in
32 consultation with the office and the division, shall make the final determination after an
33 evidentiary hearing. The electric distribution company shall not be obligated to enter into long-
34 term contracts pursuant to this section that would, in the aggregate, exceed the minimum long-

1 term contract capacity, but may do so voluntarily subject to commission approval. As long as the
2 electric distribution company has entered into long-term contracts in compliance with this
3 section, the electric distribution company shall not be required by regulation or order to enter into
4 power purchase contracts with renewable generation projects for power, renewable energy
5 certificates, or any other attributes with terms of more than three (3) years in meeting its
6 applicable annual renewable portfolio standard requirements set forth in section 39-26-4 or
7 pursuant to any other provision of the law.

8 (2) Except as provided in section 39-26.1-7, ~~and~~ 39-26.1-8, [and 39-26.1-10](#), an electric
9 distribution company shall not be required to enter into long-term contracts for newly developed
10 renewable energy resources that exceed the following four (4) year phased schedule:

11 By December 30, 2010: Twenty-five percent (25%) of the minimum long-term contract
12 capacity;

13 By December 30, 2011: Fifty percent (50%) of the minimum long-term contract
14 capacity;

15 By December 30, 2012: Seventy-five percent (75%) of the minimum long-term contract
16 capacity;

17 By December 30, 2013: One hundred percent (100%) of the minimum long-term
18 contract capacity; but may do so earlier voluntarily, subject to commission approval.

19 [No later than December 30, 2014: Execute up to a one hundred fifty megawatt \(150 MW\)](#)
20 [power purchase agreement with a large-scale hydropower facility. The deadline shall be extended](#)
21 [by the office if it is determined in coordination with the division that the procurement deadline for](#)
22 [a large-scale hydropower facility needs to be extended.](#)

23 (d) Compliance with the long-term contract standard shall be demonstrated through
24 procurement pursuant to the provisions of a long-term contract of energy, capacity and attributes
25 reflected in NE-GIS certificates relating to generating units certified by the commission as using
26 newly developed renewable energy resources, [with the exception of a large-scale hydropower](#)
27 [facility as defined under subdivision 39-26-2\(12\)](#), as evidenced by reports issued by the NE-GIS
28 administrator and the terms of the contract; provided, however, that the NE-GIS certificates were
29 procured pursuant to the provisions of a long-term contract. The electric distribution company
30 also may purchase other attributes from the generator as part of the long-term contract.

31 (e) After the adoption of the rules and regulations promulgated by the commission
32 pursuant to this chapter, an electric distribution company may, at its sole election, immediately
33 and from time to time, procure additional commercially reasonable long-term contracts for newly
34 developed renewable energy resources on an earlier timetable or above the minimum long-term

1 contract capacity, subject to commission approval.

2 **39-26.1-4. Financial remuneration and incentives.** -- In order to achieve the purposes
3 of this chapter, electric distribution companies shall be entitled to financial remuneration and
4 incentives for long-term contracts for newly developed renewable energy resources, which are
5 over and above the base rate revenue requirement established in its cost of service for distribution
6 ratemaking. Such remuneration and incentives shall compensate the electric distribution company
7 for accepting the financial obligation of the long-term contracts. The financial remuneration and
8 incentives described in this subsection shall apply only to long-term contracts for newly
9 developed renewable energy resources. The financial remuneration and incentives shall be in the
10 form of annual compensation, equal to two and three quarters percent (2.75%) of the actual
11 annual payments made under the contracts for those projects that are commercially operating.
12 [Effective January 1, 2013, the financial remuneration and incentives described above shall not](#)
13 [apply to projects, as defined in sections 39-26.1-8 and 39-26.1-10.](#)

14 **39-26.1-5. Commission approvals and regulations.** -- (a) Electric distribution
15 companies shall submit to the commission for review and approval all long-term contracts for
16 newly developed renewable energy resources proposed to be entered into in accordance with this
17 chapter.

18 (b) Unless the commission approves otherwise, all energy and capacity purchased by an
19 electric distribution company pursuant to this chapter shall be immediately sold by the electric
20 distribution company into the wholesale spot market; provided, however, that all such sales shall
21 be made through arms-length transactions.

