

SENATE NO. 1974

AN ACT TO REDUCE ELECTRIC AND NATURAL GAS COSTS AND PROMOTE ENERGY EFFICIENCY

*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 1Chapter 25 of the General Laws is hereby amended in section 19, by adding at the
2 end thereof: Beginning on March 1, 2007, and for a period of 10 years thereafter, the
3 department is authorized and directed to require a mandatory charge per therm for all consumers
4 of natural gas in the commonwealth, to fund energy efficiency activities including, but not
5 limited to, demand-side management programs. Said charge shall be in the amount of 30 mills
6 (\$0.03) per therm for calendar years 2007 through 2016, inclusive; provided, however, that in
7 authorizing such programs the department shall ensure that they are delivered in a cost-effective
8 manner utilizing competitive procurement processes to the fullest extent practicable. At least 20
9 per cent of the amount expended for residential demand-side management programs by each
10 distribution company in any year, and in no event less than the amount funded by a charge of 3
11 mills per therm, shall be spent on comprehensive low-income residential demand-side
12 management and education programs. The low-income residential demand-side management
13 and education programs shall be implemented through the low-income weatherization and fuel
14 assistance program network and shall be coordinated with all electric utility companies in the
15 commonwealth with the objective of standardizing implementation. On January 1, 2016, the
16 division of energy resources shall, in order to determine if energy investments shall continue
17 beyond calendar year 2016, review then-current market barriers, experience with competitive
18 markets, and related environmental and economic goals. If said division determines that the

19 continued operation of the programs delivers cost-effective, energy efficiency services, said
20 division shall file, with the clerk of the house of representatives of the general court, legislation
21 to extend for a time certain the authorization contained herein for such a charge to fund energy
22 efficiency activities.

23 SECTION 2. Chapter 25 of General Laws is hereby amended by adding, after section 21, the
24 following sections:

25 ENERGY RESOURCES PROCUREMENT BOARD

26 Section 22. Energy Resources Procurement Board

27 (a) There is established an Energy Resources Procurement Board which shall consist of
28 representatives appointed by the Governor of (i) a state-wide manufacturing association,
29 (ii) a state-wide business association, (iii) a chamber of commerce, (iv) residential
30 customers, (v) low income customers, (vi) an environmental organization
31 knowledgeable in energy efficiency and energy procurement programs, (vii) the
32 Division of Energy Resources, (viii) the Department of Environmental Protection, (ix)
33 and the Attorney General. Representatives of the Department of Telecommunications
34 and Energy and of each of the electric and natural gas distribution companies shall be
35 non-voting, ex-officio members of the board. The board may retain expert consultants
36 provided such consultants may not have any contractual relationship with an electric or
37 natural gas distribution company or electricity or natural gas provider. The board shall
38 annually submit to the Department of Telecommunications and Energy a proposal
39 regarding the level of funding required for the discharge of its duties, which proposal
40 shall be approved by the department either as submitted or as modified by the
41 department.

42 Section 23. Comprehensive Electric Resources Procurement Plan

43 (a) The electric distribution companies, in coordination with the board, shall develop a
44 comprehensive plan for the procurement of electric energy resources, including, but not
45 limited to, conventional and renewable generating facilities, energy efficiency, load
46 management, demand response, combined heat and power facilities, and distributed
47 generation, to meet the projected requirements of their customers in a manner which
48 minimizes the cost of such resources to customers over time consistent with the state's
49 environmental goals and standards. On or before October 1, 2007, and every three years
50 thereafter, the companies will submit to the board an assessment of (i) the energy and
51 capacity requirements of the customers for each of the next ten years, (ii) the impact of
52 current and projected environmental standards, including, but not limited to, those
53 related to greenhouse gas emissions and the federal Clean Air Act goals, and how
54 different resources could assist in achieving those standards and goals, (iii) energy
55 security and economic risks associated with potential energy resources, and (iv) the
56 estimated lifetime cost and availability of potential energy resources. The board will
57 review the assessment and provide comments to the companies within two months
58 thereafter.

