

HOUSE No. 4198

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, June 25, 2012.

The committee on Ways and Means, to whom was referred the Senate Bill relative to competitively priced electricity in the Commonwealth (Senate, No. 2214), reports recommending that the same ought to pass with an amendment striking all after the enacting clause and inserting in place thereof the text contained in House document numbered, No. 4198.

For the committee,

BRIAN S. DEMPSEY.

HOUSE No. 4198

The Commonwealth of Massachusetts

—
In the Year Two Thousand Twelve
—

By striking out all after the enacting clause and inserting in place thereof the following:—

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

3 SECTION 2. Said chapter 25, as so appearing, is hereby amended by inserting after section 19
4 the following section:-

5 Section 19A. There shall be a voluntary accelerated rebate pilot program which shall be made
6 available to the 5 largest commercial or industrial electric users and 5 largest commercial or
7 industrial gas users in each utility service territory. Multiple locations of the same customer shall
8 not be aggregated for purposes of meeting this threshold. Eligible customers electing to
9 participate in the accelerated pilot program shall notify the appropriate electric distribution
10 company or municipal aggregator, hereafter known as the program administrator, on or before
11 January 31 of each calendar year during the pilot program. Customers electing to participate
12 shall be eligible for financial support of up to 100 per cent of the cost for qualified energy

13 efficiency measures as determined by the program administrator using criteria included in the
14 efficiency investment plans established by section 21. Total rebate levels for participating
15 customers in any year of the pilot program shall not exceed 90 per cent of the amount the
16 customer was charged for energy efficiency programs for calendar year 2012. A participating
17 customer shall not aggregate a rebate from any year in which the customer does not participate in
18 the pilot. Qualified energy efficiency measures shall include cost-effective energy efficiency
19 program measures approved by the applicable program administrator recognized by the
20 department using the criteria under said section 21; provided, however, that up to 15 per cent of
21 any accelerated rebate may be used for other improvements that support energy efficiency
22 improvements made under a program approved by the department or emission reductions,
23 including, but not limited to infrastructure improvements, metering, circuit level technology and
24 software. Customers opting to receive an accelerated rebate shall be ineligible for other energy
25 efficiency program rebates under said section 21 during the period in which they participate in
26 the pilot program. All qualified installations shall be substantially completed by the end of the
27 program, and shall be subject to verification and review by the department. Electric and gas
28 distribution companies shall recalibrate their energy efficiency goals, as reviewed by the energy
29 efficiency advisory council under subsection (c) of said section 21, to reflect the rebates provided
30 to any customer electing to participate in this pilot program.

31 SECTION 3. Section 19A of said chapter 25 is hereby repealed.

32 SECTION 4. Section 21 of said chapter 25, as appearing in the 2010 Official Edition, is hereby
33 further amended by striking out, in lines 114, 115 and 118, the words “Massachusetts
34 Technology Park Corporation” and inserting in place thereof, in each instance, the following
35 words:- Massachusetts Clean Energy Technology Center.

36 SECTION 5. Section 22 of said chapter 25, as so appearing, is hereby amended by striking out,
37 in line 2, the figure “11” and inserting in place thereof the following figure:- 15.

38 SECTION 6. Said section 22 of said chapter 25, as so appearing, is hereby amended by striking
39 out, in line 9, the words “and (11) the department of energy resources” and inserting in place
40 thereof the following words:- (11) the Massachusetts Non-profit Network, (12) a city or town in
41 the commonwealth, (13) the real estate industry, (14) a business employing less than 10 persons
42 located in the commonwealth that performs energy efficiency services and (15) the department
43 of energy resources.

44 SECTION 7. Said section 22 of said chapter 25, as so appearing, is further amended by adding,
45 in line 19, after the word “industry,” the words:- , 1 from ISO New England

46 SECTION 8. Section 11F of chapter 25A, as so appearing, is hereby amended by striking out, in
47 line 35, the words “clauses (6) and (7)” and inserting in place thereof the following words:-
48 clause (6).

49 SECTION 9. Said section 11F of said chapter 25A, as so appearing, is hereby further amended
50 by striking out, in lines 63 and 65, the figure “25” and inserting in the place thereof, in each
51 instance, the following figure:- 30.

52 SECTION 10. Section 2B of chapter 59 of the General Laws, as so appearing,, is hereby
53 amended by inserting after the words “benefit of”, in line 2, the following words:- a
54 governmental entity, including.

