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# SENATE . . . . . No. 2214

Senate, April 10, 2012 – Text of the Senate Bill relative to competitively priced electricity in the Commonwealth (being the text of Senate, No. 2200, printed as amended)

## 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 said chapter 25, 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 financial support of up to 100 per cent of the cost for qualified energy efficiency measures as determined by the program administrator using energy efficiency advisory council criteria. Total rebate levels for participating customers in any year of the pilot program shall not exceed 90 per cent of the amount the customer was charged for energy efficiency programs for calendar year 2012. A

participating customer shall not aggregate a rebate from any year in which the customer does not participate in the pilot. Qualified energy efficiency measures shall include cost-effective energy efficiency program measures approved by the applicable program administrator recognized by the department using energy efficiency advisory council criteria under section 21; provided, however, that up to 15 per cent of any accelerated rebate may be used for other improvements that support energy efficiency improvements made under a program approved by the department or emission reductions, including, but 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 under said section 21 during the period in which they participate in the pilot program. All qualified installations shall be substantially completed by the end of the program, and shall be subject to verification and review by the department. Electric and gas distribution companies shall recalibrate their energy efficiency goals, as reviewed by the energy efficiency advisory council under subsection (c) of said section 21, to reflect the rebates provided to any customer electing to participate in this pilot program.

SECTION 3. Subsection (d) of said section 19 of said chapter 25 of the General Laws is hereby repealed.

SECTION 4. Paragraph 1 of subsection (b) of section 21 of said chapter 25, as appearing in the 2010 Official Edition, is hereby amended by adding the following sentence:- No portion of monies expended under this section shall pay for customer incentives meant to encourage greater building energy efficiency where such prescribed efficiency level is equal to that required by the baseline state building energy code; provided, that measures that exceed said code may be fully funded.

SECTION 5. Said section 21 of said chapter 25, as so appearing, is hereby further amended by striking out, in lines 114 and 115 and line 118, in each instance, the words "Massachusetts Technology Park Corporation" and inserting in place thereof the following words:- Massachusetts Clean Energy Technology Center.

SECTION 6. Section 22 of said chapter 25, as so appearing, is hereby amended by striking out, in line 2, the figure "11" and inserting in place thereof the following figure:- 15.

SECTION 7. Said 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) the Massachusetts Non-profit Network, (12) a city or town in the commonwealth, (13) real estate, (14) a business employing less than 10 persons located in the commonwealth that performs energy efficiency services and (15) the department of energy resources.

SECTION 8. Section 6 of chapter 25A of the General Laws, as so appearing, is hereby amended by striking out, in line 37, the word "small".

SECTION 9. Subsection (c) of section 11F of said chapter 25A, as so appearing, is hereby amended by striking out, in line 63, the figure "25" and inserting in the place thereof the following figure:- 30.

SECTION 10. Said subsection (c) of said section 11F of said chapter 25A, as so appearing, is hereby further amended by striking out, in line 65, the figure "25" and inserting the place thereof the following figure:- 30.

SECTION 11. Subsection (d) of said section 11F of said chapter 25A, as so appearing, is hereby amended by striking out, in line 93, the figure “5” and inserting the place thereof the following figure:- 30.

SECTION 12. Section 2B of chapter 59 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by inserting after the words “benefit of”, in line 2, the following words:- a governmental entity, including.

SECTION 13. Said section 2B of said chapter 59, as so appearing, is hereby further amended by inserting after the word “public”, in line 37, the following words:- , to a use, lease or occupancy for renewable generation facilities, defined as eligible under subsection (c) of section 11F of chapter 25A, from 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 14. Section 5 of said chapter 59, as so appearing, is hereby amended by striking out clause Forty-fifth 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, including contiguous property under the same ownership 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. This clause shall not apply to projects developed under section 1A of chapter 164.

