

By Mr. Bassett of Lynn, petition of Timothy A. Bassett, William F. Galvin and Thomas C. Norton for legislation to regulate the purchase and sale of electricity by private power producers. Government Regulations.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-Five.

AN ACT REGULATING THE PURCHASE AND SALE OF ELECTRICITY BY PRIVATE POWER PRODUCERS.

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. It is hereby declared that, for the benefit of the
2 people of the Commonwealth and the increase of their commerce,
3 welfare and prosperity, the Commonwealth should seek to increase
4 the diversification of power and fuel sources, the conservation of
5 energy in industrial facilities and to provide alternative means for
6 the disposal of solid waste, and that, to this end, it should promote
7 the construction and operation of facilities using cogeneration and
8 alternative energy technologies including the burning of solid
9 waste and the installation of energy conservation facilities and
10 facilities designed to reduce consumption of petroleum products;
11 that such facilities are not subject to, or reduce the severe dimin-
12 ishment of future resources which currently discourages unsup-
13 plimented long-term reliance on petroleum products; that the
14 continuing increase in the cost of energy is a basic factor tending to
15 create structural economic weaknesses in the Commonwealth, con-
16 tributing to unemployment and underemployment; that power
17 produced by such cogeneration and alternative energy technolo-
18 gies is not directly susceptible to, or would moderate, the rapidly
19 escalating production expenses attributable to the high cost of
20 additional electricity production capacity and to dependence on a
21 diminishing fuel source, and therefore, may be of significant value

22 in moderating future increases in the costs of energy, including
23 production of electricity through the burning of the Common-
24 wealth's solid waste; and that it is the purpose of this act to provide
25 financing incentives for the construction or installation and opera-
26 tion of facilities that utilize such cogeneration or alternative energy
27 technologies or are otherwise designed to reduce consumption of
28 petroleum products and aid in the efficient disposal of solid waste,
29 all to the public benefits and good, to the extent and in the manner
30 provided herein.

1 SECTION 2. Section 1 of Chapter 164 of the General Laws is
2 hereby amended by inserting after the definition of "Alternative
3 energy producer", inserted by Section 1 of Chapter 120 of the acts
4 of 1982, the following definition:

5 "Private power producer", any person, firm, partnership, asso-
6 ciation, public or private corporation, or any agency, department,
7 board, commission or authority of the Commonwealth or of a
8 subdivision of the Commonwealth, that owns or operates a facility
9 utilizing cogeneration or alternative energy technology including
10 the burning of solid waste, which generates electricity, but not
11 including an electric company, municipal light plant, municipal
12 light board, municipal light commission organized under this
13 chapter or any other company owned in whole or in part by such
14 electric company, municipal light plant, municipal light board,
15 municipal light commission, and which has a power production
16 capacity which together with any other facilities located at the
17 same site is not greater than eighty megawatts.

1 SECTION 3. Chapter 164 of the General Laws is hereby
2 amended by adding after clause three of paragraph two of Section
3 69 I the following clause:

4 (4) A description of all contracts by the company for the pur-
5 chase of electricity from the private power producers in accordance
6 with section one hundred thirty-four of this chapter, the potential
7 and anticipated purchase of electricity from such private power
8 producers by the company during the period covered by said
9 forecasts and the actions the company shall take to encourage and
10 fully utilize potential electric generating capacity by private power
11 producers in the territory served by said company during the
12 period covered by said forecasts.

1 SECTION 4. Chapter 164 of the General Laws is hereby
2 amended by inserting at the end of paragraph two of Section 69 J
3 the following sentence:

4 The council, in reviewing and approving a long-range forecast,
5 shall also consider existing and potential generating capacity from
6 cogeneration and alternative energy technologies operated by pri-
7 vate power producers and the past and planned action of the
8 company to encourage and fully utilize such generating capacity.

1 SECTION 5. Chapter 164 of the General Laws is hereby
2 amended by striking out the first sentence of Section 94 A and
3 inserting in place thereof the following sentence:

4 No gas or electric company shall hereafter enter into a contract
5 for the purchase of gas or electricity covering a period in excess of
6 one year without the approval of the department, unless such
7 contract contains a provision subjecting the price to be paid there-
8 under for gas or electricity to review and determination by the
9 department in any proceeding brought under section ninety-three
10 or ninety-four; provided, that nothing herein contained shall be
11 construed as affecting a contract for the purchase of gas or electric-
12 ity from a person or corporation engaged in manufacturing, where
13 the manufacture, sale or distribution of gas or electricity by such
14 person or corporation is a minor portion of his or its business and
15 which contract is made in connection with a contract to supply
16 such person or corporation with gas or electricity, or as affecting a
17 contract for the purchase of electricity from a private power
18 producer.

