

HOUSE No. 3371

By Mr. Rogers of Norwood, petition of John H. Rogers and others relative to the Massachusetts municipal wholesale electric company. Telecommunications, Utilities and Energy.

The Commonwealth of Massachusetts

PETITION OF:

John H. Rogers	Michael E. Festa
Donald F. Humason, Jr.	John W. Scibak
Barbara A. L'Italien	Patricia A. Haddad
Harold P. Naughton, Jr.	Michael F. Kane
James T. Welch	Elizabeth A. Poirier
Anne M. Gobi	William N. Brownsberger
Joseph R. Driscoll	Stephen R. Canessa

In the Year Two Thousand and Seven.

AN ACT RELATIVE TO THE MASSACHUSETTS MUNICIPAL WHOLESALE ELECTRIC COMPANY.

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 1 of Chapter 775 of the acts of 1975 is
2 hereby amended by striking out the definition of “electric power
3 facilities” or “electric power facility”, as inserted by Section 2 of
4 Chapter 129 of the acts of 1988, and inserting in place thereof the
5 following 2 definitions:—
6 “Energy facilities” or “energy facility”, electric power facilities,
7 electric power facility, or any system or facility, or any interest in, or
8 right to the use of, services derived from these facilities, facility or
9 system or any part of a facility or system, including any energy con-
10 servation system, system for the production of renewable energy, or
11 alternative energy facility for the manufacture, generation, transmis-
12 sion, distribution, transformation, transportation, storage, purchase,
13 sale, exchange or interchange or conservation of energy or any
14 byproducts or ancillary products or services by any means whatso-
15 ever, including but not limited to vehicles, personal or real property
16 and any facility for processing refuse, or other materials into fuel

17 with or without other byproducts, or facilities and property for the
18 acquisition, extraction, conversion, transportation, storage, repro-
19 cessing, or disposal of fuel and other material of any kind for any of
20 these purposes, as necessary to carry out the purposes of this act.

21 “Energy”, electricity, electric power, electric capacity, electric
22 energy, natural gas, liquified natural gas, LP air gas, propane air,
23 synthetic natural gas, oil, steam, coal, water, wind, battery, or any
24 byproducts, derivatives, services, ancillary products or ancillary
25 services, including but not limited to reactive power/voltage control,
26 loss compensation, scheduling and dispatch, load following, system
27 protection service and energy imbalance service, emissions
28 allowances, or the transmission, transportation, storage, purchase,
29 sale, exchange or interchange of energy capacity, either electric or
30 other, distribution, disposal, decommissioning thereof, or the trans-
31 mission, transportation, storage, disposal, decommissioning or distri-
32 bution of any byproducts thereof.

1 SECTION 2. Section 5 of said Chapter 775 is hereby amended by
2 striking out clauses (h) and (i) and inserting in place thereof the
3 following clauses:—

4 (h) to sell, lease, mortgage, exchange, transfer or otherwise dis-
5 pose of, or to grant options for any such purposes with respect to any
6 real or personal property or interest therein, with or without consid-
7 eration and notwithstanding whether the real or personal property is
8 needed by or useful to the corporation, all upon such terms and con-
9 ditions as the corporation shall determine;

10 (i) to pledge or assign any money, fees, charges, or other revenue
11 of the agency, or any real or personal property and any proceeds
12 derived by the corporation from the sale of energy or property, the
13 purchase of any insurance or condemnation awards;.

1 SECTION 3. Said Section 5 of said Chapter 775 is hereby further
2 amended by striking out clauses (k) to (p), inclusive, and inserting in
3 place thereof the following clauses:—

4 (k) to borrow money and issue its bonds as provided in this act
5 and to provide a pooled loan program on behalf of and for the ben-
6 efit of its members, to make loans to its members and to enter into
7 leases on behalf of its members, both as lessee or lessor;

8 (l) to purchase energy at wholesale, including but not limited to
9 all or a portion of the capacity and output of energy facilities and
10 steam, whether or not produced by an electric power facility;

11 (m) to sell energy and related products and services to member
12 and non-member cities and towns having municipal electric depart-
13 ments established under Chapter 164 of the General Laws or a
14 special act and to other utilities, public and private, cities, towns,
15 associations, aggregators, groups, authorities, agencies, political sub-
16 divisions, public corporations, private corporations, districts, depart-
17 ments of the commonwealth, suppliers, energy marketers, energy
18 brokers, cooperatives, either private or non-profit, and any other
19 entities, which have access to generation service and choice of
20 energy suppliers, both public and private, within and without the
21 commonwealth; all cities and towns and other entities or persons
22 listed in this section may purchase energy sold by the corporation,
23 but the sale of energy and related products and services to any of
24 these entities or persons shall not be considered to be supplying gen-
25 eration service outside of a municipal lighting plant's service terri-
26 tory for purposes of paragraph (b) of Section 47A of said Chapter
27 164, and the sale of energy in a city or town served by a municipal
28 lighting plant shall receive approval by the municipal lighting plant
29 before the initial sale;

