

HOUSE No. 3335

By Mr. Marzilli of Arlington, petition of J. James Marzilli, Jr., and Peter V. Kocot relative to the efficiency of electric, natural gas, heating oil, and combined heat and power facilities. Telecommunications, Utilities and Energy.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

AN ACT TO INCREASE THE EFFICIENCY OF ELECTRIC, NATURAL GAS, HEATING OIL, AND COMBINED HEAT AND POWER FACILITIES.

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. Chapter 25 of General Laws is hereby amended by
2 adding, after section 21, the following sections:

3 Section 22. Energy Resources Procurement Board.

4 (a) There is established an Energy Resources Procurement Board
5 which shall consist of representatives appointed by the Governor of
6 (i) a state-wide manufacturing association, (ii) a state-wide business
7 association, (iii) a chamber of commerce, (iv) residential customers,
8 (v) low income customers, (vi) an environmental organization
9 knowledgeable in energy efficiency and energy procurement pro-
10 grams, (vii) the Division of Energy Resources, (viii) the Department
11 of Environmental Protection, (ix) and the Attorney General. Repre-
12 sentatives of the Department of Telecommunications and Energy and
13 of each of the electric and natural gas distribution companies shall
14 be non-voting, ex-officio members of the board. The board may
15 retain expert consultants provided such consultants may not have
16 any contractual relationship with an electric or natural gas distribu-
17 tion company or electricity or natural gas provider. The board shall
18 annually submit to the Department of Telecommunications and
19 Energy a proposal regarding the level of funding required for the
20 discharge of its duties, which proposal shall be approved by the
21 department either as submitted or as modified by the department.

22 Section 23. Comprehensive Electric Resources Procurement Plan.

23 (a) The electric distribution companies, in coordination with the
24 board, shall develop a comprehensive plan for the procurement of
25 electric energy resources, including, but not limited to, conventional
26 and renewable generating facilities, energy efficiency, load manage-
27 ment, demand response, combined heat and power facilities, and dis-
28 tributed generation, to meet the projected requirements of their
29 customers in a manner which minimizes the cost of such resources
30 to customers over time consistent with the state's environmental
31 goals and standards. On or before October 1, 2007, and every three
32 years thereafter, the companies will submit to the board an assess-
33 ment of (i) the energy and capacity requirements of the customers
34 for each of the next ten years, (ii) the impact of current and projected
35 environmental standards, including, but not limited to, those related
36 to greenhouse gas emissions and the federal Clean Air Act goals,
37 and how different resources could assist in achieving those standards
38 and goals, (iii) energy security and economic risks associated with
39 potential energy resources, and (iv) the estimated lifetime cost and
40 availability of potential energy resources. The board will review the
41 assessment and provide comments to the companies within two
42 months thereafter.

43 (b) Based on the assessment and the comments of the board, the
44 electric distribution companies shall submit proposed comprehen-
45 sive electric resources procurement plan(s) to the board within three
46 months after receiving the comments of the Board. Resource needs
47 shall first be met through all available energy efficiency and demand
48 reduction resources that are cost effective, reliable and feasible. The
49 plan shall specify (i) the total amount of energy and capacity
50 resources that are needed to meet the requirements of all customers,
51 (ii) the extent to which demand side measures, including efficiency,
52 conservation, demand response, and load management can cost-
53 effectively meet these needs, (iii) needs for generating capacity and
54 transmission and distribution improvements, (iv) how the develop-
55 ment of said resources will reduce and stabilize the costs of elec-
56 tricity to consumers and (v) the manner in which each of the
57 proposed resources should be procured, including the optimal con-
58 tract periods for various resources (vi) the manner in which the plan
59 will further air quality goals and reduce greenhouse gas emissions.
60 The plan shall consider: (a) approaches to maximize the impact of

61 demand side measures, (b) the extent to which generation needs can
62 be met by renewable and combined heat and power facilities and by
63 the impact of regional market incentives, (c) types and locations for
64 generation that would optimize the generation portfolio within the
65 state, (d) fuel types, diversity, availability, firmness of supply, and
66 security and environmental impacts thereof, including impacts on
67 meeting the state's greenhouse gas emission goals; (e) reliability,
68 peak load and energy forecasts, system contingencies, and existing
69 resource availabilities; (f) import limitations and the appropriate
70 reliance on such imports; (g) the costs and benefits of options for the
71 ownership of energy resources, including ownership by an electric
72 distribution company, (h) if it is in the best interest of customers,
73 how new resources could be integrated into the standard service pro-
74 vided pursuant to Chapter 25 of the general laws; and (i) the impact
75 of the electric resources procurement plan on the costs of electric
76 customers, including, but not limited to, effects on capacity and
77 energy costs, rate stability, and affordability for low-income cus-
78 tomers. The electric resources procurement plan shall include a
79 summary of the savings secured by the plan for electric customers.