55 SECTION 11. Said section 2B of said chapter 59, as so appearing, is hereby further amended by
56 inserting after the word “public”, in line 37, the following words:- , to a use, lease or occupancy

57 for renewable generation facilities, defined as eligible under subsection (c) of section 11F of
58 chapter 25A, from which not less than 50 per cent of the energy output is assigned to either the
59 municipality in which the facility is located or to the governmental entity that owns the land on
60 which the facility is located,.

61 SECTION 12. Section 5 of said chapter 59, as so appearing, is hereby amended by striking out
62 clause forty-fifth and inserting in place thereof the following clause:-

63 Forty-fifth, Any solar or wind powered system that is capable of producing not more than 125
64 per cent of the annual energy needs of the property upon which it is located, including
65 contiguous property under the same ownership and is behind the meter serving the energy needs
66 of that property. All other solar and wind powered systems shall also be exempt provided that
67 the owner has made to the city or town where the system is located a payment in lieu of taxes,
68 equal to 5 per cent of the system's gross electricity sales, including receipt of net metering
69 credits as defined in section 138 of chapter 164, in the preceding calendar year. For years 1 and
70 2, the payments shall be annualized based on gross estimated sales derived from a formula to be
71 determined by the department of revenue, in consultation with the department of energy
72 resources. An exemption under this clause shall be allowed only for a period of 20 years from
73 the date of operation of such system. This clause shall not apply to projects developed under
74 section 1A of chapter 164.

75 SECTION 13. Subsection (b) of section 38H of said chapter 59, as so appearing, is hereby
76 amended by inserting after the first sentence the following sentence:- For purposes of this
77 section, a generation facility shall not include a facility powered by sun or wind to generate
78 electricity.

79 SECTION 14. Section 1A of chapter 164, as so appearing, is hereby amended by striking out, in
80 lines 194 and 195, the words “before January 1, 2009, and 50 megawatts of such a facility after
81 January 1, 2010” and inserting in place thereof the following words:- provided further, that .
82 a distribution company shall not construct any new generation facilities that produce solar energy
83 after June 30, 2014.

84 SECTION 15. Section 94 of said chapter 164, as so appearing, is hereby amended by striking out
85 the first paragraph and inserting in place thereof the following paragraphs:-

86 Gas and electric companies shall file with the department schedules, not less frequently
87 than every 15 years, under a filing schedule as prescribed by the department and in such form as
88 the department shall prescribe, showing all rates, prices and charges to be thereafter charged or
89 collected within the commonwealth for the sale and distribution of gas or electricity, together
90 with all forms of contracts to be used in connection with such schedules; provided, however, that
91 the requirement to file a schedule with the department not less frequently than every 15 years
92 shall not apply to a company or corporation as defined in section 1 of chapter 165; provided
93 further, that the department may lengthen or shorten the first rate filing period by no more than
94 two years in order to create an appropriate staggered schedule among all the distribution
95 companies. Rates, prices and charges in such a schedule may be changed by any such company
96 by filing a schedule setting forth the changed rates, prices and charges; provided, however, that,
97 until the effective date of any such change, no different rate, price or charge shall be charged,
98 received or collected by the company filing such a schedule from those specified in the schedule
99 then in effect; provided, further, that a company may:

100 (i) continue to charge, receive and collect rates, prices and charges in accordance with a
101 contract lawfully entered into before the schedule takes effect, or until the department otherwise

102 orders, after notice to the company, a public hearing and determination that the public interest so
103 requires; and

104 (ii) sell and distribute gas or electricity under a special contract hereafter made at rates or
105 prices differing from those contained in a schedule in effect; provided, further, that a copy of the
106 contract, in each instance, is filed with the department, except that a contract of a company
107 whose sole business in the commonwealth is the supply of electricity need not be filed except as
108 may be required by the department.

109 Whenever the department receives notice of any changes proposed to be made in any
110 schedule filed under this chapter which represent a general increase in rates, prices and charges
111 for gas or electric service, it shall notify the attorney general immediately and shall hold a public
112 hearing and make an investigation as to the propriety of such proposed changes after first
113 causing notice of the time, place and the subject matter of such hearing to be published at least
114 21 days before such hearing in such local newspapers as the department may select. Unless the
115 department otherwise authorizes, the rates, prices and charges set forth in such a schedule shall
116 not become effective until the first day of the month next after the expiration of 14 days from the
117 filing of the petition. Such rates, prices and charges shall apply to the consumption shown by
118 meter readings made after the effective date of such rates, prices and charges, unless the
119 department otherwise orders. So much of said schedules shall be printed in such form and
120 distributed and published in such manner as the department may require.

