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SENATE . . . . . No. 1527

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:

SECTION 1: Section 43 of chapter 164 of the general laws, as appearing in the 2006 official edition, is hereby amended by striking said section in its entirety 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 the distribution company, as defined in section one of chapter 164 of the general laws, currently serving such municipality, such municipality may apply to the department 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 other costs of establishing the municipal lighting plant, an outline of 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.

(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 consumer protection and professional licensure.

(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

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, including, at the election of the municipality, the entirety of equipment jointly owned with other entities, in which case said entities shall be directly compensated for, in a manner similar to the distribution company's compensation for its own interest in the jointly-owned equipment.

(d) The department shall also include a plan for severance of property allowing both the distribution company and the municipal lighting plant to serve their customers at the lowest identifiable and achievable total cost, through any combination of joint facility ownership, additional metering, contractual arrangements for delivery of power, and new construction. If the distribution company and the municipality agree on a plan for severance of property, the department shall approve such plan within ninety days, upon a finding that it is in the public interest. If the distribution company and the municipality do not agree on such a plan, the department shall approve within one hundred and eighty days of a petition for adjudication, the severance plan that results in the lowest identifiable and achievable total cost to Massachusetts energy consumers. The department shall also set terms and conditions for the transfer of property from the distribution company to the municipal lighting plant. 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.

(e) Within 30 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 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 180 days in which to

accept or reject said tender, or to appeal to the department any aspect of the proposed deed of conveyance. If the municipality accepts, it shall have a further period of one hundred and eighty days in which to pay to the distribution company the price determined as hereinbefore provided. Such acceptance or rejection in case of a city shall be by vote of its city council, or its commissioners if its government consists of a commission, 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 the event that the distribution company fails to comply with the preceding requirements, the price to be paid by the municipality will immediately be reduced by one percent of the price determined by the department. For every 30 additional days that pass prior to the distribution company's compliance with the preceding requirements, the price will be reduced by an additional one percent. Provided, however, that the department may waive such reduction if it finds that the delay in compliance was beyond the control of the distribution company.

(f) 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 the original cost of the property less accumulated depreciation. 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

(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 25 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 4E of chapter 40J, 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 comsumer protection and professional licensure 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 said chapter 164 of the general laws, as so appearing, is hereby amended by adding to the end of paragraph (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.

SECTION 3: Said Chapter 164 of the general laws, as so appearing, is hereby amended by inserting after section 34B the following new section:—

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