22 (c) Unless the commission approves otherwise, any attributes including NE-GIS
23 certificates purchased by an electric distribution company pursuant to this chapter shall be sold
24 through a competitive bidding process in a commercially reasonable manner.

25 (d) Notwithstanding any term or provision to the contrary contained in subsection (b) or
26 (c) hereof, subject to commission approval, electric distribution companies shall be permitted, but
27 shall not be required: (1) to use the energy, capacity and other attributes purchased for resale to
28 customers; and/or (2) to use the NE-GIS certificates for purposes of meeting the obligations set
29 forth in chapter 26 of title 39; provided, however, that the commission finds that such sales would
30 not have a detrimental impact on energy markets, on the market for NE-GIS certificates, and is
31 otherwise in the interest of utility customers.

32 (e) The commission shall promulgate regulations by April 1, 2010, that shall, as a
33 condition of contract approval, require all approved projects, regardless of their location, to
34 provide other direct economic benefits to Rhode Island, such as job creation, increased property

1 tax revenues or other similar revenues, deemed substantial by the commission.

2 (f) The electric distribution company shall file tariffs with the commission for
3 commission review and approval that net the cost of payments made to projects under the long-
4 term contracts against the proceeds obtained from the sale of energy, capacity, RECs or other
5 attributes. [A large-scale hydropower facility, as defined in subdivision 39-26-2\(12\), shall not be](#)
6 [eligible for RECs under any long-term contract.](#) The difference shall be credited or charged to all
7 distribution customers through a uniform fully reconciling annual factor in distribution rates,
8 subject to review and approval of the commission. The reconciliation shall be designed so that
9 customers are credited with any net savings resulting from the long-term contracts and the electric
10 distribution company recovers all costs incurred under such contracts, as well as, recovery of the
11 financial remuneration and incentives specified in section 39-26.1-4.

12 **39-26.1-8. Utility-scale offshore wind project -- Separate proceedings.** -- (a) Upon
13 certification by the department of administration identifying the developer selected by the state to
14 develop a utility-scale offshore wind farm, such developer may file an application under this
15 section within one hundred eighty (180) days of such certification by the department. For the
16 purposes of this section, "utility-scale offshore wind farm" shall mean a wind power project
17 located offshore in the waters of Rhode Island or adjacent federal waters of at least one hundred
18 (100) megawatts but not more than one hundred fifty (150) megawatts. The purpose of the
19 application shall be for the applicant to request that the commission require a long term contract
20 with the electric distribution company. Should the commission approve a contract pursuant to this
21 section 39-26.1-8, it shall not be counted towards the minimum long-term contract capacity
22 specified in section 39-26.1-2(7). [The electric distribution company shall, in consultation with the](#)
23 [office, identify any opportunities for regional procurement of utility-scale offshore wind, if an](#)
24 [opportunity is identified with other states and their electric distribution companies.](#)

25 (b) The commission shall hold proceedings to review the proposal contained in the
26 application. In reviewing the application, the commission shall determine whether the proposal is
27 in the best interests of electric distribution customers in Rhode Island. In making this
28 determination, the commission shall consider the following factors: (i) The economic impact and
29 potential risks, if any, of the proposal on rates to be charged by the electric distribution company;
30 (ii) The potential benefits of stabilizing long-term energy prices; (iii) Any other factor the
31 commission determines necessary to be in the best interest of the rate payers.

32 (c) The application will contain the following information:

33 (i) A complete description of the proposed project,

34 (ii) A description of the legal entity that will enter into a long term contract,

- 1 (iii) A time line for permitting, licensing, and construction,
- 2 (iv) Pricing projected under the long term contract being sought, including prices for all
- 3 market products that would be sold under the proposed long term contract, subject to any contract
- 4 negotiations between the applicant and the electric distribution company,
- 5 (v) Projected electrical energy production profiles,
- 6 (vi) The proposed term for the long term contract,
- 7 (vii) Economic justification for the proposal, including projection of market prices,
- 8 (viii) A description of the economic benefits to Rhode Island, including the creation of
- 9 jobs in Rhode Island,
- 10 (ix) All filings with state and federal regulatory agencies related to the proposal,
- 11 (x) All interconnection filings related to the proposal,
- 12 (xi) A proposed initial term sheet for a long-term contract between the applicant and the
- 13 electric distribution company.

