

## CHAPTER 39-26.1

### Long-Term Contracting Standard for Renewable Energy

#### § 39-26.1-1. Purpose.

The purpose of this chapter is to encourage and facilitate the creation of commercially reasonable long-term contracts between electric distribution companies and developers or sponsors of newly developed renewable energy resources with the goals of stabilizing long-term energy prices, enhancing environmental quality, creating jobs in Rhode Island in the renewable energy sector, and facilitating the financing of renewable energy generation within the jurisdictional boundaries of the state or adjacent state or federal waters or providing direct economic benefit to the state.

#### History of Section.

(P.L. 2009, ch. 51, § 1; P.L. 2009, ch. 53, § 1.)

#### § 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.

History of Section.

(P.L. 2009, ch. 51, § 1; P.L. 2009, ch. 53, § 1.)

### **§ 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. 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

## Appendix C-1 – LTCS Statute

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)(1) No electric-distribution company shall be obligated to enter into long-term contracts for newly developed, renewable energy resources on terms that 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 five (5) 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;

After December 30, 2013: One hundred percent (100%) of the minimum, long-term-contract capacity subject to subsection (f) of this section.

(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.

(f) At least once per year beginning in 2014, the electric-distribution company shall conduct solicitations until one hundred percent (100%) of the minimum, long-term-contract capacity is met; provided, however, that no contracts shall be awarded unless the pricing under such contract(s) is below the forecasted market price of energy and renewable-energy certificates over the term of the proposed contract, using industry standard forecasting methodologies as have been used to evaluate pricing in the past solicitation processes reviewed by the commission under this section. In such solicitations, the electric-distribution company may elect not to acquire capacity, but shall acquire all environmental attributes and energy.

History of Section.

(P.L. 2009, ch. 51, § 1; P.L. 2009, ch. 53, § 1; P.L. 2013, ch. 167, § 1; P.L. 2013, ch. 202, § 1; P.L. 2014, ch. 61, § 1; P.L. 2014, ch. 63, § 1; P.L. 2014, ch. 200, § 2; P.L. 2014, ch. 216, § 2.)

**§ 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.

History of Section.

(P.L. 2009, ch. 51, § 1; P.L. 2009, ch. 53, § 1.)

**§ 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.

History of Section.

(P.L. 2009, ch. 51, § 1; P.L. 2009, ch. 53, § 1.)

#### **§ 39-26.1-6. Interaction with other laws.**

The long-term contract standard set forth in this chapter shall be separate and distinct from the renewable energy standard set forth in chapter 26 of title 39.

History of Section.

(P.L. 2009, ch. 51, § 1; P.L. 2009, ch. 53, § 1.)

#### **§ 39-26.1-7. Town of New Shoreham Project.**

(a) The general assembly finds it is in the public interest for the state to facilitate the construction of a small-scale offshore wind demonstration project off the coast of Block Island, including an undersea transmission cable that interconnects Block Island to the mainland in order to: position the state to take advantage of the economic development benefits of the emerging offshore wind industry; promote the development of renewable energy sources that increase the nation's energy independence from foreign sources of fossil fuels; reduce the adverse environmental and health

impacts of traditional fossil fuel energy sources; and provide the Town of New Shoreham with an electrical connection to the mainland. To effectuate these goals, and notwithstanding any other provisions of the general or public laws to the contrary, the Town of New Shoreham project, its associated power purchase agreement, transmission arrangements, and related costs are authorized pursuant to the process and standards contained in this section. The Narragansett Electric Company is hereby authorized to enter into an amended power purchase agreement with the developer of offshore wind for the purchase of energy, capacity, and any other environmental and market attributes, on terms that are consistent with the power purchase agreement that was filed with the commission on December 9, 2009 in docket 4111, and amendments changing dates and deadlines, provided that the pricing terms of such agreement are amended as more fully described in subsection 39-26.1-7(e), in addition to other amendments that are made to take into account the provisions of this section as amended since the filing of the agreement in docket 4111. Any amendments shall ensure that the pricing can only be lower, and never exceed, the original pricing included in the power purchase agreement that was reviewed in docket 4111. The demonstration project subject to the amended power purchase agreement shall include up to (but not exceeding) eight (8) wind turbines with aggregate nameplate capacity of no more than thirty (30) megawatts, even if the actual capacity factor of the project results in the project technically exceeding ten (10) megawatts.

