

The Commonwealth of Massachusetts

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**In the Year Two Thousand Twelve**  
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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:*

1           SECTION 1. Section 35FF of chapter 10 of the General Laws, as appearing in the 2010  
2 Official Edition, is hereby amended by inserting, after subsection (c), the following subsection:-

3           (c $\frac{1}{2}$ ) All amounts paid by retail suppliers under subsections (h) and (h $\frac{1}{2}$ ) of section 11F  
4 of chapter 25A shall be deposited into the fund. If a shortfall is identified under section 11F $\frac{1}{4}$  of  
5 said chapter 25A, resulting in the procurement, contracting, purchase and sale of energy,  
6 renewable energy certificates or transmission scheduling rights under said section, then all  
7 amounts paid into the fund under said subsections (h) and (h $\frac{1}{2}$ ) of said section 11F of said  
8 chapter 25A shall first be obligated to pay for any contracts procured under said section 11F $\frac{1}{4}$  of  
9 said chapter 25A. The center shall immediately, and thereafter annually, transfer into a  
10 segregated account the amounts to be used to fulfill the requirements of said section 11F $\frac{1}{4}$  of  
11 said chapter 25A. The amounts transferred under said section 11F of said chapter 25A and the  
12 annual revenues from sales of energy, renewable energy certificates and transmission scheduling  
13 rights shall be credited to the segregated account to reduce the annual assessment on retail  
14 electricity suppliers. Any reductions in the assessments charged to retail electricity suppliers  
15 under this section shall be credited according to the same basis as the annual assessment was  
16 originally calculated for that year.

17           SECTION 2. Subsection (a) of section 3 of chapter 23J, as so appearing, is hereby  
18 amended by adding the following clause:- (32) to procure, contract for and sell energy,  
19 renewable energy certificates and transmission scheduling rights under section 11F $\frac{1}{4}$  of chapter  
20 25A.

21           SECTION 3. Section 18 of chapter 25 of the General Laws, as so appearing, is hereby  
22 amended by striking out the fourth paragraph.

23 SECTION 4. Section 19 of said chapter 25, as so appearing, is hereby amended by adding  
24 the following subsection:-

25 (d) There shall be a voluntary accelerated rebate pilot program which shall be made  
26 available to the 5 largest electric users and 5 largest gas users in each utility service territory.  
27 Multiple locations of the same customer shall not be aggregated for purposes of meeting this  
28 threshold. Eligible customers electing to participate in the accelerated pilot program shall notify  
29 the appropriate program administrator on or before January 31 of each calendar year during the  
30 pilot program. Customers electing to participate shall be eligible for up to a 100 per cent rebate  
31 for qualified energy efficiency measures as determined by the department. Total rebate levels for  
32 participating customers in any year of the pilot program shall not exceed 90 per cent of the  
33 amount the customer was charged for energy efficiency programs for calendar year 2012. A  
34 participating customer shall not aggregate a rebate from any year in which the customer does not  
35 participate in the pilot. Qualified energy efficiency measures shall include cost-effective energy  
36 efficiency program measures approved by the department under section 21; provided, however,  
37 that up to 15 per cent of any accelerated rebate may be used for other improvements that support  
38 energy efficiency improvements made under a program approved by the department or emission  
39 reductions, including, but not limited to infrastructure improvements, metering, circuit level  
40 technology and software. Customers opting to receive an accelerated rebate shall be ineligible for  
41 other energy efficiency program rebates under said section 21 during the period in which they  
42 participate in the pilot program. All qualified installations shall be substantially completed by the  
43 end of the program, and shall be subject to verification and review by the department.

44 SECTION 5. Subsection (d) of said section 19 of said chapter 25 of the General Laws is  
45 hereby repealed.

46 SECTION 6. Paragraph 1 of subsection (b) of section 21 of said chapter 25, as appearing  
47 in the 2010 Official Edition, is hereby amended by adding the following sentence:- No portion of  
48 monies expended under this section shall pay for compliance with federal or state building or  
49 energy codes applicable to participants.

50 SECTION 7. Said section 21 of said chapter 25, as so appearing, is hereby further  
51 amended by striking out, in lines 114 and 115 and line 118, the words “Massachusetts  
52 Technology Park Corporation” and inserting in place thereof the following words:-  
53 Massachusetts Clean Energy Technology Center.

54 SECTION 8. Section 22 of said chapter 25, as so appearing, is hereby amended by  
55 striking out, in line 2, the figure “11” and inserting in place thereof the following figure:- 15.