59 (b) Based on the assessment and the comments of the board, the electric distribution
60 companies shall submit proposed comprehensive electric resources procurement plan(s)
61 to the board within three months after receiving the comments of the Board. Resource
62 needs shall first be met through all available energy efficiency and demand reduction
63 resources that are cost effective, reliable and feasible. The plan shall specify (i) the total
64 amount of energy and capacity resources that are needed to meet the requirements of all

65 customers, (ii) the extent to which demand side measures, including efficiency,
66 conservation, demand response, and load management can cost-effectively meet these
67 needs, (iii) needs for generating capacity and transmission and distribution
68 improvements, (iv) how the development of said resources will reduce and stabilize the
69 costs of electricity to consumers and (v) the manner in which each of the proposed
70 resources should be procured, including the optimal contract periods for various
71 resources (vi) the manner in which the plan will further air quality goals and reduce
72 greenhouse gas emissions. The plan shall consider: (a) approaches to maximize the
73 impact of demand side measures, (b) the extent to which generation needs can be met by
74 renewable and combined heat and power facilities and by the impact of regional market
75 incentives, (c) types and locations for generation that would optimize the generation
76 portfolio within the state, (d) fuel types, diversity, availability, firmness of supply, and
77 security and environmental impacts thereof, including impacts on meeting the state's
78 greenhouse gas emission goals; (e) reliability, peak load and energy forecasts, system
79 contingencies, and existing resource availabilities; (f) import limitations and the
80 appropriate reliance on such imports; (g) the costs and benefits of options for the
81 ownership of energy resources, including ownership by an electric distribution company,
82 (h) if it is in the best interest of customers, how new resources could be integrated into
83 the standard service provided pursuant to Sec. XXX of the general laws; and (i) the
84 impact of the electric resources procurement plan on the costs of electric customers,
85 including, but not limited to, effects on capacity and energy costs, rate stability, and
86 affordability for low-income customers. The electric resources procurement plan shall
87 include a summary of the savings secured by the plan for electric customers.

88 (c) The proposed electric resources procurement plan shall be reviewed by the board
89 and approved as submitted or as modified by the board within four months after receipt.
90 The companies shall provide any additional information requested by the board which is
91 relevant to the consideration of the electric resources procurement plan. The board shall
92 submit the approved plan, together with a statement of any unresolved issues to the
93 Department of Telecommunications and Energy. The department shall consider the plan
94 in an uncontested docket and shall provide an opportunity for interested parties to submit
95 comments regarding the plan. Not later than one hundred twenty days after submission
96 of the plan, the department shall approve or modify and approve the plan.

97 Section 24. Implementation of Comprehensive Electric Resources Procurement Plan

98 (a) The department shall implement the electric resources procurement plan by (i)
99 issuing requests for proposals to meet specified electric energy resource needs set forth
100 in the plan or by directing the Division of Energy Resources or the electric distribution
101 companies to issue such requests for proposals, (ii) directing the electric distribution
102 companies to incorporate additional demand-side measures set forth in the plan into the
103 comprehensive conservation and load management plan prepared pursuant to Sec. 28 of
104 this chapter for review by the Energy Efficiency Board, (iii) directing the distribution
105 companies to submit proposals for specific transmission, distribution or generating
106 facility improvements or projects set forth in the plan, or (iv) taking other actions within
107 its authority to implement the electric resources procurement plan.

108 (b) If the department determines to implement provisions of the plan by issuing one or
109 more requests for proposals, it shall conduct a contested case proceeding to develop and
110 issue the request. The department shall publish requests for proposals under this section

111 in one or more newspapers or periodicals, as selected by the department and shall post
112 such request for proposals on its web site. The department may retain the services of a
113 third-party entity with experience in the area of energy procurement to oversee the
114 development of the requests for proposals and to assist the department in its approval of
115 proposals pursuant to this section. The department may require the electric distribution
116 companies to enter into contracts with entities whose proposals are approved by the
117 department. The provisions of such contracts shall be consistent with the electric
118 resources procurement plan and shall be approved by the department.