14 The information submitted in the application shall be subject to modification as a result

15 of any negotiation of a contract ordered by the commission.

16 (d) The commission shall promulgate rules and regulations governing the proceedings

17 outlined in this section by April 30, 2010.

18 (e) The applicant must serve copies of the application to the electric distribution

19 company with whom the applicant is seeking a long term contract, the division of public utilities

20 and carriers, the office of energy resources, the department of administration, the economic

21 development corporation and the attorney general. Prior to the filing of any information, the

22 applicant may seek a protective order to protect the confidentiality of information for good cause

23 shown, to the extent that such information is proprietary or confidential business information, but

24 unredacted copies of the entire filing must be provided to the parties identified in this paragraph,

25 who shall be bound by any protective order that may be issued regarding further disclosure.

26 (f) The electric distribution company, the division of public utilities and carriers and the

27 office of energy resources shall be mandatory parties to the proceeding. The applicant must pay

28 for the reasonable costs of consultants or counsel that may be hired by the commission and the

29 division for the proceeding, but in no case shall the applicant be liable for the costs in excess of

30 \$100,000 for the division and \$100,000 for the commission, respectively.

31 (g) The commission shall issue a final order in the proceedings required by section 39-

32 26.1-8(b) within eight (8) months of the filing of the application. If the commission determines

33 that the proposal meets the standard outlined in section 39-26.1-8(b), the commission shall

34 require the electric distribution company to negotiate a long-term contract with the applicant. The

1 applicant, however, may decline to continue with the project for any reason at any time during the
2 process outlined in this section. The commission may require changes to the applicant's proposal
3 as a condition to a long-term contract, as the commission determines are just and reasonable. The
4 contract shall contain terms that are commercially reasonable. The contract also shall require that
5 the electric distribution company purchase all of the output of the entire project, unless otherwise
6 authorized by the commission. The parties shall present a proposed contract for review by the
7 commission within three (3) months of the order requiring negotiations. If the parties are unable
8 to reach agreement on a contract within three (3) months of the order requiring negotiations the
9 commission shall have the discretion to order the parties to arbitrate the dispute on an expedited
10 basis. Once the contract terms are finalized by negotiation or arbitration, the contract shall be
11 filed with the commission for review and approval. The commission shall approve the contract
12 upon a finding that the contract is consistent with the purposes of this chapter and the standards
13 set forth in section 39-26.1-1.8(b). The commission shall issue its final decision on the proposed
14 contract within sixty (60) days of receiving the proposed contract. Upon execution of the contract,
15 the provisions of sections 39-26.1-4 and 39-26.1-5 shall apply, and all costs incurred in the
16 negotiation, administration, enforcement, and implementation of the agreement shall be recovered
17 annually by the electric distribution company in electric distribution rates. To the extent the
18 application cites significant economic benefits to Rhode Island that require commitments from
19 the applicant outside of the long term contract to achieve such benefits, and those economic
20 benefits are ultimately relied upon by the commission in authorizing a long term contract to be
21 negotiated, the commission may require that appropriate legally binding commitments be made
22 by the applicant as a condition to a long term contract, unless the commission finds that such
23 commitments are not necessary.

24 (h) Notwithstanding any other provision of this section, the application process does not
25 convey a legal entitlement to the applicant to a long term contract. Rather, the purpose of the
26 proceeding is to leave the final decision as to whether a long term contract should be required to
27 the discretion of the commission, subject to the standards outlined in this section and the purposes
28 of this chapter.

29 (i) An applicant under this section shall not be permitted to submit a proposal under the
30 solicitations required in section 39-26.1-3, except that such applicant shall be permitted to submit
31 a proposal under section 39-26.1-7.

32 (j) Should a proceeding pursuant to this section result in the commission not ordering the
33 distribution company to enter into a long-term contract for a utility-scale offshore wind project, or
34 should the certified developer fail to file an application with the commission within one hundred

1 eighty (180) days of certification, the certification shall be deemed void. In such case, if the
2 commission determines it is in the interest of electric distribution customers to have another
3 utility-scale project considered for a long term contract, the commission has the discretion to
4 request the department of administration to certify a different developer to make another proposal
5 for a utility-scale offshore wind project per this section, provided that the commission makes such
6 request within ninety (90) days of the certification becoming void. If the commission makes such
7 request, the department of administration may, but is not required to, certify another project and
8 shall have ninety days to submit another certification. If such certification is not made within the
9 time allowed, no further action shall be taken by the commission pursuant to this section. Under
10 no circumstances is a distribution company required to enter into more than one contract under
11 this section 39-26.1-8.