121 The department shall be authorized to add resources as needed to implement this section,
122 the costs of which shall be assessed directly on the gas and electric distribution companies on a
123 proportional basis, based on historical distribution revenues.

124 SECTION 16. Section 94G½ of said chapter 164 is hereby repealed.

125 SECTION 17. Said chapter 164, as so appearing, is hereby amended by inserting, after section
126 94H, the following section:-

127 Section 94I. In each base distribution rate proceeding conducted by the department pursuant to
128 section 94, the department shall design base distribution rates using a revenue neutral cost-
129 allocation method that is based on equalized rates of return for each customer class; provided,
130 however, that nothing in this section shall impact discounts for any low income customer class
131 created by section 1F of this chapter. If, as a result of this section, the rate paid by any one
132 customer class is impacted by more than 10 per cent, the department shall phase-in the resulting
133 new rate over a period of not less than 3 years.

134 SECTION 18. Said chapter 164 is hereby further amended by striking out section 96, as so
135 appearing, and inserting in place thereof the following section:-

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

138 “Control”, the power, through direct or indirect ownership of a majority of the outstanding
139 voting securities of a gas or electric company or of a holding company thereof, to direct or cause
140 the direction of the management and policies of a gas or electric company or a holding company
141 thereof or the ability to effect a change in the composition of its board of directors or otherwise;
142 provided, however, that control shall not be considered to arise solely from a revocable proxy or
143 consent given to a person in response to a public proxy or consent solicitation made under the
144 applicable rules and regulations of the Securities Exchange Act of 1934 unless a participant in
145 said solicitation has announced an intention to effect a merger or consolidation with,

146 reorganization or other business combination or extraordinary transaction involving such gas or
147 electric company or the holding company.

148 “Foreign electric company”, an electric company with a domicile, principal place of business,
149 headquarters or place of incorporation outside of the commonwealth, but which may have shared
150 costs with a gas or electric company subject to this chapter that may be allocated by a holding
151 company after an acquisition of control; provided, however, that such allocated costs are greater
152 than 5 per cent of the operating expenses of such company..

153 “Foreign gas company”, a gas company with a domicile, principal place of business,
154 headquarters or place of incorporation outside of the commonwealth, but which may have shared
155 costs with a gas or electric company subject to this chapter that may be allocated by a holding
156 company after an acquisition of control; provided, however, that such allocated costs are greater
157 than 5 per cent of the operating expenses of such company.

158 “Holding company”, any corporation, association, partnership, trust or similar organization, or
159 person which, regardless of the locus of the domicile, principal place of business, headquarters or
160 place of incorporation of such entity, either alone or in conjunction and under an arrangement or
161 understanding with 1 or more other corporations, associations, partnerships, trusts or similar
162 organizations, or persons, directly or indirectly, controls, or seeks to acquire control over, and
163 may cause costs to be allocated to a gas or electric company.

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

167 (b) Companies, except steam distribution companies, subject to this chapter, or holding
168 companies may consolidate or merge with one another or may sell and convey all or
169 substantially all of their properties to another of such companies. Such companies or holding
170 companies may purchase such properties if: (i) the purchase, sale, consolidation or merger, and
171 the terms thereof, have been approved, at meetings called for the purpose of approving such sale,
172 consolidation or merger, in the case of any contracting company organized under the laws of the
173 commonwealth, by a vote of the holders of at least two-thirds of each class of such company's
174 stock outstanding and entitled to vote on the question , and, in the case of any contracting
175 company organized in a jurisdiction other than the commonwealth, by a vote of the holders of at
176 least that percentage of such company's outstanding stock required for approval of the question
177 under the laws of such jurisdiction; and (ii) the department, after notice and a public hearing, has
178 determined that such purchase and sale, consolidation or merger, and the terms thereof, are
179 consistent with the public interest. In determining whether a purchase and sale, consolidation or
180 merger is consistent with the public interest, the department shall, at a minimum, consider:
181 potential rate changes, if any; the long term strategies that will assure a reliable, cost effective
182 energy delivery system; any anticipated interruptions in service; or other factors which may
183 negatively impact customer service.

