

AN OUTLINE OF R.I. ENERGY LAW

Organizational Structure

- 39-1 Public Utilities Commission
- 42-140 Office of Energy Resources
- 42-140.1 Energy Efficiency and Resources Management Council
- 42-64-13.2 Economic Development Corp. – Renewable Energy Development Fund
- 42-98 Energy Facilities Siting Board
- 42-60-4 Governor's technical Assistance Committee – Energy Crisis Management

Energy Supply

- 39-1-27 Electric Companies required to file restructuring plans
 - 39-1-27.1 Non-regulated power producer registration
 - 39-1-27.7 Least Cost Procurement (energy efficiency procurement)
 - 39-1-27.8 Supply Procurement Portfolio *6 DCOs to submit procurement plans & least cost procurement; authorizes PUC to approve special rates by rate class*
 - 39-2-1.2 Demand Side Management: (b)-(e) electric, (f)-(h) gas
 - 39-26-4 Renewable Energy Standard *- need supply for % requirement to go up! (39-26-4)*
 - 39-26-5 Renewable Energy Defined (electric off-set) *to increase %; RE Dev. Council*
- Proved by NG-GIS certificates or alternative compliance papers; PUC to auth. RE recovery; PUC determines adequacy of supply*

Energy Facility Siting

- * 42-98 Energy Facility Siting Board
- 42-11-10 Statewide Planning – State Guide Requirements
- 37- Lease of State Land Renewable Energy Projects
- * 46-23 6(v)(B)(iii)(A) Coastal Resources Management Council
- 11-22-4 – 11-22-8 Windmill Prohibitions near roads and highways

Renewable Energy Facility Financing

✓ 39-26-7 Renewable Energy Development Fund

39-2-1.2(b)-(e) Demand Side Management—Electric

42-64-13.2 Economic Development Corp. Renewal Energy Development Fund

39-26-6 (g) Net Metering

39-26.1 Long Term Contracting ^{must buy capacity, energy + attributes} 15 yrs (could be 20); ltrd to 90MW + phased in:

23-82 Regional Greenhouse Gas Initiative

25% 2010, 50% 2011; 75% 2012, 100% 2013;

EPCOs get incentive of 2.75% of annual payments under R; net out cost of R vs proceeds from sale of energy/capacity/RGLs etc + balance

Per ET → special authorities of electric utilities to use rate programs for power lines billed to ratepayers; special sections C, BI and offshore wind

Renewal Energy Development Fund

1990. The Renewal Energy Program, supported by a surcharge on electric bills, was created by Narragansett Electric Company circa 1990.

1996. The Program was made statutory with the passage of the Utility Restructuring Act of 1996; codified in RIGL section 39-2-1.2, with a rate of 2.3 mils per kilowatt hour for demand side management, with an allocation between energy efficiency and renewable energy determined by the PUC. The Program was authorized for five years commencing January 1, 1997, and continued to be administered by the distribution company (then Narragansett Electric Co., later National Grid).

2001. The Program was extended for another five years, to January 1, 2007, with electric distribution companies continuing to administer it. The demand side management Program was statutorily split into two pieces, 2.0 mils per kilowatt hour for energy efficiency and .3 mils for renewable energy initiatives.

2002. The Program was extended to 2013, and the existing administrative system was continued only through December 31, 2002; effective January 1, 2003, administration shifted to the director of state energy office who was "authorized and shall enter into a contract with a contractor for the effective administration of the renewable energy programs funded by this section [39-2-1.2]." The contractor was to be selected competitively, and the selection was to be effective for a three year period.

2003. Money (\$2.5 M) was appropriated from the Program to the State's General Fund.

2004. The Renewable Energy Standard was established, RIGL Chapter 39-26, and a Renewable Energy Development Fund was established within the Economic Development Corporation (EDC), with five member board of trustees; the Fund was also established in the EDC statute by the addition of RIGL Sec. 42-64-13.2.

2006. The Program's administration was changed again; through June 30, 2007, the Program would be administered by the State Energy Office; effective July 1, 2007, it would be administered by the commissioner of the new Office of Energy Resources, with the funds held and disbursed by the distribution company as directed by the commissioner, with approval, if appropriate, of the trustees of the Fund.

2008. The Program was consolidated into the Renewable Energy Development Fund administered by the EDC; the board of trustees of the fund, which had been provided for in RIGL Sec. 39-26-7, was repealed.

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2010

A N A C T

RELATING TO PUBLIC UTILITIES AND CARRIERS --REVENUE DECOUPLING

Introduced By: Representative D Caprio

Date Introduced: May 05, 2010

Referred To: House Environment and Natural Resources

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 39-1 of the General Laws entitled "Public Utilities Commission" is
2 hereby amended by adding thereto the following section:

3 39-1-27.7.1. Revenue decoupling.-- (a) The general assembly finds and declares that
4 electricity and gas revenues shall be fully decoupled from sales pursuant to the provisions of this
5 chapter and further finds and declares that any decoupling proposal submitted by an electric
6 distribution company as defined in subdivision 39-1-2(12) or gas distribution company included
7 as a public utility in subdivision 39-1-2(20) that has greater than one hundred thousand (100,000)
8 customers, shall be for the following purposes:

9 (1) Increasing efficiency in the operations and management of the electric and gas
10 distribution system;

11 (2) Achieving the goals established in the electric distribution company's plan for system
12 reliability and energy efficiency and conservation procurement as required pursuant to subsection
13 39-1-27.7(c);

14 (3) Increasing investment in least-cost resources that will reduce long-term electricity
15 demand;

16 (4) Reducing risks for both customers and the distribution company including, but not
17 limited to, societal risks, weather risks and economic risks;

18 (5) Increasing investment in end-use energy efficiency;

19 (6) Eliminating disincentives to support energy efficiency programs;

1 (7) Facilitating and encouraging investment in utility infrastructure, safety, and
2 reliability; and

3 (8) Considering the reduction of fixed, recurring customer charges and transition to
4 increased unit charges that more accurately reflect the long-term costs of energy production and
5 delivery.

6 (b) Each electric distribution company as defined by subdivision 39-1-2(12) and gas
7 distribution company included as a public utility in subdivision 39-1-2(20) having greater than
8 one hundred thousand (100,000) customers shall file proposals at the commission to implement
9 the policy set forth in subsection (a) herein. The commission shall approve such proposals,
10 provided they contain the features and components set forth in subsection (c) herein, and that they
11 are consistent with the intent and objectives contained in subsection (a) herein. The existence of
12 any of the ratemaking mechanisms set forth in this section shall not be relied upon or cited for the
13 purpose of making any adjustments in the determination of the distribution company's cost of
14 capital. Actions taken by the commission in the exercise of its ratemaking authority for electric
15 and gas rate cases shall be within the norm of industry standards and recognize the need to
16 maintain the financial health of the distribution company as a stand-alone entity in Rhode Island.

17 (c) The proposals shall contain the following features and components:

18 (1) A revenue decoupling reconciliation mechanism that reconciles annually the revenue
19 requirement allowed in the company's base distribution rate case to revenues actually received
20 for the applicable twelve (12) month period, provided that the mechanism for gas distribution
21 shall be determined on a revenue per-customer basis, in a manner typically employed for gas
22 distribution companies in the industry. Any revenues over-recovered or under-recovered shall be
23 credited to or recovered from customers, as applicable; and

24 (2) An annual infrastructure, safety and reliability spending plan for each fiscal year and
25 an annual rate reconciliation mechanism that includes a reconcilable allowance for the anticipated
26 capital investments and other spending pursuant to the annual pre-approved budget as developed
27 in accordance with subsection (d) herein.

28 (d) Prior to the beginning of each fiscal year, gas and electric distribution companies shall
29 consult with the division of public utilities and carriers regarding its infrastructure, safety, and
30 reliability spending plan for the following fiscal year, addressing the following categories:

31 (1) Capital spending on utility infrastructure;

32 (2) For electric distribution companies, operation and maintenance expenses on
33 vegetation management;

34 (3) For electric distribution companies, operation and maintenance expenses on system

1 inspection, including expenses from expected resulting repairs; and

2 (4) Any other costs relating to maintaining safety and reliability that are mutually agreed
3 upon by the division and the company.

4 The distribution company shall submit a plan to the division and the division shall
5 cooperate in good faith to reach an agreement on a proposed plan for these categories of costs for
6 the prospective fiscal year within sixty (60) days. To the extent that the company and the division
7 mutually agree on a plan, such plan shall be filed with the commission for review and approval
8 within ninety (90) days. If the company and the division cannot agree on a plan, the company
9 shall file a proposed plan with the commission and the commission shall review and, if the
10 investments and spending are found to be reasonably needed to maintain safe and reliable
11 distribution service over the short and long-term, approve the plan within ninety (90) days.

12 (e) The commission shall have the following duties and powers in addition to its existing
13 authorities established in title 39 of the general laws:

14 (1) To maintain reasonable and adequate service quality standards, after decoupling, that
15 are in effect at the time of the proposal and were established pursuant to section 39-3-7.

16 (2) The commission may exclude the low income rate class from the revenue decoupling
17 reconciliation rate mechanism for either electric or gas distribution. The commission also may
18 exclude customers in the large commercial and industrial rate class from the gas distribution
19 mechanism.

20 (3) The commission may adopt performance incentives for the electric distribution
21 company that provides a shared savings mechanism whereby the company would receive a
22 percentage of savings realized as a result of achieving the purposes of this section while the
23 remaining savings are credited to customers.