1 SECTION 6. Chapter 164 of the General Laws is hereby amend-
2 ed by adding after Section 132 the following new section:

3 Section one hundred thirty-three. Each electric company, mu-
4 nicipal light board, as provided for in section fifty-five of this
5 chapter, and municipal light commission as provided for in section
6 fifty-six A of this chapter shall:

7 (1) purchase any electrical energy and capacity made available
8 directly by a private power producer or indirectly under clause 4 of
9 this paragraph:

10 (2) sell backup electricity to any private power producer in its
11 service territory;

12 (3) make such interconnections necessary to accomplish such
13 purchases and sales;

14 (4) transmit energy or capacity from a willing private power
15 producer to any other such company, municipal light plant, utility
16 or to another facility operated by the private power producer; and

17 (5) offer to operate in parallel with a private power producer.

18 The requirements under clauses (3), (4), and (5) of this para-
19 graph shall be subject to reasonable standards for operating safety
20 and reliability and the nondiscriminatory assessments of costs
21 against private power producers, approved by the department of
22 public utilities with respect to electric companies or determined by
23 municipal light boards and municipal light commissions.

24 The department of public utilities, with respect to electric com-
25 panies, and each municipal light board and municipal light com-
26 mission shall establish:

27 1) minimum rates and conditions of service for the purchase of
28 electrical energy and capacity made available by a private power
29 producer; and

30 2) maximum rates and conditions of service for the sale of
31 backup electricity to a private power producer.

32 The minimum rates established for electrical energy and ca-
33 pacity-purchased from a private power producer shall be based
34 upon full avoided costs of the electric company, municipal light
35 board or municipal light commission regardless of whether the
36 purchaser is simultaneously making sales to the private power
37 producer.

38 As used in this section, "avoided costs" means the incremental
39 costs to an electric company, municipal light board, or municipal
40 light commission of electric energy or capacity or both which, but
41 for the purchase from a private power producer, as defined in
42 section one hundred and thirty-four of this chapter, such electric
43 company, municipal light board, or municipal light commission
44 would generate itself or purchase from another source.

45 The department, each municipal light board and municipal
46 commission shall actively consider the establishment of rates for
47 electricity purchased from a private power producer that enhance
48 avoided costs, such as by establishing a schedule of future rates
49 based on long-term projections of avoided costs, for classes of

50 private power producers that further additional public purposes,
51 including, but not limited to, the burning of solid waste to produce
52 electrical energy, provided such rates shall be just and reasonable
53 to electric consumers. Payment for energy and capacity purchaed
54 from a private power producer by any such electric company,
55 municipal light board or municipal light commission shall be
56 pursuant to such other terms and conditions as may be determined
57 by the department or as may be contained in any contract nego-
58 tiated between the parties so long as it is not inconsistent with this
59 Section.

60 Upon application by a private power producer to enter into a
61 contract to sell energy and capacity, an electric company, municipi-
62 pal light board or municipal light commission shall respond within
63 thirty days of receipt of such application to all requests and offers,
64 and negotiate in good faith to enter into a contract which fairly
65 reflects the provisions of this section and the anticipated avoided
66 costs over the life of the contract as determined by the department
67 or as negotiated by the parties. The contract shall extend for a
68 period of up to thirty years at the option of the private power
69 producer provided that the department may approve a contract
70 for a longer period of time or which provides for payment based
71 upon other than the anticipated avoided costs if, considering all of
72 the provisions, the contract is at least as favorable to the private
73 power producer as a contract providing simply for payment of
74 avoided costs.

75 If a private power producer believes that an electric company,
76 municipal light board, or municipal light commission is violating
77 or proposing to violate any provision of this section or otherwise
78 failing to negotiate in good faith, said private power producer may
79 submit a written petition stating such belief to the department.
80 Upon receipt of the petition, the department shall fix a time
81 and place for a hearing within thirty days of receipt of said petition
82 and mail notice of the hearing to the parties in interest at least one
83 week in advance. After due notice and hearing, the department
84 shall make a determination as to whether the company, municipal
85 light board, or municipal light commission has violated any such
86 provision of this section or failed to negotiate in good faith. Upon
87 such a finding, the department shall prescribe the manner in which

88 said electric company, municipal light board or municipal light
89 commission shall comply including arbitration by the department
90 of any disputed provisions.

1 SECTION 7. Section 94 of Chapter 164 is hereby amended by
2 adding after the third paragraph of said Section 94, the following
3 new paragraph:

4 Notwithstanding anything to the contrary contained in this
5 chapter, each electric company making payments to private power
6 producers pursuant to purchases of electricity from such power
7 producers, shall be entitled to recoup such payments through the
8 standard base rate change requirements set forth in this section.
9 The inclusion of any such charges shall automatically be allowed
10 unless the department shall find that the inclusion of any such
11 payments is inconsistent with the standards set forth for other
12 charges recoverable under this section.

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The second of these ...

The third of these ...

The fourth of these ...

The fifth of these ...

The sixth of these ...

The seventh of these ...

The eighth of these ...

The ninth of these ...

The tenth of these ...

The eleventh of these ...