56 SECTION 9. Said section 22 of said chapter 25, as so appearing, is hereby amended by  
57 striking out, in line 9, the words “and (11) the department of energy resources” and inserting in  
58 place thereof the following words:- (11) the Massachusetts Non-profit Network, (12) a city or  
59 town in the commonwealth, (13) real estate, (14) a business employing less than 10 persons

60 located in the commonwealth that performs energy efficiency services and (15) the department  
61 of energy resources.

62 SECTION 10. Section 6 of chapter 25A of the General Laws, as so appearing, is hereby  
63 amended by striking out, in line 37, the word “small”.

64 SECTION 11. Section 11F of said chapter 25A, as so appearing, is hereby amended by  
65 inserting after subsection (h) the following subsection:-

66 (h<sup>1/2</sup>) In the case of a shortfall identified under section 11F<sup>1/4</sup>, retail electricity suppliers  
67 shall pay an assessment, as determined by the department, based upon the kilowatt-hours sales of  
68 each retail electricity supplier to end-use customers in the commonwealth. The assessment shall  
69 be designed to recover from retail electricity suppliers annualized contract costs incurred under  
70 such contracts, including costs to administer the procurement and marketing of the energy,  
71 renewable energy certificates, transmission scheduling rights and any other costs incurred by the  
72 commonwealth under section 11F<sup>1/4</sup>, offset by annual revenues from sales of energy, renewable  
73 energy certificates and transmission scheduling rights that have been transferred under  
74 subsection (c<sup>1/2</sup>) of section 35FF of chapter 10.

75 SECTION 12. Said chapter 25A is hereby further amended by inserting after section 11F  
76 the following section:-

77 Section 11F<sup>1/4</sup>. In the section the following words shall, unless the context clearly requires  
78 otherwise, have the following meanings:-

79 “CEC”, Massachusetts clean energy technology center, established under chapter 23J.

80 “REC”, renewable energy certificates.

81 “RFP”, request for proposals.

82 “RPS”, renewable energy portfolio standard.

83 The department and the attorney general shall jointly select an independent third-party,  
84 using a competitive procurement process based on criteria to be agreed upon in advance by the  
85 department and the attorney general, to prepare annually a 10-year forecast of the annual surplus  
86 or shortfall of Class I RECs available to meet Massachusetts’ renewable portfolio standards for  
87 Class I resources. The costs of completing the annual 10-year forecast shall be paid by the CEC  
88 using monies available in the Massachusetts Alternative and Clean Energy Investment Trust  
89 Fund established under section 35FF of chapter 10. The 10-year REC forecast shall be published  
90 on the department’s website and copies of the 10-year REC forecast shall be delivered to the  
91 secretary of energy and environmental affairs, the attorney general and the house and senate  
92 chairs of the joint committee on telecommunications, utilities and energy.

93           If the independent third-party's 10-year forecast projects a shortfall in the supply of  
94 renewable energy needed to meet Class I of the RPS under section 11F demand of at least 1,200  
95 gigawatt hours per year, within the first 5 years of the study period that is sustained for not less  
96 than 5 consecutive years, the CEC shall, within 6 months of the publication of the forecast,  
97 solicit competitive proposals from developers of new Class I renewable energy generating  
98 sources and electric transmission developers that would enable delivery of energy and RECs  
99 produced by qualified Class I renewable resources to the ISO-NE control area. The CEC shall  
100 administer a competitive solicitation process in the form of an RFP for renewable energy  
101 generation and transmission that would result in the delivery of Class I RPS eligible resources to  
102 load. The RFP shall seek a quantity of RECs sufficient to meet the 5-year average shortfall,  
103 calculated using the first year that the shortfall exceeds 1,200 gigawatt hours and including the  
104 subsequent 4 years. Provided competitive proposals have been received, the CEC shall enter into  
105 long-term contracts with renewable energy developer or developers for energy and RECs  
106 sufficient to meet the average 5-year shortfall and if necessary long-term contracts for  
107 transmission scheduling rights sufficient to deliver the renewable generation required; provided,  
108 that such contracts shall not be effective unless approved by the department of public utilities. A  
109 project applicant in the RFP process may identify non-Class I resources that could occupy the  
110 excess capacity of the transmission line that is available when not being used by the renewable  
111 generation. The CEC shall administer the RFP process, including a timetable and method for  
112 solicitation and execution of resulting contracts, under the procedures applicable to the  
113 procurement of statewide contracts under section 22 of chapter 7. The CEC shall consult with the  
114 department in developing the request for proposals called for in this paragraph.