(b) The amended power purchase agreement shall be filed with the Public Utilities Commission. Upon the filing of the amended power purchase agreement, the commission shall open a new docket. The commission shall allow the parties to docket 4111 to become parties in the new docket who may file testimony within fifteen (15) days of the filing of the amended agreement. The commission shall allow other interventions on an expedited basis, provided they comply with the commission standards for intervention. The developer shall provide funding for the economic development corporation to hire an expert experienced in power markets, renewable energy project financing, and power contracts who shall provide testimony regarding the terms and conditions of the power purchase agreement to assist the commission in its review, provided that the developer shall be precluded from influencing the choice of expert, which shall be in the sole discretion of the economic development corporation. This testimony shall be filed within twenty (20) days after the filing of the amended power purchase agreement. The parties shall have the right to respond to the testimony of this expert through oral examination at the evidentiary hearings. The commission shall hold one public comment hearing within five (5) days after the filing of the expert testimony. Evidentiary hearings shall commence no later than thirty (30) days from the filing of the amended power purchase agreement.

(c) The commission shall review the amended power purchase agreement taking into account the state's policy intention to facilitate the development of a small offshore wind project in Rhode Island waters, while at the same time interconnecting Block Island to the mainland. The commission shall review the amended power purchase agreement and shall approve it if:

(i) The amended agreement contains terms and conditions that are commercially reasonable;

(ii) The amended agreement contains provisions that provide for a decrease in pricing if savings can be achieved in the actual cost of the project pursuant to subsection 39-26.1-7(e);

(iii) The amended agreement is likely to provide economic development benefits, including: facilitating new and existing business expansion and the creation of new renewable energy jobs; the further development of Quonset Business Park; and, increasing the training and preparedness of the Rhode Island workforce to support renewable energy projects; and

(iv) The amended power purchase agreement is likely to provide environmental benefits, including the reduction of carbon emissions. An advisory opinion on the findings of economic benefit set forth in (iii) above shall be provided by the Rhode Island economic development corporation and an advisory opinion on the environmental benefits set forth in (iv) above shall be filed by the Rhode Island department of environmental management. The advisory opinions shall be filed with the commission within twenty (20) days of filing of the amended power purchase agreement. The commission shall give substantial deference to the factual and policy conclusions set forth in the advisory opinions in making the required findings. Notwithstanding any other provisions of the general laws to the contrary, for the purposes of this section, "commercially reasonable" shall mean terms and pricing that are reasonably consistent with what an experienced power market analyst would expect to see for a project of a similar size, technology and location, and meeting the policy goals in subsection (a) of this section.

(d) The commission shall issue a written decision to accept or reject the amended power purchase agreement, without conditions, no later than forty-five (45) days from the filing of the amended power purchase agreement, without delay or extension of the timeframes contained in this section. Any review of the commission's decision shall be according to chapter 5 of title 39, and the supreme court shall advance any proceeding under this section so that the matter is afforded precedence on the calendar and shall be heard and determined with as little delay as possible. The provisions of § 39-26.1-4 and the provisions of subsections (b), (c), (d), and (f) of § 39-26.1-5 shall apply, and all costs incurred in the negotiation, administration, enforcement, transmission engineering associated with the design of the cable, and implementation of the project and agreement shall be recovered annually by the electric distribution company in electric distribution rates. The pricing under the agreement shall not have any precedential effect for purposes of determining whether other long-term contracts entered into pursuant to this chapter are commercially reasonable.

(e) Cap and lower price. (i) The amended power purchase agreement subject to subsection 39-26.1-7(a) shall provide for terms that shall decrease the pricing if savings can be achieved in the actual cost of the project, with all realized savings allocated to the benefit of ratepayers. (ii) The amended power purchase agreement shall also provide that the initial fixed price contained in the signed power purchase agreement submitted in docket 4111 shall be the maximum initial price, and any realized savings shall reduce such price. After making any such reduction to the initial price based on realized savings, the price for each year of the amended power purchase agreement shall be fixed by the terms of said agreement. (iii) The amended power purchase agreement shall require that the costs of the project shall be certified by the developer. An independent third-party acceptable to the division of public utilities and carriers shall within thirty (30) days of this certification by the developer, verify the accuracy of such costs at the

completion of the construction of the project. The reasonable costs of this verification, shall be paid for by the developer. Upon receipt of such third-party verification, the division shall notify the Narragansett Electric Company of the final costs. The public utilities commission shall reduce the expense to ratepayers consistent with a verified reduction in the project costs.

