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SENATE . . . . . No. 2190

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

An Act relative to competitively priced electricity 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:

SECTION 1. Section 18 of chapter 25 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by striking out the fourth paragraph.

SECTION 2. Section 19 of chapter 25 of the General Laws, as so appearing, is hereby amended by adding the following subsection:-

(d) There shall be a voluntary accelerated rebate pilot program which shall be made available to the 5 largest electric users and 5 largest gas users in each utility service territory. Multiple locations of the same customer shall not be aggregated for purposes of meeting this threshold. Eligible customers electing to participate in the accelerated pilot program shall notify the appropriate program administrator on or before January 31, of each calendar year during the pilot program. Customers electing to participate shall be eligible for up to a 100% rebate for qualified energy efficiency measures as determined by the department. Total rebate levels for participating customers in any year of the pilot program shall not exceed 90% of the amount the customer was charged for energy efficiency programs for calendar year 2012. A customer that elects to participate by January 31, 2013 may aggregate rebates in amounts not to exceed 270%

of the amount charged to that customer for energy efficiency programs for calendar year 2012; a customer that elects to participate after January 31, 2013 but before January 31, 2014 may aggregate rebates in amounts not to exceed 180% of the amount charged to that customer for energy efficiency programs for calendar year 2012; provided, however, a participating customer may not aggregate a rebate from any year in which it does not participate in the pilot. Qualified energy efficiency measures shall include cost-effective energy efficiency program measures approved by the department of public utilities in accordance with section 21, provided, however, that up to 15% of any accelerated rebate may be used for other improvements that support energy efficiency improvements made in accordance with a program approved by the department of public utilities or emission reductions, including, but are not limited to infrastructure improvements, metering, circuit level technology and software. Customers opting to receive an accelerated rebate shall be ineligible for other energy efficiency program rebates pursuant to section 21 during the period in which they participate in the pilot program. All qualified installations must be substantially completed by the end of the program, and are subject to verification and review by the department.

SECTION 3. Paragraph 1 of subsection (b) of Section 21 of chapter 25 of the General Laws, as so appearing, is hereby amended by inserting the following sentence to the end thereof:-

No portion of monies expended under this section shall pay for compliance with federal or state building or energy codes applicable to participants.

SECTION 4. Said section 21 of said chapter 25, as so appearing, is hereby further amended by striking out, in lines 114 and 115, the words “Massachusetts Technology Park

Corporation" and inserting in place thereof the following words:- Massachusetts Clean Energy Technology Center.

SECTION 5. Section 22 of said chapter 25, as so appearing, is hereby amended by striking out, in line 9, "the words "and (11) the department of energy resources" and inserting in place thereof the following words:- (11) a representative from the Massachusetts Non-profit Network, (12) a city or town in Massachusetts, (13) real estate, (14) a business employing less than 10 persons located in Massachusetts that performs energy efficiency services, and (15) the department of energy resources.

SECTION 6. Section 2B of chapter 59 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended, in line 2, by inserting after the words "benefit of" the" the following words:- a governmental entity, including"

SECTION 7. Said section 2B of said chapter 59 of the General Laws, as so appearing, is hereby further amended, in line 37, by inserting after the word "public" the following words:- , to leases for renewable generation facilities, defined as eligible under subsection (c) of section 11F of chapter 25A, in which not less than 50 per cent of the energy output is assigned to either the municipality in which the facility is located or to the governmental entity that owns the land on which the facility is located,

SECTION 8. Section 5 of said chapter 59, as so appearing, is hereby amended by striking out the forty-fifth clause and inserting in place thereof the following clause:-

Forty-fifth, Any solar or wind powered system that is capable of producing not more than 125 per cent of the annual energy needs of the property upon which it is located and is behind the meter serving the energy needs of that property. All other solar and wind powered systems shall

also be exempt provided that the owner has made to the city or town where the system is located a payment in lieu of taxes, equal to 5 per cent of the system's gross electricity sales, including receipt of net metering credits as defined in section 138 of chapter 164, in the preceding calendar year. For years 1 and 2, the payments shall be annualized based on gross estimated sales derived from a formula to be determined by the department of revenue, in consultation with the department of energy resources. An exemption under this clause shall be allowed only for a period of 20 years from the date of operation of such system.

SECTION 9. Subsection (b) of section 38H of said chapter 59, as so appearing, is hereby amended in line 88, by inserting after the word "thereof" the following sentence:- For purposes of this section, a generation facility shall not include a facility powered by sun or wind to generate electricity.