24 (4) The commission shall review and approve with any necessary amendments
25 performance-based energy savings targets developed and submitted by the Rhode Island energy
26 efficiency and resources management council. Said performance-based targets shall also be used
27 as a consideration in any shared savings mechanism established by the commission pursuant to
28 subdivision (3) herein.

29 (f) The Rhode Island energy efficiency and resources management council shall propose
30 performance-based energy savings targets to the commission no later than September 1, 2010.
31 The targets shall include, but not be limited to, specific energy kilowatt hour savings overall and
32 peak demand savings for both summer and winter peak periods expressed in total megawatts as
33 well as appropriate targets recommended in the opportunities report filed with the commission
34 pursuant to subdivision 39-2-27.7(e)(3). The council shall revise as necessary these targets on an

1 annual basis prior to the reconciliation process established pursuant to subsection (c) of this
2 section and submit its revisions to the commission for approval.

3 (g) Reporting. Every electric distribution company as defined in subsection (a) herein
4 shall report to the governor, general assembly, division of public utilities and public utilities
5 commission on or before September 1, 2012. Said report shall include, but not be limited to, the
6 following elements:

7 (1) A comparison of revenues from traditional rate regulation and how the revenues have
8 differed as part of an approved decoupling structure;

9 (2) A summary of how the company is achieving the performance-based targets that may
10 have been adopted pursuant to subdivision (e)(4);

11 (3) A summary of any shared savings the company may have received pursuant to the
12 performance incentives authorized in subdivision (e)(3);

13 (4) A summary of how the company is achieving the service quality standards required in
14 subdivision (e)(1);

15 (5) An overview of how decoupling is impacting revenue stabilization goals that have
16 resulted from decoupling; and

17 (6) A summary of any customer education programs provided.

18 SECTION 2. Section 39-1-27.7 of the General Laws in Chapter 39-1 entitled "Public
19 Utilities Commission" is hereby amended to read as follows:

20 **39-1-27.7. System reliability and least-cost procurement.** -- Least-cost procurement
21 shall comprise system reliability and energy efficiency and conservation procurement as provided
22 for in this section and supply procurement as provided for in section 39-1-27.8, as complementary
23 but distinct activities that have as common purpose meeting electrical and natural gas energy
24 needs in Rhode Island, in a manner that is optimally cost-effective, reliable, prudent and
25 environmentally responsible.

26 (a) The commission shall establish not later than June 1, 2008, standards for system
27 reliability and energy efficiency and conservation procurement, which shall include standards and
28 guidelines for:

29 (1) System reliability procurement, including but not limited to:

30 (i) Procurement of energy supply from diverse sources, including, but not limited to,
31 renewable energy resources as defined in chapter 26 of this title;

32 (ii) Distributed generation, including, but not limited to, renewable energy resources and
33 thermally leading combined heat and power systems, which is reliable and is cost-effective, with
34 measurable, net system benefits;

1 (iii) Demand response, including, but not limited to, distributed generation, back-up
2 generation and on-demand usage reduction, which shall be designed to facilitate electric customer
3 participation in regional demand response programs, including those administered by the
4 independent service operator of New England ("ISO-NE") and/or are designed to provide local
5 system reliability benefits through load control or using on-site generating capability;

6 (iv) To effectuate the purposes of this division, the commission may establish standards
7 and/or rates; (A) for qualifying distributed generation, demand response, and renewable energy
8 resources; (B) for net-metering; (C) for back-up power and/or standby rates that reasonably
9 facilitate the development of distributed generation; and (D) for such other matters as the
10 commission may find necessary or appropriate.

11 (2) Least-cost procurement, which shall include procurement of energy efficiency and
12 energy conservation measures that are prudent and reliable and when such measures are lower
13 cost than acquisition of additional supply, including supply for periods of high demand.

14 (b) The standards and guidelines provided for by subsection (a) shall be subject to
15 periodic review and as appropriate amendment by the commission, which review will be
16 conducted not less frequently than every three (3) years after the adoption of the standards and
17 guidelines.

18 (c) To implement the provisions of this section:

19 (1) The commissioner of the office of energy resources and the energy efficiency and
20 resources management council, either or jointly or separately, shall provide the commission
21 findings and recommendations with regard to system reliability and energy efficiency and
22 conservation procurement on or before March 1, 2008, and triennially on or before March 1,
23 thereafter through March 1, 2017.

24 (2) The commission shall issue standards not later than June 1, 2008, with regard to
25 plans for system reliability and energy efficiency and conservation procurement, which standards
26 may be amended or revised by the commission as necessary and/or appropriate.

27 (3) The energy efficiency and resources management council shall prepare by July 15,
28 2008, a reliability and efficiency procurement opportunity report which shall identify
29 opportunities to procure efficiency, distributed generation, demand response and renewables,
30 which report shall be submitted to the electrical distribution company, the commission, the office
31 of energy resources and the joint committee on energy.

32 (4) Each electrical and natural gas distribution company shall submit to the commission
33 on or before September 1, 2008, and triennially on or before September 1, thereafter through
34 September 1, 2017, a plan for system reliability and energy efficiency and conservation

1 procurement. In developing the plan, the distribution company may seek the advice of the
2 commissioner and the council. The plan shall include measurable goals and target percentages for
3 each energy resource, pursuant to standards established by the commission, including efficiency,
4 distributed generation, demand response, combined heat and power, and renewables.

5 ~~(5) The commission shall issue an order with regard to the plan from the electrical~~
6 ~~distribution company not greater than sixty (60) days after it is filed with the commission. The~~
7 commission shall issue an order approving all energy efficiency measures that are cost effective
8 and lower cost than acquisition of additional supply, with regard to the plan from the electrical
9 and natural gas distribution company, and reviewed and approved by the energy efficiency and
10 resources management council, and any related annual plans, and shall approve a fully
11 reconciling funding mechanism to fund investments in all efficiency measures that are cost
12 effective and lower cost than acquisition of additional supply, not greater than sixty (60) days
13 after it is filed with the commission.

14 (6) Each electrical and natural gas distribution company shall provide a status report,
15 which shall be public, on the implementation of least cost procurement on or before December
16 15, 2008, and on or before February 1, 2009, to the commission, the division, the commissioner
17 of the office of energy resources and the energy efficiency and resources management council
18 which may provide the distribution company recommendations with regard to effective
19 implementation of least cost procurement. The report shall include the targets for each energy
20 resource included in the order approving the plan and the achieved percentage for energy
21 resource, including the achieved percentages for efficiency, distributed generation, demand
22 response, combined heat and power, and renewables.

23 (d) If the commission shall determine that the implementation of system reliability and
24 energy efficiency and conservation procurement has caused or is likely to cause under or over-
25 recovery of overhead and fixed costs of the company implementing said procurement, the
26 commission may establish a mandatory rate adjustment clause for the company so affected in
27 order to provide for full recovery of reasonable and prudent overhead and fixed costs.

28 (e) The commission shall conduct a contested case proceeding to establish a performance
29 based incentive plan which allows for additional compensation for each electric distribution
30 company and each company providing gas to end-users and/or retail customers based on the level
31 of its success in mitigating the cost and variability of electric and gas services through
32 procurement portfolios.

33

TITLE 39

Public Utilities and Carriers

CHAPTER 39-1

Public Utilities Commission

SECTION 39-1-27.8

§ 39-1-27.8 Supply procurement portfolio. – Each electric distribution company shall submit a proposed supply procurement plan or plans to the commission not later than March 1, 2009, and each March 1, thereafter through March 1, 2018. The supply procurement plan or plans shall be consistent with the purposes of least-cost procurement and shall, as appropriate, take into account plans and orders with regard to system reliability and energy efficiency and conservation procurement. The supply procurement plan or plans will include the acquisition procedure, the pricing options being sought, and a proposed term of service for which standard offer service will be acquired. The term of service may be of various, staggered term lengths and acquisitions may occur from time to time and for more than one supplier for segments of standard offer load over different terms, if appropriate. There also may be separate procurement plans for residential and non-residential classes or separate plans among non-residential classes. All the components of the procurement plans, shall be subject to commission review and approval. Once a procurement plan is approved by the commission, the electric distribution company shall be authorized to acquire standard offer service supply consistent with the approved procurement plan and recover its costs incurred from providing standard offer service pursuant to the approved procurement plan. The commission may periodically review the procurement plan to determine whether it should be prospectively modified due to changed market conditions. The commission shall have the authority and discretion to establish eligibility criteria by rate class, and approve special tariff conditions and rates proposed by the electric distribution company that the commission finds are in the public interest, including without limitation: (1) short and long term optional service at different rates; (2) term commitments or notice provisions before individual customers leave standard offer service; (3) standard offer service rates for residential or any other special class of customers that are different than the rates for other standard offer customers; (4) time of use commodity pricing for specified classes of customers, except residential customers; provided, however, that the commission may establish pilot programs for time of use commodity pricing for residential customers; and/or (5) standard offer service rates that are designed to encourage any class of customers to purchase supply directly from the market.