184 (c) Gas, electric or holding companies, subject to this chapter, shall not enter into any
185 transaction or otherwise take any action which would result in a change of its control over any
186 gas, electric or holding company, or foreign gas or electric company unless: (i) the terms thereof,
187 have been approved, at meetings called therefor, in the case of any contracting company
188 organized under the laws of the commonwealth, by a vote of the holders of at least two-thirds of
189 each class of such company's stock outstanding and entitled to vote on the question, and, in the

190 case of any contracting company organized in a jurisdiction other than the commonwealth, by a
191 vote of the holders of at least that percentage of such company's outstanding stock required for
192 approval of the question under the laws of such jurisdiction; and (ii) the department, after notice
193 and a public hearing, has determined that such transaction or action, and the terms thereof, are
194 consistent with the public interest; provided, however, that in making such a determination the
195 department shall, at a minimum, consider: potential rate changes, if any; the long term strategies
196 that will assure a reliable, cost effective energy delivery system; any anticipated interruptions in
197 service; or other factors which may negatively impact customer service.

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

201 (e) Nothing in this section shall apply to a wholesale generation company.

202 SECTION 19. Section 138 of said chapter 164, as so appearing, is hereby amended by inserting
203 after the definition of "Agriculture" the following definition:-

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

209 SECTION 20. Said section 138 of said chapter 164, as so appearing, is hereby further amended
210 by striking out, in lines 20-23, the words "and provided further, that credit for a Class I net
211 metering facility not using solar or wind as its energy source shall be the average monthly

212 clearing price at the ISO-NE” and inserting in place thereof the following words:- and, provided
213 further, that credit for a Class I net metering facility that is not an agricultural net metering
214 facility or that is not using solar, anaerobic digestion or wind as its energy source shall be the
215 average monthly clearing price at the ISO-NE.

216 SECTION 21. Said section 138 of said chapter 164, as so appearing, is hereby further amended
217 by inserting after the word “facility” , in lines 36 and 54, the second time it appears, in each
218 instance, the following words:- , an anaerobic digestion net metering facility.

219 SECTION 22. Said section 138 of said chapter 164, as so appearing, is hereby further amended
220 by inserting after the word “metering”, in line 60, the first time it appears, the following words:- ,
221 anaerobic digestion net metering.

222 SECTION 23. Section 139 of said chapter 164, as so appearing, is hereby amended by striking
223 out, in line 68, the figure “1” and inserting in place thereof the following figure:- 3.

224 SECTION 24. Said section 139 of said chapter 164, as so appearing, is hereby further amended
225 by striking out, in line 70, the figure “2” and inserting in place thereof the following figure:- 3.

226 SECTION 25. Said section 139 of said chapter 164, as so appearing, is hereby further amended
227 by inserting after the word “facility”, in line 76, the following words:- or an anaerobic digestion
228 net metering facility.

229 SECTION 26. Said section 139 of said chapter 164, as so appearing, is hereby amended by
230 adding the following subsection:-

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

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

236 (2) the distribution company determines that the facility's average kilowatt-hour
237 generation will not exceed 100 per cent of the host customer's average kilowatt-hour usage over
238 the course of a calendar year. The determination shall be based on usage data from the previous
239 calendar year and shall be made before the facility begins to generate electricity. If such data is
240 not available, the distribution company may use a forecast of the customer's average usage over
241 the course of a calendar year. The department may review any such determination upon written
242 complaint from the host customer.

243 SECTION 27. Section 7 of chapter 465 of the acts of 1980 is hereby amended by inserting after
244 subsection (g) the following subsections:-

245 (h) If a utility includes, in manner prescribed by the department, the Massachusetts
246 residential conservation service as part of an efficiency investment plan prepared and submitted
247 to the department in accordance with Section 21 of Chapter 25 of the General Laws, the utility
248 shall be deemed to have satisfied the requirements of subsection (b).

249 (i) For any utility that includes the Massachusetts residential conservation service as part
250 of an efficiency investment plan prepared and submitted to the department in accordance with
251 Section 21 of Chapter 25 of the General Laws, the department shall review it in accordance with
252 Section 21 of Chapter 25 of the general laws and not pursuant to the provisions of subsection (f).

253 SECTION 28. Section 9H of chapter 723 of the acts of 1983 is hereby amended by striking out,
254 in lines 1 and 6, the words “quality engineering”, and inserting in place thereof, in each instance,
255 the following word:- protection.