80 (c) The proposed electric resources procurement plan shall be
81 reviewed by the board and approved as submitted or as modified by
82 the board within four months after receipt. The companies shall pro-
83 vide any additional information requested by the board which is rele-
84 vant to the consideration of the electric resources procurement plan.
85 The board shall submit the approved plan, together with a statement
86 of any unresolved issues to the Department of Telecommunications
87 and Energy. The department shall consider the plan in an uncon-
88 tested docket and shall provide an opportunity for interested parties
89 to submit comments regarding the plan. Not later than one hundred
90 twenty days after submission of the plan, the department shall
91 approve or modify and approve the plan.

92 Section 24. Implementation of Comprehensive Electric Resources
93 Procurement Plan.

94 (a) The department shall implement the electric resources pro-
95 curement plan by (i) issuing requests for proposals to meet specified
96 electric energy resource needs set forth in the plan or by directing
97 the Division of Energy Resources or the electric distribution compa-
98 nies to issue such requests for proposals, (ii) directing the electric
99 distribution companies to incorporate additional demand-side mea-

100 sures set forth in the plan into the comprehensive conservation and
101 load management plan prepared pursuant to Sec. 1.7 of this act for
102 review by the Energy Efficiency Board, (iii) directing the distribu-
103 tion companies to submit proposals for specific transmission, distrib-
104 ution or generating facility improvements or projects set forth in the
105 plan, or (iv) taking other actions within its authority to implement
106 the electric resources procurement plan.

107 (b) If the department determines to implement provisions of the
108 plan by issuing one or more requests for proposals, it shall conduct a
109 contested case proceeding to develop and issue the request. The
110 department shall publish requests for proposals under this section in
111 one or more newspapers or periodicals, as selected by the depart-
112 ment and shall post such request for proposals on its web site. The
113 department may retain the services of a third-party entity with expe-
114 rience in the area of energy procurement to oversee the development
115 of the requests for proposals and to assist the department in its
116 approval of proposals pursuant to this section. The department may
117 require the electric distribution companies to enter into contracts
118 with entities whose proposals are approved by the department. The
119 provisions of such contracts shall be consistent with the electric
120 resources procurement plan and shall be approved by the depart-
121 ment.

122 (c) The electric distribution companies shall provide quarterly
123 implementation reports to the Board commencing two and half
124 months after the approval of the electric resources procurement plan
125 by the department. Such quarterly reports shall include: description
126 of the extent to which the implementation of the plan is meeting the
127 elements specified in the plan as required by Section 1.3 (b) of this
128 act and a summary of the savings secured by the implementation
129 thus far of the plan for electric customers. The quarterly reports
130 shall also include the targets for each electric energy resource
131 included in the plan approved by the department and the achieved
132 percentages to date for each electric energy resource including the
133 achieved percentages for efficiency, distributed generation, demand
134 response, combined heat and power and renewables. The electric
135 distribution companies shall provide annual implementation reports
136 commencing one year after the approval of the electric resources
137 procurement plan by the department that include all the same ele-

138 ments as the quarterly reports to the department, the board, and
139 General Assembly.

140 (d) Effective January 1, 2008, until the comprehensive electric
141 procurement plan is implemented by the department, the electric dis-
142 tribution companies shall include all available energy efficiency and
143 demand reduction resources that are cost effective, reliable and fea-
144 sible in a comprehensive conservation and load management plan
145 prepared pursuant to Sec. 7 of this act for review by the Energy Con-
146 servation Board.

147 (e) All costs associated with the development and implementa-
148 tion of the electric plan which are not otherwise directly allocable
149 shall be recoverable through electric distribution rates.

150 (f) The limitation on the assessment of additional charges relative
151 to energy efficiency programs contained in Chapter 25, Sec. 19 of
152 the General Laws shall not apply to charges required to implement
153 the comprehensive electric procurement plan.