SECTION 10. Section 1F of chapter 164 of the General Laws, as so appearing, is hereby amended by adding the following words:-

(10) Notwithstanding section 94 or any other general or special law to the contrary, whenever the department makes a determination upon an application for a general increase in rates pursuant to 220 CMR 5.00 et seq. which results in an increase of 10% or greater above the rate paid at the time the application was filed, the department shall allow for not more than a 7 ½% increase in rates for the first calendar year in which the approved rates are to go into effect, and no more than a 7 ½% increase in any subsequent year necessary to fulfill the approved rate. When a non-residential ratepayer is subject to an increase in distribution costs that is 15% or more than the ratepayer was paying prior to a department approved rate increase that caused such increase, the ratepayer may file a petition within 20 days after the department approves the rate

increase for a phase-in of the ratepayers distribution cost increase over a period of years. The department shall order the phase-in upon a showing of the increased distribution costs of 15% or more, but the ordered phase-in shall be for not less than two calendar years and for no more than 50 % of the increase in the first calendar year of the phase in period. Such petition shall be acted upon by the department within 30 days of its filing or prior to the rate becoming effective, whichever occurs sooner. Failure to act shall be deemed approval by the department of the petition for no more than 50% of the increase in year one and no more than 50% in year two. The department shall not approve any financing, carrying, or deferral charges or any other costs charged to rate payers in consideration for the provisions of this section.

SECTION 11. Section 94 of chapter 164 of the General Laws, as so appearing, is hereby amended by striking out the first paragraph and inserting in place thereof the following paragraph:-

Gas and electric companies shall file with the department schedules, no less frequently than every three years, in accordance with a filing schedule as prescribed by the department and in such form as the department shall from time to time prescribe, showing all rates, prices, and charges to be thereafter charged or collected within the commonwealth for the sale and distribution of gas or electricity, together with all forms of contracts thereafter to be used in connection therewith. Rates, prices and charges in such a schedule may, from time to time, be changed by any such company by filing a schedule setting forth the changed rates, prices and charges, but until the effective date of any such change no different rate, price or charge shall be charged, received or collected by the company filing such a schedule from those specified in the schedule then in effect; provided, that a company may continue to charge, receive and collect rates, prices and charges in accordance with a contract heretofore lawfully entered into, or, until

the department otherwise orders, after notice to the company and a public hearing and determination that public interest so requires, may sell and distribute gas or electricity under a special contract hereafter made at rates or prices differing from those contained in a schedule in effect, providing a copy of the contract in each instance is filed with the department, except that a contract of a company whose sole business in the commonwealth is the supply of electricity in bulk need not be filed except as may be required by the department. Whenever the department receives notice of any changes proposed to be made in any schedule filed under this chapter which represent a general increase in rates, prices and charges for gas or electric service, it shall notify the attorney general of the same forthwith, and shall thereafter hold a public hearing and make an investigation as to the propriety of such proposed changes after first causing notice of the time, place and the subject matter of such hearing to be published at least twenty-one days before such hearing in such local newspapers as the department may select. Unless the department otherwise authorizes, the rates, prices and charges set forth in such a schedule shall not become effective until the first day of the month next after the expiration of fourteen days from the filing thereof, provided that the department may not authorize rates filed pursuant to a proposed settlement agreement without a sufficient evidentiary basis, available to the public, for a determination that the proposed settlement is consistent with the public interest and results in just and reasonable rates. Such rates, prices and charges shall apply to the consumption shown by meter readings made after the effective date of such rates, prices and charges, unless the department otherwise orders. So much of said schedules shall be printed in such form and distributed and published in such manner as the department may require.

SECTION 12. Section 94G1/2 of chapter 164 is hereby repealed.

SECTION 13. Chapter 164 of the General Laws, as so appearing, is hereby amended by striking out section 96, and inserting in place thereof the following section:-

Section 96. (a) For purposes of this section, the following words shall have the following meanings.

"Control," the possession of the power, through direct or indirect ownership of a majority of the voting securities of a gas or electric company or a holding company, to direct or cause the direction of the management and policies of a gas or electric company or a holding company or the ability to effect a change in the composition of its board of directors or otherwise, provided, control shall not be deemed to arise solely from a revocable proxy or consent given to a person in response to a public proxy or consent solicitation made pursuant to and in accordance with the applicable rules and regulations of the Securities Exchange Act of 1934 unless a participant in said solicitation has announced an intention to effect a merger or consolidation with, reorganization, or other business combination or extraordinary transaction involving the gas or electric company or the holding company.

"Foreign electric company," an electric company with a domicile, principal place of business, headquarters, or place of incorporation the locus of which is outside of the borders of the commonwealth.