119 (c) The electric distribution companies shall provide quarterly implementation reports to
120 the Board commencing two and half months after the approval of the electric resources
121 procurement plan by the department. Such quarterly reports shall include: description of
122 the extent to which the implementation of the plan is meeting the elements specified in
123 the plan as required by Section 24 (b) of this chapter and a summary of the savings
124 secured by the implementation thus far of the plan for electric customers. The quarterly
125 reports shall also include the targets for each electric energy resource included in the
126 plan approved by the department and the achieved percentages to date for each electric
127 energy resource including the achieved percentages for efficiency, distributed
128 generation, demand response, combined heat and power and renewables. The electric
129 distribution companies shall provide annual implementation reports commencing one
130 year after the approval of the electric resources procurement plan by the department that
131 include all the same elements as the quarterly reports to the department, the board, and
132 General Assembly.

133 (d) Effective January 1, 2008, until the comprehensive electric procurement plan is

134 implemented by the department, the electric distribution companies shall include all
135 available energy efficiency and demand reduction resources that are cost effective,
136 reliable and feasible in a comprehensive conservation and load management plan
137 prepared pursuant to Sec. 28 of this chapter for review by the Energy Efficiency Board.

138 (e) All costs associated with the development and implementation of the electric plan
139 which are not otherwise directly allocable shall be recoverable through electric
140 distribution rates.

141 (f) The limitation on the assessment of additional charges relative to energy efficiency
142 programs contained in Chapter 25, Sec. 19 of the General Laws shall not apply to
143 charges required to implement the comprehensive electric procurement plan.

144 Section 25. Comprehensive Natural Gas Resources Procurement Plan.

145 (a) The natural gas distribution companies, in coordination with the Energy Resources
146 Procurement Board, shall develop a comprehensive plan for the procurement of natural
147 gas energy resources, including, but not limited to, conventional supply and storage
148 contracts, energy efficiency, load management, and combined heat and power facilities
149 to meet the projected requirements of their customers in a manner which minimizes the
150 cost of such resources to customers over time consistent with the state's environmental
151 goals and standards. On or before October 1, 2008, and every three years thereafter, the
152 companies will submit to the board an assessment of (i) the volumetric natural gas and
153 capacity requirements of the customers for each of the next ten years, (ii) the impact of
154 current and projected environmental standards, including, but not limited to, those
155 related to greenhouse gas emissions and the federal Clean Air Act goals, and how
156 different resources could assist in achieving those standards and goals, (iii) energy

157 security and economic risks associated with potential energy resources, and (iv) the
158 estimated lifetime cost and availability of potential energy resources. The board will
159 review the assessment and provide comments to the companies within two months
160 thereafter.

161 (b) Based on the assessment and the comments of the board, the natural gas distribution
162 companies shall submit a proposed comprehensive natural gas resources procurement
163 plan to the board within three months after receiving the comments of the Board.

164 Resource needs shall first be met through all available energy efficiency and demand
165 reduction resources that are cost effective, reliable and feasible. The plan shall specify
166 (i) the total amount of volumetric natural gas and capacity resources that are needed to
167 meet the requirements of all customers, (ii) the extent to which demand side measures,
168 including efficiency, conservation, and load management can cost-effectively meet these
169 needs, (iii) needs for transmission and distribution improvements, (iv) how the
170 development of said resources will reduce and stabilize the costs of natural gas
171 consumers; (v) the manner in which each of the proposed resources should be procured,
172 including the optimal contract periods for various resources and (vi) the manner in
173 which the plan will further air quality goals and reduce greenhouse gas emissions. The
174 plan shall consider: (a) approaches to maximizing the impact of demand side measures,
175 (b) reliability, peak demand and energy forecasts, system contingencies, and existing
176 resource availabilities; (c) pipeline and other supply limitations; and (d) the impact of
177 the natural gas resources procurement plan on the costs of natural gas customers,
178 including, but not limited to, effects on volumetric and capacity costs, rate stability, and
179 affordability for low-income customers. The natural gas resources procurement plan

180 shall include a summary of the savings secured by the plan for natural gas customers.

181 (c) The proposed natural gas resources procurement plan shall be reviewed by the board

182 and approved as submitted or as modified by the board within four months after receipt.