154 Section 25. Comprehensive Natural Gas Resources Procurement
155 Plan.

156 (a) The natural gas distribution companies, in coordination with
157 the Energy Resources Procurement Board, shall develop a compre-
158 hensive plan for the procurement of natural gas energy resources,
159 including, but not limited to, conventional supply and storage con-
160 tracts, energy efficiency, load management, and combined heat and
161 power facilities to meet the projected requirements of their cus-
162 tomers in a manner which minimizes the cost of such resources to
163 customers over time consistent with the state's environmental goals
164 and standards. On or before October 1, 2008, and every three years
165 thereafter, the companies will submit to the board an assessment of
166 (i) the volumetric natural gas and capacity requirements of the cus-
167 tomers for each of the next ten years, (ii) the impact of current and
168 projected environmental standards, including, but not limited to,
169 those related to greenhouse gas emissions and the federal Clean Air
170 Act goals, and how different resources could assist in achieving
171 those standards and goals, (iii) energy security and economic risks
172 associated with potential energy resources, and (iv) the estimated
173 lifetime cost and availability of potential energy resources. The
174 board will review the assessment and provide comments to the com-
175 panies within two months thereafter.

176 (b) Based on the assessment and the comments of the board, the
177 natural gas distribution companies shall submit a proposed compre-
178 hensive natural gas resources procurement plan to the board within
179 three months after receiving the comments of the Board. Resource
180 needs shall first be met through all available energy efficiency and
181 demand reduction resources that are cost effective, reliable and fea-
182 sible. The plan shall specify (i) the total amount of volumetric nat-
183 ural gas and capacity resources that are needed to meet the
184 requirements of all customers, (ii) the extent to which demand side
185 measures, including efficiency, conservation, and load management
186 can cost-effectively meet these needs, (iii) needs for transmission
187 and distribution improvements, (iv) how the development of said
188 resources will reduce and stabilize the costs of natural gas con-
189 sumers; (v) the manner in which each of the proposed resources
190 should be procured, including the optimal contract periods for var-
191 ious resources and (vi) the manner in which the plan will further air
192 quality goals and reduce greenhouse gas emissions. The plan shall
193 consider: (a) approaches to maximizing the impact of demand side
194 measures, (b) reliability, peak demand and energy forecasts, system
195 contingencies, and existing resource availabilities; (c) pipeline and
196 other supply limitations; and (d) the impact of the natural gas
197 resources procurement plan on the costs of natural gas customers,
198 including, but not limited to, effects on volumetric and capacity
199 costs, rate stability, and affordability for low-income customers. The
200 natural gas resources procurement plan shall include a summary of
201 the savings secured by the plan for natural gas customers.

202 (c) The proposed natural gas resources procurement plan shall be
203 reviewed by the board and approved as submitted or as modified by
204 the board within four months after receipt. The companies shall pro-
205 vide any additional information requested by the board which is rele-
206 vant to the consideration of the natural gas resources procurement
207 plan. The board shall submit the approved plan, together with a
208 statement of any unresolved issues to the Department of Telecom-
209 munications and Energy. The department shall consider the plan in
210 an uncontested docket and shall provide an opportunity for inter-
211 ested parties to submit comments regarding the plan. Not later than
212 one hundred twenty days after submission of the plan, the depart-
213 ment shall approve or modify and approve the plan.

214 Section 26. Implementation of the Comprehensive Natural Gas
215 Resources Procurement Plan.

216 (a) The department shall implement the natural gas resources
217 procurement plan by (i) issuing requests for proposals to meet speci-
218 fied natural gas energy resource needs set forth in the plan or by
219 directing the Division of Energy Resources or the natural gas distrib-
220 ution companies to issue such requests for proposals, (ii) directing
221 the natural gas distribution companies to incorporate additional
222 demand-side measures set forth in the plan into the comprehensive
223 conservation and load management plan prepared pursuant to Sec.
224 1.7 of this act for review by the Energy Efficiency Board, (iii)
225 directing the distribution companies to submit proposals for specific
226 transmission, distribution or generating facility improvements or
227 projects set forth in the plan, or (iv) taking other actions within its
228 authority to implement the natural gas resources procurement plan.

229 (b) If the department determines to implement provisions of the
230 plan by issuing one or more requests for proposals, it shall conduct a
231 contested case proceeding to develop and issue the request. The
232 department shall publish requests for proposals under this section in
233 one or more newspapers or periodicals, as selected by the depart-
234 ment and shall post such request for proposals on its web site. The
235 department may require the natural gas distribution companies to
236 enter into contracts with entities whose proposals are approved by
237 the department. The provisions of such contracts shall be consistent
238 with the natural gas resources procurement plan and shall be
239 approved by the department.