"Foreign gas company," a gas company with a domicile, principal place of business, headquarters, or place of incorporation the locus of which is outside of the borders of the commonwealth.

"Holding company," any corporation, association, partnership, trust or similar organization, or person which, regardless of the locus of the domicile, principal place of

business, headquarters, or place of incorporation of such entity, either alone or in conjunction and pursuant to an arrangement or understanding with one or more other corporations, associations, partnerships, trusts or similar organizations, or persons, directly or indirectly, controls, or seeks to acquire control over, a gas or electric company."

(b) Companies, except steam distribution companies, subject to this chapter, or holding companies may, notwithstanding any other provisions of this chapter or of any general or special law, consolidate or merge with one another or may sell and convey their properties to another of such companies or to a wholesale generation company, and such companies, holding companies, or wholesale generation companies may purchase such properties if such purchase, sale, consolidation or merger, and the terms thereof, have been approved, at meetings called therefor, by vote of the holders of at least two-thirds of each class of stock outstanding and entitled to vote on the question of each of the contracting companies, and that the department, after notice and a public hearing, has determined that such purchase and sale or consolidation or merger, and the terms thereof, are consistent with the public interest; provided, however, that in making such a determination the department shall at a minimum consider: potential rate changes, if any; the long term strategies that will assure a reliable, cost effective energy delivery system; any anticipated interruptions in service; or other factors which may negatively impact customer service; and provided further, that the purchase or sale of properties by, or the consolidation or merger of, wholesale generation companies shall not require departmental approval except as otherwise provided herein.

(c) No gas, electric, or holding company, subject to this chapter, shall enter into any transaction or otherwise take any action which would result in a change of its control over any gas, electric, or holding company, or foreign gas or electric company unless the terms thereof,

have been approved, at meetings called therefor, by vote of the holders of at least two-thirds of each class of stock outstanding and entitled to vote on the question of each of the contracting companies, and the department, after notice and a public hearing, has determined that such transaction or action, and the terms thereof, are consistent with the public interest; provided, however, that in making such a determination the department shall at a minimum consider: potential rate changes, if any; the long term strategies that will assure a reliable, cost effective energy delivery system; any anticipated interruptions in service; or other factors which may negatively impact customer service."

SECTION 14. Section 83 of chapter 169 of the acts of 2008 is hereby amended by striking out the first paragraph and inserting in place thereof the following paragraph:-

Commencing on July 1, 2009, and continuing until December 31, 2012, each distribution company, as defined in section 1 of chapter 164 of the General Laws, shall be required twice in that time period to solicit proposals from renewable energy developers and provided reasonable proposals have been received, enter into cost-effective long-term contracts to facilitate the financing of renewable energy generation. The timetable and method for solicitation and execution of such contracts shall be proposed by the distribution company in consultation with the department of energy resources and shall be subject to review and approval by the department of public utilities. This long-term contracting obligation shall be separate and distinct from the electric distribution companies' obligation to meet applicable annual renewable portfolio standard, hereinafter referred to as RPS, requirements, set forth in section 11F of chapter 25A of the General Laws.

SECTION 15. Chapter 169 of the acts of 2008 is hereby amended by inserting after section 83 the following section:-

Section 83A. Commencing on January 1, 2013, and continuing until December 31, 2016, each distribution company, as defined in section 1 of chapter 164 of the General Laws, shall be required twice in that time period to solicit additional proposals from renewable energy developers and, provided reasonable proposals have been received, enter into additional cost-effective long-term contracts to facilitate the financing of renewable energy generation. The timetable and method for solicitation and execution of such contracts shall be proposed by the distribution company in consultation with the department of energy resources and shall be subject to review and approval by the department of public utilities. This long-term contracting obligation shall be separate and distinct from the electric distribution companies' obligation to meet applicable annual renewable portfolio standard, hereinafter referred to as RPS, requirements, set forth in section 11F of chapter 25A of the General Laws.

For purposes of this section, a long term contract is defined as a contract with a term of 15 to 20 years. In developing the provisions of proposed long term contracts, the distribution company shall consider multiple contracting methods, including long-term contracts for renewable energy certificates, hereinafter referred to as RECs, for energy, and for a combination of both RECs and energy. Commencing January 1, 2013, the electric company shall select a reasonable method of soliciting proposals from renewable energy developers using a competitive bidding process only. Electric companies are authorized, but not required, to use timetables and methods for the solicitation of competitively bid long-term contracts approved by the department of public utilities prior to January 1, 2013. The distribution company may decline to consider contract proposals having terms and conditions that it determines would require the contract

obligation to place an unreasonable burden on the distribution company's balance sheet. The distribution company shall consult with the department of energy resources regarding its choice of contracting methods and solicitation methods. All proposed contracts shall be subject to the review and approval of the department of public utilities.

