HOUSE DOCKET, NO. 94792 FILED ON: 6/23/2010

HOUSE . . . . . No. 4792

The Commonwealth of Massachusetts

In the Year Two Thousand Ten

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:

SECTION 1. The first sentence of section 19 of chapter 25 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting after the word “plant” the words:- formed prior to July 31, 2010.

SECTION 2. Said section 19 of chapter 25 is hereby further amended by inserting after the word “companies”, in line 5, the following words:- participating municipal lighting plants

SECTION 3. Section 20 of said chapter 25, as so appearing, is hereby amended by inserting after the word “plant”, in line 3, the words:- formed prior to July 31, 2010

SECTION 4. Said section 20 of chapter 25 is hereby further amended by inserting after the word “ plant”, in line 10, the words:- formed prior to July 31, 2010

SECTION 5. Section 21 of said chapter 25 is hereby amended by inserting after the word “companies”, in line 9, the words:- municipal light plants formed after July 31, 2010

SECTION 6. Said section 21 of chapter 25 is hereby further amended by inserting after the word “companies”, in line 77, the words:- municipal light plants

SECTION 7. Said section 21 of chapter 25 is hereby further amended by inserting after the word “companies”, in line 81, the words:- municipal light plants

SECTION 8. Said section 21 of chapter 25 is hereby further amended by inserting after the word “companies”, in line 83, the words:- municipal light plants

SECTION 9. Said section 21 of chapter 25 is hereby further amended by inserting after the word “companies”, in line 85, the words:- municipal light plants formed after July 31, 2010

SECTION 10. Said section 21 of chapter 25 is hereby further amended by inserting after the word “companies”, in line 93, the words:- and municipal light plants

SECTION 11. Said section 21 of chapter 25 is hereby further amended by inserting after the word “companies”, in line 105, the words:- municipal light plant

SECTION 12. Said section 21 of chapter 25 is hereby further amended by inserting after the word “company”, in line 110, the words:- municipal light plant

SECTION 13. Section 1B of chapter 164 of the General Laws, as so appearing, is hereby amended by adding to the end of subsection (a) the following:-

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

SECTION 14. Said chapter 164 is hereby amended by striking out section 43, as so appearing, and inserting in place thereof the following section:-

Section 43. (a) If a municipality which votes to establish a municipal lighting plant fails, within 150 days from the passage of the final vote required by section 35 or 36, to agree, as to price or as to the property to be included in the purchase, with a distribution company currently serving such municipality, such municipality may apply to the department within 180 days after the expiration of said 150 days for review of the feasibility of the municipality's acquisition of such property. The municipality's filing shall include:

an outline of the property the municipality wishes to acquire;

a projection of purchase price of such property;

a projection of total costs of establishing the municipal lighting plant;

a financing plan to cover the purchase price, including a description of municipality's bonding ability;

pro forma income statement and 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.

The department may investigate the feasibility of the municipality's proposed acquisition, and shall, within 180 days of the filing and after notice and a public hearing, issue a report regarding the feasibility of the municipality's filing; provided, however, that the department is

not required to issue more than 3 such reports in any contiguous 12-month period. Any reports that are not issued within 180 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 its report to the distribution company, the clerk of each such town and the department of energy resources. The department shall report to the general court the results of its findings and file such reports with the clerks of the house of representatives and the senate, who shall forward the same to the joint committee on telecommunications, utilities and energy.

Upon the issuance of the department's 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 50 percent of the net book value, plus 50 percent of the reproduction cost new less depreciation, adjusted based on the physical condition of the assets, in addition to any damages as specified in this section. Such value shall be estimated without enhancement on account of future earning capacity or good will, or of exclusive privileges derived from rights in the public ways. Such price shall include damages, if any, which the department finds would be caused by the severance of the property proposed to be included in the purchase from other property of the owner, including (1) stranded costs; (2) the capital costs of infrastructure reconfiguration or additions caused by the severance; (3) engineering costs; and (4) any other costs incurred in preparing for the reconfiguration and the sale. Such property shall include such portion of the property within the limits of such municipality as is suitable for, and used in connection with, the distribution of electricity within such limits. If any such property is subject to any mortgages, liens or other encumbrances, the department in making its

determination shall provide for the deduction or withholding from the purchase price, pending discharge, of such sum or sums as it deems proper.

