HOUSE . . . . No. 3719

By Mr. Valianti of Marlborough, petition of Daniel J. Valianti relative to an investigation and study of the savings potential from the use of energy futures and options by electric and gas utility companies. Government Regulations.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Five.

AN ACT TO STUDY THE SAVINGS POTENTIAL FROM THE USE OF ENERGY FUTURES AND OPTIONS BY ELECTRIC AND GAS UTILITIES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. The Secretary of Consumer Affairs, in consultation with the Commissioner of the Division of Energy Resources (DOER) and the Chairman of the Department of Public Utilities (DPU), shall conduct a study of the potential use of fuel procurement funds by public utilities of the Commonwealth to purchase futures, options, swaps, or other derivative contracts for fuel.

SECTION 2. The study shall:

1) examine any potential advantages of the use of such funds, including:

a) protection for utilities of the Commonwealth and their ratepayers from unanticipated surges in the price of fuel; and

b) increasing the effectiveness of fuel purchase programs.

2) examine any potential disadvantages of the use of such funds including reduction in funds available for fuel purchases, and waste, fraud, or abuse.

3) further examine —

a) the extent to which new authority would be needed for the use of such funds;

b) the extent to which the use of such funds would conflict with existing law;

c) the extent to which the use of futures, options, swaps, or affiliated derivatives could provide effective protection to end users from unanticipated surges in the price of energy fuels; and

d) how utilities could be educated in the prudent use of futures, options on futures, and swaps to maximize their purchasing effectiveness and protect themselves against unanticipated surges in the price of fuel.

SECTION 3. The Secretary of Consumer Affairs, in consultation with the Commissioner of the DOER and the Chairman of the DPU, may —

1) initiate a pilot program in cooperation with one or more public utilities of the Commonwealth to directly, or indirectly through third parties, purchase futures, options, swaps, or other derivative contracts for fuel; and

2) initiate a pilot program to educate utilities of the Commonwealth on the prudent and effective use of futures and options on futures to increase their protection against unanticipated surges in the price of fuel and thereby increase the efficiency of their fuel purchases.

3) implement such procedures as are necessary or appropriate to ensure the lowest purchase price to the participants for such energy products, through competitive bidding programs or otherwise;

4) direct steps to minimize or eliminate, to the extent practicable, the participants' exposure to energy price risk by purchasing energy products pursuant to fixed price contract, price cap contract, commodity swaps, or by engaging in a bona fide hedging transaction in (a) energy futures and options contract that are traded on an exchange designated for such trading by the commodity futures trading commission; or (b) commodity swaps transaction sponsored by an established financial institution.

The Secretary shall, in connection with transactions under this section, use due judgment and care under the circumstances then prevailing.

The Secretary, or his/her designee, may consult with representatives of the commodity futures, options trading, and swaps, transaction industry who are specialists in bona fide hedging transaction with energy futures, options, and swaps contracts and transactions.

Definitions: —

"Energy futures contract" — an obligation to make or take delivery of a specific quantity and quality of crude oil, gasoline, heating oil, natural gas, propane, or other energy product at a specific location at a future date and time;

"Bona fide hedging transaction" — a transaction in a contract for future delivery on any contract market, in a commodity option, where such transactions or positions normally represent a substitute for transactions to be made or positions to be taken at a later time in a physical marketing channel, and where they are economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise;

"Commodity swap transaction" — a contract to supply an energy product to a customer at an established price, agreed to in advance, typically involving a major financial institution, as third party, who swaps one or more parties' purchase transactions with one or more sell transactions.

"Fixed price contract" — a contract to supply an energy product to a customer at a single price, agreed to in advance;

"Price cap contract" — a contract to supply an energy product to a customer at a variable price not to exceed a price agreed to in advance, but which may decrease pursuant to agreed terms if market conditions warrant.