

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION NO.

COMMONWEALTH OF
MASSACHUSETTS,

Plaintiff,

v.

UTILITY EXPENSE REDUCTION, LLC,

Defendant.

FINAL JUDGMENT BY CONSENT PURSUANT TO MASS. R. CIV. P. 58(a)(1)

WHEREAS, Plaintiff, the Commonwealth of Massachusetts, through the Attorney General (the “AGO”) acting in conjunction with the Inspector General pursuant to M.G.L. c. 12A, § 11 (collectively, the “Commonwealth”), and Defendant Utility Expense Reduction, LLC (the “Defendant”) consent to the entry of this Final Judgment by Consent (“Final Judgment”) and its terms, without trial or adjudication, to resolve the claims set forth in the Commonwealth’s Complaint in the above-captioned case;

WHEREAS, Utility Expense Reduction was a New York corporation that supplied retail electricity to Massachusetts customers from 2016 to 2019;

WHEREAS, the Commonwealth filed a civil action (the “Complaint”) in Suffolk County Superior Court on June 30, 2022 against Utility Expense Reduction pursuant to M.G.L. c. 12, § 5C(1), M.G.L. c. 12, § 10, and M.G.L. c. 12, § 11D. The Complaint alleges that the Defendant:

- a. violated the Massachusetts Renewable Energy Portfolio Standard (M.G.L. c. 25A, § 11F) (“RPS”), the Massachusetts Alternative Renewable Energy Portfolio Standard (M.G.L. c. 25A, § 11F1/2) (“APS”), and Clean Energy Standard under the Massachusetts Clean Air Act (M.G.L. c. 111, §§ 142A-142E) (“CES”) by 1) failing to obtain the amount of renewable and clean energy required or, in lieu of meeting that obligation, to pay an alternative compliance payment (“ACP”) to the Commonwealth for 2018 and 2019; and 2) failing to submit an annual compliance filing to the Commonwealth for 2018 and 2019;
- b. violated the Massachusetts Consumer Protection Act (M.G.L. c. 93A, § 2), by using unfair methods of competition and unfair and deceptive acts or practices in the conduct of trade or commerce in the Commonwealth in its failure to comply with the RPS, APS and CES; and
- c. violated the Massachusetts False Claims Act (M.G.L. c. 12, § 5B(9)), by knowingly and improperly avoiding its obligation to pay money to the Commonwealth or a political subdivision thereof, under the RPS, APS, and CES; or
- d. in the alternative, was unjustly enriched by failing to make ACPs to the Commonwealth in 2018 and 2019.

WHEREAS, the Defendant neither admits nor denies the allegations made by the Commonwealth;

WHEREAS, entry of this Final Judgment resolves the allegations and claims set forth in the Complaint;

WHEREAS, the Defendant acknowledges this Court has subject matter jurisdiction over this case and personal jurisdiction over it, and consents to the entry of this Final Judgment in the

above-captioned case to fully and finally resolve the allegations and claims set forth in the Complaint;

WHEREAS, the Parties agree there is no just reason for delay, and that the Court's execution of this Final Judgment constitutes entry of a final judgment as to the Defendant and all claims as set forth in the Complaint, pursuant to Mass. R. Civ. P. 58(a)(1).

NOW, THEREFORE, BASED UPON THE AGREEMENT OF THE PARTIES, it is ADJUDGED, ORDERED, AND DECREED:

1. Parties Subject to Final Judgment. This Final Judgment, which constitutes a continuing obligation, is binding upon the Defendant.
2. Jurisdiction. This Court has jurisdiction over the persons and subject matter of this action pursuant to M.G.L. c. 12, § 5C(1), M.G.L. c. 12, § 10, and M.G.L. c. 12, § 11D, and M.G.L. c. 223A, § 3.
3. Venue. Venue is proper in Suffolk County Superior Court pursuant to M.G.L. c. 12, § 5C, and M.G.L. c. 223, § 5.
4. Monetary Relief. Judgment shall enter as follows:
 - a. against Defendant in the total amount of \$1,650,672.48 (the "Settlement Amount"), of which \$825,336.24 constitutes restitution (the "Restitution Amount").
 - b. Defendant has paid the amount of judgment in full accord and satisfaction to the AGO.
 - c. The AGO will designate \$783,010.41 of the Restitution Amount, *i.e.* the ACP amounts Defendant owed to the Department of Energy Resources ("DOER") for 2018 and 2019, to the Massachusetts Clean

Energy Center (“MassCEC”) pursuant to 225 CMR 14.08(3), 15.08(3) and 16.07(3) to fund clean energy programs. The remaining \$42,325.83 of the Restitution Amount, *i.e.* the ACP amounts Defendant owed to the Department of Environmental Protection (“DEP”) for 2018 and 2019, will be designated to DEP pursuant to 310 CMR 7.75(5)(c) to be used for the purposes set forth in 310 CMR 7.75(5)(c)(2) for initiatives to mitigate climate change.

5. Injunctive Relief. In accordance with Mass. R. Civ. P. Rule 65(d), for five years from the date of this Final Judgment, the Defendant shall be enjoined from engaging in business in the Commonwealth of Massachusetts.