(f) The project shall include a transmission cable between the Town of New Shoreham and the mainland of the state. The electric distribution company, at its option, may elect to own, operate, or otherwise participate in such transmission cable project. The electric distribution company, however, has the option to decline to own, operate, or otherwise participate in the transmission cable project. The electric distribution company may elect to purchase the transmission cable and related facilities from the developer or an affiliate of the developer, pursuant to the terms of a transmission facilities purchase agreement negotiated between the electric distribution company and the developer or its affiliate, an unexecuted copy of which shall be provided to the division of public utilities and carriers for the division's consent to execution. The division shall have twenty (20) days to review the agreement. If the division independently determines that the terms and pricing of the agreement are reasonable, taking into account the intention of the legislature to advance the project as a policy-making matter, the division shall provide its written consent to the execution of the transmission facilities purchase agreement. Once written consent is provided, the electric distribution company and its transmission affiliate are authorized to make a filing with the federal energy regulatory commission to put into effect transmission rates to recover all of the costs associated with the purchase of the transmission cable and related facilities and the annual operation and maintenance. The revenue requirement for the annual cable costs shall be calculated in the same manner that the revenue requirement is calculated for other transmission facilities in Rhode Island for local network service under the jurisdiction of the federal energy regulatory commission. The division shall be authorized to represent the State of Rhode Island in those proceedings before the federal energy regulatory commission, including the authority to enter into any settlement agreements on behalf of the state to implement the intention of this section. The division shall support transmission rates and conditions that allow for the costs related to the transmission cable and related facilities to be charged in transmission rates in a manner that socializes the costs throughout Rhode Island. Should the electric distribution company own, operate, and maintain the cable, the annual costs incurred by the electric distribution company directly or through transmission charges shall be recovered annually through a fully reconciling rate adjustment from customers of the electric distribution company and/or from the Block Island Power Company or its successor, subject to any federal approvals that may be required by law. The allocation of the costs related to the transmission cable through transmission rates or otherwise shall be structured so that the estimated impact on the typical residential customer bill for such transmission costs for customers in the Town of New Shoreham shall be higher than the estimated impact on the typical residential customer bill for customers on the mainland of the electric distribution company. This higher charge for the customers in the Town of New Shoreham shall be developed by allocating the actual cable costs based on the annual peak demands of the Block Island Power Company and the electric distribution company, and these resultant costs recovered in the per kWh charges of each company. In any event, the difference in the individual charge per kWh or per customer/month shall not exceed the ratio of average demand to peak demand for Block Island Power Company relative to the electric distribution company, currently at 1.8 to 1.0 respectively. To the extent

that any state tariffs or rates must be put into effect in order to implement the intention of this section, the public utilities commission shall accept filings of the same and shall approve them.

(g) Any charges incurred by the Block Island Power Company or its successor pursuant to this section or other costs incurred by the Block Island Power Company in implementing this section, including the cost of participation in regulatory proceedings in the state or at the federal energy regulatory commission shall be recovered annually in rates through a fully reconciling rate adjustment, subject to approval by the commission. If the electric distribution company owns, operates, or otherwise participates in the transmission cable project, pursuant to subsection 39-26.1-7(b) the provisions of § 39-26.1-4 shall not apply to the cable cost portion of the Town of New Shoreham Project.

(h) Any contract entered into pursuant to this section shall count as part of the minimum long-term contract capacity.

(i) If the electric distribution company elects not to own the transmission cable, the developer may elect to do so directly, through an affiliate, or a third-party and the power purchase agreement pricing shall be adjusted to allow the developer, an affiliate or a third-party, to recover the costs (including financing costs) of the transmission facilities, subject to complying with the terms as set forth in the power purchase agreement between the developer and the electric distribution company.

#### History of Section.

(P.L. 2009, ch. 51, § 1; P.L. 2009, ch. 53, § 1; P.L. 2009, ch. 216, § 1; P.L. 2009, ch. 217, § 1; P.L. 2010, ch. 31, § 1; P.L. 2010, ch. 32, § 1.)

#### **§ 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.

## Appendix C-1 – LTCS Statute

(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.

## Appendix C-1 – LTCS Statute

(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.

History of Section.

(P.L. 2009, ch. 51, § 1; P.L. 2009, ch. 53, § 1.)