TITLE 39

Public Utilities and Carriers

CHAPTER 39-2

Duties of Utilities and Carriers

SECTION 39-2-1.2

§ 39-2-1.2 Utility base rate – Advertising, demand side management and renewables. – (a) In addition to costs prohibited in § 39-1-27.4(b), no public utility distributing or providing heat, electricity, or water to or for the public shall include as part of its base rate any expenses for advertising, either direct or indirect, which promotes the use of its product or service, or is designed to promote the public image of the industry. No public utility may furnish support of any kind, direct, or indirect, to any subsidiary, group, association, or individual for advertising and include the expense as part of its base rate. Nothing contained in this section shall be deemed as prohibiting the inclusion in the base rate of expenses incurred for advertising, informational or educational in nature, which is designed to promote public safety conservation of the public utility's product or service. The public utilities commission shall promulgate such rules and regulations as are necessary to require public disclosure of all advertising expenses of any kind, direct or indirect, and to otherwise effectuate the provisions of this section.

(b) Effective as of January 1, 2003, and for a period of ten (10) years thereafter, each electric distribution company shall include charges of 2.0 mills per kilowatt-hour delivered to fund demand side management programs and 0.3 mills per kilowatt-hour delivered to fund renewable energy programs. Existing charges for these purposes and their method of administration shall continue through December 31, 2002. Thereafter, the electric distribution company shall establish and after July 1, 2007, maintain two (2) separate accounts, one for demand side management programs, which shall be administered and implemented by the distribution company, subject to the regulatory reviewing authority of the commission, and one for renewable energy programs, which shall be administered by the economic development corporation pursuant to § 42-64-13.2 and, shall be held and disbursed by the distribution company as directed by the economic development corporation for the purposes of developing, promoting and supporting renewable energy programs.

During the ten (10) year period the commission may, in its discretion, after notice and public hearing, increase the sums for demand side management and renewable resources; thereafter, the commission shall, after notice and public hearing, determine the appropriate charge for these programs. The office of energy resources and/or the administrator of the renewable energy programs may seek to secure for the state an equitable and reasonable portion of renewable energy credits or certificates created by private projects funded through those programs. As used in this section, "renewable energy resources" shall mean: (1) power generation technologies as defined in § 39-26-5, "eligible renewable energy resources", including off-grid and on-grid generating technologies located in Rhode Island as a priority; (2) research and development activities in Rhode Island pertaining to eligible renewable energy resources and to other renewable energy technologies for electrical generation; or (3) projects and activities directly related to implementing eligible renewable energy resources projects in Rhode Island. Technologies for converting solar energy for space heating or generating domestic hot water may also be funded through the renewable energy programs, so long as these technologies are installed on housing projects that have been certified by the executive director of the Rhode Island housing and mortgage finance corporation as serving low-income Rhode Island residents. Fuel cells may be considered an energy efficiency

technology to be included in demand sided management programs. Special rates for low-income customers in effect as of August 7, 1996 shall be continued, and the costs of all of these discounts shall be included in the distribution rates charged to all other customers. Nothing in this section shall be construed as prohibiting an electric distribution company from offering any special rates or programs for low-income customers which are not in effect as of August 7, 1996, subject to the approval by the commission.

(c) On or before November 15, 2008, the economic development corporation shall create the municipal renewable energy investment program utilizing the lesser of fifty percent (50%) or one million dollars (\$1,000,000) collected annually from the .3 mils per kilo-watt hour charge for renewable energy programs, to fund qualified municipal renewable energy projects in accordance with this chapter and the following provisions:

(1) The municipal renewable energy investment programs shall be administered pursuant to rules established by the economic development corporation. Said rules shall provide transparent criteria to rank qualified municipal renewable energy projects, giving consideration to:

- (i) the feasibility of project completion;
- (ii) the anticipated amount of renewable energy the project will produce;
- (iii) the potential of the project to mitigate energy costs over the life of the project; and
- (iv) the estimated cost per kilo-watt hour (kwh) of the energy produced from the project.

Municipalities that have not previously received financing from this program shall be given priority over those municipalities that have received funding under this program.

(2) Beginning on January 1, 2009, the economic development corporation shall solicit proposals from municipalities for eligible projects and shall award grants, in accordance with the rules and ranking criteria, of no more than five hundred thousand dollars (\$500,000) to each eligible project.

(3) Any funds not expended from the municipal renewable energy investment programs in a given year shall remain in the fund and be added to the balance to be distributed in the next award cycle. For the purposes of this section, qualified municipal renewable energy projects means any project that produces renewable energy resources and whose output of power and other attributes is controlled in its entirety by at least one Rhode Island city or town.

(d) On or before November 15, 2008, the economic development corporation shall create the nonprofit affordable housing renewable energy investment program utilizing the lesser of ten percent (10%) or two hundred thousand dollars (\$200,000) collected annually from the .3 mils per kilo-watt hour charge for renewable energy programs to fund qualified nonprofit affordable housing renewable energy projects in accordance with this chapter and the following provisions:

(1) The nonprofit affordable housing renewable energy investment programs shall be administered pursuant to rules established by the economic development corporation in consultation with the Rhode Island housing mortgage finance corporation. Said rules shall provide transparent criteria to rank qualified nonprofit affordable housing renewable energy projects, giving consideration to:

- (i) the feasibility of project completion;

(ii) the anticipated amount of renewable energy the project will produce;

(iii) the potential of the project to mitigate energy costs over the life of the project; and

(iv) the estimated cost per kilo-watt hour (kwh) of the energy produced from the project. Nonprofit affordable housing agencies that have not previously received financing from this program shall be given priority over those agencies that have received funding under this program.

(2) Beginning on January 1, 2009, the economic development corporation, in consultation with the Rhode Island housing and mortgage finance corporation, shall solicit proposals from eligible nonprofit housing agencies for renewable energy projects and shall award grants, in accordance with the rules and ranking criteria. The economic development corporation shall consult with the Rhode Island housing and mortgage finance corporation in the grant-making process and shall notify the corporation of the awardees.

(3) Any funds not expended from the affordable housing renewable energy investment program in a given year shall remain in the fund and be added to the balance to be distributed in the next award cycle. For the purposes of this section, "qualified nonprofit affordable housing renewable energy projects" means any project that produces renewable energy resources and whose output of power and other attributes is controlled in its entirety by at least one nonprofit affordable housing development as defined in § 42-55-3 and is restricted to producing energy for the nonprofit affordable housing development.

(e) The executive director of the economic development corporation is authorized and may enter into a contract with a contractor for the cost effective administration of the renewable energy programs funded by this section. A competitive bid and contract award for administration of the renewable energy programs may occur every three (3) years and shall include as a condition that after July 1, 2008 the account for the renewable energy programs shall be maintained and administered by the economic development corporation as provided for in subdivision (b) above.

(f) Effective January 1, 2007, and for a period of seven (7) years thereafter, each gas distribution company shall include, with the approval of the commission, a charge of up to fifteen cents (\$0.15) per deca therm delivered to demand side management programs, including, but not limited to, programs for cost-effective energy efficiency, energy conservation, combined heat and power systems, and weatherization services for low income households.

(g) The gas company shall establish a separate account for demand side management programs, which shall be administered and implemented by the distribution company, subject to the regulatory reviewing authority of the commission. The commission may establish administrative mechanisms and procedures that are similar to those for electric demand side management programs administered under the jurisdiction of the commissions and that are designed to achieve cost-effectiveness and high life-time savings of efficiency measures supported by the program.

(h) The commission may, if reasonable and feasible, except from this demand side management change:

(i) gas used for distribution generation; and

(ii) gas used for the manufacturing processes, where the customer has established a self-directed program to invest in and achieve best effective energy efficiency in accordance with a plan approved by the commission and subject to periodic review and approval by the commission, which plan shall require

annual reporting of the amount invested and the return on investments in terms of gas savings.

(i) The commission may provide for the coordinated and/or integrated administration of electric and gas demand side management programs in order to enhance the effectiveness of the programs. Such coordinated and/or integrated administration may after March 1, 2009, upon the recommendation of the office of energy resources, be through one or more third-party entities designated by the commission pursuant to a competitive selection process.

(j) Effective January 1, 2007, the commission shall allocate from demand-side management gas and electric funds authorized pursuant to this § 39-2-1.2, an amount not to exceed two percent (2%) of such funds on an annual basis for the retention of expert consultants, and reasonable administrations costs of the energy efficiency and resources management council associated with planning, management, and evaluation of energy efficiency programs, renewable energy programs and least-cost procurement, and with regulatory proceedings, contested cases, and other actions pertaining to the purposes, powers and duties of the council, which allocation may by mutual agreement, be used in coordination with the office of energy resources to support such activities.

TITLE 39

Public Utilities and Carriers

CHAPTER 39-2

Duties of Utilities and Carriers

SECTION 39-2-1.4

§ 39-2-1.4 Reasonable backup or supplemental rates. – (a) Electricity produced by cogeneration and small power production can be of benefit to the public as part of the total energy supply of the entire electric grid of the state or consumed by a cogenerator or small power producer. Subject to compliance with applicable rules governing such service, public utilities shall provide transmission or distribution service to enable a retail customer to transmit electrical power generated by the customer at one location to the customer's facilities at another location, if the commission finds that the provision of this service, and the charges, terms, and other conditions associated with the provision of this service, are not likely to result in higher cost electric service to the utility's general body of retail and wholesale customers or adversely affect the adequacy or reliability of electric service to all customers.