SECTION 15. Subsection (b) of section 38H of said chapter 59, as so appearing, is hereby amended by inserting after the first sentence 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 16. Section 1 of chapter 164 of the General Laws, as so appearing, is hereby amended by striking out the definition of "Distribution company" and inserting in place thereof the following definition:-

"Distribution company", a company engaging in the distribution of electricity or owning, operating or controlling distribution facilities; provided, however, that a distribution company shall not include any entity which owns or operates plant or equipment used to produce electricity, steam and chilled water, or an affiliate engaged solely in the provision of such electricity, steam and chilled water, where the electricity produced by such entity or its affiliate is primarily for the benefit of hospitals and non-profit educational institutions, and where such plant or equipment was in operation before January 1, 1986; and provided further that a distribution company shall not include an on-site combined heat and power facility.

SECTION 17. Said section 1 of said chapter 164, as so appearing, is hereby further amended by striking out the definition of "Electric company" and inserting in place thereof the following definition:-

"Electric company", a corporation organized under the laws of the commonwealth for the purpose of making by means of water power, steam power or otherwise and for selling, transmitting, distributing, transmitting and selling, or distributing and selling, electricity within the commonwealth, or authorized by special act so to do, even though subsequently authorized to make or sell gas; provided, however, that electric company shall not include an alternative energy producer; provided, further, that a distribution company shall not include an entity which owns or operates a plant or equipment used to produce electricity, steam and chilled water, or an affiliate engaged solely in the provision of such electricity, steam and chilled water, where the electricity produced by such entity or its affiliate is primarily for the benefit of hospitals and nonprofit educational institutions, and where such plant or equipment was in operation before January 1, 1986; and provided, further, that electric company shall not include a corporation only transmitting and selling, or only transmitting, electricity unless such corporation is affiliated with an electric company organized under the laws of the commonwealth for the purpose of distributing and selling, or distributing only, electricity within the commonwealth; and provided, further, that an electric company shall not include an on-site combined heat and power facility.

SECTION 18. Said section 1 of said chapter 164, as so appearing, is hereby further amended by inserting after the definition of "Non-renewable energy supply and resource development" the following definition:-

"On-site combined heat and power facility", a combined heat and power facility using equipment and services to produce and deliver electric and thermal energy to end use customers located on the property on which the facility is located or on property contiguous to the property on which the facility is located; provided, however, that the property of the end use customer shall be considered contiguous to the property on which the on-site combined heat and power

facility is located if (i) said properties are geographically adjacent to one another, (ii) said properties are only separated by an easement, a public thoroughfare or a transportation or utility-owned right-of-way or (iii) regardless of any intervening properties, public thoroughfares, or transportation or

utility-owned rights-of-way, the end use customer is purchasing thermal energy produced by the on-site combined heat and power facility and said thermal energy is being utilized in an established application of thermal energy, including but not limited to, industrial or commercial heating or cooling.

SECTION 19. Said section 1 of said chapter 164, as so appearing, is hereby further amended by striking out the definition of "Supplier" and inserting in place thereof the following definition:-

"Supplier", a supplier of generation service to retail customers, including power marketers, brokers and marketing affiliates of distribution companies, except that neither an electric company nor an on-site combined heat and power facility shall be considered a supplier.

SECTION 20. Section 1F of chapter 164 of the General Laws, as so appearing, is hereby amended by adding the following paragraph:-

(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 total distribution costs paid by ratepayers under 220 CMR 5.00 et seq. which results in an increase of 10 per cent or greater above the total distribution costs paid by those ratepayers at the time the application was filed, the department shall allow for not more than a 7 ½ per cent increase in rates for the first rate year in which the approved rates are to go into effect, and not

more than a 7 ½ per cent increase in any subsequent year necessary to fulfill the approved rate; provided, however, that an increase of more than 7 ½ per cent may be allowed upon a showing of strict necessity and a finding by the department that the increase occurred despite best faith efforts to avoid such a result. When a non-residential ratepayer is subject to an increase in total distribution costs that is 15 per cent or more than that 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 ratepayer's 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 per cent or more, but the ordered phase-in shall be for not less than 2 rate years and for not more than 50 per cent of the increase in the first rate year of the phase in period. Such petition shall be acted upon by the department within 60 days of its filing or prior to the rate becoming effective, whichever occurs first. Failure to act shall be considered approval by the department of the petition for not more than 50 per cent of the increase in year 1 and not more than 50 per cent in year 2.