115           For purposes of this section, a long-term contract with a Class I generating resource shall  
116 be a contract with a term of up to 20 years, and a long-term contract with a transmission  
117 developer shall be a contract with a term of up to 30 years.

118           The CEC shall adopt regulations consistent with this section. The regulations shall: (a)  
119 allow renewable energy developers and transmission developers to submit proposals for long-  
120 term contracts conforming to the contracting terms specified in the second paragraph of this  
121 section; (b) require that the renewable energy generating source to be used by a developer under  
122 the proposal meet the following criteria: (1) have a commercial operation date, as verified by the  
123 department, not earlier than January 1 of the same year as the effective date of the long-term  
124 contract; (2) be qualified by the department as eligible to participate in the RPS program, under  
125 section 11F and to sell RECs under the program; and (3) be determined to be the least-cost bid  
126 for RECs and energy when including the cost of any transmission required to be procured under  
127 this section to enable delivery of energy and RECs produced by qualified Class I renewable  
128 resources to the ISO-NE control area; and (c) require that electric transmission scheduling rights  
129 procured under the competitive solicitation meet the following criteria: (1) have a commercial  
130 operation date, as verified by the department, no earlier than January 1 of the same year as the  
131 effective date of the long-term contract; (2) for long-term contracts awarded under this section,

132 provide sufficient transmission scheduling rights to enable delivery of energy and RECs  
133 produced by qualified Class I renewable resources to the ISO-NE control area ; (3) increase the  
134 maximum transfer capability of transmission in the ISO-NE control area to directly or indirectly  
135 enhance the availability of energy to load zones in the commonwealth; and (4) be determined by  
136 the department of public utilities to be cost effective to electric ratepayers in the commonwealth  
137 over the term of the contract.

138           The contracts entered into by the CEC under this section shall be reviewed by the  
139 department of public utilities. If over the life of the contract the net present value of the contract  
140 payments determined under subclause (3) of clause (b) is lower than the net present value of an  
141 equivalent quantity of energy and RECs delivered at a price equal to the sum of the forecast  
142 energy price and the alternative compliance payment rates established by the department under  
143 subsection (h) of section 11F, then the contracts entered into by the CEC under this section shall  
144 be approved by the department of public utilities, with no additional review. If over the life of  
145 the contract the net present value of the contract payments determined under subclause (3) of  
146 clause (b) is higher than or equal to the net present value of an equivalent quantity of energy and  
147 RECs delivered at a price equal to the sum of the forecast energy price and the alternative  
148 compliance payment rates established by the department under subsection (h) of section 11F,  
149 then the department of public utilities shall review the contracts and determine whether to  
150 approve them. In the case of any such contract, the CEC shall include documentation of its cost-  
151 effectiveness to ratepayers, specifying the parameters used to make this calculation, including,  
152 but not limited to, the forecast energy price and the discount rate. As part of its approval process,  
153 the department of public utilities shall consider the attorney general’s recommendations, which  
154 shall be submitted to the department of public utilities within 45 days following the filing of such  
155 contracts with the department of public utilities. The department of public utilities shall take into  
156 consideration both the potential costs and benefits of such contracts and shall approve a contract  
157 only upon a finding that it is cost effective to ratepayers. Notwithstanding this paragraph,  
158 however, if the department of public utilities determines that the solicitation process was not  
159 competitive, then it shall not approve the contracts.

160           The energy purchased by the state under long-term contract shall be sold into the  
161 wholesale spot market. The RECs and unused transmission scheduling rights purchased under  
162 long-term contract shall be sold through a competitive bid process. The proceeds of these  
163 transactions shall be deposited into the segregated fund under subsection (c½) of section 35FF of  
164 chapter 10.

165           If the RPS requirements of section 11F should ever terminate, contracts already executed  
166 shall remain in full force and effect.

167           SECTION 13. Section 2B of chapter 59 of the General Laws, as appearing in the 2010  
168 Official Edition, is hereby amended by inserting after the words “benefit of”, in line 2, the  
169 following words:- a governmental entity, including.

170 SECTION 14. Said section 2B of said chapter 59, as so appearing, is hereby further  
171 amended by inserting after the word “public”, in line 37, the following words:- , to leases for  
172 renewable generation facilities, defined as eligible under subsection (c) of section 11F of chapter  
173 25A, in which not less than 50 per cent of the energy output is assigned to either the  
174 municipality in which the facility is located or to the governmental entity that owns the land on  
175 which the facility is located,.