(b) Each electric distribution company shall provide backup and supplemental service to any customer who is self-generating electricity and meets reasonable interconnection requirements designed to protect the distribution and transmission system. The commission shall ensure that backup and supplemental rates made, exacted, demanded or collected by any public utility from a customer who is self-generating shall be just and reasonable and may not be unduly discriminatory. Any backup and supplemental rate tariffs in effect as of May 2002 may remain in effect as designed through December 31, 2004. Commencing January 1, 2005, the backup and supplemental rates shall be cost based but may be discounted as provided for in subsection (c) of this section; provided, however, that the John O. Pastore Center power plant shall be exempt from said backup or supplemental rates.

(c) Notwithstanding the rate design criteria set forth in subsection (b) of this section, the commission may permit or require discounted backup distribution service rates in order to encourage economically efficient cogeneration or small power production projects if it finds these discounts to be in the public interest and/or contribute to system reliability procurement or least-cost procurement; provided, however, that any revenue not recovered by the electric distribution company as a result of these discounted distribution rates shall be accounted for and recovered in the rates assessed on all customers. The commission shall, in determining the public interest in distributed generating facilities, consider reduced environmental impacts, increased energy efficiency, reduced transmission losses and congestion, effects on electric system reliability and other factors the commission may deem relevant.

(d) The provisions of this section shall be effective as of January 1, 2005.

TITLE 39

Public Utilities and Carriers

CHAPTER 39-26

Renewable Energy Standard

SECTION 39-26-2

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

- (1) "Alternative compliance payment" means a payment to the Renewable Energy Development Fund of fifty dollars (\$50.00) per megawatt-hour of renewable energy obligation, in 2003 dollars, adjusted annually up or down by the consumer price index, which may be made in lieu of standard means of compliance with this statute;
- (2) "Commission" means the Rhode Island public utilities commission;
- (3) "Compliance year" means a calendar year beginning January 1 and ending December 31, for which an obligated entity must demonstrate that it has met the requirements of this statute;
- (4) "Customer-sited generation facility" means a generation unit that is interconnected on the end-use customer's side of the retail electricity meter in such a manner that it displaces all or part of the metered consumption of the end-use customer;
- (5) "Educational institution" means any public school, approved private non-profit school, or institution of higher education as defined in 20 U.S.C. Chapter 28, Subchapter 1, Part A § 1001 (a).
- (6) "Electrical energy product" means an electrical energy offering, including, but not limited to, last resort and standard offer service, that can be distinguished by its generation attributes or other characteristics, and that is offered for sale by an obligated entity to end-use customers;
- (7) "Eligible biomass fuel" means fuel sources including brush, stumps, lumber ends and trimmings, wood pallets, bark, wood chips, shavings, slash and other clean wood that is not mixed with other solid wastes; agricultural waste, food and vegetative material; energy crops; landfill methane; biogas; or neat bio-diesel and other neat liquid fuels that are derived from such fuel sources;
- (8) "Eligible renewable energy resource" means resources as defined in § 39-26-5;
- (9) "End-use customer" means a person or entity in Rhode Island that purchases electrical energy at retail from an obligated entity;
- (10) "Existing renewable energy resources" means generation units using eligible renewable energy resources and first going into commercial operation before December 31, 1997;
- (11) "Farm" shall be defined in accordance with § 44-27-2, except that all buildings associated with the farm shall be eligible for net metering credits as long as: (i) the buildings are owned by the same

entity operating the farm or persons associated with operating the farm; and (ii) the buildings are on the same farmland as the renewable generation on either a tract of land contiguous with such farmland or across a public way from such farmland.

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

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

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

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

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

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

(18) "New renewable energy resources" means generation units using eligible renewable energy resources and first going into commercial operation after December 31, 1997; or the incremental output of generation units using eligible renewable energy resources that have demonstrably increased generation in excess of ten percent (10%) using eligible renewable energy resources through capital investments made after December 31, 1997; but in no case involve any new impoundment or diversion of water with an average salinity of twenty (20) parts per thousand or less;

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

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

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

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

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

(ii) distribution kWh charge;

(iii) transmission kWh charge; and

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

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

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

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

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

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

TITLE 39

Public Utilities and Carriers

CHAPTER 39-26

Renewable Energy Standard

SECTION 39-26-4

§ 39-26-4 Renewable energy standard. – (a) Starting in compliance year 2007, all obligated entities shall obtain at least three percent (3%) of the electricity they sell at retail to Rhode Island end-use customers, adjusted for electric line losses, from eligible renewable energy resources, escalating, according to the following schedule:

- (1) At least three percent (3%) of retail electricity sales in compliance year 2007;
 - (2) An additional one half of one percent (0.5%) of retail electricity sales in each of the following compliance years 2008, 2009, 2010;
 - (3) An additional one percent (1%) of retail electricity sales in each of the following compliance years 2011, 2012, 2013, 2014, provided that the commission has determined the adequacy, or potential adequacy, of renewable energy supplies to meet these percentage requirements;
 - (4) An additional one and one half percent (1.5%) of retail electricity sales in each of the following compliance years 2015, 2016, 2017, 2018 and 2019, provided that the commission has determined the adequacy, or potential adequacy of renewable energy supplies to meet these percentage requirements;
 - (5) In 2020 and each year thereafter, the minimum renewable energy standard established in 2019 shall be maintained unless the commission shall determine that such maintenance is no longer necessary for either amortization of investments in new renewable energy resources or for maintaining targets and objectives for renewable energy.
- (b) For each obligated entity and in each compliance year, the amount of retail electricity sales used to meet obligations under this statute that is derived from existing renewable energy resources shall not exceed two percent (2%) of total retail electricity sales.
- (c) The minimum renewable energy percentages set forth in subsection (a) above shall be met for each electrical energy product offered to end-use customers, in a manner that ensures that the amount of renewable energy of end-use customers voluntarily purchasing renewable energy is not counted toward meeting such percentages.
- (d) To the extent consistent with the requirements of this chapter, compliance with the renewable energy standard may be demonstrated through procurement of NE-GIS certificates relating to generating units certified by the commission as using eligible renewable energy sources, as evidenced by reports issued by the NE-GIS administrator. Procurement of NE-GIS certificates from off-grid and customer-sited generation facilities, if located in Rhode Island and verified by the commission as eligible renewable energy resources, may also be used to demonstrate compliance. With the exception of

contracts for generation supply entered into prior to 2002, initial title to NE-GIS certificates from off-grid and customer-sited generation facilities and from all other eligible renewable energy resources shall accrue to the owner of such a generation facility, unless such title has been explicitly deemed transferred pursuant to contract or regulatory order.

(e) In lieu of providing NE-GIS certificates pursuant to subsection (d) of this section, an obligated entity may also discharge all or any portion of its compliance obligations by making an alternative compliance payment to the Renewable Energy Development Fund established pursuant to § 39-26-7.

TITLE 39

Public Utilities and Carriers

CHAPTER 39-26

Renewable Energy Standard

SECTION 39-26-5

§ 39-26-5 Eligible renewable energy resources. – (a) For the purposes of the regulations promulgated under this chapter, eligible renewable energy resources are generation units in the NEPOOL control area using:

(1) Direct solar radiation;

(2) The wind;

(3) Movement or the latent heat of the ocean;

(4) The heat of the earth;

(5) Small hydro facilities;

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

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

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

(b) A generation unit located in an adjacent control area outside of the NEPOOL may qualify as an eligible renewable energy resource, but the associated generation attributes shall be applied to the renewable energy standard only to the extent that the energy produced by the generation unit is actually delivered into NEPOOL for consumption by New England customers. The delivery of such energy from the generation unit into NEPOOL must be generated by:

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

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

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

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

(c) NE-GIS certificates associated with energy production from off-grid generation and customer-sited generation facilities certified by the commission as eligible renewable energy resources may also be used to demonstrate compliance, provided that the facilities are physically located in Rhode Island.

TITLE 39

Public Utilities and Carriers

CHAPTER 39-26

Renewable Energy Standard

SECTION 39-26-6

§ 39-26-6 Duties of the commission. – The commission shall:

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

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

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

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

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

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

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

(d) Determine, on or before January 1, 2010, the adequacy, or potential adequacy, of renewable energy

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

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

(f) Report, by February 15, 2006, and by February 15 each year thereafter, to the governor, the speaker of the house and the president of the senate on the status of the implementation of the renewable energy standards in Rhode Island and other states, and which report shall include in 2009, and each year thereafter, the level of use of renewable energy certificates by eligible renewable energy resources and the portion of renewable energy standards met through alternative compliance payments, and the amount of rate increases authorized pursuant to subsection (b) above.

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

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

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

(3) With the exception of those customers described in subsection (ii), if the electricity generated by the renewable generation facility during a billing period exceeds the customer's kilowatt-hour usage during the billing period, the customer shall upon a request of the customer be billed for zero kilowatt-hour usage and the excess renewable generation credits shall be credited to the customer's account for the following billing period. Unless otherwise requested by the customer, the customer shall be compensated monthly by a check from the electric distribution company for the excess renewable generation credits pursuant to the rate specified in subdivision 39-26-2(22).

(ii) If the electricity generated by the renewable generation facility owned by a Rhode Island city or town, educational institution, nonprofit affordable housing, farm, the state or the Narragansett Bay

Commission, during a billing period exceeds the customer's kilowatt-hour usage during the billing period, the customer shall be billed for zero-kilowatt-hour usage, and:

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

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

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

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

(4) If the customer's kilowatt-hour usage exceeds the electricity generated by the renewable generation facility during the billing period, the customer shall be billed for the net kilowatt-hour usage at the applicable rate. Any excess credits may be carried forward month to month for twelve (12) month periods as established by the commission. At the end of the applicable twelve (12) month period, if there are unused excess credits on the net metering customer accounts, such credits shall be used to offset recoverable utility costs. Where compensation has been provided for excess renewable generation credits, no further charge may be made to the customer against said credits.