SECTION 21. Section 1J of said chapter 164, as so appearing, is hereby amended by adding the following paragraph:-

In the event that more than either (i) 20,000 customers or (ii) 0.8% of the total customers, whichever is fewer, of an electric company are subjected to a continuous power interruption of 4 hours or more that results in the transmission of power at less than 50% of the standard voltage, or that results in the total loss of power transmission, the electric company shall be responsible for reimbursing the affected municipality, county or other unit of local government in which the power interruption has taken place for all emergency expenses, direct and contingent, incurred as a result of the interruption. A waiver of the requirements of this section may be granted by the

department in instances in which the electric company can show that the power interruption was a result of any 1 or more of the following causes:

(i) unpreventable damage due to weather events or conditions;

(ii) customer tampering;

(iii) unpreventable damage due to civil or international unrest, criminal mischief or animals; or

(iv) damage to utility equipment or other actions by a party other than the utility, its employees, agents or contractors.

Loss of revenue and expenses incurred in complying with this section shall not be recovered from retail customers.

SECTION 22. Chapter 164 of the General Laws, as so appearing, is hereby amended by inserting after section 1J the following section:-

Section 1K. (a) As used in this section the following words shall, unless the context clearly requires otherwise, have the following meanings:-

“Catastrophic conditions”, severe weather conditions resulting in the interruption of service to 10 per cent or more of a utility's customers or a state of emergency declared by local, state or federal government officials.

“Duration of the interruption”, the measure of time from the time the utility was notified or otherwise became aware of the loss of service.

"Interruption", the full or partial loss of service to 1 or more customers for longer than 5 minutes.

"Normal conditions", conditions other than catastrophic conditions.

"Same-circuit repetitive interruption", a grouping of more than 10 customers on a circuit who experience multiple interruptions under all conditions.

(b) Notwithstanding any general or special law, rule or regulation to the contrary, the department shall promulgate regulations to establish a credit of not less than $25 to be awarded to each ratepayer, whereupon an investor-owned electric distribution, transmission or natural gas distribution company fails to restore service as follows:

(i) within 120 hours after an interruption due to catastrophic conditions;

(ii) within 16 hours after an interruption that occurred during normal conditions; or

(iii) where there are more than 7 service interruptions in a 12-month period due to same circuit repetitive interruption.

The credit shall be credited during a single billing month within 3 months of the department's notification of violation or final adjudication after appeal under this section; provided, however, that companies may petition the department to distribute the credit over a period of more than a single billing month if the cumulative amount of the credits exceeds $10,000,000. The department may establish a schedule of credits dependent on the class of ratepayer, length of interruption or frequency of interruption. The entire cost of the credit shall be assessed to the investor-owned electric distribution, transmission or natural gas distribution company that provides such service to the affected customer. The issuance of the credit shall be

appealable to the department. The department shall review the amount of the credit on an annual basis. The credits established by this section shall be implemented notwithstanding the maximum penalty under section 1J.

SECTION 23. Section 94 of said chapter 164, 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, not less frequently than every 3 years, under a filing schedule as prescribed by the department and in such form as the department shall prescribe, showing all rates, prices and charges to be charged or collected within the commonwealth for the sale and distribution of gas or electricity, together with all forms of contracts to be used in connection with such schedules; provided, however, that the requirement to file a schedule with the department not less frequently than every 3 years shall not apply to a company or corporation as defined in section 1 of chapter 165. Rates, prices and charges in such a schedule may be changed by any such company by filing a schedule setting forth the changed rates, prices and charges; provided, however, that 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, further, that a company may:

(i) continue to charge, receive and collect rates, prices and charges under a contract lawfully entered into before the schedule takes effect or until the department otherwise orders, after notice to the company, a public hearing and determination that the public interest so requires; and

(ii) 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; provided, further, that 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 file, 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 immediately and shall 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 21 days before such hearing in such local newspapers as the department may select. The department may apportion electric and gas company rate case expenses between shareholders and ratepayers. Unless the department otherwise authorizes, the rates, prices and charges under the schedule of a gas or electric company shall not become effective until the first day of the month next after the expiration of 14 days from the filing of the petition; provided, that the department shall not authorize rates filed under a proposed settlement agreement more than once in a 6-year period  Unless the department otherwise authorizes, the rates, prices and charges set forth in the schedule of a corporation or company, as defined in section 1 of chapter 165, shall not become effective until the first day of the month next after the expiration of 14 days from the filing of the petition. 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 24. Section 94G½ of said chapter 164 is hereby repealed.