176 SECTION 15. Section 5 of said chapter 59, as so appearing, is hereby amended by  
177 striking out clause Forty-fifth and inserting in place thereof the following clause:-

178 Forty-fifth, Any solar or wind powered system that is capable of producing not more than  
179 125 per cent of the annual energy needs of the property upon which it is located and is behind the  
180 meter serving the energy needs of that property. All other solar and wind powered systems shall  
181 also be exempt provided that the owner has made to the city or town where the system is located  
182 a payment in lieu of taxes, equal to 5 per cent of the system’s gross electricity sales, including  
183 receipt of net metering credits as defined in section 138 of chapter 164, in the preceding calendar  
184 year. For years 1 and 2, the payments shall be annualized based on gross estimated sales derived  
185 from a formula to be determined by the department of revenue, in consultation with the  
186 department of energy resources. An exemption under this clause shall be allowed only for a  
187 period of 20 years from the date of operation of such system. This clause shall not apply to  
188 projects developed under section 1A of chapter 164.

189 SECTION 16. Subsection (b) of section 38H of said chapter 59, as so appearing, is  
190 hereby amended by inserting after the first sentence the following sentence:- For purposes of  
191 this section, a generation facility shall not include a facility powered by sun or wind to generate  
192 electricity.

193 SECTION 17. Section 1F of chapter 164 of the General Laws, as so appearing, is hereby  
194 amended by adding the following paragraph:-

195 (10) Notwithstanding section 94 or any other general or special law to the contrary,  
196 whenever the department makes a determination upon an application for a general increase in  
197 total distribution costs paid by ratepayers under 220 CMR 5.00 et seq. which results in an  
198 increase of 10 per cent or greater above the total distribution costs paid by those ratepayers at the  
199 time the application was filed, the department shall allow for not more than a 7 ½ per cent  
200 increase in rates for the first rate year in which the approved rates are to go into effect, and not  
201 more than a 7 ½ per cent increase in any subsequent year necessary to fulfill the approved rate.  
202 When a non-residential ratepayer is subject to an increase in total distribution costs that is 15 per  
203 cent or more than that ratepayer was paying prior to a department approved rate increase that  
204 caused such increase, the ratepayer may file a petition within 20 days after the department  
205 approves the rate increase for a phase-in of the ratepayer’s distribution cost increase over a  
206 period of years. The department shall order the phase-in upon a showing of the increased

207 distribution costs of 15 per cent or more, but the ordered phase-in shall be for not less than 2 rate  
208 years and for not more than 50 per cent of the increase in the first rate year of the phase in  
209 period. Such petition shall be acted upon by the department within 60 days of its filing or prior to  
210 the rate becoming effective, whichever occurs first. Failure to act shall be considered approval by  
211 the department of the petition for not more than 50 per cent of the increase in year 1 and not  
212 more than 50 per cent in year 2.

213 SECTION 18. Section 94 of said chapter 164, as so appearing, is hereby amended by  
214 striking out the first paragraph and inserting in place thereof the following paragraph:-

215 Gas and electric companies shall file with the department schedules, not less frequently  
216 than every 3 years, under a filing schedule as prescribed by the department and in such form as  
217 the department shall prescribe, showing all rates, prices and charges to be charged or collected  
218 within the commonwealth for the sale and distribution of gas or electricity, together with all  
219 forms of contracts to be used in connection with such schedules; provided, however, that the  
220 requirement to file a schedule with the department not less frequently than every 3 years shall not  
221 apply to a company or corporation as defined in section 1 of chapter 165. Rates, prices and  
222 charges in such a schedule may be changed by any such company by filing a schedule setting  
223 forth the changed rates, prices and charges; provided, however, that until the effective date of  
224 any such change no different rate, price or charge shall be charged, received or collected by the  
225 company filing such a schedule from those specified in the schedule then in effect; provided,  
226 further, that a company may:

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

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

236 Whenever the department receives notice of any changes proposed to be made in any  
237 schedule filed under this chapter which represent a general increase in rates, prices and charges  
238 for gas or electric service, it shall notify the attorney general immediately and shall hold a public  
239 hearing and make an investigation as to the propriety of such proposed changes after first  
240 causing notice of the time, place and the subject matter of such hearing to be published at least  
241 21 days before such hearing in such local newspapers as the department may select. The  
242 department may apportion electric and gas company rate case expenses between shareholders  
243 and ratepayers. Unless the department otherwise authorizes, the rates, prices and charges under

