

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Robert A. O'Leary

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to the establishment of municipal lighting authorities.

PETITION OF:

NAME:

DISTRICT/ADDRESS:

Robert A. O'Leary

Cape and Islands

Marc R. Pacheco

First Plymouth and Bristol

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO THE ESTABLISHMENT OF MUNICIPAL LIGHTING AUTHORITIES.

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 43 of chapter 164 of the general laws, as appearing in the 2006 official
2 edition, is hereby amended by striking said section in its entirety and inserting in place thereof
3 the following section:—

4 Section 43. (a) If a municipality which votes to establish a municipal lighting plant fails,
5 within 150 days from the passage of the final vote required by section 35 or 36, to agree, as to
6 price or as to the property to be included in the purchase, with the distribution company, as
7 defined in section one of chapter 164 of the general laws, currently serving such municipality,
8 such municipality may apply to the department for review of the feasibility of the municipality's
9 acquisition of such property. The municipality's filing shall include an outline of the property the
10 municipality wishes to acquire, a projection of purchase price of such property, a projection of
11 other costs of establishing the municipal lighting plant, an outline of a financing plan to cover the
12 purchase price, including a description of municipality's bonding ability, pro forma income
13 statement and balance sheet for the municipal lighting plant, the options for governance of the

14 municipal lighting plant approved or anticipated by the municipality, and a projection of electric
15 rates to be charged by the municipal lighting plant.

16 (b) The department may request comments on the filing, hold hearings or technical conferences,
17 and request data and supporting materials from the municipality and the distribution company. The
18 department shall issue a report regarding the feasibility of the municipality's filing within one hundred
19 and eighty days of the filing, provided however that the department is not required to issue more than
20 three such reports in any contiguous twelve-month period. Any reports that are not issued within one
21 hundred and eighty days of the filing shall be issued in the order of the filings. If multiple municipalities
22 file with the stated intent of establishing a joint or cooperative system of municipal lighting plants, the
23 department shall process such filing simultaneously, to the extent possible. The department shall
24 transmit copies of the aforementioned report to the municipal clerk, the division of energy resources
25 and the joint committee on consumer protection and professional licensure.

26 (c) Upon the issuance of the department's report, or the expiration of the previously-described
27 time period for such report, the municipality may seek determination as to what property ought in the
28 public interest to be included in the purchase and what price should be paid, which shall be equal to the
29 original cost of the property less accumulated depreciation plus any other components required to
30 provide reasonable compensation to the distribution company. Such value shall be estimated without
31 enhancement on account of future earning capacity, lost sales, good will, physical reconfiguration of the
32 distribution company's utility plant and system or of exclusive privileges derived from rights in the public
33 ways. The department, after notice to the parties, shall give a hearing thereon and make the
34 determination aforesaid within one hundred and eighty days of the request for determination. Such
35 property shall include such portion of the property within the limits of such municipality as is suitable
36 for, and used in connection with, the distribution of electricity within such limits, including, at the

37 election of the municipality, the entirety of equipment jointly owned with other entities, in which case
38 said entities shall be directly compensated for, in a manner similar to the distribution company's
39 compensation for its own interest in the jointly-owned equipment.

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

53 (e) Within 30 days after such determination shall have been made by the department, the
54 distribution company shall tender to the municipality's city or town clerk a good and sufficient
55 deed of conveyance for the property required by the department to be purchased, and shall then
56 place said deed in escrow. The municipality shall have 180 days in which to accept or reject said
57 tender, or to appeal to the department any aspect of the proposed deed of conveyance. If the
58 municipality accepts, it shall have a further period of one hundred and eighty days in which to
59 pay to the distribution company the price determined as hereinbefore provided. Such acceptance

60 or rejection in case of a city shall be by vote of its city council, or its commissioners if its
61 government consists of a commission, and in case of a town shall be by vote at a town meeting,
62 or by such town officer or body to which town meeting shall delegate such authority. In the event
63 that the distribution company fails to comply with the preceding requirements, the price to be
64 paid by the municipality will immediately be reduced by one percent of the price determined by
65 the department. For every 30 additional days that pass prior to the distribution company's
66 compliance with the preceding requirements, the price will be reduced by an additional one
67 percent. Provided, however, that the department may waive such reduction if it finds that the
68 delay in compliance was beyond the control of the distribution company.

69 (f) In connection with the exercise by a municipality of the option to purchase utility
70 plant pursuant to this section, the municipality may elect to assume responsibilities for
71 maintenance, placement and removal of jointly-owned poles or other facilities shared with other
72 public utilities, or to purchase such facilities at the original cost of the property less accumulated
73 depreciation. Except where the municipality makes such election, the municipality shall assume
74 the rights and obligations of the previous owner with respect to any person other than the
75 distribution company controlling or using the poles, conduit or other jointly-owned or joint-use
76 facilities, property and rights; provided, that in the assumption of the rights and obligations of the
77 previous owner by such a municipality, such municipality shall in no way or form restrict,
78 impede, or prohibit access that other parties would enjoy under the previous ownership

79 (g) Any municipal lighting plant established pursuant to these provisions shall collect the energy
80 conservation and renewables charges as established by the department under section nineteen and
81 section twenty of chapter 25 of the general laws, and may use the resulting revenues for cost-effective
82 demand-side management programs and to support the development and promotion of renewable

83 energy projects in accordance with the provisions of section 4E of chapter 40J, and may elect to
84 contribute to, and benefit from, programs operated by one or more distribution companies or the
85 Massachusetts renewable energy trust fund, on the same basis as the distribution companies.

86 (h) Any municipal lighting plant established pursuant to these provisions shall allow customers to
87 be served by competitive electricity suppliers, and shall establish rules to allow competitive supply while
88 protecting the financial stability of the municipal lighting plant.

89 (i) The department shall not allow as a cost of service any costs of the incumbent
90 distribution company in connection with such proceedings, in excess of the costs reasonably
91 necessary to provide information, negotiate necessary contractual arrangements, and represent
92 the interests of the remaining ratepayers in designing the severance plan as described in
93 paragraph (d) of this section.

94 (j) The department shall report to the joint committee on consumer protection and professional
95 licensure annually on the operation of this revised section, including a summary of activity under this
96 section and any recommendations for amending the section.

97 SECTION 2: Section 1B of said chapter 164 of the general laws, as so appearing, is hereby
98 amended by adding to the end of paragraph (a) the following:—

99 except that the purchase by a municipality of plant from a distribution company shall transfer all
100 rights and obligations established in this section to the municipal lighting plant of the purchasing
101 municipality.

102 SECTION 3: Said Chapter 164 of the general laws, as so appearing, is hereby amended by
103 inserting after section 34B the following new section:—

104 Section 34C: Each electric distribution company shall maintain accounts of plant in service in
105 each municipality in its service territory, including the original cost of plant, accumulated depreciation,
106 and any other measures of the value of plant that the department may order used for determination of
107 sale prices under section forty-three of this chapter. The distribution company shall maintain such
108 accounts by the system of accounts approved by the department. Upon the request of any clerk of any
109 municipality in its service territory, the distribution company shall provide such accounts for that
110 municipality within thirty days. In the event that the distribution company fails to comply with this
111 provision, it shall be liable to the municipality for one thousand dollars for every day of noncompliance.