SECTION 25. Said chapter 164 is hereby amended by striking out section 96, as appearing in the 2010 Official Edition, and inserting in place thereof the following section:-

Section 96. (a) For purposes of this section, the following words shall, unless the context clearly requires otherwise, have the following meanings:-

"Control", the possession of the power, through direct or indirect ownership of a majority of the outstanding voting securities of a gas or electric company or of a holding company thereof, to direct or cause the direction of the management and policies of a gas or electric company or a holding company thereof or the ability to effect a change in the composition of its board of directors or otherwise; provided, however, that control shall not be considered to arise solely from a revocable proxy or consent given to a person in response to a public proxy or consent solicitation made under 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 such 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 outside of the commonwealth, but which may have costs in common with a gas or electric company subject to this chapter that may be allocated by a holding company after an acquisition of control.

"Foreign gas company", a gas company with a domicile, principal place of business, headquarters or place of incorporation outside of the commonwealth, but which may have costs

in common with a gas or electric company subject to this chapter that may be allocated by a holding company after an acquisition of control.

"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 under an arrangement or understanding with 1 or more other corporations, associations, partnerships, trusts or similar organizations, or persons, directly or indirectly, controls, or seeks to acquire control over, and may cause costs to be allocated to a gas or electric company.

"Third party acquirer", any corporation, association, partnership, trust or similar organization or person that is not under common control with a holding company or companies that are being acquired.

(b) Notwithstanding this chapter or any other general or special law to the contrary, companies, except steam distribution companies, subject to this chapter, or holding companies may consolidate or merge with one another or may sell and convey all or substantially all of their properties to another of such companies or to a wholesale generation company. Such companies, holding companies or wholesale generation companies may purchase such properties if: (i) the purchase, sale, consolidation or merger, and the terms thereof, have been approved, at meetings called for the purpose of approving such sale, consolidation or merger, in the case of any contracting company organized under the laws of the commonwealth, by a vote of the holders of at least two-thirds of each class of such company's stock outstanding and entitled to vote on the question , and, in the case of any contracting company organized in a state other than the commonwealth, by a vote of the holders of at least that percentage of such company's

outstanding stock required for approval of the question under the laws of such state; and (ii) that the department, after notice and a public hearing, has determined that such purchase and sale, consolidation or merger, and the terms thereof, are consistent with the public interest. In determining whether a purchase and sale, consolidation or merger is consistent with the public interest, 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. 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 in this subsection.

(c) Notwithstanding this chapter or any other general or special law to the contrary, gas, electric or holding company, subject to this chapter, shall not 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: (i) the terms thereof, have been approved, at meetings called therefor, in the case of any contracting company organized under the laws of the commonwealth, by a vote of the holders of at least two-thirds of each class of such company's stock outstanding and entitled to vote on the question, and, in the case of any contracting company organized in a state other than the commonwealth, by a vote of the holders of at least that percentage of such company's outstanding stock required for approval of the question under the laws of such state; and (ii) 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.

(d) Corporate reorganizations involving holding companies that will not result in the acquisition, directly or indirectly, of control of an electric or gas company subject to this chapter, or of a holding company thereof, by a third party acquirer shall not be subject to this section.

SECTION 26. Section 138 of said chapter 164, as so appearing, is hereby amended by inserting after the definition of "Agriculture" the following definition:-

"Anaerobic digestion net metering facility", a facility that (1) generates electricity from a biogas produced by the accelerated biodegradation of organic materials under controlled anaerobic conditions; and (2) has been determined by the department of energy resources, in coordination with the department of environmental protection, to qualify under the department of energy resources regulations as a Class I renewable energy generating source under section 11F of chapter 25A.