244 the schedule of a gas or electric company shall not become effective until the first day of the  
245 month next after the expiration of 14 days from the filing of the petition; provided, that the  
246 department shall not authorize rates filed under a proposed settlement agreement more than once  
247 in a 6-year period. Unless the department otherwise authorizes, the rates, prices and charges set  
248 forth in the schedule of a corporation or company, as defined in section 1 of chapter 165, shall  
249 not become effective until the first day of the month next after the expiration of 14 days from the  
250 filing of the petition. Such rates, prices and charges shall apply to the consumption shown by  
251 meter readings made after the effective date of such rates, prices and charges, unless the  
252 department otherwise orders. So much of said schedules shall be printed in such form and  
253 distributed and published in such manner as the department may require.

254 SECTION 19. Section 94G½ of said chapter 164 is hereby repealed.

255 SECTION 20. Said chapter 164, as appearing in the 2010 Official Edition, is hereby  
256 amended by striking out section 96 and inserting in place thereof the following section:-

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

259 “Control”, the possession of the power, through direct or indirect ownership of a majority  
260 of the voting securities of a gas or electric company or a holding company, to direct or cause the  
261 direction of the management and policies of a gas or electric company or a holding company or  
262 the ability to effect a change in the composition of its board of directors or otherwise; provided,  
263 however, that control shall not be considered to arise solely from a revocable proxy or consent  
264 given to a person in response to a public proxy or consent solicitation made under the applicable  
265 rules and regulations of the Securities Exchange Act of 1934 unless a participant in said  
266 solicitation has announced an intention to effect a merger or consolidation with, reorganization  
267 or other business combination or extraordinary transaction involving the gas or electric company  
268 or the holding company.

269 “Foreign electric company”, an electric company with a domicile, principal place of  
270 business, headquarters or place of incorporation outside of the commonwealth.

271 “Foreign gas company”, a gas company with a domicile, principal place of business,  
272 headquarters or place of incorporation outside of the commonwealth.

273 “Holding company”, any corporation, association, partnership, trust or similar  
274 organization, or person which, regardless of the locus of the domicile, principal place of  
275 business, headquarters, or place of incorporation of such entity, either alone or in conjunction  
276 and under an arrangement or understanding with 1 or more other corporations, associations,  
277 partnerships, trusts or similar organizations, or persons, directly or indirectly, controls, or seeks  
278 to acquire control over, a gas or electric company.

279 (b) Notwithstanding this chapter or any other general or special law to the contrary,  
280 companies, except steam distribution companies, subject to this chapter, or holding companies  
281 may consolidate or merge with one another or may sell and convey their properties to another of  
282 such companies or to a wholesale generation company. Such companies, holding companies or  
283 wholesale generation companies may purchase such properties if: (i) the purchase, sale,  
284 consolidation or merger, and the terms thereof, have been approved, at meetings called for the  
285 purpose of approving such sale consolidation or merger, by a vote of the holders of at least two-  
286 thirds of each class of stock outstanding and entitled to vote on the question of each of the  
287 contracting companies; and (ii) that the department, after notice and a public hearing, has  
288 determined that such purchase and sale or consolidation or merger, and the terms thereof, are  
289 consistent with the public interest. In determining whether a purchase, sale consolidation or  
290 merger is consistent with the public interest, the department shall, at a minimum, consider:  
291 potential rate changes, if any; the long term strategies that will assure a reliable, cost effective  
292 energy delivery system; any anticipated interruptions in service; or other factors which may  
293 negatively impact customer service. The purchase or sale of properties by, or the consolidation or  
294 merger of, wholesale generation companies shall not require departmental approval except as  
295 otherwise provided in this subsection.

296 (c) Notwithstanding this chapter or any other general or special law to the contrary, gas,  
297 electric and holding companies, subject to this chapter, shall not enter into any transaction or  
298 otherwise take any action which would result in a change of control over any gas, electric or  
299 holding company, or foreign gas or electric company, unless: (i) the transaction or action have  
300 been approved, at meetings called for the purpose of approving such transaction or action, by a  
301 vote of the holders of at least two-thirds of each class of stock outstanding and entitled to vote on  
302 the question of each of the contracting companies; and (ii) the department, after notice and a  
303 public hearing, has determined that such transaction or action, and the terms thereof, are  
304 consistent with the public interest. In determining whether a transaction or action is consistent  
305 with the public interest, the department shall, at a minimum, consider: potential rate changes, if  
306 any; the long term strategies that will assure a reliable, cost effective energy delivery system; any  
307 anticipated interruptions in service; or other factors which may negatively impact customer  
308 service.

