

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Michael A. Costello

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 further regulating utility companies.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Michael A. Costello	1st Essex

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT FURTHER REGULATING UTILITY COMPANIES.

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 1C of Chapter 164 of the General Laws, as appearing in the 2006 Official Edition,
2 is hereby amended by striking said section 1C and inserting in place thereof the following:-

3
4 Section 1C. Any marketing company or other competitive or unregulated operation or entity of an electric
5 or gas company shall be in the form of an affiliate of said company and shall be separate from any
6 generation, transmission, or distribution company affiliate of the electric or gas company. The department
7 shall promulgate standards of conduct which shall ensure the separation of such affiliates and which shall
8 be consistent with the following provisions: (i) a distribution or gas company, or an affiliate thereof, shall
9 not directly or indirectly use proceeds obtained from providing regulated services, or assets obtained with
10 such proceeds, to subsidize non-regulated services; said prohibition shall extend to the use of vehicles,
11 service tools, instruments, or employees, and the costs, salaries and benefits related thereto; (ii) a
12 distribution or gas company shall not give any affiliates any preference over non-affiliated suppliers or
13 customers thereof in matters relating to any product or service; (iii) all products, services, discounts,
14 rebates, and fee waivers offered by a distribution or gas company shall be available to all customers and
15 suppliers simultaneously, to the extent technically possible, on a comparable basis; (iv) a distribution or
16 gas company shall process all same or similar requests for any product, service, or information in the
17 same manner and within the same period of time; (v) a distribution or gas company shall not condition or
18 tie the provision of any product, service, or rate agreement by the distribution or gas company to the
19 provision of any product or service to which an affiliate is involved; (vi) a distribution or gas company
20 shall not share with any affiliate any market information acquired or developed by the distribution or gas
21 company in the course of responding to requests for distribution or gas service or any proprietary
22 customer information including, but not limited to, mailing lists, marketing information, and other

23 customer related information, without prior written authorization from the customer and unless the use of
24 such information is available to all commercial businesses on a non-discriminatory basis; (vii) a
25 distribution or gas company shall refrain from presenting that any advantage accrues to customers or
26 others in the use of its services as a result of that customer or others dealing with any such affiliate; (viii)
27 a distribution or gas company shall not share any portion of its name or logo with any affiliate; (ix) a
28 distribution or gas company shall not engage in joint advertising or marketing programs with any affiliate;
29 and (x) employees of a distribution or gas company shall not be shared with, and shall be physically
30 separated from those of, any generating or marketing affiliate.

31 Upon the filing of a written complaint with the department requesting determination of compliance by a
32 distribution or gas company, or an affiliate of a distribution or gas company, with the provisions of this
33 section or any rule, order, or other action promulgated pursuant thereto, the department shall investigate
34 the complaint, and upon the determination that there are reasonable grounds to proceed, the department
35 shall promptly initiate formal complaint proceedings. If the department determines that there is no
36 reasonable basis for initiating a formal complaint proceeding, it shall so advise, in writing, the person
37 filing such written complaint within 90 days of the date on which the complaint was filed, if a reasonable
38 basis for the complaint does exist the person filing the complaint shall be notified within 90 days.

39 The department shall establish such penalties as necessary to assure compliance; provided, however, that
40 any penalty incurred under this section shall not be included as expenses in connection with the
41 establishment of rates by said distribution or gas company. Any final judgment or determination issued by
42 the department, as a result of an investigation or otherwise, that an electric or gas company or an affiliate
43 thereof has violated either (1) the provisions of this section; or (2) any rule, order, or settlement
44 promulgated pursuant thereto, shall be prima facie evidence in any civil action against the distribution or
45 gas company or its affiliate to recover damages or obtain injunctive relief.

46 A violation of this section shall constitute an unfair or deceptive act or practice under the provisions of
47 chapter 93A, notwithstanding any contrary provision of any other law of the commonwealth or any
48 exemption provided by said chapter 93A.

49 It shall be the duty of the Attorney General of the Commonwealth to institute proceedings in the Superior
50 Court to prevent and restrain violations of this section. When the Attorney General has reason to believe
51 an electric or gas company or its affiliate is engaging in a violation of this section, the Attorney General
52 may bring an action to enjoin the electric or gas company, the affiliate, or both, from engaging in a
53 violation of this section.

54 The Department may approve an exemption from the requirements of this section upon a showing by the
55 distribution or gas company that such an exemption would be in the best interests of the ratepayers and
56 have no anticompetitive effect, and that costs can be fully and accurately allocated between the

57 distribution or gas company and its affiliate. Such exemption shall be valid for a period of two years and
58 may be extended by the Department after public hearing. Annually, as a condition of maintaining its
59 exemption, and as part of any petition to extend an exemption, the distribution or gas company shall make
60 a filing with the Department showing that the exemption continues to be in the best interests of the
61 ratepayers and have no anticompetitive effect, and showing the full allocation of costs between the
62 distribution or gas company and its affiliate. Such filings shall be open to public inspection. Any party
63 may petition the department at any time to revoke an exemption granted pursuant to this section.