SECTION 27. Said section 138 of said chapter 164, as so appearing, is hereby further amended by striking out, in lines 20-23, the words "and provided further, that credit for a Class I net metering facility not using solar or wind as its energy source shall be the average monthly clearing price at the ISO-NE" and inserting in place thereof the following words:- and provided further, that credit for a Class I net metering facility that is not an agricultural net metering facility or that is not using solar, anaerobic digestion or wind as its energy source shall be the average monthly clearing price at the ISO-NE.

SECTION 28. Said section 138 of said chapter 164, as so appearing, is hereby further amended by inserting after the word “facility” , in lines 36 and 54, the second time it appears, in each instance, the following words:- ,an anaerobic digestion net metering facility.

SECTION 29. Said section 138 of said chapter 164, as so appearing, is hereby further amended by inserting after the word “metering”, in line 60, the first time it appears, the following words:- , anaerobic digestion net metering.

SECTION 30. The definition of “Net metering facility of a municipality or other governmental entity” in section 138 of said chapter 164, as so appearing, is hereby amended by adding the following words:- ; provided, however, that renewable energy facilities of a cooperative corporation organized under section 136 with only municipalities and other governmental entities as members may qualify as a net metering facility of a municipality or other governmental entity.

SECTION 31. Subsection (e) of section 139 of said chapter 164, as so appearing, is hereby amended by adding the following sentence:- For the purposes of net metering, a cooperative corporation organized under section 136 that is comprised solely of municipalities or other governmental entities shall not be considered an electric company, generation company, aggregator, supplier, energy marketer or energy broker, within the meaning of those terms as defined in sections 1 and 1F.

SECTION 32. Subsection (f) of said section 139 of said chapter 164, as so appearing, is hereby amended by striking out, in line 68, the words “1 per cent” and inserting in place thereof the following words:- 3 per cent.

SECTION 33. Said subsection (f) of said section 139 of said chapter 164, as so appearing, is hereby further amended by striking out, in line 70, the words “2 per cent” and inserting in place thereof the following words:- 3 per cent.

SECTION 34. Said subsection (f) of said section 139 of said chapter 164, as so appearing, is hereby further amended by inserting after the word “megawatts”, in line 73, the following words:- ; provided, that a cooperative corporation organized under section 136 that is comprised solely of municipalities or other governmental entities may qualify as the customer of a net metering facility of a municipality or other governmental entity and such cooperative corporation may allocate the facility's generating capacity to a municipality or other governmental entity with the written assent of such municipality or other governmental entity and the department. A municipality or governmental entity may not exceed 10 megawatts, whether as a customer of a net metering facility or from allocated generating capacity from such cooperative corporation.

SECTION 35. Said subsection (f) of said section 139 of said chapter 164, as so appearing, is hereby further amended by inserting after the word “facility”, in line 76, the following words:- or an anaerobic digestion net metering facility.

SECTION 36. Subsection (g) of said section 139 of said chapter 164, as so appearing, is hereby amended by adding the following sentence:- The department shall adopt rules and regulations regarding the assurance of net metering eligibility.

SECTION 37. Said section 139 of said chapter 164, as so appearing, is hereby amended by adding the following subsection:-

(h) A Class I net metering facility shall be exempt from the aggregate net metering capacity of facilities that are not net metering facilities of a municipality or other governmental entity under subsection (f), and may net meter if it is generating renewable energy and:

(1) the nameplate capacity of the facility is equal to or less than 10 kilowatts on a single-phase circuit, or 25 kilowatts on a 3-phase circuit; or

(2) the department determines that the facility's average kilowatt-hour generation will not exceed 100 per cent of the customer's average kilowatt-hour usage over the course of a calendar year. The department's determination shall be based on usage data from the previous calendar year and shall be made before the facility begins to generate electricity. If such data is not available, the department may use a forecast of the customer's average usage over the course of a calendar year.