12 (k) Approval of a contract under this section shall not be interpreted to prevent, hinder or
13 diminish the ability of any offshore wind project or developer to pursue, finance, seek the
14 development of, or secure permits or electrical interconnection for offshore wind projects in or
15 adjacent to the state, or whose output may be utilized in the state.

16 SECTION 3. Chapter 39-26.1 of the General Laws entitled "Long-Term Contracting
17 Standard for Renewable Energy" is hereby amended by adding thereto the following section:

18 **39-26.1-10. International and regional renewable energy project. -- (a) Upon**
19 **selection of a renewable energy developer for up to a one hundred fifty megawatt (150 MW)**
20 **large-scale hydropower facility long-term power purchase agreement contract, the electric**
21 **distribution company in consultation with the office shall file an application with the commission**
22 **under this section within one hundred eighty (180) days.**

23 **(b) The application shall contain the following information:**

24 **(1) A complete description of the existing or newly developed renewable energy resource**
25 **project, including any upgrades or new transmission lines;**

26 **(2) A description of the legal entity that will enter into a long-term contract;**

27 **(3) A timeline for permitting, licensing, and construction, including any necessary**
28 **transmission line upgrades;**

29 **(4) Pricing projected under the long-term contract being sought, including prices for all**
30 **market products that would be sold under the proposed long-term contract at fixed or variable**
31 **rates. If variable rates are proposed they must be fully specified in the power purchase agreement.**

32 **A contract may have a different term, and/or variable rate structure, if these are mutually agreed**
33 **to by the seller and the electric distribution company and are approved by the commission,**
34 **subject to any contract negotiations between the applicant and the electric distribution company;**

- 1 (5) Projected electrical energy production profiles;
- 2 (6) The proposed term for the long-term contract;
- 3 (7) Economic justification for the proposal, including projection of market prices;
- 4 (8) All filings with state and federal regulatory agencies related to the proposal;
- 5 (9) All interconnection filings related to the proposal; and
- 6 (10) A proposed initial term sheet for a long-term contract between the applicant and the
- 7 electric distribution company.

8 The information submitted in the application shall be subject to modification as a result
9 of any negotiation of a contract ordered by the commission.

10 (c) The applicant must serve copies of the application to the electric distribution company
11 with whom the applicant is seeking a long-term contract, the division of public utilities and
12 carriers, the office of energy resources, and the attorney general. Prior to the filing of any
13 information, the applicant may seek a protective order to protect the confidentiality of
14 information for good cause shown, to the extent that such information is proprietary or
15 confidential business information, but unredacted copies of the entire filing must be provided to
16 the parties identified in this paragraph, who shall be bound by any protective order that may be
17 issued regarding further disclosure.

18 (d) The commission shall hold proceedings to review the proposal contained in the
19 application. In reviewing the application, the commission shall determine whether the proposal
20 meets the requirement of the chapter. In making this determination, the commission shall
21 consider the following factors:

22 (1) The economic impact and potential risks, if any, of the proposal on rates to be charged
23 by the electric distribution company;

24 (2) The potential benefits of stabilizing long-term energy prices;

25 (3) Environmental benefits;

26 (4) System reliability benefits; and

27 (5) The potential benefits of diversifying the state's energy resources in order to increase
28 energy security.

29 (e) The commission shall promulgate rules and regulations governing the proceedings
30 outlined in this section by December 31, 2013.

31 (f) The electric distribution company, the division of public utilities and carriers and the
32 office shall be mandatory parties to the proceeding. The applicant must pay for the reasonable
33 costs of consultants or counsel that may be hired by the commission, the division, and the office
34 of energy resources for the proceeding, but in no case shall the applicant be liable for the costs in

1 excess of one hundred thousand dollars (\$100,000) for the division of public utilities and carriers,
2 one hundred thousand dollars (\$100,000) for the commission, and one hundred thousand dollars
3 (\$100,000) for the office.