256 SECTION 29. Said section 9H of said chapter 723 is hereby further amended by inserting after
257 the word “recreation”, in line 9, the following words:- or renewable energy, notwithstanding any
258 rule or regulation to the contrary, in accordance with a permit issued by said department pursuant
259 to CMR 19.000.

260 SECTION 30. Section 59 of chapter 169 of the Acts of 2008 is hereby repealed.

261 SECTION 31. Section 83 of chapter 169 of the acts of 2008 is hereby amended by striking out
262 the first paragraph and inserting in place thereof the following paragraph:-

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

274 SECTION 32. Said chapter 169 is hereby further amended by inserting after section 83 the
275 following section:-

276 Section 83A. Beginning on January 1, 2013, and continuing until December 31, 2016, all
277 distribution companies in the commonwealth, as defined in section 1 of chapter 164 of the
278 General Laws, shall be required twice in that time period to jointly solicit additional proposals
279 from renewable energy developers and, provided reasonable proposals have been received, enter
280 into additional cost-effective long-term contracts to facilitate the financing of renewable energy
281 generation, apportioned among the distribution companies in accordance with this section. The
282 timetable and method for solicitation and execution of such contracts shall be proposed by the
283 distribution companies in consultation with the department of energy resources and shall be
284 subject to review and approval by the department of public utilities. This long-term contracting
285 obligation shall be separate and distinct from the electric distribution companies' obligation to
286 meet applicable annual renewable portfolio standard, hereinafter referred to as RPS,
287 requirements, under section 11F of chapter 25A of the General Laws.

288 For purposes of this section, a long term contract shall be a contract with a term of 10 to
289 20 years. In developing proposed long term contracts, the distribution companies shall consider
290 multiple contracting methods, including long-term contracts for renewable energy certificates,
291 hereinafter referred to as RECs, for energy, and for a combination of both RECs and energy.
292 Beginning January 1, 2013, the electric companies shall jointly select a reasonable method of
293 soliciting proposals from renewable energy developers using a competitive bidding process only.
294 Distribution companies may use timetables and methods for the solicitation of competitively bid
295 long-term contracts approved by the department of public utilities prior to January 1, 2013. A
296 distribution company may decline to consider contract proposals having terms and conditions
297 that it determines would require the contract obligation to place an unreasonable burden on the
298 distribution company's balance sheet, and may structure its contracts, pricing, and/or administration

299 of the products purchased to mitigate impacts on the balance sheet or income statement of the
300 distribution company or its parent company, subject to the approval of the department of public
301 utilities; provided that such mitigation shall not increase costs to ratepayers. The distribution
302 companies shall consult with the department of energy resources and the attorney general's
303 office regarding the choice of contracting methods and solicitation methods. All proposed
304 contracts shall be subject to the review and approval of the department of public utilities.

305 The department of public utilities and the department of energy resources each shall
306 adopt regulations consistent with this section. The regulations shall: (a) allow renewable energy
307 developers to submit proposals for long-term contracts conforming to the contracting methods
308 specified in the second paragraph; (b) require that contracts executed by the distribution
309 companies under such proposals are filed with, and approved by, the department of public
310 utilities before they become effective; (c) provide for an annual remuneration for each
311 contracting distribution company of up to 4 per cent but no less than 2.75 per cent of the annual
312 payments under the contract made by each distribution company to compensate the companies
313 for accepting the financial obligation of the long-term contract, as determined by the department
314 of public utilities at the time of contract approval; (d) to the extent there are significant
315 transmission costs included in a bid, allow the department of public utilities to authorize the
316 contracting parties to seek recovery of such transmission costs of the project through federal
317 transmission rates, consistent with policies and tariffs of the federal energy regulatory
318 commission, to the extent the department finds such recovery is in the public interest; and (e)
319 require that the renewable energy generating source to be used by a developer under the proposal
320 meet the following criteria: (1) have a commercial operation date, as verified by the department
321 of energy resources, on or after January 1, 2013; (2) be qualified by the department of energy

322 resources as eligible to participate in the RPS program, under said section 11F of said chapter
323 25A, and to sell RECs under the program; and (3) be determined by the department of public
324 utilities to: (i) provide enhanced electricity reliability within the commonwealth; (ii) contribute to
325 moderating system peak load requirements; (iii) be cost effective to Massachusetts electric
326 ratepayers over the term of the contract; and (iv) where feasible, create additional employment
327 and economic development in the commonwealth. As part of its approval process, the
328 department of public utilities shall consider the attorney general's recommendations, which shall
329 be submitted to the department of public utilities within 45 days following the filing of such
330 contracts with the department of public utilities. The department of public utilities shall take into
331 consideration both the potential costs and benefits of such contracts and shall approve a contract
332 only upon a finding that it is a cost effective mechanism for procuring low cost renewable energy
333 on a long-term basis taking into account the factors outlined in this section.

