

HOUSE No. 3061

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act to promote reliable and high quality utility service in the Commonwealth..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. . Section 40B of chapter 82 of the General Laws, as appearing in the 2006
2 Official Edition, is hereby amended by adding the following paragraph:-

3 The designation markings required by this section shall be performed by trained
4 permanent employees of the utility unless otherwise authorized by a collective bargaining
5 agreement. If no such trained permanent employees are available, the department of public
6 utilities may certify and license outside companies to perform such designation markings.

7 Moreover, to receive a building permit from any municipality, or political subdivision thereof,
8 for any work requiring excavation, an individual shall provide certification of compliance with
9 this section. Any utility that violates any provision of this section shall forfeit a penalty as
10 determined by the department of public utilities. Penalties incurred under this section shall not be
11 included as expenses in connection with the establishment of rates by said company.

12 SECTION 2. Section 1 of chapter 164 of the General Laws, as appearing in the 2006
13 Official Edition, is hereby amended by inserting after the definition of “Horizontal market
14 power” the following definition:- “LNG”, liquid natural gas.

SECTION 3. Said chapter 164 of the General Laws, as so appearing, is hereby amended by striking section 1C, as so appearing, and inserting in place thereof the following section:-

Section 1C. Any marketing company or other competitive or unregulated operation or entity of an electric or gas company shall be in the form of an affiliate of said company and shall be separate from any generation, transmission, or distribution company affiliate of the electric or gas company. The department shall promulgate standards of conduct which shall ensure the separation of such affiliates and which shall be consistent with the following provisions: (i) a distribution or gas company, or an affiliate thereof, shall not directly or indirectly use proceeds obtained from providing regulated services, or assets obtained with such proceeds, to subsidize non-regulated services; said prohibition shall extend to the use of vehicles, service tools, instruments, and employees, and the costs, salaries and benefits related thereto; (ii) a distribution or gas company shall not give any affiliates any preference over non-affiliated suppliers or customers thereof in matters relating to any product or service; (iii) all products, services, discounts, rebates, and fee waivers offered by a distribution or gas company shall be available to all customers and suppliers simultaneously, to the extent technically possible, on a comparable basis; (iv) a distribution or gas company shall process all same or similar requests for any product, service, or information in the same manner and within the same period of time; (v) a distribution or gas company shall not condition the provision of any product, service, or rate agreement by the distribution or gas company to the provision of any product or service to which an affiliate is involved; (vi) a distribution or gas company shall not share with any affiliate any market information acquired or developed by the distribution or gas company in the course of responding to requests for distribution or gas service or any proprietary customer information including, but not limited to, mailing lists, marketing information, and other customer related

information, unless the use of such information is available to all commercial businesses on a non-discriminatory basis; (vii) a distribution or gas company shall refrain from presenting that any advantage accrues to customers or others in the use of its services as a result of that customer or others dealing with any such affiliate; (viii) a distribution or gas company shall not engage in joint advertising or marketing programs with any affiliate; and (ix) employees of a distribution or gas company shall not be shared with, and shall be physically separated from those of, any generating or marketing affiliate.

Upon the filing of a written complaint with the department requesting determination of compliance by a distribution or gas company, or an affiliate of a distribution or gas company, with the provisions of this section or any rule, order, or other action promulgated pursuant thereto, the department shall investigate the complaint, and upon the determination that there are reasonable grounds to proceed, the department shall promptly initiate formal complaint proceedings. If the department determines that there is no reasonable basis for initiating a formal complaint proceeding, it shall so advise, in writing, the person filing such written complaint within 90 days. The department shall establish such penalties as necessary to assure compliance; provided, however, that any penalty incurred under this section shall not be included as expenses in connection with the establishment of rates by said distribution or gas company. Any final judgment or determination issued by the department, as a result of an investigation or otherwise, that an electric or gas company or an affiliate thereof has violated either (1) the provisions of this section; or (2) any rule, order, or settlement promulgated pursuant thereto, shall be prima facie evidence in any civil action against the distribution or gas company or its affiliate to recover damages or obtain injunctive relief.

