

HOUSE No. 3134

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 40A of chapter 82 of the General Laws, as appearing in the 2002
2 Official Edition, is hereby amended by inserting at the end thereof the following:-

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
6 telecommunications and energy may certify and license outside companies to perform such
7 designation markings. Moreover, to receive a building permit from any municipality, or political
8 subdivision thereof, for any work requiring excavation, an individual shall provide certification
9 of compliance with this section. Any utility that violates any provision of this section shall forfeit
10 a penalty as determined by the department of telecommunications and energy. Penalties incurred
11 under this section shall not be included as expenses in connection with the establishment of rates
12 by said company.

SECTION 2. Section 1C of Chapter 164 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking said section 1C and inserting in placed thereof the following:-

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 3. Section 1E(b) of Chapter 164 of the General Laws, as so appearing, is hereby amended by striking in line 16 the words “the effective date of this act” and inserting in place thereof the following:-

November 1, 1997

SECTION 4. Section 1E(b) of Chapter 164 of the General Laws, as so appearing, is hereby amended by striking the last sentence and inserting in place thereof the following:

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 \$10,000.00 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, 2005, regardless of whether any company has at any time used, implemented or discontinued the use of any set of performance based rates.

SECTION 5. Section 1F(7) of Chapter 164 of the General Laws, as so appearing, is hereby amended by adding after the phrase “1997” in line 224 the following:-

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 6. Section 75A of Chapter 164 of the General Laws, as so appearing, is hereby amended by adding at the end thereof the following new paragraph:-

“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 7. Section 75F of Chapter 164 of the General Laws, as so appearing, is hereby amended by striking out in lines 8 through 9 the word “hundred” and inserting in place thereof the following new word:- thousand

SECTION 8. Section 76 of Chapter 164 of the General Laws, as so appearing, is hereby amended adding at the end thereof the following:-

The department shall require gas companies to instruct their authorized permanent employees to annually survey their gas piping system for leak detection. 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 which violates any provision of this section shall forfeit a penalty as determined by the department. Penalties and fees incurred under this section shall not be included as expenses in connection with the establishment of rates by said company.

SECTION 9. Chapter 164 of the General Laws, as so appearing, is hereby further amended by inserting after section 105A the following new section:-

Section 105B. Every gas corporation or municipal gas department engaged in the distribution of gas within the commonwealth shall annually conduct a survey of all schools,

student quarters, day care centers, kindergartens, pre-schools, churches, hospitals, elder centers, nursing homes, rehabilitation centers, libraries, fire stations, police stations, theatres, arenas, and all public buildings within their service territories by authorized permanent employees of the gas company. Said survey shall include tests for gas leakage and the visual inspection of all accessible gas facilities and gas appliances in the structure. Any gas company which 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 10. Section 115A of Chapter 164 of the General Laws, as so appearing, is hereby amended by striking in line 9 the word “five” and inserting thereof the following new word:- fifty

SECTION 11. Section 124I of Chapter 164 of the General Laws, as so appearing, is hereby amended by striking out said section 124I in its entirety and inserting in place thereof the following new section:-

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

SECTION 12. Chapter 164 of the General Laws, as so appearing, is hereby further amended by inserting after section 124I the following new section:-

124J. Any company found by the department to have willfully violated sections one hundred and twenty-four A to one hundred and twenty-four I, inclusive, shall be assessed a penalty after a hearing by the department, in an amount not to exceed one thousand dollars.

147 Penalties and fees incurred under said sections 124A through 124I shall not be included as
148 expenses in connection with the establishment of rates by said company.

149 SECTION 13. Section 29 of chapter 65 of the Acts of 2004, is hereby amended by
150 striking the in the first sentence the word “except” and inserting in place thereof the following:-
151 including

152 SECTION 14. Section 29 of chapter 65 of the Acts of 2004, is hereby amended by
153 striking the in the third sentence the word “except” and inserting in place thereof the following:-
154 or

155 SECTION 15. Chapter 501 of the Acts of 2002 is hereby amended by adding after the
156 first sentence the following:-

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

161 SECTION 16. Section 75A of Chapter 164 of the General Laws, as so appearing , is
162 hereby amended by adding at the end thereof the following new paragraph:-

163 Any new natural gas service shall be initially activated into a consumer’s residence or
164 business only by qualified personnel under state and federal regulations.

165 Section 17. Chapter 501 of the Acts of 2002 is hereby amended by adding after the first
166 sentence the following:-

167 All paving contractors are to utilize a one- call system to allow operators to mark out
168 involved gate boxes before paving if they have not already been raised prior to a paving project
169 initiation.

170 No paving contractor shall, except in an emergency , pave any public way unless
171 notifying the “one-call” system and/or the gas company (s) in that jurisdiction at least 72 hours,
172 exclusive of Saturdays, Sundays and legal holidays but not more than 30 days before the
173 proposed paving is to be conducted. Such initial notice shall set forth a description of the paving
174 location in the manner as herein defined. In addition, such initial notice shall indicate the paving
175 project in its entirety.

176 The paving contractor can place a paving ring around the value box and the operator can
177 raise the box after the paving. This should be required whether the paver plans to cut grade or
178 not.

179 Section 18. Chapter 164 of the General Laws, as so appearing, is hereby further amended
180 by inserting after section 105A the following new section:-

181 Section 105C. All LNG facilities in the Commonwealth will have at least one person in
182 the control room at all times while the LNG facility is storing LNG.

183 Section 19. Section 76 of Chapter 164 of the General Laws, as so appearing, is hereby
184 amended adding at the end thereof the following:-

185 Each gas service provided by a gas company or municipal lighting plant to a consumer
186 shall be inspected for corrosion and leak surveyed as required by all state and federal regulations
187 by the company or municipal lighting plant at the premises of the consumer.

188 Any gas company or municipal lighting plant which violates any provision of this
189 section, unless in the opinion of the department such violation is due to unavoidable cause,
190 accident or lack of materials, shall forfeit twenty five dollars for each service which is not
191 inspected for corrosion and leak surveyed as provided herein. Forfeitures incurred under this
192 section shall not be included as expenses in connection with the establishment of rates by said
193 companies.