30 (n) to contract for the use of generation, manufacturing, transmis-
31 sion, storage, disposal, decommissioning, transportation, and distrib-
32 ution facilities owned by others for the delivery to purchasers of
33 energy sold by the corporation, and any owner of these facilities may
34 enter into contracts with the corporation;

35 (o) to contract with respect to the purchase, sale, delivery,
36 exchange, interchange wheeling, pooling, transmission, transporta-
37 tion, storage, disposal, decommissioning, or use of energy and to
38 participate in intrastate, interstate and international arrangements
39 with respect thereto, including a New England Power Pool as
40 defined by Section 1 of said Chapter 164A of the General Laws;

41 (p) jointly or separately to plan, finance, acquire, construct,
42 improve, purchase, operate, maintain, use, share costs of, own, lease,
43 sell, dispose of, mortgage, or otherwise participate in energy facili-
44 ties or portions of these facilities or research and development
45 relating to them within and without the commonwealth and to enter
46 into and perform contracts with respect to these facilities, and if the

47 corporation acquires or owns an interest as a tenant in common with
48 others in any energy facilities within the commonwealth, the sur-
49 render or waiver by any owner of the property of its right to partition
50 the property for a period not exceeding the period for which the
51 property is used or useful for the corporation's purposes shall not be
52 invalid and unenforceable for any reason of length of that period, or
53 as unduly restricting the alienation of the property;.

1 SECTION 4. Clause (s) of said Section 5 of said Chapter 775 is
2 hereby amended by striking out the word “factions” and inserting
3 in place thereof the following word: — functions.

1 SECTION 5. Said Section 5 of said Chapter 775 is hereby further
2 amended by striking out clause (t) and inserting in place thereof the
3 following 3 clauses:—

4 (t) to enter into contracts determined by the corporation to be nec-
5 essary or for the prudent management of the corporation's assets,
6 funds, debts, or fuels, including without limitation, interest rate
7 swaps, option contracts, future contracts, forward purchase con-
8 tracts, hedging contracts, leases, or other risk management instru-
9 ments; and

10 (u) to exercise and perform all or a part of its powers and func-
11 tions through 1 or more wholly-owned or partly-owned corporations
12 or other entities; and

13 (v) to do all things necessary, convenient or desirable to carry out
14 the purposes of this act or the powers expressly granted or neces-
15 sarily implied in this act.

1 SECTION 6. Subsection (a) of Section 6 of said Chapter 775 is
2 hereby amended by striking out the first sentence and inserting in
3 place thereof the following sentence:—

4 The corporation may contract to sell, and any entity, aggregator,
5 association, agency, authority, district, city, town, political subdivi-
6 sion, department of the commonwealth, public or private corpora-
7 tion, and any other entity authorized to purchase energy within or
8 without the commonwealth, including but not limited to member and
9 non-member cities and towns having municipal electric departments
10 established under Chapter 164 of the General Laws or by a special
11 act and any utilities, public or private, and cities, towns, associa-

12 tions, aggregators, groups, authorities, agencies, political subdivi-
13 sions, districts, departments of the Commonwealth, suppliers, energy
14 brokers, cooperatives either private or non-profit, and any entities,
15 either private or non-profit and any other entities who have retail
16 access to generation services and choice of energy suppliers both
17 public and private may contract to purchase all or a portion of the
18 capacity and output of 1 or more energy facilities or energy, byprod-
19 ucts or related or ancillary services sold by the corporation,
20 including without limitation contracts providing for the planning,
21 engineering, design, acquiring sites or options for sites and expenses
22 preliminary or incidental to these facilities, but the contract to sell
23 shall not be considered to be supplying generation service outside of
24 a municipal lighting plant's service territory for purposes of para-
25 graph (b) of Section 47A of said Chapter 164, and the sale of energy
26 in a city or town served by a municipal lighting plant shall receive
27 approval by the municipal lighting plant before the initial sale.