The department, after notice to the parties, shall give a hearing thereon and make the determination aforesaid.

Within 60 days after such determination shall have been made by the department, the distribution company shall tender to the municipality's city or town clerk a copy of a good and sufficient deed of conveyance for the property required by the department to be purchased, and shall then place said deed in escrow. The municipality shall have 300 days in which to accept or reject said tender and, if accepting, to pay to the distribution company the price determined by the department. Such acceptance or rejection in case of a city shall be by vote of its city council and in case of a town shall be by vote at a town meeting, or by such town officer or body to which town meeting shall delegate such authority.

In connection with the exercise by a municipality of the option to purchase utility plant pursuant to this section, the municipality may elect to assume responsibilities for maintenance, placement and removal of jointly-owned poles or other facilities shared with other public utilities, or to purchase such facilities at an amount equal to 50 percent of the net book value, plus 50 percent of the reproduction cost new less depreciation, adjusted based on the physical condition of the assets. Except where the municipality makes such election, the municipality shall assume the rights and obligations of the previous owner with respect to any person other than the distribution company controlling or using the poles, conduit or other jointly-owned or joint-use facilities, property and rights; provided, that in the assumption of the rights and obligations of the previous owner by such a municipality, such municipality shall in no way or

form restrict, impede, or prohibit access that other parties would enjoy under the previous ownership.

Any municipal lighting plant established pursuant to these provisions shall file with the department a plan for supporting development of renewable and alternative energy production comparable to the magnitude of such support achieved under sections 11F and 11F½ of chapter 25A, sections 138 through 143, and section 83 of chapter 169 of the acts of 2008. Following department approval of such plan, the municipal lighting plant shall implement that plan and report annually to the department regarding such implementation.

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 any severance plan required.

If, at the time of purchase of the distribution equipment by a municipality, the distribution company has unfunded liabilities for pensions and other post-retirement benefits that would be recovered through distribution rates, the department shall determine the fair share of such liabilities attributable to the distribution system to be acquired by the municipality and the method by which the municipal lighting plant shall compensate the distribution company for that fair share.

To the extent that the distribution company has entered into any long term contracts for renewable energy pursuant to section 83 of chapter 169 of the acts of 2009 prior to the date of the acquisition, the municipality acquiring any electric distribution facilities pursuant to this section shall be required to assess its distribution customers an equivalent charge in distribution

rates to cover its proportionate share of the monthly costs of such contracts, as would have been charged to the electric distribution customers in such municipality had the acquisition not occurred. Such amounts collected shall then be remitted to the electric distribution company within thirty days of being invoiced by the electric distribution company.

The department shall report to the joint committee on telecommunications, utilities and energy annually on the operation of this section, including a summary of activity under this section and any recommendations for amending the section.

SECTION 15. Said chapter 164 is hereby further amended by inserting after section 56E the following section:-

Section 56F. The department is hereby authorized to promulgate rules and regulations to establish service quality standards for municipal light plants formed after July 31, 2010, including, but not limited to, standards for customer satisfaction, service outages, distribution facility upgrades, repairs and maintenance, telephone service, billing service, and public safety provided. Each municipal light plant formed after July 31, 2010 shall file a report with the department by March first of each year comparing its performance during the previous calendar year to the department's service quality standards and any applicable national standards as may be adopted by the department.

SECTION 16. The first sentence of section 47A of said chapter 164 is hereby amended by inserting after the word “law” the words:- formed prior to July 31, 2010

SECTION 17. Said section 47A of chapter 164 is hereby further amended by inserting after the word “law”, in line 7, the words:- formed prior to July 31, 2010.