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April 24, 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: HB 4672 Redraft: An Act Improving Tax Fairness and Business Competitiveness

Dear Chairman Morrissey:

On behalf of the New England Power Generators Association, Inc. ("NEPGA"), please accept these comments to the above referenced HB 4672. 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.

The tangible economic, reliability and environmental benefits put forth by energy industry participants have been made possible through consistent regulatory and financial policies that encourage private investment in energy infrastructure. However, issues relating to siting new production infrastructure and increasing the necessary transmission infrastructure need careful consideration by Massachusetts policy leaders. Such a drastic change in the application of the tax treatment as that proposed in HB 4672 will have a detrimental effect on the developing energy market and will negatively impact reliability and innovation. Such a chilling effect on energy infrastructure investment undermines the regional planning efforts that have been undertaken to increase energy capacity in major load pockets, especially areas like northeastern Massachusetts.

NEPGA has worked closely with the Associated Industries of Massachusetts, the state's largest nonprofit, nonpartisan association of Massachusetts' employers, in the analysis and development of these comments. A group of tax experts from the state's employer community reviewed the bill with an eye to its "workability" in the real world of business. The group

identified four missing elements – still missing in the version going to the House floor – that are critical in terms of predictability and fairness, and that have no significant revenue impact. Failure to include them in the final version will create severe consequences for the state's economic climate. In order of priority they are:

1. Limited discretion for the commissioner of revenue is the top priority of the entire business community. An honest tax policy is transparent and predictable; it does not leave major issues of tax liability to the discretion of an interested unelected official. Presently, CFO magazine puts Massachusetts at or near the bottom of the state rankings with respect to tax climate because of the administration of our tax laws. We call for explicit statutory language that limits the "need" for Department of Revenue discretion, and consultation with affected taxpayers in the regulation drafting process.
2. Federal consolidated return election in statute. The Special Tax Commission's subcommittee on combined reporting also recommended inclusion of this provision to address the uncertainty inherent in determining the members of a unitary group. The language of the current bill is so vague as to cast doubt as to whether the tax liability reported on a combined basis will ultimately be sustained on audit. The federal consolidated return election would provide taxpayers with the certainty they need by reducing the instances of long and expensive audits regarding the appropriate composition of the combined group.
3. FAS 109 language. Combined reporting changes financial reporting requirements for publicly traded companies; a technical tax accounting rule known as "FAS 109" requires them to recognize deferred tax liabilities for any additional Massachusetts tax that will be due in the future for income that was previously reported for financial reporting purposes (arising largely from prior accelerated tax depreciation). This will create a one-time charge against current net income that will be perceived negatively by Wall Street and the capital markets. To eliminate the negative implications in the capital markets the combined filing provisions must provide a deduction that companies could use to offset this liability; other states such as Ohio and Michigan have recently enacted similar provisions, with a deferral to minimize the revenue impact.
4. A true water's edge election. The pending bill allows for water's edge election; we propose that water's edge be the default, rather than an election. We also propose tighter language so that combined reporting truly applies only to U.S. operations of multi-jurisdictional taxpayers. The Special Tax Commission's subcommittee on combined reporting unanimously recommended a true water's edge provision, based in part upon concerns that any alternative might contravene international law and diplomatic treaties.

There are other recommended amendments that would have a revenue impact but would avert unintended or unfair implications of the bill; one example is that subchapter S corporations do not benefit from the proposed rate reductions. We understand, however, that these considerations may be difficult to weigh in a time of pressing concern about future revenues. The

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four issues outlined above are critical concerns that may be addressed readily and without significant impact on state revenues.

NEPGA appreciates the opportunity to work 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 a faint, larger version of the typed name.

Christopher P. Sherman
General Counsel

cc. Chairman Steven C. Panagiotakos - Chairman, Senate committee on Ways and Means