The department of public utilities and the department of energy resources each shall adopt regulations consistent with this section. The regulations shall: (a) allow renewable energy developers to submit proposals for long-term contracts conforming to the contracting methods specified in the third paragraph; (b) require that contracts executed by the distribution company under such proposals are filed with, and approved by, the department of public utilities before they become effective; (c) provide for an annual remuneration for the contracting distribution company equal to the actual cost to the company for accepting the financial obligation of the long-term contract, but in no case shall such remuneration exceed 1 per cent of the annual payments under the contract, such provision to be acted upon by the department of public utilities at the time of contract approval; and (d) require that the renewable energy generating source to be used by a developer under the proposal meet the following criteria: (1) have a commercial operation date, as verified by the department of energy resources, on or after January 1, 2008; (2) be qualified by the department of energy resources as eligible to participate in the RPS program, under said section 11F of chapter 25A, and to sell RECs under the program; and (3) be determined by the department of public utilities to: (i) provide enhanced electricity reliability within the commonwealth; (ii) contribute to moderating system peak load requirements; (iii) be cost effective to Massachusetts electric ratepayers over the term of the contract; and (iv) where feasible, create additional employment and economic development in the commonwealth. As part of its approval process, the department of public utilities shall

consider the attorney general's recommendations, which shall be submitted to the department of public utilities within 45 days following the filing of such contracts with the department of public utilities. The department of public utilities shall take into consideration both the potential costs and benefits of such contracts, and shall approve a contract only upon a finding that it is a cost effective mechanism for procuring low cost renewable energy on a long-term basis taking into account the factors outlined in this section.

Distribution companies shall not be obligated to enter into long-term contracts under this section that would, in the aggregate, exceed 4 per cent of the total energy demand from all distribution customers in the service territory of the distribution company. Ten (10) percent of the aggregate level of long term contracts shall be reserved for newly developed, small, emerging, or diverse renewable energy distributed generation facilities that are located within each distribution company's service territory. Distributed generation projects shall have a nameplate capacity no larger than 6MW, but shall not qualify as a class I, II, or III net metering facility as defined in section 138 of chapter 164 of the General Laws unless the project is located within the service territory of a company where qualifying net metering facility development has been maximized under subsection (f) of section 139 of Chapter 164 of the General Laws, long term contracts for distributed generation technology shall not be awarded to any technology eligible for solar renewable energy credits at the time of solicitation. The department shall not approve contracts for distributed generation if the energy price proposed in the contract exceeds the sum of the distribution company's residential (i) default service kilowatt-hour charge in the ISO-NE load zone where the customer is located; (ii) distribution kilowatt-hour charge; (iii) transmission kilowatt-hour charge; and (iv) transition kilowatt-hour charge at the time of solicitation. As long as the electric distribution company has entered into long term contracts in

compliance with this section, it shall not be required by regulation or order to enter into contracts with terms of more than 3 years in meeting its applicable annual RPS requirements set forth in said section 11F of said chapter 25A, unless the department of public utilities finds that such contracts are in the best interest of customers; provided, however, that the electric distribution company may execute such contracts voluntarily, subject to the department of public utilities' approval.

An electric distribution company may elect to use any energy purchased under such contracts for resale to its customers, and may elect to retain RECs for the purpose of meeting the applicable annual RPS requirements set forth in said section 11F of said chapter 25A. If the energy and RECs are not so used, such companies shall sell such purchased energy into the wholesale spot market and shall sell such purchased RECs through a competitive bid process. Notwithstanding the foregoing, the department of energy resources shall conduct periodic reviews to determine the impact on the energy and REC markets of the disposition of energy and RECs hereunder, and may issue reports recommending legislative changes if it determines that actions are being taken that will adversely affect the energy and REC markets.

If the distribution company sells the purchased energy into the wholesale spot market and auctions the RECs as described in the fifth paragraph, the distribution company shall net the cost of payments made to projects under the long-term contracts against the proceeds obtained from the sale of energy and RECs, and the difference shall be credited or charged to all distribution customers through a uniform fully reconciling annual factor in distribution rates, subject to review and approval of the department of public utilities. The reconciliation process shall be designed so that the distribution company recovers all costs incurred under such contracts.

If the RPS requirements of said section 11F of said chapter 25A should ever terminate, the obligation to continue periodic solicitations to enter into long term contracts shall cease, but contracts already executed and approved by the department of public utilities shall remain in full force and effect.

