

HOUSE No. 3087

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act relative to the establishment of municipal lighting authorities..

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 43 of chapter 164 of the General Laws, as appearing in the 2004
2 Official Edition, is hereby amended by striking said section in its entirety and inserting in place
3 thereof the following section:—

4 Section 43. (a) If a municipality which votes to establish a municipal lighting
5 plant fails, within one hundred and fifty days from the passage of the final vote required by
6 section thirty-five or thirty-six, to agree, as to price or as to the property to be included in the
7 purchase, with the distribution company, as defined in section one of chapter one hundred sixty-
8 four of the General Laws, currently serving such municipality, such municipality may apply to
9 the department for review of the feasibility of the municipality's acquisition of such property.
10 The municipality's filing shall include an outline of the property the municipality wishes to
11 acquire, a projection of purchase price of such property, a projection of other costs of
12 establishing the municipal lighting plant, an outline of a financing plan to cover the purchase
13 price, including a description of municipality's bonding ability, pro forma income statement and
14 balance sheet for the municipal lighting plant, the options for governance of the municipal

lighting plant approved or anticipated by the municipality, and a projection of electric rates to be charged by the municipal lighting plant.

(b) The department may request comments on the filing, hold hearings or technical conferences, and request data and supporting materials from the municipality and the distribution company. The department shall issue a report regarding the feasibility of the municipality's filing within one hundred and eighty days of the filing, provided however that the department is not required to issue more than three such reports in any contiguous twelve-month period. Any reports that are not issued within one hundred and eighty days of the filing shall be issued in the order of the filings. If multiple municipalities file with the stated intent of establishing a joint or cooperative system of municipal lighting plants, the department shall process such filing simultaneously, to the extent possible. The department shall transmit copies of the aforementioned report to the municipal clerk, the Division of Energy Resources and the Joint Committee on Government Regulations.

(c) Upon the issuance of the department's report, or the expiration of the previously-described time period for such report, the municipality may seek determination as to what property ought in the public interest to be included in the purchase and what price should be paid, which shall be equal to the original cost of the property less accumulated depreciation plus any other components required to provide reasonable compensation to the distribution company. Such value shall be estimated without enhancement on account of future earning capacity, lost sales, good will, physical reconfiguration of the distribution company's utility plant and system or of exclusive privileges derived from rights in the public ways. The department, after notice to the parties, shall give a hearing thereon and make the determination aforesaid within one hundred and eighty days of the request for determination. Such property shall include

38 such portion of the property within the limits of such municipality as is suitable for, and used in
39 connection with, the distribution of electricity within such limits, including, at the election of the
40 municipality, the entirety of equipment jointly owned with other entities, in which case said
41 entities shall be directly compensated for, in a manner similar to the distribution company's
42 compensation for its own interest in the jointly-owned equipment.

43 (d) The department shall also include a plan for severance of property
44 allowing both the distribution company and the municipal lighting plant to serve their customers
45 at the lowest identifiable and achievable total cost, through any combination of joint facility
46 ownership, additional metering, contractual arrangements for delivery of power, and new
47 construction. If the distribution company and the municipality agree on a plan for severance of
48 property, the department shall approve such plan within ninety days, upon a finding that it is in
49 the public interest. If the distribution company and the municipality do not agree on such a plan,
50 the department shall approve within one hundred and eighty days of a petition for adjudication,
51 the severance plan that results in the lowest identifiable and achievable total cost to
52 Massachusetts energy consumers. The department shall also set terms and conditions for the
53 transfer of property from the distribution company to the municipal lighting plant. If any such
54 property is subject to any mortgages, liens or other encumbrances, the department in making its
55 determination shall provide for the deduction or withholding from the purchase price, pending
56 discharge, of such sum or sums as it deems proper.