6. Waiver of Appeal and Findings and Rulings. The Defendant waives all rights of appeal, and also waives the requirements of Mass. R. Civ. P. Rule 52. The Defendant will not challenge or appeal the entry of the Final Judgment or the Court’s jurisdiction to enter and enforce the Final Judgment.

7. Notices. All notices and documents required by this Final Judgment shall be provided via email to the Parties as follows:

The Commonwealth:

Christina Chan
Deputy Division Chief
False Claims Division
Office of the Attorney General
One Ashburton Place
Boston, MA 02108
christina.chan@mass.gov

Meghan K. MacKenzie
Lead Counsel
Office of the Inspector General
One Ashburton Place, Room 1311
Boston, MA 02108
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The Defendant: David G. Lazarus, Esq.
Verrill Dana LLP
One Federal Street, 20th floor
Boston, MA 02110
dlazarus@verrill-law.com

8. Release. This Final Judgment releases and discharges Defendant from civil liability only for the allegations and claims alleged in the Complaint.

9. Continuing Jurisdiction. The Superior Court of the Commonwealth retains jurisdiction of this action for the purpose of enforcing the terms of this Final Judgment or granting such further relief as the Court deems just and proper. The provisions of this Final Judgment shall be construed in accordance with the laws of the Commonwealth of Massachusetts.

10. Ongoing Obligations to Comply with the Law. Nothing in this Final Judgment shall relieve the Defendant of its duty to comply with any provision of the law. This Final Judgment does not constitute an approval by the Commonwealth of the Defendant's business acts and practices, and the Defendant shall not make any representations to the contrary.

11. Failure to Comply with Final Judgment. Nothing in this Final Judgment shall preclude the Commonwealth from commencing an action to pursue any remedy or sanction that may be available to the Commonwealth upon its determination that the Defendant has failed to comply with any of the requirements of this Final Judgment.

12. Complete Agreement. This Final Judgment contains the complete agreement between the Commonwealth and the Defendant relating to the allegations in the Complaint. No promises, representations or warranties other than those set forth in this Final Judgment have been made by any of the Parties.

13. Severability. The provisions of this Final Judgment shall be severable, and should any provision(s) be declared by a court of competent jurisdiction to be unenforceable, the other provisions of this Final Judgment shall remain in full force and effect.

14. Modification. This Final Judgment may not be changed, altered or modified, except by further order of the Court.

APPROVED AND ORDERED:

Justice of the Superior Court

Dated: _____

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION NO.

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v.

UTILITY EXPENSE REDUCTION, LLC,

Defendant.

JOINT MOTION FOR ENTRY OF FINAL JUDGMENT BY CONSENT

The Commonwealth of Massachusetts, through the Attorney General and the Inspector General (the “Commonwealth”), and Defendant Utility Expense Reduction, LLC (the “Defendant”), hereby jointly move for entry of the Final Judgment by Consent (the “Final Judgment”) filed herewith, to fully and finally adjudicate the above-captioned case. As grounds for this Motion, the Commonwealth and Defendant (collectively, the “Parties”) reached agreement on terms embodied by the proposed Final Judgment, which is incorporated herein by reference. In support of this motion, the Parties state that:

1. The Commonwealth’s Complaint alleges that the Defendant violated the Massachusetts Renewable Energy Portfolio Standard (M.G.L. c. 25A, § 11F), the Massachusetts Alternative Renewable Energy Portfolio Standard (M.G.L. c. 25A, § 11F1/2), the Massachusetts Clean Air Act (M.G.L. c. 111, §§ 142A-142E), the Massachusetts Consumer Protection Act (M.G.L. c. 93A, § 2), and the Massachusetts

False Claims Act (M.G.L. c. 12, § 5B(9)), or, in the alternative, was unjustly enriched.

2. The Defendant neither admits nor denies the allegations made by the Commonwealth.
3. The Parties now seek entry of the contemporaneously filed Final Judgment resolving the matter.
4. The Parties waive the entry of findings of fact and conclusions of law pursuant to Mass. R. Civ. P. Rule 52 and waive all rights to appeal entry of the Final Judgment.
5. The proposed Final Judgment is lawful, was arrived at in full conformity with considerations of procedural fairness, and is in the public interest.

WHEREFORE, the Parties respectfully request that the Court enter the Final Judgment submitted herewith.

Plaintiff,
Commonwealth of Massachusetts

MAURA HEALEY,
Attorney General

/s/ Amy Crafts

Amy Crafts, BBO #667844
Chief, False Claims Division
Christina Chan, BBO #677703
Deputy Chief, False Claims Division
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GLENN CUNHA,
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Defendant's Counsel on behalf of Utility Expense Reduction, LLC



David G. Lazarus, BBO #624907

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Boston, MA 02110

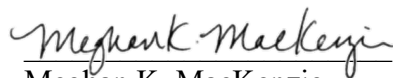
(617) 292-2859

Date: 6/27/2022

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was e-filed and sent to the defendant's counsel David Lazarus, Esq. via email to dlazarus@verril-law.com and Assistant Attorney General Amy Crafts to amy.crafts@mass.gov.

Dated: June 30, 2022



Meghan K. MacKenzie
Lead Counsel
Office of the Inspector General