On or before July 1, 2010 , and annually until the long-term contracting requirement expires, the department of energy resources shall assess whether the long-term contracting requirements set forth in this section reasonably support the renewable energy goals of the commonwealth as set forth in said section 11F of said chapter 25A, and whether the alternative compliance rate established under said section 11F should be adjusted accordingly.

The provisions of this section shall not limit consideration of other contracts for RECs or power submitted by a distribution company for review and approval by the department of public utilities.

If any provision of this section is subject to a judicial challenge, the department of public utilities may suspend the applicability of the challenged provision during the pendency of the judicial action until final resolution of the challenge and any appeals, and shall issue such orders and take such other actions as are necessary to ensure that the provisions that are not challenged are implemented expeditiously to achieve the public purposes of this provision.

SECTION 16. Clause (2) of section 116 of said chapter 169 of the acts of 2008 is hereby amended by adding the following words:- , including hydroelectric power, regardless of whether that power is eligible under the renewable energy portfolio standard contained in section 11F of chapter 25A.

SECTION 17. Chapter 169 of the acts of 2008 is hereby amended by inserting after section 116 the following section:-

SECTION 116A. The Executive Office of Energy and Environmental Affairs shall report the estimated or actual ratepayer cost and benefits of any program required under Chapter 169 of the Acts of 2008 every three years to the joint committee on telecommunications, utilities and energy, unless said programs are separately itemized on a ratepayer's bill. Said reporting shall be submitted to the committee by January 31 of each reporting year. Whenever possible, the reported costs shall be presented on a volumetric basis, by customer class.

SECTION 18. The department of energy resources shall conduct a study of the greenhouse gas emissions reduction potential and viability, fiscal impact, statutory and regulatory barriers and anticipated long-term results of establishing a clean energy performance standard consistent with the greenhouse gas emission reduction requirements of chapter 21N of the General Laws, including all interim greenhouse gas limits adopted by the secretary pursuant thereto. The study shall consider how such a clean energy performance standard could be designed so as to advance the deployment of electricity generation and storage technologies that have low or no greenhouse gas emissions and that are not eligible pursuant to sections 11F or 11F ½ of chapter 25A of the General Laws, nor eligible as part of any energy efficiency program pursuant to section 19 of chapter 20 of the General Laws. The study shall be based on the best available scientific, technical and economic analysis, and specifically shall consider, but shall not be limited to, (a) market-based frameworks designed to encourage lower production of greenhouse gas emissions per megawatt-hour of electricity delivered; (b) mechanisms to make such a greenhouse gas emissions performance standard more stringent over time; (c) categories of low- or no-emissions technologies that should be eligible pursuant to a clean energy

performance standard, including but not limited to hydropower facilities having a nameplate capacity greater than 25 megawatts, large-capacity electric storage technologies, and related smart grid technologies that may enable achievement of the Commonwealth's clean energy goals; (d) mechanisms for encouraging the displacement of electricity produced by generating facilities having high emissions of greenhouse gases per megawatt-hour of electricity delivered with lower-emissions resources; (e) the extent to which various types of low- and no-emissions technologies have reached technological maturity and the associated degree of need, or not, for incentives to encourage deployment on a commercial basis; (f) economic benefits and impacts for the Commonwealth, including but not limited to electric ratepayer benefits and impacts as well as employment and other economic development opportunities over the short term and long term; (g) tracking mechanisms; (h) allowing tradability among suppliers, including distribution companies; (i) incentives for reducing criteria and hazardous pollutants coincident with reductions in greenhouse gas emissions; (j) eligibility criteria for electricity generation and storage technologies directed toward avoiding undue impacts on the environment or public welfare; (k) policies adopted or considered by other jurisdictions, including other states, federal government entities or foreign nations, to advance objectives similar to those identified herein.

SECTION 19. The department of public utilities shall undertake a study into the low-income electric and gas programs. Such a study shall identify the cost to each electric and gas distribution company of the existing program and shall include consideration of adopting a statewide low income program to eliminate individual distribution companies from management of said programs. In addition, said study shall identify and make recommendations as to cost-saving efficiencies that increase accountability. The study shall be complete by January 1, 2013.

SECTION 20. The department of energy resources shall study what legislative or regulatory steps would serve to reduce reliance on alternative compliance payments in meeting Class II renewable energy generating sources, as defined by section 11F of chapter 164, and report to the joint committee on telecommunications, utilities and energy its recommendations by January 1, 2013.

SECTION 21. The pilot program created in section 2 shall begin in calendar year 2013.

SECTION 22. The first report required under section 17 shall be completed by January 31, 2013.