4 (g) The commission shall issue a final order in the proceedings within six (6) months of
5 the filing of the application. If the commission determines that the proposal meets the standard
6 outlined in subsection 39-26.1-3(b), the commission shall require the electric distribution
7 company to negotiate a long-term contract with the applicant. The applicant, however, may
8 decline to continue with the project for any reason at any time during the process outlined in this
9 section. The commission may require changes to the applicant's proposal as a condition to a long-
10 term contract, as the commission determines are just and reasonable. The contract shall contain
11 terms that are commercially reasonable at fixed or variable rates. If variable rates are proposed
12 they must be fully specified in the power purchase agreement. A contract may have a different
13 term, and/or variable rate structures, if these are mutually agreed to by the seller and the electric
14 distribution company and are approved by the commission, subject to any contract negotiations
15 between the applicant and the electric distribution company. The contract also shall require that
16 the electric distribution company purchase all of the output of the entire project, unless otherwise
17 authorized by the commission. The parties shall present a proposed contract for review by the
18 commission within three (3) months of the order requiring negotiations. If the parties are unable
19 to reach agreement on a contract within three (3) months of the order requiring negotiations the
20 commission shall have the discretion to order the parties to arbitrate the dispute on an expedited
21 basis. Once the contract terms are finalized by negotiation or arbitration, the contract shall be
22 filed with the commission for review and approval. The commission shall approve the contract
23 upon a finding that the contract is consistent with the purposes of this chapter. The commission
24 shall issue its final decision on the proposed contract within ninety (90) days of receiving the
25 proposed contract. Upon execution of the contract, the provisions of section 39-26.1-5 shall
26 apply, and all costs incurred in the negotiation, administration, enforcement, and implementation
27 of the agreement shall be recovered annually by the electric distribution company in electric
28 distribution rates.

29 (h) Should a proceeding pursuant to this section result in the commission not ordering the
30 distribution company to enter into a long-term contract for a newly developed renewable energy
31 resource, or should the certified developer fail to file an application with the commission within
32 one hundred eighty (180) days of certification, the certification shall be deemed void. In such
33 case, if the commission in consultation with the office determines it is in the interest of electric
34 distribution customers to have another newly developed renewable energy project be considered

1 for a long-term contract, the commission has the discretion to request the electric distribution
2 company to solicit another proposal for a newly developed renewable energy project per this
3 section, provided that the commission makes such request within ninety (90) days of the
4 certification becoming void. If the commission makes such request, the electric distribution
5 company in consultation with the office may, but is not required to, certify another project and
6 shall have ninety (90) days to submit another certification. If such certification is not made within
7 the time allowed, no further action shall be taken by the commission pursuant to this section.
8 Under no circumstances is a distribution company required to enter into more than one, one
9 hundred fifty megawatt (150 MW) contract under section 39-26.1-10.

10 (i) Notwithstanding any other provision of this section, the application process does not
11 convey a legal entitlement to the applicant to a long-term contract. Rather, the purpose of the
12 proceeding is to leave the final decision as to whether a long-term contract should be required to
13 the discretion of the commission, subject to the standards outlined in this section and the purposes
14 of this chapter.

15 SECTION 4. Sections 39-26.2-3, 39-26.2-4, 39-26.2-6, 39-26.2-7, 39-26.2-8 and 39-
16 26.2-12 of the General Laws in Chapter 39-26.2 entitled "Distributed Generation Standard
17 Contracts" are hereby amended to read as follows:

18 **39-26.2-3. Definitions.** -- When used in this chapter, the following terms shall have the
19 following meanings:

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

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

23 (3) "Board" shall mean the distributed generation standard contract board established
24 pursuant to the provisions of chapter 39-26.2-9, or the office of energy resources. Until such time
25 as the board is duly constituted, the office of energy resources shall serve as the board with the
26 same powers and duties pursuant to this chapter.

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

32 (5) "Distributed generation facility" means an electrical generation facility that is a
33 newly developed renewable energy resource as defined in section 39-26.1-2, located in the
34 electric distribution company's load zone with a nameplate capacity no greater than five

1 megawatts (5 MW), using eligible renewable energy resources as defined by section 39-26-5,
2 including biogas created as a result of anaerobic digestion, but, specifically excluding all other
3 listed eligible biomass fuels, and connected to an electrical power system owned, controlled, or
4 operated by the electric distribution company.