1 SECTION 7. Said Section 6 of Chapter 775 is hereby further
2 amended by striking out subsections (b) and (c) and inserting in
3 place thereof the following 3 subsections:—

4 (b) Neither the obligations of the corporation nor the obligations
5 of any member or non-member cities and towns or districts, authori-
6 ties, or departments of the commonwealth or political subdivisions
7 under the capacity and output contracts shall be included in com-
8 puting the borrowing capacities of the cities and towns or districts,
9 authorities, departments of the commonwealth or political subdivi-
10 sions. Such obligations of cities and towns having municipal electric
11 departments established under said Chapter 164 or a special act shall
12 be treated as expenses of operating their electric plants and shall
13 constitute special obligations of the cities and towns, payable solely
14 from the revenues and other moneys derived by the cities and towns
15 from their electric departments or systems, the liability of these
16 cities and towns from other funds being limited to obligations under-
17 taken by them to pay for the energy used by them.

18 (c) A city or town shall be obligated to fix, revise, and collect fees
19 and charges for energy and other services, facilities and commodities
20 furnished or supplied through its electric department or systems at
21 least sufficient to provide revenues adequate to meet its obligations
22 under any contracts with the corporation and to pay any and all other

23 amounts payable from or constituting a charge and lien upon such
24 revenues, including amounts sufficient to pay the principal of and
25 interest on all bonds issued by the city or town for energy-related
26 purposes.

27 A city or town shall be obligated to fix, revise and collect fees and
28 charges for energy and other services, facilities and commodities
29 furnished or supplied through its electric department or system at
30 least sufficient to provide revenues adequate to meet its obligations
31 under any such output and capacity contract and to pay any and all
32 other amounts payable from or constituting a charge and lien upon
33 these revenues, including amounts sufficient to pay the principal of
34 and interest on all bonds issued by the city or town for energy-
35 related purposes.

36 (d) A city or town, which does not have an electric department,
37 district, authority, department of the commonwealth, or political sub-
38 division shall be obligated to fix, revise and collect taxes, fees or
39 charges sufficient to provide revenues adequate to meet any of its
40 obligations under any contract with the corporation.

1 SECTION 8. Section 9 of said Chapter 775 is hereby amended by
2 striking out subsection (a) and inserting in place thereof the
3 following subsection:—

4 (a) The corporation may, subject to the approval of the depart-
5 ment, borrow money by the issue of its bonds for any of its corpo-
6 rate purposes. Bonds may be issued under this section as mortgage
7 bonds, as general obligations of the corporation or as a special oblig-
8 ation payable solely from particular funds. Without limiting the gen-
9 erality of the foregoing, these bonds may be issued for project costs,
10 prepayment of fuel, transmission or transportation of fuel, or the cor-
11 poration's share of project costs of energy facilities or long-term pur-
12 chases of rights to use energy facilities which may include interest
13 before and during the carrying out of any project and for a reason-
14 able period after that time, prepayments under contracts for the pur-
15 chase of energy, or services related thereto, stranded investment
16 costs, early termination costs of any energy project, decommis-
17 sioning costs, reserves for debt service or other capital or current
18 expenses that may be required by a trust agreement or resolution
19 securing bonds, and all other expenses incidental to the determina-

20 tion of the feasibility of any project or to carrying out the project or
21 to placing the project in operation.

1 SECTION 9. Subsection (a) of Section 10 of said Chapter 775 is
2 hereby amended by striking out the first 2 sentences and inserting in
3 place thereof the following 2 sentences:—

4 In the discretion of the corporation, but subject to approval by the
5 department, any bonds issued under this act may be secured by a res-
6 olution of the board or by a trust agreement between the corporation
7 and a corporate trustee, which may be any trust company or bank
8 having the powers of a trust company within or without the com-
9 monwealth, and this trust agreement shall be in a form and executed
10 in a manner that may be determined by the corporation. The trust
11 agreement or resolution may pledge or assign, in whole or in part,
12 the revenues and other moneys held or to be received by the corpora-
13 tion, including the revenues from any facilities already existing
14 when the pledge or assignment is made, and any contract or other
15 rights to receive the same, whether then existing or later coming into
16 existence and whether then held or later acquired by the corporation,
17 and the proceeds thereof.

1 SECTION 10. Subsection (b) of said Section 10 of said Chapter
2 775 is hereby amended by striking out the first sentence and
3 inserting in place thereof the following sentence:—

4 The corporation is authorized to fix, revise, and collect fees and
5 charges for energy and other services, facilities, and commodities
6 furnished or supplied by it, but no costs, losses or benefits of any
7 such endeavor shall be allocated to any other endeavor unrelated
8 to it.