183 The companies shall provide any additional information requested by the board which is

184 relevant to the consideration of the natural gas resources procurement plan. The board

185 shall submit the approved plan, together with a statement of any unresolved issues to the

186 Department of Telecommunications and Energy. The department shall consider the plan

187 in an uncontested docket and shall provide an opportunity for interested parties to submit

188 comments regarding the plan. Not later than one hundred twenty days after submission

189 of the plan, the department shall approve or modify and approve the plan.

190 Section 26. Implementation of the Comprehensive Natural Gas Resources Procurement

191 Plan

192 (a) The department shall implement the natural gas resources procurement plan by (i)

193 issuing requests for proposals to meet specified natural gas energy resource needs set

194 forth in the plan or by directing the Division of Energy Resources or the natural gas

195 distribution companies to issue such requests for proposals, (ii) directing the natural gas

196 distribution companies to incorporate additional demand-side measures set forth in the

197 plan into the comprehensive conservation and load management plan prepared pursuant

198 to Sec. 28 of this chapter for review by the Energy Efficiency Board, (iii) directing the

199 distribution companies to submit proposals for specific transmission, distribution or

200 generating facility improvements or projects set forth in the plan, or (iv) taking other

201 actions within its authority to implement the natural gas resources procurement plan.

202 (b) If the department determines to implement provisions of the plan by issuing one or

203 more requests for proposals, it shall conduct a contested case proceeding to develop and
204 issue the request. The department shall publish requests for proposals under this section
205 in one or more newspapers or periodicals, as selected by the department and shall post
206 such request for proposals on its web site. The department may require the natural gas
207 distribution companies to enter into contracts with entities whose proposals are approved
208 by the department. The provisions of such contracts shall be consistent with the natural
209 gas resources procurement plan and shall be approved by the department.

210 (c) The natural gas distribution companies shall provide quarterly implementation
211 reports to the Board commencing two and half months after the approval of the natural
212 gas resources procurement plan by the department. Such quarterly reports shall include:
213 description of the extent to which the implementation of the plan is meeting the elements
214 specified in the plan as required by Section 26 (b) of this chapter and a summary of the
215 savings secured by the implementation thus far of the plan for electric customers. The
216 quarterly reports shall also include the targets for each natural gas energy resource
217 included in the plan approved by the department and the achieved percentages to date
218 for each natural gas energy resource including but not limited to efficiency and load
219 management. The natural gas distribution companies shall provide annual
220 implementation reports commencing one year after the approval of the natural gas
221 resources procurement plan by the department hat include all the same elements as the
222 quarterly reports to the department, the board, and the Massachusetts General Court.

223 (d) Effective January 1, 2008, until the comprehensive natural gas procurement plan is
224 implemented by the department, the natural gas distribution companies shall include all
225 available energy efficiency and demand reduction resources that are cost effective,

226 reliable and feasible in a comprehensive conservation and load management plan
227 prepared pursuant to Sec. 28 of this chapter for review by the Energy Efficiency Board,
228 provided that funding for such energy efficiency and demand reduction resources shall
229 be not less than 20 mills per therm for all consumers of natural gas in the
230 commonwealth.

231 (e) All costs associated with the development and implementation of the natural gas
232 plan which are not otherwise directly allocable shall be recoverable through natural gas
233 distribution rates.

234 Section 27. Aligning Utility Incentives with Reducing Consumer Costs and Increased
235 Energy Efficiency

236 (a) The department shall ensure that estimates of sales or demand elasticity do not result
237 in material over or undercollections by distribution, transmission, and gas companies
238 organized and doing business in the commonwealth pursuant to the provisions of this
239 chapter, and that such companies are compensated in a manner that eliminates the extent
240 to which the financial success of the companies is directly linked to increased sales to
241 end use customers or is threatened by decreases in sales. On or after the issuance of a
242 final decision in a proceeding on amendments to rate schedules for any electric or
243 natural gas company, but not later than January 1, 2009, any purchased natural gas
244 adjustment clause or energy adjustment clause approved by the department for such
245 company shall include a provision that requires the electric or natural gas company to
246 charge or reimburse customers for any under-recovery or over-recovery of overhead and
247 fixed costs due solely to the deviation of actual retail sales of electricity or natural gas
248 from projected retail sales of electricity or natural gas.