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

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

12 (8) "Large distributed generation project" means a distributed generation project that has
13 a nameplate capacity that exceeds the size of a small distributed generation project in a given
14 year, but is no greater than five megawatts (5 MW) nameplate capacity.

15 (9) "Office" means the Rhode Island office of energy resources;

16 ~~(9)~~(10) "Program year" means a calendar year beginning January 1 and ending
17 December 31.

18 ~~(10)~~(11) "Renewable energy classes" means categories for different renewable energy
19 technologies using eligible renewable energy resources as defined by section 39-26-5. For each
20 program year, the board shall determine the renewable energy classes as are reasonably feasible
21 for use in meeting distributed generation objectives from renewable energy resources and are
22 consistent with the goal of meeting the annual target for the program year. For the program year
23 ending December 31, 2012, there shall be at least four (4) technology classes and at least two (2)
24 shall be for solar generation technology, and at least one shall be for wind. The board may add,
25 eliminate, or adjust renewable energy classes for each program year with public notice given at
26 least sixty (60) days previous to any renewable energy class change becoming effective. For each
27 program year, the board shall set renewable energy class targets for each class established. Class
28 targets are the total program-year target amounts of nameplate capacity reserved for standard
29 contracts for each renewable energy class. The sum of all the class targets shall equal the annual
30 target.

31 ~~(11)~~(12) "Renewable energy credit" means a New England Generation Information
32 System renewable energy certificate as defined in subdivision 39-26-2(15);

33 ~~(12)~~(13) "Small distributed generation project" means a distributed generation renewable
34 energy project that has a nameplate capacity ~~no larger than~~ within the following: Solar: fifty (50)

1 [to](#) five hundred kilowatts (500 KW); Wind: [fifty \(50\) to](#) one and one-half megawatts (1.5 MW).
2 For technologies other than solar and wind, the board shall set the nameplate capacity size limits,
3 but such limits may not exceed one megawatt. The board may lower the nameplate capacity from
4 year to year for any of these categories, but may not increase the capacity beyond what is
5 specified in this definition. In no case may a project developer be allowed to segment a
6 distributed generation project into smaller sized projects in order to fall under this definition.

7 ~~(13)~~[\(14\)](#) "Standard contract" means a contract with a term of ~~fifteen (15)~~ [twenty \(20\)](#)
8 years at a fixed rate for the purchase of all capacity, energy, and attributes generated by a
9 distributed generation facility. A contract may have a different term if it is mutually agreed to by
10 the seller and the electric distribution company and it is approved by the commission. The terms
11 of the standard contract for each program year and for each renewable energy class shall be set
12 pursuant to the provisions of this chapter.

13 ~~(14)~~[\(15\)](#) "Standard contract ceiling price" means the standard contract price for the
14 output of a distributed generation facility which price is approved annually for each renewable
15 energy class pursuant to the procedure established in this chapter, for the purchase of energy,
16 capacity, renewable energy certificates, and all other environmental attributes and market
17 products that are available or may become available from the distributed generation facility.

18 **39-26.2-4. Standard contracts -- Annual targets.** -- (a) To the extent eligible projects
19 are available and submit conforming applications, an electric distribution company shall enter
20 into standard contracts for an aggregate nameplate capacity of at least ~~forty megawatts (40 MW)~~
21 [one hundred twenty megawatts \(120 MW\)](#) of distributed generation projects by the end of ~~2014~~
22 [2018](#), unless such schedule is extended by the board. The contracting shall be spread over ~~four~~
23 ~~(4)~~ [eight \(8\)](#) years, based on the annual targets, aggregated to reflect annual targets from prior
24 program years, contained in the following ~~four (4)~~ [eight \(8\)](#) year phased schedule, unless such
25 schedule is adjusted by the board in any given year:

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

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

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

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

33 [\(5\) By December 30, 2015: a minimum of sixty megawatts \(60 MW\) nameplate;](#)

34 [\(6\) By December 30, 2016: a minimum aggregate of eighty megawatts \(80 MW\)](#)

1 [nameplate:](#)

2 [\(7\) By December 30, 2017: a minimum aggregate of one hundred megawatts \(100 MW\)](#)