A violation of this section shall constitute an unfair or deceptive act or practice under the provisions of chapter 93A, notwithstanding any contrary provision of any other law of the commonwealth or any exemption provided by said chapter 93A.

It shall be the duty of the Attorney General of the Commonwealth to institute proceedings in the superior court to prevent and restrain violations of this section. When the Attorney General has reason to believe an electric or gas company or its affiliate is engaging in a violation of this section, the Attorney General shall bring an action to enjoin the electric or gas company, the affiliate, or both, from engaging in a violation of this section.

SECTION 4. Subsection (b) of section 1E of said chapter 164 of the General Laws, as so appearing, is hereby amended by striking out, in line 16, the words “the effective date of this act” and inserting in place thereof the following words:- November 1, 1997.

SECTION 5. Said subsection (b) of said section 1E of said chapter 164 of the General Laws, as so appearing, is hereby further amended by striking out the last sentence and inserting in place thereof the following sentences:

At the time of any filings made pursuant to this section, if staffing levels have decreased below those in effect on November 1, 1997, the department shall hold evidentiary hearings to determine if staffing levels in said company are adequate; provided further, that unless the company establishes, by clear and convincing evidence, that said staffing levels are adequate, the department shall hold that staffing levels within any function, department, or work unit, below those in existence on November 1, 1997 are unsafe and therefore not in compliance with this section. The results of the hearings shall be binding on both parties and the civil penalty for non-compliance shall be no less than \$10,000 per day; provided, however, that the maximum civil

penalty shall not exceed \$500,000 for any related series of violations. Nothing in this paragraph shall prevent reduction of forces below the November 1, 1997 level through early retirement and severances negotiated with labor organizations before said date. The preceding provisions of this paragraph notwithstanding, in no event shall the department fail to establish benchmarks for employee staffing levels for each distribution, transmission and gas company by September 1, 2009, regardless of whether any company has at any time used, implemented or discontinued the use of any set of performance based rates.

SECTION 6. Subsection (7) of section 1F of said chapter 164 of the General Laws, as so appearing, is hereby amended by inserting after the number “1997”, in line 241, the following words:-

and, in accordance with Section 1E, shall establish benchmark staffing levels adequate to ensure that service quality and reliability do not decline below levels that existed on November 1, 1997.

SECTION 7. Section 75A of said chapter 164 of the General Laws, as so appearing, is hereby amended by adding the following paragraph:-

Any new natural gas service shall be initially activated into a consumer’s residence or business only by qualified personnel under state and federal regulations. Upon installation of a meter measuring gas supplied to any premises, only the authorized permanent employees of the gas company completing said installation shall be authorized to turn on the gas supply; provided further, that the newly installed meter shall remain locked on the service side by the gas company until the local gas inspector inspects the installation of piping to the new gas appliance(s). Upon the successful completion of the inspection, the lock shall only be removed

by an authorized permanent employee of the gas company; provided further, that said permanent employee of the gas company shall then light all gas appliances and check all gas related equipment. Any gas company that violates any provision of this section shall forfeit a penalty as determined by the department. Penalties incurred under this section shall not be included as expenses in connection with the establishment of rates by said company.

SECTION 8. Section 75F of said chapter 164 of the General Laws, as so appearing, is hereby amended by striking out, in lines 8-9, the words “one hundred dollars” and inserting in place thereof the following number:- \$1,000.

SECTION 9. Section 76 of said chapter 164 of the General Laws, as so appearing, is hereby amended adding the following paragraph:-

The department shall require gas companies to instruct their authorized permanent employees to annually survey their gas piping system for leak detection. Each gas service provided by a gas company or municipal lighting plant to a consumer, shall be inspected for corrosion and leak surveyed as required by all state and federal regulations by the company or municipal lighting plant at the premises of the consumer.