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

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

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

TITLE 39

Public Utilities and Carriers

CHAPTER 39-26

Renewable Energy Standard

SECTION 39-26-7

§ 39-26-7 Renewable energy development fund. – (a) There is hereby authorized and created within the economic development corporation a renewable energy development fund for the purpose of increasing the supply of NE-GIS certificates available for compliance in future years by obligated entities with renewable energy standard requirements, as established in this chapter. The fund shall be located at and administered by the Rhode Island economic development corporation in accordance with § 42-64-13.2. The economic development corporation shall:

Adopt plans and guidelines for the management and use of the fund in accordance with § 42-64-13.2, and

(b) The economic development corporation shall enter into agreements with obligated entities to accept alternative compliance payments, consistent with rules of the commission and the purposes set forth in this section; and alternative compliance payments received pursuant to this section shall be trust funds to be held and applied solely for the purposes set forth in this section.

(c) The uses of the fund shall include but not be limited to:

(1) Stimulating investment in renewable energy development by entering into agreements, including multi-year agreements, for renewable energy certificates;

(2) Issuing assurances and/or guarantees to support the acquisition of renewable energy certificates and/or the development of new renewable energy sources for Rhode Island;

(3) Establishing escrows, reserves, and/or acquiring insurance for the obligations of the fund;

(4) Paying administrative costs of the fund incurred by the economic development corporation, the board of trustees, or the office of energy resources, not to exceed ten percent (10%) of the income of the fund, including, but not limited to, alternative compliance payments. All funds transferred from the economic development corporation to support the office of energy resources' administrative costs shall be deposited as restricted receipts.

(d) NE-GIS certificates acquired through the fund may be conveyed to obligated entities or may be credited against the renewable energy standard for the year of the certificate provided that the commission assesses the cost of the certificates to the obligated entity, or entities, benefiting from the credit against the renewable energy standard, which assessment shall be reduced by previously made alternative compliance payments and shall be paid to the fund.

TITLE 39

Public Utilities and Carriers

CHAPTER 39-26.1

Long-Term Contracting Standard for Renewable Energy

SECTION 39-26.1-2

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

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

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

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

(4) "Eligible renewable energy resource" means resources as defined in § 39-26-5 and any references therein;

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

(6) "Newly developed renewable energy resources" means electrical generation units that use exclusively an eligible renewable energy resource, and that have neither begun operation, nor have the developers of the units implemented investment or lending agreements necessary to finance the construction of the unit; provided, however, that any projects using eligible renewable energy resources and located within the state of Rhode Island which obtain project financing on or after January 1, 2009, shall qualify as newly developed renewable energy resources for purposes of the first solicitation under this chapter;

(7) "Minimum long-term contract capacity" means ninety (90) megawatts of which three (3) megawatts must be solar or photovoltaic projects located in the state of Rhode Island. In determining whether the minimum long-term contract capacity has been reached, the capacity under contract shall be adjusted by the capacity factor of each renewable generator as determined by the ISO-NE rules, as they may change from time to time. By way of example, a contract with a one hundred (100) megawatt facility with a thirty percent (30%) capacity factor would be counted as providing thirty (30) megawatts to the minimum long-term contract capacity requirement.

TITLE 39

Public Utilities and Carriers

CHAPTER 39-26.1

Long-Term Contracting Standard for Renewable Energy

SECTION 39-26.1-3

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

(b) The timetable and method for solicitation and execution of such contracts shall be proposed by the electric distribution company, and shall be subject to review and approval by the commission prior to issuance by the company; provided that the timetable is reasonably designed to result in the electric distribution company having the minimum long-term contract capacity under contract within four (4) years of the date of the first solicitation; it is not necessary that the projects associated with these contracts be operational within these four (4) years, as the operational dates shall be specified in the contract. The electric distribution company shall, subject to review and approval of the commission, select a reasonable method of soliciting proposals from renewable energy developers, which shall include, at a minimum, an annual public solicitation, but may also include individual negotiations. The solicitation process shall permit a reasonable amount of negotiating discretion for the parties to engage in commercially reasonable arms-length negotiations over final contract terms. Each long-term contract entered into pursuant to this section shall contain a condition that it shall not be effective without commission review and approval. The electric distribution company shall file such contract, along with a justification for its decision, within a reasonable time after it has executed the contract following a solicitation or negotiation. The commission shall hold public hearings to review the contract within forty-five (45) days of the filing and issue a written order approving or rejecting the contract within sixty (60) days of the filing; in rejecting a contract the commission may advise the parties of the reason for the contract being rejected and direct the parties to attempt to address the reasons for rejection in a revised contract within a specified period not to exceed ninety (90) days. The commission shall approve the contract if it determines that: (1) the contract is commercially reasonable; (2) the requirements for the annual solicitation have been met; and (3) the contract is consistent with the purposes of this chapter. A report on each solicitation shall be filed with the commission each year within a reasonable time after decisions are made by the electric distribution company regarding the solicitation results, even if no contracts are executed following the solicitation.

(c) No electric distribution company shall be obligated to enter into long-term contracts for newly developed renewable energy resources on terms which the electric distribution company reasonably

believes to be commercially unreasonable; provided, however, if there is a dispute about whether these terms are commercially unreasonable, the commission shall make the final determination after an evidentiary hearing. The electric distribution company shall not be obligated to enter into long-term contracts pursuant to this section that would, in the aggregate, exceed the minimum long-term contract capacity, but may do so voluntarily subject to commission approval. As long as the electric distribution company has entered into long-term contracts in compliance with this section, the electric distribution company shall not be required by regulation or order to enter into power purchase contracts with renewable generation projects for power, renewable energy certificates, or any other attributes with terms of more than three (3) years in meeting its applicable annual renewable portfolio standard requirements set forth in § 39-26-4 or pursuant to any other provision of the law.

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

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

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

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

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

(d) Compliance with the long-term contract standard shall be demonstrated through procurement pursuant to the provisions of a long-term contract of energy, capacity and attributes reflected in NE-GIS certificates relating to generating units certified by the commission as using newly developed renewable energy resources, as evidenced by reports issued by the NE-GIS administrator and the terms of the contract; provided, however, that the NE-GIS certificates were procured pursuant to the provisions of a long-term contract. The electric distribution company also may purchase other attributes from the generator as part of the long-term contract.

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

TITLE 39

Public Utilities and Carriers

CHAPTER 39-26.1

Long-Term Contracting Standard for Renewable Energy

SECTION 39-26.1-4

§ 39-26.1-4 Financial remuneration and incentives. – In order to achieve the purposes of this chapter, electric distribution companies shall be entitled to financial remuneration and incentives for long-term contracts for newly developed renewable energy resources, which are over and above the base rate revenue requirement established in its cost of service for distribution ratemaking. Such remuneration and incentives shall compensate the electric distribution company for accepting the financial obligation of the long-term contracts. The financial remuneration and incentives described in this subsection shall apply only to long-term contracts for newly developed renewable energy resources. The financial remuneration and incentives shall be in the form of annual compensation, equal to two and three quarters percent (2.75%) of the actual annual payments made under the contracts for those projects that are commercially operating.

TITLE 39

Public Utilities and Carriers

CHAPTER 39-26.1

Long-Term Contracting Standard for Renewable Energy

SECTION 39-26.1-5

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

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

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

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

(e) The commission shall promulgate regulations by April 1, 2010, that shall, as a condition of contract approval, require all approved projects, regardless of their location, to provide other direct economic benefits to Rhode Island, such as job creation, increased property tax revenues or other similar revenues, deemed substantial by the commission.

(f) The electric distribution company shall file tariffs with the commission for commission review and approval that net the cost of payments made to projects under the long-term contracts against the proceeds obtained from the sale of energy, capacity, RECs or other attributes. The difference shall be credited or charged to all distribution customers through a uniform fully reconciling annual factor in distribution rates, subject to review and approval of the commission. The reconciliation shall be designed so that customers are credited with any net savings resulting from the long-term contracts and the electric distribution company recovers all costs incurred under such contracts, as well as, recovery of the financial remuneration and incentives specified in § 39-26.1-4.

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.

TITLE 42

State Affairs and Government

CHAPTER 42-11

Department of Administration

SECTION 42-11-10

§ 42-11-10 Statewide planning program. – (a) *Findings.* The general assembly finds that the people of this state have a fundamental interest in the orderly development of the state; the state has a positive interest and demonstrated need for establishment of a comprehensive strategic state planning process and the preparation, maintenance, and implementation of plans for the physical, economic, and social development of the state; the continued growth and development of the state presents problems that cannot be met by the cities and towns individually and that require effective planning by the state; and state and local plans and programs must be properly coordinated with the planning requirements and programs of the federal government.

(b) *Establishment of statewide planning program.* (1) A statewide planning program is hereby established to prepare, adopt, and amend strategic plans for the physical, economic, and social development of the state and to recommend these to the governor, the general assembly, and all others concerned.

(2) All strategic planning, as defined in subsection (c) of this section, undertaken by the executive branch for those departments and other agencies enumerated in subsection (g) of this section, shall be conducted by or under the supervision of the statewide planning program. The statewide planning program shall consist of a state planning council, and the office of strategic planning and the office of systems planning of the division of planning, which shall be a division within the department of administration.