240 (c) The natural gas distribution companies shall provide quarterly
241 implementation reports to the Board commencing two and half
242 months after the approval of the natural gas resources procurement
243 plan by the department. Such quarterly reports shall include:
244 description of the extent to which the implementation of the plan is
245 meeting the elements specified in the plan as required by Section 1.4
246 (b) of this act and a summary of the savings secured by the imple-
247 mentation thus far of the plan for electric customers. The quarterly
248 reports shall also include the targets for each natural gas energy
249 resource included in the plan approved by the department and the
250 achieved percentages to date for each natural gas energy resource
251 including but not limited to efficiency and load management. The
252 natural gas distribution companies shall provide annual implementa-

253 tion reports commencing one year after the approval of the natural
254 gas resources procurement plan by the department that include all
255 the same elements as the quarterly reports to the department, the
256 board, and the Massachusetts General Court.

257 (d) Effective January 1, 2008, until the comprehensive natural
258 gas procurement plan is implemented by the department, the natural
259 gas distribution companies shall include all available energy effi-
260 ciency and demand reduction resources that are cost effective, reli-
261 able and feasible in a comprehensive conservation and load
262 management plan prepared pursuant to Sec. 1.7 of this act for review
263 by the Energy Efficiency Board, provided that funding for such
264 energy efficiency and demand reduction resources shall be not less
265 than 20 mills per therm for all consumers of natural gas in the com-
266 monwealth.

267 (e) All costs associated with the development and implementa-
268 tion of the natural gas plan which are not otherwise directly allo-
269 cable shall be recoverable through natural gas distribution rates.

270 Section 27. Aligning Utility Incentives with Reducing Consumer
271 Costs and Increased Energy Efficiency.

272 (a) The department shall ensure that estimates of sales or demand
273 elasticity do not result in material over or under collections by distri-
274 bution, transmission, and gas companies organized and doing busi-
275 ness in the commonwealth pursuant to the provisions of this chapter.
276 On or after the issuance of a final decision in a proceeding on
277 amendments to rate schedules for any electric or natural gas com-
278 pany, but not later than January 1, 2009, any purchased natural gas
279 adjustment clause or energy adjustment clause approved by the
280 department for such company shall include a provision that requires
281 the electric or natural gas company to charge or reimburse customers
282 for any under-recovery or over-recovery of overhead and fixed costs
283 due solely to the deviation of actual retail sales of electricity or nat-
284 ural gas from projected retail sales of electricity or natural gas.

285 (b) On or before July 1, 2008, the department shall conduct an
286 uncontested docket to establish a performance based incentive plan
287 which allows for additional compensation for each electric and nat-
288 ural gas distribution company based on the level of success in miti-
289 gating and reducing the cost and variability of electric and natural
290 gas services for customers through implementation of the electric

291 and natural gas procurement plans and shall provide an opportunity
292 for interested parties to submit comments regarding the plan.

293 Section 28. Energy Efficiency Program Oversight.

294 (a) The Division of Energy Resources shall appoint and convene
295 an Energy Efficiency Board which shall include representatives of:
296 (i) a state-wide manufacturing association, (ii) a state-wide business
297 association, (iii) a chamber of commerce, (iv) a heating oil industry
298 representative (v) residential customers, (vi) low income customers,
299 (vii) an environmental organization knowledgeable in energy effi-
300 ciency and energy procurement programs, (viii) the Division of
301 Energy Resources, (ix) the Department of Environmental Protection,
302 (x) and the Attorney General. Representatives of the Department of
303 Telecommunications and Energy and of each of the electric and nat-
304 ural gas distribution companies shall be non-voting, ex-officio mem-
305 bers of the board.

306 (b)(1) The Energy Efficiency Board shall advise and assist the
307 electric and natural gas distribution companies in the development
308 and implementation of comprehensive plans, which plans shall be
309 approved by the Department of Telecommunications and Energy, to
310 implement cost-effective energy efficiency programs and market
311 transformation initiatives. The plan shall be consistent with the com-
312 prehensive procurement plans approved by the Energy Resources
313 Procurement Board pursuant to sections 1.2 and 1.4 of this act at the
314 time of submission to the department. Each program contained in
315 the plan shall be either accepted or rejected by the Energy Efficiency
316 Board prior to submission to the department for approval. The
317 Energy Efficiency Board shall, as part of its review, examine oppor-
318 tunities to offer joint programs providing similar efficiency measures
319 that save more than one fuel resource or otherwise to coordinate pro-
320 grams targeted at saving ore than one fuel resource. Any costs for
321 joint programs shall be allocated equitably among the efficiency pro-
322 grams.