334 The joint solicitations required under this section shall be coordinated among the electric
335 distribution companies by the department of energy resources. If distribution companies are
336 unable to agree on a winning bid(s) pursuant to a solicitation under this section, the matter shall
337 be submitted to the department of public utilities, in consultation with the department of energy
338 resources and the attorney general's office, for a final, binding determination of the winning bid.
339 The electric distribution companies shall each enter into a contract with the winning bidder(s) for
340 their apportioned share of the market products being purchased from the project. The
341 apportioned share shall be calculated and based upon the total energy demand from all
342 distribution customers in each service territory of the distribution companies.

343 Distribution companies shall not be obligated to enter into long-term contracts under this
344 section that would, in the aggregate, exceed 4 per cent of the total energy demand from all

345 distribution customers in the service territory of the distribution company. As long as the electric
346 distribution company has entered into long-term contracts in compliance with this section, it
347 shall not be required by regulation or order to enter into contracts with terms of more than 3
348 years in meeting its applicable annual RPS requirements under said section 11F of said chapter
349 25A, unless the department of public utilities finds that such contracts are in the best interest of
350 customers; provided, however, that the electric distribution company may execute such contracts
351 voluntarily, subject to the department of public utilities' approval.

352 Ten per cent of the aggregate level of long-term contracts under this section shall be
353 reserved for newly developed, small, emerging or diverse renewable energy distributed
354 generation facilities, as determined by the department of energy resources, that are located within
355 each distribution company's service territory. Notwithstanding any provision in this section to
356 the contrary, each distribution company shall be required to solicit proposals for such distributed
357 generation facilities separately through a competitive bidding process only. Distributed
358 generation projects qualifying under this paragraph shall have a nameplate capacity no larger
359 than 6 megawatts, shall not qualify as a Class I, II or III net metering facility, as defined in
360 section 138 of said chapter 164, and shall not be eligible for solar renewable energy credits at the
361 time of solicitation.

362 An electric distribution company may elect to use any energy purchased under such
363 contracts for resale to its customers, and may elect to retain RECs for the purpose of meeting the
364 applicable annual RPS requirements under said section 11F of said chapter 25A. If the energy
365 and RECs are not so used, such companies shall sell such purchased energy into the wholesale
366 spot market and shall sell such purchased RECs through a competitive bid process.
367 Notwithstanding the previous sentence, the department of energy resources shall conduct

368 periodic reviews to determine the impact on the energy and REC markets of the disposition of
369 energy and RECs under this section and may issue reports recommending legislative changes if it
370 determines that actions are being taken that will adversely affect the energy and REC markets.

371 If a distribution company sells the purchased energy into the wholesale spot market and
372 auctions the RECs as described in the fifth paragraph, the distribution company shall net the cost
373 of payments made to projects under the long-term contracts against the proceeds obtained from
374 the sale of energy and RECs, and the difference shall be credited or charged to all distribution
375 customers through a uniform fully reconciling annual factor in distribution rates, subject to
376 review and approval of the department of public utilities. The reconciliation process shall be
377 designed so that a distribution company recovers all costs incurred under such contracts. If the
378 RPS requirements of said section 11F of said chapter 25A should ever terminate, the obligation
379 to continue periodic solicitations to enter into long-term contracts shall cease, but contracts
380 already executed and approved by the department of public utilities shall remain in full force and
381 effect.

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

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

389 SECTION 33. Section 122 of chapter 169 of the Acts of 2008 is hereby repealed.

390 SECTION 34. The department of public utilities shall conduct a study into the financing of low-
391 income electric and gas discount programs. The study shall identify the financing of the existing
392 program at each electric and gas distribution company and shall include consideration of
393 adopting a statewide mechanism for financing low-income discount programs. In addition, the
394 study shall identify and make recommendations as to cost-saving efficiencies that increase
395 accountability. The department shall submit a copy of the study to the clerks of the house of
396 representatives and the senate who shall forward the copy of the study to the joint committee on
397 telecommunications, utilities and energy by January 1, 2014.

