

HOUSE No. 4055

By Mr. Kaufman of Lexington, petition of Jay R. Kaufman and others relative to the establishment of a municipal lighting plant by the town of Lexington. Municipalities and Regional Government. [Local Approval Received.]

The Commonwealth of Massachusetts

PETITION OF:

Jay R. Kaufman	Robert A. Havern
Thomas M. Stanley	Susan C. Fargo
Harold P. Naughton, Jr.	

In the Year Two Thousand and Seven.

AN ACT TO SIMPLIFY AND FACILITATE THE ESTABLISHMENT OF A MUNICIPAL LIGHT PLANT BY THE TOWN OF LEXINGTON.

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

1 SECTION 1.(a) If within one hundred and fifty days from the
2 vote by the Lexington Board of Selectmen directing the Town
3 Manager to determine what property of the electric distribution
4 company currently serving Lexington should be purchased by the
5 Town of Lexington to form a municipal lighting plant and at what
6 price, the Town Manager and the distribution company cannot
7 agree on said property and price, then the Town of Lexington may
8 seek determination by the department as to what distribution com-
9 pany property ought in the public interest to be included in the
10 purchase and what price should be paid.

11 (b) The price shall be equal to the original cost of the property
12 less accumulated depreciation, plus any other components
13 required to provide reasonable compensation to the distribution
14 company. Such price shall be estimated without enhancement on
15 account of future earning capacity, lost sales, good will, physical
16 reconfiguration of distribution company plant and system or of
17 exclusive privileges derived from rights in the public ways.

18 (c) The department, after notice to the parties, shall give a
19 hearing thereon and make the determination aforesaid within one

20 hundred and eighty days of the request for determination by the
21 Town of Lexington. Such property shall include such portion of
22 distribution company property within Lexington as is necessary,
23 suitable for, and used in connection with the distribution of elec-
24 tricity in Lexington, including, at the election of the Town of Lex-
25 ington, the entirety of equipment jointly owned with other entities
26 (such as the ownership interest of the telephone utility in utility
27 poles supporting electric distribution company facilities in Lex-
28 ington), in which case said entities shall be directly compensated
29 for, in a similar manner as the distribution company will be com-
30 pensated for its own interest in the jointly-owned equipment.

31 (d) The department shall also include a plan for allowing both
32 the distribution company and the municipal light plant to serve
33 their customers at the lowest identifiable and achievable total cost,
34 through any combination of joint facility ownership, additional
35 metering, contractual arrangements for delivery of power, and
36 new construction. If the Town of Lexington and the distribution
37 company agree on a plan for severance of property, the depart-
38 ment shall approve such plan within ninety days, upon a finding
39 that it is in the public interest. If the Town of Lexington and the
40 distribution company do not agree on such a plan, the department
41 shall approve within one hundred and eighty days of a petition for
42 adjudication, the severance plan that results in the lowest identifi-
43 able and achievable total cost to Massachusetts energy consumers.
44 The department shall also set terms and conditions for the transfer.
45 If any such property is subject to any mortgages, liens or other
46 encumbrances, the department in making its determination shall
47 provide for the deduction or withholding from the purchase price,
48 pending discharge, of such sum or sums as it deems proper.

49 (e) Within thirty days after such determination shall have been
50 made by the department, the distribution company shall tender a
51 good and sufficient deed of conveyance to the Town Clerk of the
52 Town of Lexington of the property required by the department to
53 be purchased, and shall then place said deed in escrow. The Town
54 of Lexington shall have one hundred and eighty days in which to
55 accept or reject said tender, or to appeal to the department any
56 aspect of the proposed deed of conveyance. If the Town of Lex-
57 ington accepts, it shall have a further period of one hundred and
58 eighty days in which to pay to the distribution company the price

59 determined as hereinbefore provided. Such acceptance or rejection shall be by vote of the Lexington town meeting, or by such town officer or body to which town meeting shall delegate such authority. In the event that the distribution company fails to comply with the preceding requirements, the price to be paid by the Town of Lexington will immediately be reduced by one percent of the price determined by the department. For every thirty additional days that pass prior to compliance of the distribution company with the preceding requirements, the price will be reduced by an additional one percent. Provided, however, that the department may waive such reduction if it finds that the delay in compliance was beyond the control of the distribution company.

71 (f) In connection with the exercise by the Town of Lexington of the option to purchase utility plant pursuant to this section, the Town of Lexington may elect to assume responsibilities for maintenance, placement and removal of jointly-owned poles or other facilities shared with other entities, or to purchase such facilities at the cost of the property less a reasonable allowance for depreciation and obsolescence. Except where the Town of Lexington makes such election, the Town of Lexington shall assume the rights and obligations of the distribution company, including under existing joint use agreements with respect to any person other than the distribution company controlling or using the poles, conduit or other jointly-owned or joint-use facilities, property and rights; provided that in the assumption of the rights and obligations of the previous owner by the Town of Lexington, the Town of Lexington shall in no way or form restrict, impede, or prohibit access that other parties would enjoy under the previous ownership.

87 (g) The municipal lighting plant established in Lexington pursuant to these provisions shall collect the energy conservation and renewables charges as established by the department under section 19 and section 20 of chapter 25 of the General Laws, and may use the resulting revenues for cost-effective demand-side management programs and to support the development and promotion of renewable energy projects in accordance with the provisions of section 4E of chapter 40J, and may elect to contribute to, and benefit from, programs operated by one or more electric distribution companies or the Massachusetts Renewable Energy Trust Fund, on the same basis as the distribution companies.

98 (h) The municipal lighting plant established in Lexington pur-
99 suant to these provisions shall allow customers to be served by
100 wholesale competitive electricity suppliers, and shall establish
101 rules to allow competitive supply while protecting the financial
102 stability of the municipal lighting plant.

103 (i) The municipal lighting plant established in Lexington pur-
104 suant to these provisions shall compensate the distribution com-
105 pany for transition costs as allowed by the department under
106 section 1G of chapter 164 of the General Laws, to the extent such
107 costs would have been charged to the customers served by the
108 municipal lighting plant. The municipal lighting plant may elect
109 whether to pay such costs as they are included to charges to retail
110 customers, to pay the distribution company the present value of
111 projected transition charges, or to pay the distribution company
112 the present value of projected transition charges with reconcilia-
113 tion to actual charges. The department shall resolve any disputes
114 between the municipal lighting plant and the distribution company
115 regarding transition costs.

116 (j) The department shall not allow as a cost of service any costs
117 the distribution company shall incur in connection with the pro-
118 ceedings outlined in this Section, in excess of the costs reasonably
119 necessary to provide information to the department as required in
120 paragraphs (a) through (c) of this Section, negotiate necessary
121 contractual arrangements, and represent the interests of its
122 remaining ratepayers in designing the severance plan as described
123 in paragraph (d) of this Section.

1 SECTION 2. Section 1B of chapter one hundred sixty-four of
2 the General Laws, as appearing in the 1998 Official Edition, is
3 hereby amended by adding to the end of paragraph (a) the
4 following:

5 except that the purchase by the Town of Lexington of the distri-
6 bution company's property within Lexington as is necessary, suit-
7 able for, and used in connection with the distribution of electricity
8 in Lexington, shall transfer all rights and obligations established
9 in this section to the Lexington municipal lighting plant.

1 SECTION 3. This act shall take effect upon its passage.