323 (2) Programs included in the plan developed under subdivision
324 (1) of this section shall be screened through cost-effectiveness
325 testing which compares the value and payback period of program
326 benefits to program costs to ensure that programs are designed to
327 obtain energy savings and system benefits whose value is greater
328 than the costs of the programs. Program cost-effectiveness shall be
329 reviewed annually, or otherwise as is practicable. If a program is

330 determined to fail the cost-effectiveness test as part of the review
331 process, it shall either be modified to meet the test or shall be termi-
332 nated. On or before March 1, 2008, and annually thereafter, the
333 board shall provide a report to the Massachusetts House and Senate
334 Ways and Means Committees that documents expenditures and fund
335 balances and evaluates the cost-effectiveness of such programs con-
336 ducted in the preceding year.

337 (3) Programs included in the plan developed under subdivision
338 (1) of subsection (d) of this section may include, but not be limited
339 to: (A) conservation and load management programs, including pro-
340 grams that benefit low-income individuals; (B) research, develop-
341 ment and commercialization of products or processes which are
342 more energy-efficient than those generally available; (C) develop-
343 ment of markets for such products and processes; (D) support for
344 energy use assessment, real-time monitoring systems, engineering
345 studies and services related to new construction or major building
346 renovation; (E) the design, manufacture, commercialization and pur-
347 chase of energy-efficient appliances and heating, air conditioning
348 and lighting devices; (F) program planning and evaluation; (G) joint
349 fuel efficiency initiatives programs targeted at reducing consumption
350 of more than one fuel resource; and (H) public education regarding
351 efficiency. Such support may be by direct funding, manufacturers'
352 rebates, sale price and loan subsidies, leases and promotional and
353 educational activities. The plan shall also provide for expenditures
354 by the Energy Efficiency Board for the retention of expert consul-
355 tants and reasonable administrative costs provided such consultants
356 shall not be employed by, or have any contractual relationship with,
357 an electric or natural gas distribution company. Such costs shall not
358 exceed five per cent of the total costs of the plans.

359 Section 29. Heating Oil Use.

360 (a) The Energy Efficiency Board shall develop programs to pro-
361 vide energy efficiency services for home heating oil consumers. The
362 programs shall be developed with advice and input from heating oil
363 dealers and service technicians. The Board shall ensure that input is
364 solicited from heating oil dealers and service technicians located in
365 different regions of the state.

366 (b) The Board will issue a request for proposals and select a pro-
367 gram administrator(s) to develop and implement programs for cost

368 effective heating and fuel oil efficiency. The elements of the plan,
369 approval process, and implementation will be consistent with
370 Section 1.7 of this act.

371 (c) A not for profit corporation shall be created, the Fuel Oil Effi-
372 ciency Trust, with a board comprised of 5 representatives elected
373 from the membership of the Board by the Board to collect and
374 administer monies for heating and fuel oil conservation. Upon
375 approval of an efficiency plan by the Board, the Fuel Oil Efficiency
376 Trust shall pay the approved amount to the program administrator.

377 (d) The state shall impose a one cent per gallon tax on the sale of
378 number 2 fuel oil (fuel and heating oil, use in electric generation and
379 transportation exempt) at the wholesale level which shall be paid to
380 the Fuel Oil Efficiency Trust. The state will create a corresponding
381 one cent per gallon tax credit for wholesale distributors of fuel oil
382 when they contribute one cent per gallon on the sale of number 2
383 fuel oil to the Fuel Oil Efficiency Trust.

384 Section 30. Combined Heat and Power.

385 (a) The Department of Telecommunications and Energy shall
386 develop a program utilizing incentives, competitive contracts, or a
387 portfolio standard, after a review of the most cost-effective mecha-
388 nisms, to increase the generation of electricity from combined heat
389 and power systems in the state.

390 (b) Eligible combined heat and power systems shall be new, oper-
391 ational after January 1, 2007, and achieve an efficiency of seventy
392 five percent or greater on an annual basis, with annual reporting to
393 the Department.

394 (c) The program or policies developed by the Department shall
395 supply one percent of the states total electric supply in 2010, and
396 increase by one percent per year to six percent in 2015. The Depart-
397 ment and the Division of Energy Resources shall assess the potential
398 to increase the combined heat and power target in the years beyond
399 2015 and the Department shall have the authority to increase the per-
400 centages at any time if it is in the state's economic and environ-
401 mental interest to do so. The programs or policies shall be funded
402 through electric distribution rates.

1 SECTION 2. Chapter 164 of General Laws, section 1E(a) is
2 hereby amended by inserting "success in mitigating and reducing the

3 cost and variability of electric and natural gas services for customers
4 through implementation of the electric and natural gas procurement
5 plans, effective delivery of energy efficiency and demand side man-
6 agement,” after the words “satisfaction services outages.”