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January 8, 2008

VIA HAND DELIVERY

Chairman Michael W. Morrissey
Committee on Telecommunications, Utilities and Energy
Massachusetts Senate
State House
Room 413-D
Boston, MA 02133

**Re: Senate Proposed Re-draft of H4373: An Act to Promote Efficiency-First
Energy Procurement, Renewable and Alternative Energy Generation, and
Green Communities in the Commonwealth**

Dear Chairman Morrissey:

On behalf of the New England Power Generators Association, Inc. ("NEPGA"), please accept these comments to the proposed Massachusetts Senate re-draft of House Bill No. 4373 dated December 21, 2007, and the subsequent Amendments released January 8, 2008, (hereinafter collectively referred to as "the Bill").¹ NEPGA is the largest trade association representing competitive electric generating companies in New England. NEPGA's member companies represent approximately 25,000 megawatts of generating capacity throughout New England, and nearly 12,000 megawatts of generating capacity in Massachusetts. NEPGA's mission is to promote sound energy policies which will further economic development, jobs, and balanced environmental policy.

NEPGA appreciates your continued efforts to build on the successes of the restructured electricity markets by looking for incremental improvements to the flexibility and efficiency of the governing electricity statutes. NEPGA's member companies have been actively involved in working with you in the design and development of the competitive wholesale markets during the last ten years. In that time, markets have developed the necessary frameworks to support robust competition. NEPGA applauds your efforts in the Bill, and seeks through these comments to advance

¹ The views expressed in these comments do not necessarily represent the positions of each of NEPGA's members. In addition, nothing in these comments should be deemed to waive any rights that NEPGA or any of its members may have to challenge the administrative, procedural or substantive validity of the proposed regulation.

the evolution of competitive wholesale markets, and to further the economic and reliability benefits that competitive markets can deliver to consumers and the economy as a whole. NEPGA is concerned primarily with the sections of the Bill that (1) threaten to erode electricity consumer protections by promoting the monopoly build of renewable generation and (2) endanger the future supply of electricity by erecting statutory obstacles to generation infrastructure improvements. To that end, NEPGA puts forth the following comments for your consideration.

1. Electric utility participation in the energy supply business will have a detrimental effect on electricity consumers, merchant generators of electricity and on competitive electricity providers.

The restructuring of the ISO-NE market has been the product of many years of negotiations and discussions among a wide range of market participants: utilities, regulators, customers, generators and other stakeholder groups. From a practical perspective, a competitive wholesale market for power in New England has delivered benefits to customers and the region that would have been impossible under the regulated structure that had been in place for many years. This success has been the product of substantial new investment in efficient generating plants. Within ISO-NE there are market mechanisms that currently exist and that are being developed and implemented to meet the local reliability and sustainability needs of the region through competitive market signals, and NEPGA supports that process as the most appropriate mechanism to obtain desired generation capacity in Massachusetts.

Prior to the restructuring of the market, electricity consumers were vulnerable to a persistent market situation where there was only one provider of electricity, as opposed to a vibrant electricity market where participants' survival was based upon superior innovation and efficiencies. The lack of economic competition for electricity led to unavoidable cost overruns and stranded costs by utilities that experienced no competitive market pressures. The provisions in the Bill that advance utility owned generation by developing renewable energy resources outside of the private sector will ultimately cost ratepayers more money. In order to remain solvent, vertically integrated utility companies unavoidably recover their costs from ratepayers, whereas merchant energy companies are forced to cover their costs from the markets and must answer to their shareholders when their performance is subpar. For the foregoing reasons, NEPGA opposes the reentry of electric utilities into the energy supply business, and specifically opposes provisions in the Bill to that affect.

Notwithstanding the foregoing, NEPGA is aware of the Commonwealth's objective to increase the amount of renewable generation to achieve its environmental and sustainability goals.² NEPGA supports these initiatives, provided that such initiatives are not advanced at the expense of electric consumers or the competitive

² Commonwealth Solar will launch on January 23, 2008, to increase the amount of funds expended for solar rebates and accelerate the number of installations across Massachusetts. NEPGA encourages and supports such progressive initiatives.

wholesale electricity market. In furtherance thereof, NEPGA is willing to work through the legislative process to achieve these goals, provided that any such resulting legislation contains the following guidelines for generation development and ownership:

- All of the risk of the generation projects procured by any proposed legislation, including liability for project cost and scheduled completion and delivery obligation dates, must stay with the project proponent to maximize protections for Massachusetts consumers and remain consistent with competitive market fundamentals.
- The process for building renewable generation must maintain a strict consistency with competitive market rules.
- The amount of megawatts of renewable generation that is procured must be left to the market to decide, based on information provided by ISO-NE in its analyses of the power system, and on the value of such resources presented in the markets.

NEPGA maintains fuel neutrality in its membership and policy initiatives, as our members represent a highly diverse portfolio of generation. We feel uniquely qualified to assist in the development of market policies that promote new renewable and sustainable generation infrastructure in Massachusetts. We are anxious to see the Commonwealth achieve its goals and to be a part of that accomplishment.

2. All Municipalities Within the Commonwealth Should Participate in and Support Existing Permitting Processes for the Permitting of Energy Infrastructure by the Massachusetts Energy Facilities Siting Board.