249 (b) On or before, July 1, 2008, the department shall conduct an uncontested docket to
250 establish a performance based incentive plan which allows for additional compensation
251 for each electric and natural gas distribution company based on the level of success in
252 mitigating and reducing the cost and variability of electric and natural gas services for
253 customers through implementation of the electric and natural gas procurement plans and
254 shall provide an opportunity for interested parties to submit comments regarding the
255 plan.

256 Section 28. Energy Efficiency Program Oversight

257 (a) The Division of Energy Resources shall appoint and convene an Energy Efficiency
258 Board which shall include representatives of: (i) a state-wide manufacturing association,
259 (ii) a state-wide business association, (iii) a chamber of commerce, (iv) a heating oil
260 industry representative (v) residential customers, (vi) low income customers, (vii) an
261 environmental organization knowledgeable in energy efficiency and energy procurement
262 programs, (viii) the Division of Energy Resources, (ix) the Department of
263 Environmental Protection, (x) a representative of the Community Action Programs, (xi)
264 and the Attorney General. Representatives of the Department of Telecommunications
265 and Energy and of each of the electric and natural gas distribution companies shall be
266 non-voting, ex-officio members of the board.

267 (b)(1) The Energy Efficiency Board shall advise and assist the electric and natural gas
268 distribution companies in the development and implementation of comprehensive plans,
269 which plans shall be approved by the Department of Telecommunications and Energy, to
270 implement cost-effective energy efficiency programs and market transformation
271 initiatives. The plan shall be consistent with the comprehensive procurement plans

272 approved by the Energy Resources Procurement Board pursuant to sections 23 and 25 of
273 this chapter at the time of submission to the department. Each program contained in the
274 plan shall be either accepted or rejected by the Energy Efficiency Board prior to
275 submission to the department for approval. The Energy Efficiency Board shall, as part
276 of its review, examine opportunities to offer joint programs providing similar efficiency
277 measures that save more than one fuel resource or otherwise to coordinate programs
278 targeted at saving ore than one fuel resource. Any costs for joint programs shall be
279 allocated equitably among the efficiency programs.

280 (2) Programs included in the plan developed under subdivision (1) of this section shall
281 be screened through cost-effectiveness testing which compares the value and payback
282 period of program benefits to program costs to ensure that programs are designed to
283 obtain energy savings and system benefits whose value is greater than the costs of the
284 programs. Program cost-effectiveness shall be reviewed annually, or otherwise as is
285 practicable. If a program is determined to fail the cost-effectiveness test as part of the
286 review process, it shall either be modified to meet the test or shall be terminated. On or
287 before March 1, 2008, and annually thereafter, the board shall provide a report to the
288 Massachusetts House and Senate Ways and Means Committees that documents
289 expenditures and fund balances and evaluates the cost-effectiveness of such programs
290 conducted in the preceding year.

291 (3) Programs included in the plan developed under subdivision (1) of subsection (d) of
292 this section may include, but not be limited to: (A) conservation and load management
293 programs, including programs that benefit low-income individuals; (B) research,
294 development and commercialization of products or processes which are more energy-

295 efficient than those generally available; (C) development of markets for such products
296 and processes; (D) support for energy use assessment, real-time monitoring systems,
297 engineering studies and services related to new construction or major building
298 renovation; (E) the design, manufacture, commercialization and purchase of energy-
299 efficient appliances and heating, air conditioning and lighting devices; (F) program
300 planning and evaluation; (G) joint fuel efficiency initiatives programs targeted at
301 reducing consumption of more than one fuel resource; and (H) public education
302 regarding efficiency. Such support may be by direct funding, manufacturers' rebates,
303 sale price and loan subsidies, leases and promotional and educational activities. The plan
304 shall also provide for expenditures by the Energy Efficiency Board for the retention of
305 expert consultants and reasonable administrative costs provided such consultants shall
306 not be employed by, or have any contractual relationship with, an electric or natural gas
307 distribution company. Such costs shall not exceed five per cent of the total costs of the
308 plans.