SECTION 38. Chapter 775 of the acts of 1975 is hereby amended by striking out subsection (a) of section 6and inserting in place thereof the following subsection:-

(a) The corporation, and member and non-member cities and towns having municipal electric departments established under chapter 164 of the General Laws or by a special act and other utilities, public or private, may enter into energy contracts including, but not limited to, contracts providing for the sale or purchase of energy or energy facilities, borrowing by members under a pooled loan program, planning, engineering, design, acquiring sites or options for sites and expenses preliminary or incidental to such facilities. Any such contract may: (i) be for the life of a facility or other term or for an indefinite period; (ii) provide for the payment of unconditional obligations imposed without regard to whether a facility is undertaken, completed, operable or operating and notwithstanding the suspension, interruption, interference, reduction or

curtailment of the output of a facility; and (iii) contain provisions for prepayment, non-unanimous amendment, arbitration, delegation and other matters considered necessary or desirable to carry out its purposes. Any such contract may also provide, in the event of default by any party to the contract in the performance of its obligations under the contract, for other parties to assume the obligations and succeed to the rights and interests of the defaulting party, pro rata or otherwise as may be agreed upon in the contract.

SECTION 39. Section 142 of said chapter 164, as so appearing, is hereby amended by adding the following 2 paragraphs:-

The owner of an on-site combined heat and power facility may distribute and sell electricity at retail to end use customers located on the property on which the facility is located or on property contiguous to the property on which said facility is located. The department shall promulgate regulations to ensure that the delivery of electricity from an on-site combined heat and power facility to end use customers shall meet the same standards of reliability and safety as those that apply to the design, operation and maintenance of distribution facilities by a distribution company, including standards for metering and interconnection. The distribution company providing distribution service to the end use customers served by an on-site combined heat and power facility shall provide non-discriminatory electric delivery services at the standard prevailing tariff rates applicable to such individual end use customers. In the event of a forced outage of delivered supply, the distribution company experiencing such outage shall be responsible for curing the outage. The distribution companies shall provide back-up service to any end use customer desiring such service.

A distribution company shall not exercise its franchise rights in a way that would affect the distribution and sale of electricity by on-site combined heat and power facilities to end use customers; provided, however, that the department may grant a waiver of this prohibition upon a finding that the waiver is in the public interest and that failure to grant the waiver will result in irreparable harm to the distribution company. Any party aggrieved by a decision of the department under this section may seek judicial review under chapter 30A.

SECTION 40. 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:-

Beginning 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 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, under section 11F of chapter 25A of the General Laws.

SECTION 41. Said chapter 169 is hereby further amended by inserting after section 83 the following section:-

Section 83A. Beginning 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, under section 11F of chapter 25A of the General Laws.

For purposes of this section, a long term contract shall be a contract with a term of 10 to 20 years. In developing 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. Beginning 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 may 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 second 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 said 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 per cent of the aggregate level of long-term contracts shall be reserved for newly developed, small, emerging or diverse renewable energy distributed generation facilities, as determined by the department, that are located within each distribution company's service territory. Distributed generation projects shall have a nameplate capacity no larger than 6 megawatts, but shall not qualify as a Class I, II or III net metering facility, as defined in section 138 of said chapter 164; provided, however, that long-term contracts reserved for newly developed, small, emerging or diverse renewable energy distributed generation facilities shall not be awarded to any technology which had more than 30 megawatts of capacity installed in the commonwealth before April 1, 2012. 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 under 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 at the contract price, and may elect to retain RECs for the

purpose of meeting the applicable annual RPS requirements under 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 previous sentence, 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 under this section 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 under this section reasonably support the renewable energy goals of the commonwealth under said section 11F of said chapter 25A, and whether the alternative

compliance rate established under said section 11F of said chapter 25A should be adjusted accordingly.

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 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 section.

SECTION 42. Clause (2) of subsection (a) of section 116 of said chapter 169 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 of the General Laws.

SECTION 43. Said chapter 169 is hereby further 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 this act every 3 years to the joint committee on telecommunications, utilities and energy. 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 44. The executive office of energy and environmental affairs 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 under said chapter 21N. 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 under sections 11F or 11F ½ of chapter 25A of the General Laws, nor eligible as part of any energy efficiency program under section 19 of chapter 25 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 emissions or no emissions technologies that should be eligible under 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 emissions 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; and (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. The department shall submit a copy of the study to the clerks of the house of representatives and the senate who shall forward the copy of the study to the joint committee on telecommunications, utilities and energy by January 1, 2013.