(c) *Strategic planning.* Strategic planning includes the following activities:

- (1) Establishing or identifying general goals.
- (2) Refining or detailing these goals and identifying relationships between them.
- (3) Formulating, testing, and selecting policies and standards that will achieve desired objectives.
- (4) Preparing long-range or system plans or comprehensive programs that carry out the policies and set time schedules, performance measures, and targets.
- (5) Preparing functional short-range plans or programs that are consistent with established or desired goals, objectives, and policies, and with long-range or system plans or comprehensive programs where applicable, and that establish measurable intermediate steps toward their accomplishment of the goals, objectives, policies, and/or long-range system plans.
- (6) Monitoring the planning of specific projects and designing of specific programs of short duration

by the operating departments, other agencies of the executive branch, and political subdivisions of the state to insure that these are consistent with and carry out the intent of applicable strategic plans.

(7) Reviewing the execution of strategic plans and the results obtained and making revisions necessary to achieve established goals.

(d) State guide plan. Components of strategic plans prepared and adopted in accordance with this section may be designated as elements of the state guide plan. The state guide plan shall be comprised of functional elements or plans dealing with land use; physical development and environmental concerns; economic development; housing production; energy supply, including the development of renewable energy resources in Rhode Island, and energy access, use, and conservation; human services; and other factors necessary to accomplish the objective of this section. The state guide plan shall be a means for centralizing, integrating, and monitoring long-range goals, policies, plans, and implementation activities related thereto. State agencies concerned with specific subject areas, local governments, and the public shall participate in the state guide planning process, which shall be closely coordinated with the budgeting process.

(e) Membership of state planning council. The state planning council shall consist of:

- (1) The director of the department of administration as chairperson;
- (2) The director, policy office, in the office of the governor, as vice-chairperson;
- (3) The governor, or his or her designee;
- (4) The budget officer;
- (5) The chairperson of the housing resources commission;
- (6) The chief of statewide planning, as secretary;
- (7) The president of the League of Cities and Towns or his or her designee and one official of local government, who shall be appointed by the governor from a list of not less than three (3) submitted by the Rhode Island League Cities and Towns; and
- (8) The executive director of the League of Cities and Towns;
- (9) One representative of a nonprofit community development or housing organization;
- (10) Four (4) public members, appointed by the governor;
- (11) Two (2) representatives of a private, nonprofit environmental advocacy organization, both to be appointed by the governor; and
- (12) The director of planning and development for the city of Providence.

(f) Powers and duties of state planning council. The state planning council shall have the following powers and duties:

- (1) To adopt strategic plans as defined in this section and the long-range state guide plan, and to

modify and amend any of these, following the procedures for notification and public hearing set forth in § 42-35-3, and to recommend and encourage implementation of these goals to the general assembly, state and federal agencies, and other public and private bodies; approval of strategic plans by the governor;

(2) To coordinate the planning and development activities of all state agencies, in accordance with strategic plans prepared and adopted as provided for by this section;

(3) To review and comment on the proposed annual work program of the statewide planning program;

(4) To adopt rules and standards and issue orders concerning any matters within its jurisdiction as established by this section and amendments to it;

(5) To establish advisory committees and appoint members thereto representing diverse interests and viewpoints as required in the state planning process and in the preparation or implementation of strategic plans. The state planning council shall appoint a permanent committee comprised of:

(i) Public members from different geographic areas of the state representing diverse interests, and

(ii) Officials of state, local and federal government, which shall review all proposed elements of the state guide plan, or amendment or repeal of any element of the plan, and shall advise the state planning council thereon before the council acts on any such proposal. This committee shall also advise the state planning council on any other matter referred to it by the council; and

(6) To establish and appoint members to an executive committee consisting of major participants of a Rhode Island geographic information system with oversight responsibility for its activities.

(7) To adopt on or before July 1, 2007, and to amend and maintain as an element of the state guide plan or as an amendment to an existing element of the state guide plan, standards and guidelines for the location of eligible renewable energy resources and renewable energy facilities in Rhode Island with due consideration for the location of such resources and facilities in commercial and industrial areas, agricultural areas, areas occupied by public and private institutions, and property of the state and its agencies and corporations, provided such areas are of sufficient size, and in other areas of the state as appropriate.

(g) *Division of planning.* (1) The division of planning shall be the principal staff agency of the state planning council for preparing and/or coordinating strategic plans for the comprehensive management of the state's human, economic, and physical resources. The division of planning shall recommend to the state planning council specific guidelines, standards, and programs to be adopted to implement strategic planning and the state guide plan and shall undertake any other duties established by this section and amendments thereto.

(2) The division of planning shall maintain records (which shall consist of files of complete copies) of all plans, recommendations, rules, and modifications or amendments thereto adopted or issued by the state planning council under this section. The records shall be open to the public.

(3) The division of planning shall manage and administer the Rhode Island geographic information system of land-related resources, and shall coordinate these efforts with other state departments and agencies, including the University of Rhode Island, which shall provide technical support and assistance in the development and maintenance of the system and its associated data base.

(4) The division of planning shall coordinate and oversee the provision of technical assistance to political subdivisions of the state in preparing and implementing plans to accomplish the purposes, goals, objectives, policies, and/or standards of applicable elements of the state guide plan and shall make available to cities and towns data and guidelines that may be used in preparing comprehensive plans and elements thereof and in evaluating comprehensive plans and elements thereby.

(h) Transfer determinations. (1) The director of administration, with the approval of the governor, shall make the conclusive determination of the number of positions, personnel, physical space, property, records, and appropriation balances, allocations and other funds of the department of mental health, retardation, and hospitals, department of health, department of human services, department of corrections, department of labor and training, department of environmental management, department of business regulation, department of transportation, department of state library services, Rhode Island Economic Development Corporation, department of elderly affairs, department of children, youth, and families, historical preservation commission, water resources board, and the defense civil preparedness/emergency management agency of the executive department to be transferred to the department of administration in connection with the functions transferred there into by the provisions of this article.

(2) In order to ensure continuity of the strategic planning process of the department specified heretofore, the actual transfer of functions or any part thereof to the department of administration may be postponed after July 1, 1985 until such time as, by executive order of the governor, the transfer herein provided can be put into force and effect but no later than December 31, 1985.

TITLE 42

State Affairs and Government

CHAPTER 42-64

Rhode Island Economic Development Corporation

SECTION 42-64-3

§ 42-64-3 Definitions. – As used in this chapter, the following words and terms shall have the following meanings, unless the context indicates another or different meaning or intent:

(1) "Administrative penalty" means a monetary penalty not to exceed the civil penalty specified in § 42-64-9.2 of this chapter.

(2) "Airport facility" means developments consisting of runways, hangars, control towers, ramps, wharves, bulkheads, buildings, structures, parking areas, improvements, facilities, or other real or personal property necessary, convenient, or desirable for the landing, taking off, accommodation, and servicing of aircraft of all types, operated by carriers engaged in the transportation of passengers or cargo, or for the loading, unloading, interchange, or transfer of the passengers or their baggage, or the cargo, or otherwise for the accommodation, use or convenience of the passengers or the carriers or their employees (including related facilities and accommodations at sites removed from landing fields and other landing areas), or for the landing, taking off, accommodation, and servicing of aircraft owned or operated by persons other than carriers. It also means facilities providing access to an airport facility, consisting of rail, rapid transit, or other forms of mass transportation which furnish a connection between the air terminal and other points within the state, including appropriate mass transportation terminal facilities at and within the air terminal itself and suitable offsite facilities for the accommodation of air passengers, baggage, mail, express, freight, and other users of the connecting facility.

(3) "BOCA code" means the BOCA basic building code published by building officials & code administrators international, inc., as the code may from time to time be promulgated by the building officials & code administrators international, inc.

(4) "Bonds" and "notes" means the bonds, notes, securities, or other obligations or evidences of indebtedness issued by the corporation pursuant to this chapter, all of which shall be issued under the name of and known as obligations of the "Rhode Island economic development corporation."

(5) "Civic facility" means any real or personal property designed and intended for the purpose of providing facilities for educational, cultural, community, or other civic purposes.

(6) "Compliance schedule" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation or any other limitation, prohibition or standard.

(7) "Corporation," "port authority", or "authority" means the governmental agency and public instrumentality, formerly known as the "Rhode Island port authority and economic development

corporation" and renamed the "Rhode Island economic development corporation," authorized, created, and established pursuant to § 42-64-4, or any subsidiary corporation thereof which is established pursuant to § 42-64-7.1.

(8) "Director" means the executive director of the Rhode Island economic development corporation.

(9) "Federal land" means real property within the state, now acquired or hereafter acquired by the Rhode Island economic development corporation which was formerly owned by the United States government, or any agency or instrumentality thereof, including without limiting the generality of the foregoing, any and all real property now or formerly owned or used by the United States government in the towns of North Kingstown, Portsmouth, Middletown, and Charlestown and the city of Newport as military installations or for other purposes related to the national defense. Without limiting the generality of the foregoing, federal land shall also mean and include certain land in the town of North Kingstown, or any portion thereof, which has or shall revert to the state pursuant to the provisions of Public Laws 1939, chapter 696 and is now or hereafter acquired by the corporation from the state.