309 Section 29. Minimum Energy Efficiency and Demand Response Resource Standard.
310 Every retail electric supplier shall provide a minimum percentage of kilowatt-hours sales
311 to end-use customers in the commonwealth from new energy efficiency and demand
312 reduction resources according to the following schedule: (i) an additional 1 per cent of
313 sales by December 31, 2008; (ii) an additional 1 per cent of sales every year thereafter
314 until December 31, 2018, or a date determined by the Department of
315 Telecommunications and Energy in consultation with the Division of Energy Resources
316 and the Energy Resources Procurement Board, whichever is later. This requirement for
317 a minimum percentage of new energy efficiency and demand reduction resources is

318 intended to establish a minimum procurement of these new resources, and shall not
319 relieve any retail electric supplier from the obligation to procure all energy efficiency
320 and demand reduction resources that are cost effective, reliable and feasible pursuant to
321 the requirements of this chapter, including sections 23 and 24 herein. For the purposes
322 of this section, new energy efficiency and demand reduction resources shall be those
323 energy efficiency and demand response resources that were not procured at any time
324 prior to December 31, 2006.

325 Section 30. Fuel Oil Efficiency

326 (a) The Energy Efficiency Board shall develop programs to provide energy efficiency
327 services for home heating oil consumers. The programs shall be developed with advice
328 and input from heating oil dealers and service technicians. The Board shall ensure that
329 input is solicited from heating oil dealers and service technicians located in different
330 regions of the state.

331 (b) The Board will issue a request for proposals and select a program administrator(s) to
332 develop and implement programs for cost effective heating and fuel oil efficiency. The
333 elements of the plan, approval process, and implementation will be consistent with
334 Chapter 25, Section 28.

335 (c) A not for profit corporation shall be created, the Fuel Oil Efficiency Trust, with a
336 board comprised of 5 representatives elected from the membership of the Board by the
337 Board to collect and administer monies for heating and fuel oil conservation. Upon
338 approval of an efficiency plan by the Board, the Fuel Oil Efficiency Trust shall pay the
339 approved amount to the program administrator.

340 (d) The state shall impose a one cent per gallon tax on the sale of number 2 fuel oil (fuel
341 and heating oil, use in electric generation and transportation exempt) at the wholesale
342 level which shall be paid to the Fuel Oil Efficiency Trust. The state will create a
343 corresponding one cent per gallon tax credit for wholesale distributors of fuel oil when
344 they contribute one cent per gallon on the sale of number 2 fuel oil to the Fuel Oil
345 Efficiency Trust.

346 Section 31. Increased supply from Combined Heat and Power

347 (a) The Department of Telecommunications and Energy shall develop a program
348 utilizing incentives, competitive contracts, or a portfolio standard, after a review of the
349 most cost-effective mechanisms, to increase the generation of electricity from combined
350 heat and power systems in the state.

351 (b) Eligible combined heat and power systems shall be new, operational after January 1,
352 2007, and achieve an efficiency of seventy five percent or greater on an annual basis,
353 with annual reporting to the Department.

354 (c) The program or policies developed by the Department shall supply one percent of the
355 states total electric supply in 2010, and increase by one percent per year to six percent in
356 2015. The Department and the Division of Energy Resources shall assess the potential
357 to increase the combined heat and power target in the years beyond 2015 and the
358 Department shall have the authority to increase the percentages at any time if it is in the
359 state's economic and environmental interest to do so. The programs or policies shall be
360 funded through electric distribution rates.

361 SECTION 3: Section 1E, subsection (a) of Chapter 164 is hereby amended by adding after the
362 word "outages", the following new text:-

363 “ successful implementation of the electric and natural gas resources cost procurement
364 plans, effective delivery of energy efficiency and demand side management,”
365 SECTION 4: Section 1E, subsection (a) of Chapter 164 is hereby amended by adding after the
366 phrase “customer satisfaction”, the following :- “,”