309 SECTION 21. The definition of “Net metering facility of a municipality or other  
310 governmental entity” in section 138 of said chapter 164, as so appearing, is hereby amended by  
311 adding the following words:- ; provided, however, that renewable energy facilities of a  
312 cooperative corporation organized under section 136 with only municipalities and other  
313 governmental entities as members may qualify as a net metering facility of a municipality or  
314 other governmental entity.

315 SECTION 22. Subsection (e) of section 139 of said chapter 164, as so appearing, is  
316 hereby amended by adding the following sentence:- For the purposes of net metering, a  
317 cooperative corporation organized under section 136 that is comprised solely of municipalities or

318 other governmental entities shall not be considered an electric company, generation company,  
319 aggregator, supplier, energy marketer or energy broker, within the meaning of those terms as  
320 defined in sections 1 and 1F.

321 SECTION 23. Subsection (f) of said section 139 of said chapter 164, as so appearing, is  
322 hereby amended by striking out, in line 68, the words “1 per cent” and inserting in place thereof  
323 the following words:- 3 per cent.

324 SECTION 24. Said subsection (f) of said section 139 of said chapter 164, as so  
325 appearing, is hereby further amended by striking out, in line 70, the words “2 per cent” and  
326 inserting in place thereof the following words:- 3 per cent.

327 SECTION 25. Said subsection (f) of said section 139 of said chapter 164, as so  
328 appearing, is hereby further amended by inserting after the word “megawatts”, in line 73, the  
329 following words:- ; provided, that a cooperative corporation organized under section 136 that is  
330 comprised solely of municipalities or other governmental entities may assign generating capacity  
331 to municipalities or other governmental entities with the approval of the department.

332 SECTION 26. Subsection (g) of said section 139 of said chapter 164, as so appearing, is  
333 hereby amended by adding the following sentence:- The department shall adopt rules and  
334 regulations regarding the assurance of net metering eligibility.

335 SECTION 27. Said section 139 of said chapter 164, as so appearing, is hereby amended  
336 by adding the following subsection:-

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

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

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

348 SECTION 28. Section 83 of chapter 169 of the acts of 2008 is hereby amended by  
349 striking out the first paragraph and inserting in place thereof the following paragraph:-

350 Beginning on July 1, 2009 and continuing until December 31, 2012, each distribution  
351 company, as defined in section 1 of chapter 164 of the General Laws, shall be required twice to

352 solicit proposals from renewable energy developers and, provided reasonable proposals have  
353 been received, enter into cost-effective long-term contracts to facilitate the financing of  
354 renewable energy generation. The timetable and method for solicitation and execution of such  
355 contracts shall be proposed by the distribution company in consultation with the department of  
356 energy resources and shall be subject to review and approval by the department of public  
357 utilities. This long-term contracting obligation shall be separate and distinct from the electric  
358 distribution companies' obligation to meet applicable annual renewable portfolio standard,  
359 hereinafter referred to as RPS, requirements, under section 11F of chapter 25A of the General  
360 Laws.

361 SECTION 29. Said chapter 169 is hereby further amended by inserting after section 83  
362 the following section:-

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

374 For purposes of this section, a long term contract shall be a contract with a term of 15 to  
375 20 years. In developing proposed long term contracts, the distribution company shall consider  
376 multiple contracting methods, including long-term contracts for renewable energy certificates,  
377 hereinafter referred to as RECs, for energy, and for a combination of both RECs and energy.  
378 Beginning January 1, 2013, the electric company shall select a reasonable method of soliciting  
379 proposals from renewable energy developers using a competitive bidding process only. Electric  
380 companies may use timetables and methods for the solicitation of competitively bid long-term  
381 contracts approved by the department of public utilities prior to January 1, 2013. The distribution  
382 company may decline to consider contract proposals having terms and conditions that it  
383 determines would require the contract obligation to place an unreasonable burden on the  
384 distribution company's balance sheet. The distribution company shall consult with the  
385 department of energy resources regarding its choice of contracting methods and solicitation  
386 methods. All proposed contracts shall be subject to the review and approval of the department of  
387 public utilities.