(10) "Industrial facility" means any real or personal property, the demolition, removal, relocation, acquisition, expansion, modification, alteration, or improvement of existing buildings, structures, or facilities, the construction of new buildings, structures, or facilities, the replacement, acquisition, modification, or renovation of existing machinery and equipment, or the acquisition of new machinery and equipment, or any combination of the United States, which shall be suitable for manufacturing, research, production, processing, agriculture, and marine commerce, or warehousing; or convention centers, trade centers, exhibition centers, or offices (including offices for the government of the United States or any agency, department, board, bureau, corporation, or other instrumentality of the United States, or for the state or any state agency, or for any municipality); or facilities for other industrial, commercial or business purposes of every type and description; and facilities appurtenant or incidental to the foregoing, including headquarters or office facilities, whether or not at the location of the remainder of the facility, warehouses, distribution centers, access roads, sidewalks, utilities, railway sidings, trucking, and similar facilities, parking areas, waterways, dockage, wharfage, and other improvements necessary or convenient for the construction, development, maintenance, and operation of those facilities.

(11) "Local governing body" means any town or city council, commission, or other elective governing body now or hereafter vested by state statute, charter, or other law, with jurisdiction to initiate and adopt local ordinances, whether or not these local ordinances require the approval of the elected or appointed chief executive officer or other official or body to become effective.

(12) "Local redevelopment corporation" means any agency or corporation created and existing pursuant to the provisions of chapter 31 of title 45.

(13) "Municipality" means any city or town within the state now existing or hereafter created, or any state agency.

(14) "Parent corporation" means, when used in connection with a subsidiary corporation established pursuant to § 42-64-7.1, the governmental agency and public instrumentality created and established pursuant to § 42-64-4.

(15) "Personal property" means all tangible personal property, new or used, including, without limiting the generality of the foregoing, all machinery, equipment, transportation equipment, ships, aircraft, railroad rolling stock, locomotives, pipelines, and all other things and rights usually included within that term. "Personal property" also means and includes any and all interests in the property which are less

than full title, such as leasehold interests, security interests, and every other interest or right, legal or equitable.

(16) "Pollutant" means any material or effluent which may alter the chemical, physical, biological or radiological characteristics or integrity of water, including but not limited to, dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, cellar dirt, or industrial, municipal, agricultural or other waste petroleum or petroleum products, including, but not limited to, oil.

(17) "Pollution" means the discharge of any gaseous, liquid, or solid substance or combination thereof (including noise) into the air, water, or land which affects the physical, chemical, or biological properties (including temperature) of the air, water, or land in a manner or to an extent which renders or is likely to render the air, water, or land harmful or inimical to the public health, safety, or welfare, or to animal, bird, or aquatic life, or to the use of the air or water for domestic, industrial, or agricultural purposes or recreation including the man-made or man-induced alteration of the chemical, physical, biological or radiological integrity of water.

(18) "Pollution control facility" means any land or interest in land, the demolition, removal, relocation, acquisition, expansion, modification, alteration, or improvement of existing buildings, structures, or facilities, the construction of new buildings, structures, or facilities, the replacement, modification, or renovation of existing machinery and equipment, or the acquisition of new machinery and equipment, or any combination thereof, having to do with or the purpose of which is the abatement, control, or prevention of pollution, including industrial pollution, and all real and personal property incidental to that facility.

(19) "Port facility" means harbors, ports, and all real and personal property used in connection therewith, including, but not limited to, waterways, channels, wharves, docks, yards, bulkheads, slips, basins, pipelines, ships, boats, railroads, trucks, and other motor vehicles, aircraft, parking areas, shipyards, piers, quays, elevators, compressors, loading and unloading facilities, storage facilities, and warehouses of every type, buildings and facilities used in the manufacturing, processing, assembling, storing, or handling of any produce or products, other structures and facilities necessary for the convenient use of the harbors and seaports, including dredged approaches, railways, railroad terminals, side tracks, airports, roads, highways, tunnels, viaducts, bridges, and other approaches, useful in connection therewith, and any other shipping or transportation facility useful in the operation of a port or harbor.

(20) "Project" or "port project" means the acquisition, ownership, operation, construction, reconstruction, rehabilitation, improvement, development, sale, lease, or other disposition of, or the provision of financing for, any real or personal property (by whomever owned) or any interests in real or personal property, including without limiting the generality of the foregoing, any port facility, recreational facility, industrial facility, airport facility, pollution control facility, utility facility, solid waste disposal facility, civic facility, residential facility, water supply facility, energy facility or renewable energy facility, or any other facility, or any combination of two (2) or more of the foregoing, or any other activity undertaken by the corporation.

(21) "Project cost" means the sum total of all costs incurred by the Rhode Island economic development corporation in carrying out all works and undertakings, which the corporation deems reasonable and necessary for the development of a project. These shall include, but are not necessarily limited to, the costs of all necessary studies, surveys, plans, and specifications, architectural, engineering, or other special services, acquisition of land and any buildings on the land, site preparation and development, construction, reconstruction, rehabilitation, improvement, and the acquisition of any

machinery and equipment or other personal property as may be deemed necessary in connection with the project (other than raw materials, work in process, or stock in trade); the necessary expenses incurred in connection with the initial occupancy of the project; an allocable portion of the administrative and operating expenses of the corporation; the cost of financing the project, including interest on all bonds and notes issued by the corporation to finance the project from the date thereof to one year from the date when the corporation shall deem the project substantially occupied; and the cost of those other items, including any indemnity or surety bonds and premiums on insurance, legal fees, real estate brokers and agent fees, fees and expenses of trustees, depositories, and paying agent for bonds and notes issued by the Rhode Island economic development corporation, including reimbursement to any project user for any expenditures as may be allowed by the corporation (as would be costs of the project under this section had they been made directly by the corporation), and relocation costs, all as the corporation shall deem necessary.

(22) "Project user" means the person, company, corporation, partnership, or commercial entity, municipality, state, or United States of America who shall be the user of, or beneficiary of, a port project.

(23) "Real property" means lands, structures (new or used), franchises, and interests in land, including lands under water, and riparian rights, space rights, and air rights, and all other things and rights usually included within the term. "Real property" shall also mean and include any and all interests in that property less than fee simple, such as easements, incorporeal hereditaments, and every estate, interest or right, legal or equitable, including terms for years and liens thereon by way of judgments, mortgages or otherwise, and also all claims for damages to that real property.

(24) "Recreational facility" means any building, development, or improvement, provided that building, facility, development, or improvement is designed in whole or in part to attract tourists to the state or to provide essential overnight accommodations to transients visiting this state, including, without limiting in any way the generality of the foregoing, marinas, beaches, bathing facilities, ski facilities, convention facilities, hotels, motels, golf courses, camp grounds, arenas, theatres, lodges, guest cottages, and all types of real or personal property related thereto as may be determined from time to time by the corporation.

(25) "Revenues" means: (i) with respect to any project, the rents, fees, tolls, charges, installment payments, repayments, and other income or profit derived from a project or a combination of projects pursuant to any lease, conditional sales contract, installment sales contract, loan agreement, or other contract or agreement, or any combination thereof, and (ii) any receipts, fees, payments, moneys, revenues or other payments received or to be received by the corporation in the exercise of its corporate powers under this chapter, including, without limitation, loan repayments, grants, aid, appropriations and other assistance for the state, the United States or any corporation, department or instrumentality of either or of a political subdivision thereof, bond proceeds, investment earnings, insurance proceeds, amounts in reserves and other funds and accounts established by or pursuant to this chapter or in connection with the issuance of bonds, and any other taxes, assessments, fees, charges, awards or other income or amounts received or receivable by the corporation.

(26) "Rule or regulation" means any directive promulgated by the Rhode Island economic development corporation not inconsistent with the laws of the United States or the state, for the improvement of navigation and commerce or other project purposes and shall include, but not be limited to, charges, tolls, rates, rentals, and security provisions fixed or established by the corporation.

(27) "Sewage" shall be construed to mean the same as "pollutant" as defined in § 42-64-3(o) above.

(28) "Sewage treatment facility" means the sewage treatment plant, structure, combined sewer overflows, equipment, interceptors, mains, pumping stations and other property, real, personal or mixed, for the treatment, storage, collection, transporting or disposal of sewage, or any property or system to be used in whole or in part for any of the aforesaid purposes located or operated within the boundaries of the Quonset Point/Davisville Industrial Park, or utilized by the corporation for the transport, collection, treatment, storage or disposal of waste.

(29) "Solid waste" means garbage, refuse, and other discarded materials, including, but not limited to, solid waste materials resulting from industrial, recreational, utility, and commercial enterprises, hotels, apartments, or any other public building or private building, or agricultural, or residential activities.

(30) "Solid waste disposal facility" means any real or personal property, related to or incidental to any project, which is designed or intended or designated for the purpose of treating, compacting, composting, or disposing of solid waste materials, including treatment, compacting, composting, or disposal plants, site and equipment furnishings thereof, and their appurtenances.

(31) "Source" means any building, structure, facility or installation from which there is or may be the discharge of sewage.

(32) "State" means the state of Rhode Island and Providence Plantations.

(33) "State agency" means any office, department, board, commission, bureau, division, authority, or public corporation, agency or instrumentality of the state.

(34) "State guide plan" means the plan adopted pursuant to § 42-11-10, which establishes the statewide planning program.