3 [nameplate:](#)

4 [\(8\) By December 30, 2018: a minimum aggregate of one hundred twenty megawatts \(120](#)
5 [MW\) nameplate.](#)

6 (b) By October 15, 2011 and each calendar year following until October 15, ~~2013~~ [2018](#),
7 the board may recommend to the commission that the annual target for the following program
8 year be adjusted upward to reflect any shortfalls in meeting the previous program year's annual
9 target or to reflect any standard contracts entered into during prior program years that are voided.
10 The board may also recommend to the commission that the annual target for the following
11 program year be adjusted downward by any amounts that the previous program year's annual
12 targets were exceeded by the standard contracts entered into during that program year.

13 (c) The board may, based on market data and other information available to it including
14 pricing for standard contracts received during previous program years, recommend a reduction of
15 the annual target for the upcoming program year where the board determines that market
16 conditions would be likely to produce unfavorably high target pricing for standard contracts
17 during that upcoming program year. In considering such issues, the board may take into account
18 the reasonableness of current pricing and its impact on all electric distribution customers who will
19 be paying for the output for up to twenty (20) years at such prices. The board may also
20 recommend an extension of time to achieve the ~~forty megawatt (40 MW)~~ [one hundred twenty](#)
21 [megawatts \(120 MW\)](#) target, to allow for contracting to occur after 2014, if necessary.

22 (d) The electric distribution company must contract for at least ~~forty megawatt (40 MW)~~
23 [one hundred twenty megawatts \(120 MW\)](#) of nameplate capacity distributed generation projects
24 by the end of ~~2014~~ [2018](#), unless such schedule is extended by the board. The electric distribution
25 company may not be required to contract for more than ~~forty megawatt (40 MW)~~ [one hundred](#)
26 [twenty megawatts \(120 MW\)](#) or the distributed generation contract capacity, but may do so
27 voluntarily, subject to commission approval.

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

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

34 **39-26.2-6. Standard contract enrollment program.** -- (a) Each electric distribution

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

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

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

1 distributed generation projects.

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

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.

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

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

33 **39-26.2-7. Standard contract -- Form and provisions.** -- The following process shall be
34 implemented to establish the non-price terms and conditions of the standard contract:

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

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

32 (i) Hold the distributed generation facility owner liable for the cost of interconnection
33 from the distributed generation facility to the interconnect point with the distribution system, and
34 for any upgrades to the existing distributed generation system that may be required by the electric

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

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

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

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

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

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

1 by the commission, and the costs of such measurement and accounting are paid for by the
2 distributed generation facility owner.

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

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

20 (b) Each quarter of a program year, the electric distribution company shall provide an
21 accounting to [the](#) office ~~of energy resource~~, the board, and the commission of the total amount
22 paid to distributed generation facilities under standard contracts during that quarter, until the ~~forty~~
23 ~~megawatt (40 MW)~~ [one hundred twenty \(120 MW\)](#) target is met;

24 (c) Until the ~~forty megawatt (40 MW)~~ [one hundred twenty \(120 MW\)](#) target is met, the
25 electric distribution company shall submit preliminary reports to [the](#) office ~~of energy resources~~,
26 the board, and the commission indicating the number of standard contracts and total estimated
27 annual generation, price, class, and any other relevant information for the purposes of better
28 specifying classes, targets, or standard contract prices so as to achieve the purposes set forth in
29 this chapter. Such reports shall be submitted no later than sixty (60) days prior to the end of the
30 calendar year.

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

34 [\(e\) The office shall have staff present as observers at the time project proposals are being](#)

1 [evaluated and ranked by the electric distribution company. At the end of each enrollment, the](#)
2 [electric distribution company shall provide all applicants with a copy of their proposal evaluation](#)
3 [form showing how their project ranked.](#)

4 **39-26.2-12. Powers and duties.** -- The board shall have the power to:

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

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

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

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

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

19 SECTION 5. This act shall take effect upon passage.

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LC02392
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO PUBLIC UTILITIES AND CARRIERS -- THE ENERGY REFORM ACT
OF 2013

1 This act would facilitate, promote, and support the development of newly developed
2 renewable energy resources. In addition, the act would extend the distributed generation contracts
3 program.

4 This act would take effect upon passage.

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LC02392
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