388 The department of public utilities and the department of energy resources each shall  
389 adopt regulations consistent with this section. The regulations shall: (a) allow renewable energy

390 developers to submit proposals for long-term contracts conforming to the contracting methods  
391 specified in the second paragraph; (b) require that contracts executed by the distribution  
392 company under such proposals are filed with, and approved by, the department of public utilities  
393 before they become effective; (c) provide for an annual remuneration for the contracting  
394 distribution company equal to the actual cost to the company for accepting the financial  
395 obligation of the long-term contract, but in no case shall such remuneration exceed 1 per cent of  
396 the annual payments under the contract, such provision to be acted upon by the department of  
397 public utilities at the time of contract approval; and (d) require that the renewable energy  
398 generating source to be used by a developer under the proposal meet the following criteria: (1)  
399 have a commercial operation date, as verified by the department of energy resources, on or after  
400 January 1, 2008; (2) be qualified by the department of energy resources as eligible to participate  
401 in the RPS program, under said section 11F of said chapter 25A, and to sell RECs under the  
402 program; and (3) be determined by the department of public utilities to: (i) provide enhanced  
403 electricity reliability within the commonwealth; (ii) contribute to moderating system peak load  
404 requirements; (iii) be cost effective to Massachusetts electric ratepayers over the term of the  
405 contract; and (iv) where feasible, create additional employment and economic development in  
406 the commonwealth. As part of its approval process, the department of public utilities shall  
407 consider the attorney general's recommendations, which shall be submitted to the department of  
408 public utilities within 45 days following the filing of such contracts with the department of  
409 public utilities. The department of public utilities shall take into consideration both the potential  
410 costs and benefits of such contracts and shall approve a contract only upon a finding that it is a  
411 cost effective mechanism for procuring low cost renewable energy on a long-term basis taking  
412 into account the factors outlined in this section.

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

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

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

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

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

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

463 If this section is subject to a judicial challenge, the department of public utilities may  
464 suspend the applicability of the challenged provision during the pendency of the judicial action  
465 until final resolution of the challenge and any appeals, and shall issue such orders and take such

466 other actions as are necessary to ensure that the provisions that are not challenged are  
467 implemented expeditiously to achieve the public purposes of this section.

468 SECTION 30. Section 93 of said chapter 169 is hereby amended by adding the following  
469 sentence:- In addition, the department shall expend monies from amounts collected through such  
470 alternative compliance payments for the costs associated with completing the renewable supply  
471 forecast required under section 11F<sup>1</sup>/<sub>4</sub> of chapter 25A of the General Laws; provided, however,  
472 that in the event a shortfall of renewable energy is determined under said section 11F<sup>1</sup>/<sub>4</sub> of said  
473 chapter 25A, unencumbered alternative compliance payment revenues shall be transferred to the  
474 segregated account created by the Massachusetts clean energy technology center under  
475 subsection (c<sup>1</sup>/<sub>2</sub>) of section 35FF of chapter 10 of the General Laws to be used in fulfillment of  
476 the requirements of said section 11F<sup>1</sup>/<sub>4</sub> of said chapter 25A.

477 SECTION 31. Clause (2) of section 116 of said chapter 169 is hereby amended by  
478 adding the following words:- , including hydroelectric power, regardless of whether that power is  
479 eligible under the renewable energy portfolio standard contained in section 11F of chapter 25A  
480 of the General Laws.

481 SECTION 32. Said chapter 169 is hereby further amended by inserting after section 116  
482 the following section:-

483 SECTION 116A. The executive office of energy and environmental affairs shall report  
484 the estimated or actual ratepayer cost and benefits of any program required under this act every 3  
485 years to the joint committee on telecommunications, utilities and energy, unless said programs  
486 are separately itemized on a ratepayer's bill. Said reporting shall be submitted to the committee  
487 by January 31 of each reporting year. Whenever possible, the reported costs shall be presented  
488 on a volumetric basis, by customer class.