398 SECTION 35. The department of energy resources shall study what legislative or regulatory
399 steps would serve to reduce reliance on alternative compliance payments in meeting Class II
400 renewable energy generating sources, as defined in section 11F of chapter 25A of the General
401 Laws, and report to the joint committee on telecommunications, utilities and energy its
402 recommendations by January 1, 2013.

403 SECTION 36. A customer that elects to participate in the voluntary accelerated rebate pilot
404 program under subsection (d) of section 19 of chapter 25 of the General Laws by January 31,
405 2013, may aggregate rebates in amounts not to exceed 270 per cent of the amount charged to that
406 customer for energy efficiency programs for calendar year 2012; a customer that elects to
407 participate after January 31, 2013, but before January 31, 2014, may aggregate rebates in
408 amounts not to exceed 180 per cent of the amount charged to that customer for energy efficiency
409 programs for calendar year 2012.

410 SECTION 37. Clause Forty-fifth of section 5 of chapter 59 of the General Laws shall not apply
411 to projects developed under section 139 of chapter 164 which have a signed agreement with the
412 city or town to make a payment in lieu of taxes as of the effective date of this act.

413 SECTION 38. Notwithstanding clause Forty-fifth of section 5 of chapter 59, any payment in lieu
414 of taxes agreements currently under contract between a municipality and a developer of solar and
415 wind projects that expires prior to 2032 may be negotiated up to the terms in place as of the
416 effective date of this act.

417 SECTION 39. Notwithstanding any general or special law or rule or regulation to the contrary,
418 nothing in this act shall apply to any settlement agreement entered into by an electric or gas
419 distribution company and approved by the department of public utilities prior to the passage of
420 this act.

421 SECTION 40. Section 44 of this act shall apply to any closed landfills so that the parties to any
422 deed restriction existing on the effective date of this act may amend it to allow for renewable
423 energy use..

424 SECTION 41. No later than January 1, 2013, the department of public utilities shall commence a
425 proceeding for each gas and electric utility to establish a cost-based rate design for costs that are
426 currently recovered from distribution customers through a reconciling factor. Notwithstanding
427 any general or special law to the contrary, the department shall reset reconciliation factors to
428 recover such costs from each rate class in a uniform manner in direct proportion to the
429 contribution of base distribution revenues from each class, unless the cost causation for each rate
430 class is directly attributable to volumetric usage. The department shall approve such redesigned
431 reconciliation factors, after a public hearing comment period, no later than January 1, 2014.

432 SECTION 42. Each distribution company shall execute, and the department shall approve, long-
433 term contracts for the purchase of capacity, energy or other attributes, with a term of no less than
434 15 years, provided the department finds, after public hearing and within 120 days of the filing of
435 the long-term contract with the department, that the purchase of capacity, energy or other
436 attributes shall be from a proposed electric generation facility: (i) that is to be located on the site
437 of a coal or oil-fired electric generation facility in the commonwealth that will be permanently
438 retired prior to the commercial operation date on the proposed facility; (ii) that will have quick
439 start capability that can facilitate the further development of intermittent renewable electric
440 generation resources serving the commonwealth; (iii) whose developer, or an affiliate thereof,
441 shall have committed to remediate the site of the existing and operating coal or oil-fired
442 generation plant; and (iv) that such new facility is reasonably expected to result in net benefits in
443 terms of costs to electricity customers in the commonwealth and the mitigation of environmental
444 impacts including, but not limited to, site remediation and reduced system emissions for New
445 England. Any contract executed by the contracting distribution company shall provide for annual
446 remuneration for such company of up to 4 per cent of the annual payments under the contract to
447 compensate the company for accepting the financial obligation of the long-term contract, as
448 determined by the department of public utilities at the time of contract approval. Distribution
449 companies shall not be obligated to enter into long-term contracts pursuant to this paragraph that
450 would, in the aggregate, exceed ten per cent of the total energy demand from all distribution
451 customers in the service territory of the distribution company.

452 SECTION 43. The pilot program created in section 2 shall begin in calendar year 2013.

453 SECTION 44. Section 3 shall take effect on December 31, 2015.