Massachusetts Municipal Association
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March 26, 1997

The Honorable Michael Morrissey, Senate Chair
The Honorable Daniel Bosley, House Chair
Joint Committee on Government Regulations
The Honorable Robert Bernstein, Senate Chair
The Honorable Dennis Murphy, House Chair
Joint Committee on Energy
State House
Boston, MA 02133

Dear Chairman Morrissey, Chairman Bosley, Chairman Bernstein, Chairman Murphy, and Members of the Joint Committees on Government Regulations and Energy,

The Massachusetts Municipal Association appreciates the opportunity to testify on Governor Weld's electric industry restructuring proposal and the Legislature's Joint Electric Industry Restructuring Committee's deregulation plan. The MMA applauds the work of the Weld Administration and the Joint Committee on this important issue. Those involved have worked very hard to develop frameworks for the challenging task of opening the electric generating market to competition.

The MMA believes that any restructuring plan must reduce costs for all consumers of electricity, and must result in lower future electric rates with no diminution of services. In general, the MMA believes that any plan must do the following: provide for equitable benefits for all consumers; maintain existing local powers authorized by the state Constitution, state law, municipal charters, and case law; resolve the problem of stranded investments in a way that keeps ratepayers and local governments financially whole; allow cities and towns to act as aggregators to negotiate the purchase of electricity; and maintain the state's energy programs that provide social and environmental benefits.

The MMA appreciates the Committee's interest in the impact of restructuring on municipalities, and offers testimony on the following issues: property taxation and restructuring; municipalities as electricity load aggregators; exemption from the Uniform Procurement Act (MGL Chapter 30B), and municipal electric companies.

PROPERTY TAXATION AND RESTRUCTURING

Valuation of Electric Generating Property under Restructuring

The taxation of property owned by electricity generators is surfacing as a major issue of concern to municipal officials in the movement to restructure the electric industry. About 40 communities host an electric generating plant, and for many of them property taxes on utilities are a large source of revenue. Cities and towns which currently host generation facilities have traditionally based their property tax assessments on the book value of those plants. The book value is likely to be higher than the market value for some plants in a deregulated environment, especially in the case of old fossil fuel plants and nuclear power plants like the Pilgrim nuclear plant in the town of Plymouth.

Both the Weld proposal and the Electric Restructuring Committee's plan recognize that the value of many existing electric generating plants would decrease in a competitive market.

The Weld plan provides for a five-year transition period for payments in lieu of taxes for communities experiencing a loss of taxable property valuations resulting from restructuring.

The Joint Committee plan recommended payments in lieu of taxes be provided to host cities and towns for a period of ten years. The payments would drop by 10 percent each year over the decade. A city or town that currently hosts a power plant that would lose more than 50% of its value after restructuring would be eligible to apply for status as an economic target area and/or economic opportunity area as a means of promoting economic development. In addition, a municipality hosting a generation facility, upon the request of a majority of its executive body, would be allowed to bid on the facility for purchase by the city or town.

MMA recommendation

The MMA asks the Committees to include a provision that would require utility companies to make payments to municipalities on lost value of a plant if utilities are allowed to recover their losses, and that these payments be made for as long as utility companies are allowed to recover their stranded costs. In addition, local assessing officials will need access to financial and fixed asset records from power plant owners in order to make accurate valuations.

The MMA asks the Committees to not take any action that would limit the ability of municipalities to use the most appropriate assessment procedures for the valuation of electricity generating facilities, and recommends that the state make technical assistance for the valuation of electric generating facilities available to all interested municipalities.

Personal Property Taxation

Under current state law, investor-owned utilities, which are regulated by the Department of Public Utilities under MGL Chapter 164, pay personal and real property taxes on their land, buildings, and personal property. In some cases, the value of this personal property - the machinery, turbines, and the like - accounts for much of the value of a power plant. However, it is possible that under restructuring huge amounts of property used in the generation of electricity will be exempt from the personal property tax, resulting in a massive shift in the property tax burden to the citizens in affected communities.

Two scenarios are unfolding in anticipation of restructuring. First, several corporations are already exploring the possibility of building new electricity generating plants in communities across the state. Under state law, these businesses can form as manufacturing corporations. Second, regulated utility corporations will sell some, if not all, of their existing power plants. The New England Electric System has already announced that it plans to divest itself of its power generating interests. It is very possible that these interests will be bought by corporations that are formed as manufacturing corporations.

Under MGL Chapter 59, Subsection Sixteenth (3), manufacturing corporations are not required to pay municipal property taxes on the value of their personal property. In lieu of making property tax payments, these corporations pay a component of the corporate excise tax based on the value of the corporation's personal property. The state assesses $2.60 per $1,000 of the net book value of this personal property.

If electric utility corporations sell their plants to manufacturing corporations, and if many manufacturing corporations build electric generating facilities, a huge loss in taxable valuation will result, along with a shift in the tax burden from utility corporations to all other business and residential taxpayers in the municipality. A recent informal survey found that municipalities would stand to lose about $90 million from the property tax base. It is likely that the figure is much larger. The City of Boston receives $38 million in property taxes on utility-owned property, and estimates that most of this revenue would be at risk if a manufacturing corporation owned the property. The City of Everett levies $18 million in property taxes on utility-owned property, which is 42.5% of the city's property tax base. Seventy percent of the tax base in the town of Erving is in the property owned by utilities. About twenty-five percent of Montague's tax comes from utility-owned property.

The Weld plan provides that no property would be exempt from taxation if it is used in the manufacture or generation of electricity and if it has not, as of January 1, 1997, received a manufacturing status exemption.