SECTION 45. The secretary of the executive office of energy and environmental affairs shall conduct an investigation and study into the process for reactivation of pre-existing hydroelectric power sites, including a review of all necessary permitting and approvals to determine whether and how the process can be expedited and streamlined. The investigation shall include a determination of those permits necessary from federal, state and local agencies for the reactivation of a pre-existing site, and recommendations to streamline the process to allow for timely and cost-effective redevelopment. In the course of the investigation, the secretary shall convene, to the extent possible, those state and federal agencies responsible for permitting, and any entities that may have obtained, or pursued, permits for the reactivation of pre-existing hydroelectric power sites.

The secretary shall file a report of the findings with the clerks of house of representatives and the senate who shall forward a copy of the report to the chairs of the joint committee on

environment, natural resources and agriculture and the chairs of the joint committee on telecommunications, utilities and energy by January 1, 2014.

SECTION 46. The department of public utilities shall conduct a study into the financing of low-income electric and gas discount programs. The study shall identify the financing of the existing program at each electric and gas distribution company and shall include consideration of adopting a statewide mechanism for financing low-income discount programs. In addition, the study shall identify and make recommendations as to cost-saving efficiencies that increase accountability. The department shall submit a copy of the study to the clerks of the house of representatives and the senate who shall forward the copy of the study to the joint committee on telecommunications, utilities and energy by January 1, 2014.

SECTION 47. 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 in section 11F of chapter 25A of the General Laws, and report to the joint committee on telecommunications, utilities and energy its recommendations by January 1, 2013.

SECTION 48. The department of public utilities and the attorney general shall jointly conduct an investigation and study into the reliance of electric and gas distribution companies on so-called trackers and reconciliation mechanisms. The study shall detail the trackers and reconciliation methods currently approved by the department for all electric and gas distribution companies, including identification of the start date of each. The department and the attorney general shall determine the value and rationale of each, including, but not limited to: whether each serves a legitimate purpose, whether or not trackers and reconciliation mechanisms are used

by electric and gas distribution companies as a method to avoid comprehensive rate reviews and whether or not the continuance of each is necessary under the new framework requiring 3 year rate reviews. The department and the attorney general shall include recommendations to reduce reliance on trackers and reconciliation mechanisms. The department and the attorney general shall publish a report of their findings and recommendations on their respective websites, and shall submit a copy of the report to the clerks of the house of representatives and the senate who shall forward a copy of the report to the joint committee on telecommunications, utilities and energy, by April 1, 2013.

SECTION 49. The department of energy resources and the attorney general shall jointly study the feasibility, anticipated results, statutory and regulatory barriers and potential benefits of authorizing the commonwealth to procure long-term contracts with Class I renewable energy facilities, as defined in section 11F of chapter 25A of the General Laws, together with long-term contracts for transmission scheduling rights to deliver power generated by such facilities to load zones in the commonwealth. The study shall be based on the best available technical, regulatory and economic analysis. The study shall include a review of central procurement practices in other jurisdictions, including other states or regions, and shall concentrate on such practices in states with restructured electricity markets. The study shall review any studies already performed, and shall take into consideration any studies currently being conducted by state or regional groups with regards to regional procurement, and how the implementation of long-term contract procurement would affect regional efforts in the ISO-New England service area. The study shall identify potential problems and recommend possible solutions to be implemented before the commonwealth is authorized to procure such long-term contracts. The department and the attorney general shall publish a report of their findings and recommendations on their

respective websites, and shall submit a copy of the report to the clerks of the house of representatives and the senate who shall forward the copy of the report to the joint committee on telecommunications, utilities and energy, by December 15, 2012.

SECTION 50. The executive office of energy and environmental affairs, in consultation with the Massachusetts Department of Transportation and the executive office of housing and economic development, shall conduct a study on state and municipally funded outdoor lighting, including highway and street lights. The executive offices and the department shall conduct at least 1 public hearing in support of the study and shall solicit and evaluate input from lighting engineers, lighting manufacturers, town planners, environmental protection advocates, the Massachusetts Medical Society, the director of the Arnold Arboretum and other interested organizations and individuals. The study shall include recommendations on ways to reduce non-renewable electricity usage for outdoor lighting, support the business community and expand job creation, enhance night sky visibility, protect public health and safety and promote electricity pricing accountability. The executive office of energy and environmental affairs shall submit a copy of the study to the clerks of the house of representatives and the senate who shall forward a copy of the study to the joint committee on telecommunications, utilities and energy by December 1, 2012.

