

TITLE 39

Public Utilities and Carriers

CHAPTER 39-26.1

Long-Term Contracting Standard for Renewable Energy

SECTION 39-26.1-8

§ 39-26.1-8 Utility-scale offshore wind project – Separate proceedings. – (a) Upon certification by the department of administration identifying the developer selected by the state to develop a utility-scale offshore wind farm, such developer may file an application under this section within one hundred eighty (180) days of such certification by the department. For the purposes of this section, "utility-scale offshore wind farm" shall mean a wind power project located offshore in the waters of Rhode Island or adjacent federal waters of at least one hundred (100) megawatts but not more than one hundred fifty (150) megawatts. The purpose of the application shall be for the applicant to request that the commission require a long term contract with the electric distribution company. Should the commission approve a contract pursuant to this § 39-26.1-8, it shall not be counted towards the minimum long-term contract capacity specified in § 39-26.1-2(7).

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

(c) The application will contain the following information:

(i) A complete description of the proposed project,

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

(iii) A time line for permitting, licensing, and construction,

(iv) Pricing projected under the long term contract being sought, including prices for all market products that would be sold under the proposed long term contract, subject to any contract negotiations between the applicant and the electric distribution company,

(v) Projected electrical energy production profiles,

(vi) The proposed term for the long term contract,

(vii) Economic justification for the proposal, including projection of market prices,

(viii) A description of the economic benefits to Rhode Island, including the creation of jobs in Rhode

Island,

- (ix) All filings with state and federal regulatory agencies related to the proposal,
- (x) All interconnection filings related to the proposal,
- (xi) A proposed initial term sheet for a long-term contract between the applicant and the electric distribution company.

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

(d) The commission shall promulgate rules and regulations governing the proceedings outlined in this section by April 30, 2010.

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

(f) The electric distribution company, the division of public utilities and carriers and the office of energy resources shall be mandatory parties to the proceeding. The applicant must pay for the reasonable costs of consultants or counsel that may be hired by the commission and the division for the proceeding, but in no case shall the applicant be liable for the costs in excess of \$100,000 for the division and \$100,000 for the commission, respectively.

(g) The commission shall issue a final order in the proceedings required by § 39-26.1-8(b) within eight (8) months of the filing of the application. If the commission determines that the proposal meets the standard outlined in § 39-26.1-8(b), the commission shall require the electric distribution company to negotiate a long-term contract with the applicant. The applicant, however, may decline to continue with the project for any reason at any time during the process outlined in this section. The commission may require changes to the applicant's proposal as a condition to a long-term contract, as the commission determines are just and reasonable. The contract shall contain terms that are commercially reasonable. The contract also shall require that the electric distribution company purchase all of the output of the entire project, unless otherwise authorized by the commission. The parties shall present a proposed contract for review by the commission within three (3) months of the order requiring negotiations. If the parties are unable to reach agreement on a contract within three (3) months of the order requiring negotiations the commission shall have the discretion to order the parties to arbitrate the dispute on an expedited basis. Once the contract terms are finalized by negotiation or arbitration, the contract shall be filed with the commission for review and approval. The commission shall approve the contract upon a finding that the contract is consistent with the purposes of this chapter and the standards set forth in § 39-26.1-1.8(b). The commission shall issue its final decision on the proposed contract within sixty (60) days of receiving the proposed contract. Upon execution of the contract, the provisions of §§ 39-26.1-4 and 39-26.1-5 shall apply, and all costs incurred in the negotiation, administration, enforcement, and implementation of the agreement shall be recovered annually by the electric distribution company in electric distribution rates. To the extent the application cites significant economic benefits to Rhode Island that require commitments from the applicant outside of the long term contract to achieve such

benefits, and those economic benefits are ultimately relied upon by the commission in authorizing a long term contract to be negotiated, the commission may require that appropriate legally binding commitments be made by the applicant as a condition to a long term contract, unless the commission finds that such commitments are not necessary.

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

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

(j) Should a proceeding pursuant to this section result in the commission not ordering the distribution company to enter into a long-term contract for a utility-scale offshore wind project, or should the certified developer fail to file an application with the commission within one hundred eighty (180) days of certification, the certification shall be deemed void. In such case, if the commission determines it is in the interest of electric distribution customers to have another utility-scale project considered for a long term contract, the commission has the discretion to request the department of administration to certify a different developer to make another proposal for a utility-scale offshore wind project per this section, provided that the commission makes such request within ninety (90) days of the certification becoming void. If the commission makes such request, the department of administration may, but is not required to, certify another project and shall have ninety days to submit another certification. If such certification is not made within the time allowed, no further action shall be taken by the commission pursuant to this section. Under no circumstances is a distribution company required to enter into more than one contract under this § 39-26.1-8.

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