489 SECTION 33. The department of energy resources shall conduct a study of the  
490 greenhouse gas emissions reduction potential and viability, fiscal impact, statutory and  
491 regulatory barriers and anticipated long-term results of establishing a clean energy performance  
492 standard consistent with the greenhouse gas emission reduction requirements of chapter 21N of  
493 the General Laws, including all interim greenhouse gas limits adopted by the secretary under  
494 said chapter 21N. The study shall consider how such a clean energy performance standard could  
495 be designed so as to advance the deployment of electricity generation and storage technologies  
496 that have low or no greenhouse gas emissions and that are not eligible under sections 11F or 11F  
497 <sup>1</sup>/<sub>2</sub> of chapter 25A of the General Laws, nor eligible as part of any energy efficiency program  
498 under section 19 of chapter 25 of the General Laws. The study shall be based on the best  
499 available scientific, technical and economic analysis and specifically shall consider, but shall not  
500 be limited to, (a) market-based frameworks designed to encourage lower production of  
501 greenhouse gas emissions per megawatt-hour of electricity delivered; (b) mechanisms to make  
502 such a greenhouse gas emissions performance standard more stringent over time; (c) categories

503 of low emissions or no emissions technologies that should be eligible under a clean energy  
504 performance standard, including but not limited to hydropower facilities having a nameplate  
505 capacity greater than 25 megawatts, large-capacity electric storage technologies, and related  
506 smart grid technologies that may enable achievement of the commonwealth's clean energy goals;  
507 (d) mechanisms for encouraging the displacement of electricity produced by generating facilities  
508 having high emissions of greenhouse gases per megawatt-hour of electricity delivered with  
509 lower-emissions resources; (e) the extent to which various types of low emissions and no  
510 emissions technologies have reached technological maturity and the associated degree of need,  
511 or not, for incentives to encourage deployment on a commercial basis; (f) economic benefits and  
512 impacts for the commonwealth, including, but not limited to, electric ratepayer benefits and  
513 impacts as well as employment and other economic development opportunities over the short  
514 term and long term; (g) tracking mechanisms; (h) allowing tradability among suppliers, including  
515 distribution companies; (i) incentives for reducing criteria and hazardous pollutants coincident  
516 with reductions in greenhouse gas emissions; (j) eligibility criteria for electricity generation and  
517 storage technologies directed toward avoiding undue impacts on the environment or public  
518 welfare; and (k) policies adopted or considered by other jurisdictions, including other states,  
519 federal government entities or foreign nations, to advance objectives similar to those identified  
520 herein. The department shall submit a copy of the study to the clerks of the house of  
521 representatives and the senate who shall forward the copy of the study to the joint committee on  
522 telecommunications, utilities and energy by January 1, 2013.

523         SECTION 34. The department of public utilities shall conduct a study into the low-  
524 income electric and gas programs. The study shall identify the cost to each electric and gas  
525 distribution company of the existing program and shall include consideration of adopting a  
526 statewide low-income program to eliminate individual distribution companies from management  
527 of said programs. In addition, the study shall identify and make recommendations as to cost-  
528 saving efficiencies that increase accountability. The department shall submit a copy of the study  
529 to the clerks of the house of representatives and the senate who shall forward the copy of the  
530 study to the joint committee on telecommunications, utilities and energy by January 1, 2013.

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

536         SECTION 36. A customer that elects to participate in the voluntary accelerated rebate  
537 pilot program under subsection (d) of section 19 of chapter 25 of the General Laws by January  
538 31, 2013 may aggregate rebates in amounts not to exceed 270 per cent of the amount charged to  
539 that customer for energy efficiency programs for calendar year 2012; a customer that elects to  
540 participate after January 31, 2013 but before January 31, 2014 may aggregate rebates in amounts

541 not to exceed 180 per cent of the amount charged to that customer for energy efficiency  
542 programs for calendar year 2012.

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

546 SECTION 38. The department of public utilities shall adopt rules and regulations  
547 regarding the assurance of net metering eligibility under subsection (g) of section 139 of chapter  
548 164 of the General Laws by October 1, 2012.

549 SECTION 39. The department of public utilities shall develop a standard interconnection  
550 agreement for projects qualifying under subsection (h) of section 139 of chapter 164 of the  
551 General Laws by January 1, 2013.

552 SECTION 40. The independent third-party selected under section 11F<sup>1</sup>/<sub>4</sub> of chapter 25A  
553 of the General Laws shall prepare the first forecast under said section 11F<sup>1</sup>/<sub>4</sub> of said chapter 25A  
554 not later than June 30, 2013, for the forecast period starting with calendar year 2013.

555 SECTION 41. The pilot program created in section 4 shall begin in calendar year 2013.

556 SECTION 42. The first report required under section 32 shall be completed by January  
557 31, 2013.

558 SECTION 43. Section 5 shall take effect on December 31, 2015.