(35) "Utility facility" means any real or personal property designed, intended or utilized for generating, manufacturing, producing, storing, transmitting, distributing, delivering, or furnishing natural or manufactured gas, steam, electrical, or nuclear energy, heat, light, or power directly or indirectly to or for any project, project user, or for the public, the collection and disposal of storm and sanitary sewage; any railroads necessary or desirable for the free flow of commerce to and from projects; any roads, highways, bridges, tunnels, viaducts, or other crossings necessary or desirable for the free flow of commerce to and from projects, and any public transportation systems or facilities, including, but not limited to, bus, truck, ferry, and railroad terminals, depots, tracked vehicles, and other rolling stock and ferries; and any appurtenances, equipment, and machinery or other personal property necessary or desirable for the utilization thereof.

(36) "Water supply facility" means any real or personal property, or any combination thereof, related to or incidental to any project, designed, intended, or utilized for the furnishing of water for domestic, industrial, irrigation, or other purposes and including artesian wells, reservoirs, dams, related equipment, and pipelines, and other facilities.

(37) "Renewable energy facility" means any real or personal property, or any combination thereof, related to, or incidental to, any project, designed, intended, or utilized for an eligible renewable energy resource that meets the criteria set forth in subsections 39-26-5(a) and 39-26-5(c).

TITLE 42

State Affairs and Government

CHAPTER 42-98

Energy Facility Siting Act

SECTION 42-98-3

§ 42-98-3 Definitions. – (a) "Agency" means any agency, council, board, or commission of the state or political subdivision of the state.

(b) "Alteration" means a significant modification to a major energy facility, which, as determined by the board, will result in a significant impact on the environment, or the public health, safety, and welfare. Conversion from one type of fuel to another shall not be considered to be an "alteration."

(c) "Board" for purposes of this chapter refers to the siting board.

(d) "Major energy facility" means facilities for the extraction, production, conversion, and processing of coal; facilities for the generation of electricity designed or capable of operating at a gross capacity of forty (40) megawatts or more; transmission lines of sixty-nine (69) Kv or over; facilities for the conversion, gasification, treatment, transfer, or storage of liquified natural and liquified petroleum gases; facilities for the processing, enrichment, storage, or disposal of nuclear fuels or nuclear byproducts; facilities for the refining of oil, gas, or other petroleum products; facilities of ten (10) megawatts or greater capacity for the generation of electricity by water power, and facilities associated with the transfer of oil, gas, and coal via pipeline; any energy facility project of the Rhode Island economic development corporation; the board may promulgate regulations to further define "major energy facility" to the extent further definition is required to carry out the purpose of this chapter, provided that any waste to energy facility shall not be deemed a major energy facility for the purposes of this chapter.

(e) "Clean coal technology" means one of the technologies developed in the clean coal technology program of the United States Department of Energy, and shown to produce emissions levels substantially equal to those of natural gas fired power plants.

TITLE 42

State Affairs and Government

CHAPTER 42-98

Energy Facility Siting Act

SECTION 42-98-7

§ 42-98-7 Powers and duties. – (a) The siting board is the licensing and permitting authority for all licenses, permits, assents, or variances which, under any statute of the state or ordinance of any political subdivision of the state, would be required for siting, construction or alteration of a major energy facility in the state.

(2) Any agency, board, council, or commission of the state or political subdivision of the state which, absent this chapter, would be required to issue a permit, license, assent, or variance in order for the siting, construction, or alteration of a major energy facility to proceed, shall sit and function at the direction of the siting board. These agencies shall follow the procedures established by statute, ordinance, and/or regulation provided for determining the permit, license, assent, or variance, but, instead of issuing the permit, license, assent, or variance, shall forward its findings from the proceeding, together with the record supporting the findings and a recommendation for final action, to the siting board.

(3) Notwithstanding any provision in this chapter to the contrary, in those instances in which the department of environmental management exercises a permitting or licensing function under the delegated authority of federal law, including, but not limited to, the Federal Clean Water Act (33 U.S.C. § 1251 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), and those state laws and regulations which implement those federal laws, the department of environmental management shall be the licensing and permitting authority. Moreover, the authority to issue licenses and permits delegated to the department of environmental management pursuant to chapter 1 of title 2 and to the coastal resources management council pursuant to chapter 23 of title 46, shall remain with those agencies, but in all other respects the department of environmental management and the coastal resources management council shall follow the procedures set forth in this chapter.

(b) The siting board is authorized and empowered to summon and examine witnesses and to compel the production and examination of papers, books, accounts, documents, records, certificates, and other legal evidence that may be necessary for the determination of its jurisdiction and decision of any question before, or the discharge of any duty required by law of, the board.

(c) The siting board is empowered to issue any orders, rules, or regulations as may be required to effectuate the purposes of this chapter.

(d) The siting board shall, by regulation, determine the standards for intervention.

(e) The siting board's proceedings shall in all respects comply with the requirements of the Administrative Procedures Act, chapter 35 of this title, except where otherwise explicitly provided.

TITLE 42

State Affairs and Government

CHAPTER 42-98

Energy Facility Siting Act

SECTION 42-98-9

§ 42-98-9 Applications – Procedures for review – Preliminary hearing. – (a) Within sixty (60) days following the board's docketing of an application the board shall, on not less than forty-five (45) days' notice to all agencies, subdivisions of the state, and the public, convene a preliminary hearing on the application to determine the issues to be considered by the board in evaluating the application, and to designate those agencies of state government and of political subdivisions of the state which shall act at the direction of the board for the purpose of rendering advisory opinions on these issues, and to determine petitions for intervention.

(b) The board shall consider as issues in every proceeding the ability of the proposed facility to meet the requirements of the laws, rules, regulations, and ordinances under which, absent this chapter, the applicant would be required to obtain a permit, license, variance, or assent. The agency of state government or of a political subdivision of the state which, absent this chapter, would have statutory authority to grant or deny the permit, license, variance, or assent, shall function at the direction of the board for hearing the issue and rendering an advisory opinion thereon.

(c) The board shall limit the scope of any agency's investigation where it finds that more than one agency has jurisdiction over a matter at issue in the licensing process. In these instances, the board shall determine which agency shall make the necessary findings on the issue after giving proper consideration to the expertise and resources available to each of the agencies involved.

(d) The public utilities commission shall conduct an investigation in which the division of planning of the department of administration, the governor's office of energy assistance and the division of public utilities and carriers shall participate and render an advisory opinion as to the need for the proposed facility.

(e) The statewide planning program within the department of administration shall conduct an investigation and render an advisory opinion as to the socio-economic impact of the proposed facility and its construction and consistency with the state guide plan.

(f) A decision of the board under this section shall be issued within thirty (30) days following the conclusion of the preliminary hearing and in any event within forty-five (45) days of the commencement of the hearing.

TITLE 42

State Affairs and Government

CHAPTER 42-140.2

Distributed Generation

SECTION 42-140.2-2

§ 42-140.2-2 Office of energy resources. – (1) The office of energy resources shall support and facilitate a stakeholder led study of issues pertaining to distributed generations and barriers that impede the implementation of distributed generation and the realization of the societal benefits thereof. This study shall augment, compliment, and be integrated with a study initiated pursuant to an order of the public utilities commission.

(2) Said study shall consider the following definitions and the implications thereof for the effective and fair implementation of distributed generation:

(a) "Backup power rates" means any component of utility tariffs that are charged only to those customers who install on-site generation, self-generation, behind-the-meter generation, or distributed generation. Backup power rates, also called "standby rates", include, but are not limited to, any rate, tariff, or surcharge billed on the basis of the amount of energy generated by, or demand change related to, or installed capacity size of, any generation unit installed by an end-use customer.

(b) "Combined heat and power system" means a system that produces, from a single source, both electric power and thermal energy used in any process or for heating that result in an aggregate reduction in energy use. To be considered a combined heat and power system for the purpose of this section, the system must achieve an average annual fuel conversion efficiency of at least fifty-five percent (55%).

(c) "Net-metering" means billing or charging an end-use customer only for the electricity supply or services which is the net amount of electricity actually delivered to the client by a supplier or service company, less any amount of electricity generated by or on behalf of the end-use customer and either used on the end-use customer's property or put on to the electric distribution grid within the same transmission interconnect area in which the end-use customers is located.

(3) Said study shall make findings and recommendations using methods for determining and quantifying system benefits attributable to distributed generation including costs and benefits relating to:

(a) the electricity distribution system;

(b) the electricity transmission system;

(c) the electricity generating system and the cost and availability of capital needed to construct or maintain generation capacity;

(d) system losses;

- (e) congestion and reliability;
- (f) ancillary services including voltage stability and reactive power;
- (g) fuel availability and pricing, and costs of electricity supply;
- (h) environmental impacts.

(4) The commissioner of the office of energy resources shall report the findings and recommendations of the stakeholder's group with regard to any statutory changes necessary to reduce barriers to implementation of distributed generation to the general assembly by February 1, 2007.

(5) The commission shall by June 1, 2007, issue the report of the stakeholder's group to the public utilities commission; and the commissioner is hereby authorized to request that the commission initiate proceedings with regard to establishing any appropriate rates and/or regulation necessary to implement the recommendations contained in the report.

(6) The findings and recommendations of the said stakeholder's group shall in no way be binding upon either the general assembly or the public utilities commission and may be accepted, accepted in part, rejected or rejected in part by the general assembly or the public utilities commission and until such action by either the general assembly or the public utilities commission, there shall be no further action on said recommendations.