Upon discovery of a natural gas leak, said leak shall be investigated, graded, logged and monitored by authorized permanent employees of the gas company and reported to the department; provided further, that officers and employees of the department shall randomly inspect reported leaks on a regular basis. For said regular inspections the department shall collect from the gas company such reasonable fees as it may from time to time prescribe. Any gas company or municipal lighting plant which violates any provision of this section, unless in the opinion of the department such violation is due to unavoidable cause, accident or lack of

126 materials, shall forfeit \$25 for each service which is not inspected for corrosion and leak
127 surveyed as provided herein. Penalties, fees and forfeitures incurred under this section shall not
128 be included as expenses in connection with the establishment of rates by said company.

129 SECTION 10. Chapter 164 of the General Laws, as so appearing, is hereby amended by
130 inserting after section 105A the following two sections:-

131 Section 105B. Every gas corporation or municipal gas department engaged in the
132 distribution of gas within the commonwealth shall annually conduct a survey of all schools,
133 student quarters, day care centers, kindergartens, pre-schools, churches, hospitals, elder centers,
134 nursing homes, rehabilitation centers, libraries, fire stations, police stations, theatres, arenas, and
135 all public buildings within their service territories by authorized permanent employees of the gas
136 company. Said survey shall include tests for gas leakage and the visual inspection of all
137 accessible gas facilities and gas appliances in the structure. Any gas company that violates any
138 provision of this section shall forfeit a penalty as determined by the department. Penalties
139 incurred under this section shall not be included as expenses in connection with the
140 establishment of rates by said company.

141 Section 105C. All LNG facilities in the commonwealth will have at least one person in
142 the control room at all times while the LNG facility is storing LNG.

143 SECTION 11. Section 115A of said chapter 164 of the General Laws, as so appearing, is
144 hereby amended by striking out, in line 10, the words “five dollars” and inserting in place thereof
145 the following number:- \$50.

146 SECTION 12. Section 116B of said chapter 164 of the General Laws, as so appearing, is
147 hereby amended by adding the following two paragraphs:-

148 All paving contractors are to utilize a one-call system to allow operators to mark out
149 involved gate boxes before paving if they have not already been raised prior to a paving project
150 initiation. No paving contractor shall, except in an emergency, pave any public way unless
151 notifying the “one-call” system and/or the gas company(s) in that jurisdiction at least 72 hours,
152 exclusive of Saturdays, Sundays and legal holidays but not more than 30 days before the
153 proposed paving is to be conducted. Such initial notice shall set forth a description of the paving
154 location in the manner as herein defined. In addition, such initial notice shall indicate the paving
155 project in its entirety. The paving contractor can place a paving ring around the valve box and the
156 operator can raise the box after the paving. This should be required whether the paver plans to
157 cut grade or not.

158 Any company found by the department to have willfully violated this section shall be
159 assessed a penalty in an amount not to exceed \$500 for each violation. Penalties and fees
160 incurred under this section shall not be included as expenses in connection with the
161 establishment of rates by said company.

162 SECTION 13. Said chapter 164 of the General Laws, as so appearing, is hereby amended
163 by striking out section 124I, as so appearing, and inserting in place thereof the following
164 section:-

165 Section 124I. Each gas company shall upon the termination of service by a customer shut
166 off said service within 30 days after receiving notice of the termination of service by said
167 customer. Said company shall use only authorized permanent employees in complying with this
168 section.

169 SECTION 14. Said chapter 164 of the General Laws, as so appearing, is hereby further
170 amended by inserting after section 124I the following section:-

171 Section 124J. Any company found by the department to have willfully violated sections
172 124A to 124I, inclusive, shall be assessed a penalty after a hearing by the department, in an
173 amount not to exceed \$1,000. Penalties and fees incurred under said sections 124A through 124I
174 shall not be included as expenses in connection with the establishment of rates by said company.

175 SECTION 15. Section 29 of chapter 65 of the Acts of 2004, is hereby amended by
176 striking out, in line 8, the word “except” and inserting in place thereof the following word:-
177 including.

178 SECTION 16. Section 29 of chapter 65 of the Acts of 2004, is hereby amended by
179 striking out, in line 21, the word “except” and inserting in place thereof the following word:- or.