Under the Joint Committee's plan, utility-owned facilities would not be eligible for any exemption from personal property taxation, but independently owned facilities would be eligible if their owners renegotiated their purchase power contracts. To encourage the siting of new generation facilities within the state, the Committee recommended that new generating facilities be eligible for the personal property tax exemption, and that property taxes be assessed solely on the value of the facility's real property.

MMA Recommendation

The MMA believes that all real and personal property used in the generation of electricity should continue to be subject to the local property tax. Cities and towns should be authorized to negotiate agreements for payments in lieu of taxes with plant owners. But if an agreement is not in place, the property should be subject to property taxation. Such a requirement would give municipalities leverage in negotiating agreements. Failure to include local tax authority would have a severe negative impact on many cities and towns.

MUNICIPAL LOAD AGGREGATION

It appears that joining together with other electric consumers will be of benefit in a restructured electric industry. Larger consumers of electricity would have a stronger negotiating position with generators and would have more clout to realize significant savings. Many municipalities have expressed interest in joining with other municipalities to purchase electricity for their own use, and on behalf of any interested electricity consumers located in the municipalities. Cities, towns, counties, or other regional governmental entities are natural vehicles for load aggregation.

Noting that communities and other organizations could form cooperatives to negotiate favorable terms not only on price, but also on community values such as energy efficiency, renewable power and low-income provisions, the Joint Committee recommended that municipalities be allowed to aggregate electricity demand on behalf of their citizens on a voluntary basis. The report also included legislation that would authorize corporate and non-profit aggregators and energy cooperatives. Participation in these entities would be voluntary.

<u>MMA Recommendation</u>

The MMA urges the Committee to support legislation that would specifically authorize municipalities or groups of municipalities to aggregate their own electric load. In addition, interested cities or towns should have the ability to aggregate the load of their citizens and businesses on a voluntary basis.

EXEMPTION FROM THE UNIFORM PROCUREMENT ACT

The state's Office of Inspector General has stated that municipality's electricity procurement will be subject to MGL Chapter 30B, the Uniform Procurement Act (UPA). The restrictions of the Act will put municipalities at a competitive disadvantage in the electricity market. Virtually every other public entity will not have to adhere to such strict rules as those contained in Chapter 30B.

The UPA prohibits municipalities from negotiating the terms of an agreement after an RFP has been issued and proposals have been received. The electricity market will be a dynamic and complex area, and it will be almost impossible for municipalities to have every term set in an RFP for energy. In addition, a city or town may want the flexibility to refine its specifications and terms as it learns more by going through the process. The lowest price may not be the best decision, given the need for reliability and stability.

The pilot project in Southern New Hampshire required extensive negotiations among the participating municipalities and the various providers. In the Massachusetts Electric pilot program underway in four Massachusetts cities, the Inspector General's Office issued a Chapter 30B waiver for participating local governments.

The Joint Committee recommended that a municipality's purchase of energy or energy-related services on behalf of its citizens be exempt from the UPA.

MMA Recommendation

The MMA strongly recommends that cities and towns be exempted from the UPA for the purchase of energy or energy services for themselves, as well as for purchases on behalf of their citizens.

MUNICIPAL ELECTRIC UTILITIES

The DPU has limited authority over municipal electric companies, whose rates are set by the local government rather than the state regulatory agency. The DPU's authority over municipal electric companies includes the following: approving the issuance of revenue bonds; ensuring compliance with laws governing street lighting rates; reviewing allowable earning; and reviewing rate changes to make sure they are not changed more than every three months.

The Joint Committee report recognized that the forty municipally-owned systems in the state have a distinct role in providing electric service to their customers, and that the elected bodies in each of these communities created the departments in the past, and have the right in the future to dissolve them. The Committee plan advocated for the protection of home rule by allowing communities served by municipal electric departments to decide for themselves on the benefits of competition. It recommended that municipal light departments be exempt from the provisions of its recommendations. However, if a municipal electric company is interested in selling power beyond its service territory, it would have to open its own service territory to other suppliers.

MMA Recommendation

The MMA supports the preservation of the current jurisdictional bounds with respect to municipal utilities. Municipal utilities should be able to participate in competition on a voluntary basis. Local governments and the municipal officials representing them should determine the extent of the involvement of municipal utilities in a restructured, competitive industry. For municipal utilities seeking to participate in the competitive market, it seems fair to require a reciprocal structure in which a municipal utility having authority to sell to customers outside of its jurisdiction should be required to offer reciprocal access to its customers

Thank you for the opportunity to testify today. As you know, the stakes are very high for cities and towns, and it is imperative that state and local governments work together as the commonwealth charts a course to a new environment for the provision and purchase of electricity and energy-related services. Please do not hesitate to contact me or Marie Johnson of the MMA staff if you have any questions, or would like any further comments. We look forward to working with you on this important and complex initiative.

Sincerely,

Geoffrey Beckwith
Executive Director

GCB/mej

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April 9, 1997

Honorable, The Cambridge City Council
City Hall
Cambridge, MA 02139

Dear Colleagues:

I am attaching for your information a memo outlining the position of the Massachusetts Municipal Association position on deregulating the electric industry.

The key staff person for the MMA in this area is a Cambridge resident who at my request would be available during the month of April to brief the Council further if this would be helpful.

Sincerely yours,

Francis H. Duehay

Francis H. Duehay

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Communications and Reports from City Officers #1

A communication was received from D. Margaret Drury, City Clerk, transmitting a letter from Councillor Francis H. Duehay, regarding the position of the Massachusetts Municipal Association position on deregulating the electric industry.

In City Council April 14, 1997

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