57 (e) Within thirty days after such determination shall have been made by the
58 department, the distribution company shall tender to the municipality's city or town clerk a good
59 and sufficient deed of conveyance for the property required by the department to be purchased,
60 and shall then place said deed in escrow. The municipality shall have one hundred and eighty

61 days in which to accept or reject said tender, or to appeal to the department any aspect of the
62 proposed deed of conveyance. If the municipality accepts, it shall have a further period of one
63 hundred and eighty days in which to pay to the distribution company the price determined as
64 hereinbefore provided. Such acceptance or rejection in case of a city shall be by vote of its city
65 council, or its commissioners if its government consists of a commission, and in case of a town
66 shall be by vote at a town meeting, or by such town officer or body to which town meeting shall
67 delegate such authority. In the event that the distribution company fails to comply with the
68 preceding requirements, the price to be paid by the municipality will immediately be reduced by
69 one percent of the price determined by the department. For every thirty additional days that pass
70 prior to the distribution company's compliance with the preceding requirements, the price will be
71 reduced by an additional one percent. Provided, however, that the department may waive such
72 reduction if it finds that the delay in compliance was beyond the control of the distribution
73 company.

74 (f) In connection with the exercise by a municipality of the option to purchase
75 utility plant pursuant to this section, the municipality may elect to assume responsibilities for
76 maintenance, placement and removal of jointly-owned poles or other facilities shared with other
77 public utilities, or to purchase such facilities at the original cost of the property less accumulated
78 depreciation. Except where the municipality makes such election, the municipality shall assume
79 the rights and obligations of the previous owner with respect to any person other than the
80 distribution company controlling or using the poles, conduit or other jointly-owned or joint-use
81 facilities, property and rights; provided, that in the assumption of the rights and obligations of the
82 previous owner by such a municipality, such municipality shall in no way or form restrict,
83 impede, or prohibit access that other parties would enjoy under the previous ownership.

(g) Any municipal lighting plant established pursuant to these provisions shall collect the energy conservation and renewables charges as established by the department under section nineteen and section twenty of chapter twenty-five of the General Laws, and may use the resulting revenues for cost-effective demand-side management programs and to support the development and promotion of renewable energy projects in accordance with the provisions of section four E of chapter forty J, and may elect to contribute to, and benefit from, programs operated by one or more distribution companies or the Massachusetts Renewable Energy Trust Fund, on the same basis as the distribution companies.

(h) Any municipal lighting plant established pursuant to these provisions shall allow customers to be served by competitive electricity suppliers, and shall establish rules to allow competitive supply while protecting the financial stability of the municipal lighting plant.

(i) The department shall not allow as a cost of service any costs of the incumbent distribution company in connection with such proceedings, in excess of the costs reasonably necessary to provide information, negotiate necessary contractual arrangements, and represent the interests of the remaining ratepayers in designing the severance plan as described in paragraph (d) of this Section.

(j) The department shall report to the Joint Committee on Government Regulations annually on the operation of this revised section, including a summary of activity under this section and any recommendations for amending the section.

SECTION 2: Section 1B of chapter 164 of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by adding to the end of paragraph (a) the following:—

105 except that the purchase by a municipality of plant from a distribution company shall
106 transfer all rights and obligations established in this section to the municipal lighting plant of the
107 purchasing municipality.

108 SECTION 3: Chapter 164 of the General Laws, as appearing in the 2004 Official Edition,
109 is hereby amended by inserting after section 34B the following new section:—

110 Section 34C: Each electric distribution company shall maintain accounts of
111 plant in service in each municipality in its service territory, including the original cost of plant,
112 accumulated depreciation, and any other measures of the value of plant that the department may
113 order used for determination of sale prices under section forty-three of this chapter. The
114 distribution company shall maintain such accounts by the system of accounts approved by the
115 department. Upon the request of any clerk of any municipality in its service territory, the
116 distribution company shall provide such accounts for that municipality within thirty days. In the
117 event that the distribution company fails to comply with this provision, it shall be liable to the
118 municipality for one thousand dollars for every day of noncompliance.