**§ 39-26.1-9. Town of Johnston Project.**

Notwithstanding any other provisions of this chapter to the contrary:

(1) The Narragansett Electric Company is hereby authorized, at its sole discretion, to procure a commercially reasonable long-term contract for a newly developed renewable energy resource fueled by landfill gas from the central landfill in the town of Johnston on a timetable earlier than is otherwise set forth in this chapter.

(2) Any such contract executed on or before May 21, 2010 shall be legal, binding and enforceable and shall not be subject to commission approval if:

(i) Such resource has a gross nameplate capacity rating of less than thirty-seven (37) megawatts; and

(ii) Such contract is:

(A) For a term not in excess of twenty (20) years; and

(B) Contains such other terms and conditions as may be approved by the director of the department of administration, such approval to be indicated by written confirmation of the director delivered to an electric distribution company prior to such contract becoming effective.

(3) The power purchase agreement shall be reviewed by the administrator of the division of public utilities and carriers, the executive director of the Rhode Island economic development corporation, the administrator of the office of energy resources, and the director of the department of administration. Certified copies of the executed agreement shall be provided to each agency by the Narragansett Electric Company and published on the website of the division of public utilities and carriers for public inspection. Members of the public shall have fifteen (15) days to submit written comments to the four (4) agencies for the respective agency consideration; however, no evidentiary hearings shall be required.

(4) Within thirty (30) days of receipt of the agreement each of the four (4) agencies in subsection (c) shall issue a certification or decline certification in writing. Such certifications or declinations shall be final and conclusive as a matter of law and not subject to appeal. The respective certification determinations shall be made to the division of public utilities and carriers as follows:

(i) The administrator of the division of public utilities and carriers shall certify the agreement if the administrator determines that the agreement is consistent with the provisions of this chapter and this section;

(ii) The executive director of the Rhode Island economic development corporation shall certify the agreement if the executive director determines that the project encourages and facilitates the creation of jobs in Rhode Island in the renewable energy sector;

(iii) The administrator of the office of energy resources shall certify the agreement if the administrator determines that the agreement fulfills the declared policy of this chapter and this section.

(iv) The director of the department of administration shall certify the agreement if the director determines that the contractual terms of the agreement are reasonable and in the best interest of the state in accordance with this chapter and section.

(5) Upon receipt of the certifications pursuant to subsection (d) the division shall review such certifications and confirm that each is in conformance with this section.

(6) Within five (5) days of receipt of the certifications by the division, the division shall file the agreement with the commission. Upon such filing, the agreement shall be deemed accepted and fully enforceable.

(7) If one or more of the certifications is not received by the division within the thirty (30) day period established by this section, the division shall, within fifteen (15) days, consider the reasons, if any, provided by the agency not providing such certification and the division shall, within such fifteen (15) day period, make a final determination on the question originally assigned to the non-certifying agency. If the division determines that, notwithstanding the lack of certification from the non-certifying agency, such certification should be issued, the division shall make such certification, which certification shall have the same effect as if it had been made by the agency which first considered such question. If, in the case of a lack of certification

from an agency, the division determines that such certifications shall not be issued, then the division shall not file the agreement with the commission and the agreement shall have no effect.

(8) The Narragansett Electric Company's act of having entered into this agreement and its terms and pricing shall be deemed prudent for purposes of any future regulatory proceedings before the commission and recovery of the costs incurred in making payments under the terms of the agreement shall not be subject to challenge in any future commission proceedings. The provisions of § 39-26.1-4 and the provisions of subsections (b), (c), (d), and (f) of § 39-26.1-5 shall apply, and all costs incurred in, or savings resulting from, the administration and implementation of the agreement shall be recovered annually by the electric distribution company and its customers in electric distribution rates. Any contract entered into pursuant to this section shall count as part of the minimum long-term contract capacity.

(9) The electric distribution company shall be authorized upon appropriate notice and filing with the commission, to allocate all products purchased under any power purchase agreements entered into pursuant to chapter 39-26.1 to its standard offer service customers at the market price and to allocate any difference, whether positive or negative, between the costs of the power purchase agreement and the market price of the products purchased under the power purchase agreement to all of its electric distribution customers.

(10) The provisions of this section shall be severable from the other provisions of this chapter, and shall remain in effect regardless of any judicial challenge to other sections of this chapter.

History of Section.

(P.L. 2010, ch. 14, § 2; P.L. 2010, ch. 18, § 2.)