Among the benefits of the competitive market system has been substantial new investment in efficient generating plants, much of it in Massachusetts. These units are cleaner and more efficient, so emissions of key pollutants have gone down even as electricity consumption throughout the region has increased. Despite the increase in generating capacity, New England facilities have reduced the emissions of NO_x by 32%, SO₂ by 48% and CO₂ by 6%. Generators want to continue to provide Massachusetts with the benefits that consumers have experienced and come to expect over the past several years. NEPGA is confident that this can be accomplished by incentivizing private investment in new technology to accelerate those benefits to improve the environment, while maintaining adequate electrical supply. However, the challenge of maintaining adequate electrical supply is constantly being burdened by regional demand increases, capacity shortfalls and the potential for loss of existing installed capacity. Simultaneously, the industry struggles with the ability to develop new generating infrastructure and to maintain existing capacity because of the complexities of the permitting process and the success of activist obstructions and delays.

NEPGA recognizes and appreciates the need for a comprehensive, formal planning and permitting process for energy related facilities within the Commonwealth. To protect a variety of environmental and economic resources, the Commonwealth has, over time, implemented a number of statutory and regulatory schemes for the selection, permitting and construction of energy infrastructure. Primarily, the Department of Public Utilities (DPU) oversees electric and gas infrastructure siting in conjunction with the Massachusetts Energy Facilities Siting Board (“EFSB”). The EFSB is a nine-member review board with expertise in the permitting of energy infrastructure that is charged with ensuring a reliable energy supply for the Commonwealth with a minimum impact on the environment at the lowest possible cost.³ The scope of review of the EFSB will vary greatly depending upon the infrastructure proposed, but consistently seeks to promote the public health, safety and general welfare, to maintain and enhance sound local and regional economies, and to ensure balanced economic development.⁴ The EFSB reviews major energy facilities using an adjudicatory process that provides for agencies to intervene as a party, or to participate as a limited participant.

A number of provisions within the Bill create an unnecessary interference with the permitting process governing the development of energy infrastructure and will cause frustrating delay and increased cost for project proponents and for the public. For the foregoing reasons, NEPGA opposes legislative permitting restrictions to the development of energy infrastructure.

3. The Legislature Should Not Attempt to Reform the Commercial Abilities of Municipal Lighting Plant Cooperatives in Comprehensive Energy Legislation.

NEPGA is concerned with the ability of the Legislature to conscientiously modify the operating charters of the Massachusetts Municipal Wholesale Electric Company (“MMWEC”) specifically, and municipal lighting plant cooperatives generally, through comprehensive energy legislation in a manner that sufficiently protects competitive markets and energy consumers. As has been indicated and demonstrated by NEPGA, we want to accommodate MMWEC’s changes to its corporate structure to enable it to obtain necessary financing authority and to transact market functions implemented since its incorporation in 1975. However, NEPGA is fundamentally opposed to any changes to 1975 Mass. Acts 775 § 5 that include language that allows MMWEC or any other municipal lighting plant cooperative to sell energy and related services to any entity without being considered a sale outside of MMWEC’s service territory pursuant to G.L.c 164 § 47A.⁵

³ See, G.L. c. 164, §69H

⁴ The EFSB’s review of electric generating facilities includes local and regional land use impact, local and regional cumulative health impact, water resource impact, wetlands impact, air quality impact, solid waste impact, radiation impact, visual impact, and noise impact of the proposed generating facility. See, G.L.c. 164, §69J1/4.

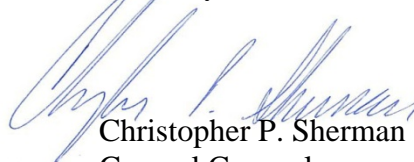
⁵ G.L.c 164 § 47A provides that a municipal lighting plant is exempt from the requirements to allow competitive choice of generation supply provided, however, that a municipal lighting plant may supply generation service

A coalition of competitive energy suppliers has met with MMWEC to negotiate the language that is included in the Bill. However, we are unable at this time to comfortably support that language because of the subsequent language offered in the Bill that extends the jurisdiction of municipal lighting plants. Of particular concern is any reference to a municipal lighting plant cooperative's ability to conduct energy transactions without violating G.L.c 164 § 47A. If these organizations are proposing to operate within the spirit of the competitive market, any such reference is unnecessary, and we suspect that the coalition can support the language if such a provision is removed.

Unfortunately, our concern with these sections arises from an inability to analyze the proposed new definitions in conjunction with the proposed broadening of authority within the short timeframe required. The MMWEC legislation was originally proposed as Senate Bill 1952. NEPGA hereby requests that S.B. 1952 be expanded to include the language in the Bill involving MMWEC and other municipal lighting cooperatives, and that the coalition of competitive energy suppliers, including NEPGA, be granted the opportunity to continue working with these associations to develop comprehensive language that will maintain the competitive market protections currently provided to electric consumers and other market participants.

NEPGA appreciates your efforts through this legislation and looks forward to working with you in the development of these policies and initiatives that further Massachusetts' interests in a robust and competitive energy supply and a cleaner environment. NEPGA reserves the right to provide further comments on the Bill. Please contact me if I can provide further clarification on the issues contained herein.

Sincerely,

A handwritten signature in blue ink, appearing to read "Chris P. Sherman", is written over the typed name.

Christopher P. Sherman
General Counsel