SECTION 51. The executive office of energy and environmental affairs, in consultation with the department of energy resources, shall study whether useful thermal energy shall be added to the list of alternative energy generating sources that may be used to meet the commonwealth's energy portfolio standard for all retail electricity suppliers selling electricity to end-use customers in the commonwealth under section 11F½ of chapter 25A of the General Laws. For purposes of this study, "useful thermal energy", shall mean energy in the form of

direct heat, steam, hot water or other thermal form that is used in production and beneficial measures for heating, cooling, humidity control, process use or other valid thermal end use energy requirements and for which fuel or electricity would otherwise be consumed. The executive office of energy and environmental affairs shall submit a report of its findings to the clerks of the house of representatives and the senate who shall forward a copy of the report to the joint committee on telecommunications, utilities and energy not later than June 3, 2013.

SECTION 52. The division of local services within the department of revenue shall study the impact and provide an estimate of the effect of the changes to chapter 59 of the General Laws contained in this act on municipal revenues. The division of local services shall submit a report detailing its findings to the clerks of the senate and the house of representatives, the chairs of the joint committee on telecommunications, utilities and energy, the chairs of the joint committee on revenue and the chairs of the joint committee on municipalities and regional government not later than 3 years and 90 days after the effective date of this act.

SECTION 53. A customer that elects to participate in the voluntary accelerated rebate pilot program under subsection (d) of section 19 of chapter 25 of the General Laws by January 31, 2013 may aggregate rebates in amounts not to exceed 270 per cent 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 per cent of the amount charged to that customer for energy efficiency programs for calendar year 2012.

SECTION 54. Clause Forty-fifth of section 5 of chapter 59 of the General Laws shall not apply to projects developed under section 139 of chapter 164 which have a signed agreement with the city or town to make a payment in lieu of taxes as of the effective date of this act.

SECTION 55. Notwithstanding clause Forty-fifth of section 5 of chapter 59, any payment in lieu of taxes agreements currently under contract between a municipality and a developer of solar and wind projects that expires prior to 2032 may be negotiated up to the terms in place as of the effective date of this act.

SECTION 56. The department of public utilities shall adopt rules and regulations regarding the assurance of net metering eligibility under subsection (g) of section 139 of chapter 164 of the General Laws by October 1, 2012.

SECTION 57. The department of public utilities shall develop a standard interconnection agreement for projects qualifying under subsection (h) of section 139 of chapter 164 of the General Laws by January 1, 2013.

SECTION 58. Notwithstanding any general or special law or rule or regulation to the contrary, beginning July 1, 2012, all electric bills sent to retail and commercial customers by an electric or distribution company or competitive supplier shall include a separate line-item to reflect the rate charged for renewable energy generation, transmission and distribution services contained in the total retail price. The department shall determine whether any additional information shall be required to be disclosed on the bills and to promulgate rules and regulations to implement this section. Rules and regulations relative to the appeals process for billing disputes or damage claims made by customers shall be published and distributed to customers as part of an education and outreach program.

SECTION 59. The requirement to conduct a study under section 43 shall not be construed as a limitation on the authority or obligation of the department of environmental protection to issue regulations under subsection (d) of section 3 of chapter 21N of the General Laws; nor shall the completion of the study be considered a condition precedent to the issuance of such regulations.

SECTION 60. The pilot program created in section 2 shall begin in calendar year 2013.

SECTION 61. The first report required under section 43 shall be completed by January 31, 2013.

SECTION 62. Section 3 shall take effect on December 31, 2015.

SECTION 63. Section 41 shall not take effect until the department of energy resources has completed a study to assess whether the long-term contracting requirements reasonably support the renewable energy goals of the commonwealth as required under section 83 of chapter 169 of the acts of 2008 and said study has been submitted to the clerks of the house of representatives and the senate and to the chairs of the joint committee on telecommunications, utilities and energy. The study shall include, but not be limited to, input from stakeholders in the energy sector.