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HOUSE . . . . . No. 3513

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act further regulating utility companies..

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

SECTION 1. Section 1C of Chapter 164 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking said section 1C and inserting in place 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, or 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 or tie 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, without prior written authorization from the customer and 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 share any portion of its name or logo with any affiliate; (ix) a distribution or gas company shall not engage in joint advertising or marketing programs with any affiliate; and (x) 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 of the date on which the complaint was filed, if a reasonable basis for the complaint does exist the person filing the complaint shall be notified 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 may bring an action to enjoin the electric or gas company, the affiliate, or both, from engaging in a violation of this section.

The Department may approve an exemption from the requirements of this section upon a showing by the distribution or gas company that such an exemption would be in the best interests of the ratepayers and have no anticompetitive effect, and that costs can be fully and accurately allocated between the distribution or gas company and its affiliate. Such exemption shall be valid for a period of two years and may be extended by the Department after public hearing. Annually, as a condition of maintaining its exemption, and as part of any petition to extend an exemption, the distribution or gas company shall make a filing with the Department showing that the exemption continues to be in the best interests of the ratepayers and have no anticompetitive effect, and showing the full allocation of costs between the distribution or gas company and its affiliate. Such filings shall be open to public inspection. Any party may petition the department at any time to revoke an exemption granted pursuant to this section.