COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

SUFFOLK COUNTY 2018 SITTING

NO. 12477

NEW ENGLAND POWER GENERATORS ASSOCIATION and GENON ENERGY, INC.
Plaintiffs/Appellants,

and FOOTPRINT POWER SALEM HARBOR DEVELOPMENT LP and MASSACHUSETTS MUNICIPAL WHOLESALE ELECTRIC COMPANY
Intervenors-Plaintiffs/Appellants,

v.

MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION and EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS
Defendants/Appellees

On Appeal from the
Superior Court of Suffolk County

Brief For the Intervenor-Appellant Footprint Power Salem Harbor Development LP

John A. DeTore (BBO #121840)
Greenberg Traurig, LP
One International Place
Suite 2000
Boston, MA 02110
Telephone: (617) 310-6000
Facsimile: (617) 310-6001
detorej@gtlaw.com

Supreme Judicial Court Rule 1:21
Corporate Disclosure Statement

Oaktree Capital Group, LLC owns more than 10% of the stock of Footprint Power Salem Harbor Development LP.

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ISSUE PRESENTED

1. Whether the regulations at 310 Code Mass. Regs. §7.74 ("Section 7.74") that impose annually declining, mass-based emissions limits on the electric sector are arbitrary and capricious in effect because they will increase statewide greenhouse gas emissions as defined in the Global Warming Solutions Act, Chapter 298 of the Acts of 2008; G.L. c. 21N ("GWSA").

STATEMENT OF THE CASE

The Nature of the Case and Course of Proceedings Below submitted by Appellant New England Power Generators Association ("NEPGA") is adopted and incorporated herein by reference.

STATEMENT OF FACTS

On October 10, 2013, more than five years after the enactment of the GWSA, the Massachusetts Energy Facilities Siting Board ("Siting Board" or "EFSB"), in accordance with G.L. c. 164, § 69J¼, approved the construction of Footprint's 630 Megawatt ("MW")[1]

[1] Electricity is measured in terms of watts (the amount of energy used, generated or transmitted at a time), typically in kilowatts (1,000 watts) or megawatts (1,000 kilowatts). The number of kilowatts used in an hour (kilowatt-hour or kWh) is the amount of electricity a power plant generates over time. (RA1186).

electric generating facility in Salem, MA ("Footprint Facility"). (RA2871[2]). In approving the Footprint Facility, the Siting Board concluded that it would displace (*i.e.*, operate in place of) older, more highly greenhouse gas ("GHG") emitting power plants and that such displacement would result in reduced GHG emissions "under any plausible modeling scenario." (RA2871). As a result, the Siting Board determined that the Footprint Facility would be consistent with the GWSA.[3] Footprint strongly supports the goals of the GWSA. (RA2862). Indeed, Footprint conceived, developed and permitted the Footprint Facility with the GWSA in mind, as the overriding purpose for the Footprint Facility was to replace a highly polluting coal-fired plant with a state-of-the-art, efficient, less-GHG-

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[2] "RA" refers to the Record Appendix which was compiled by the Agencies and filed with this Court on February 16, 2018.

[3] On February 18, 2014, Footprint and Conservation Law Foundation entered into a settlement agreement ("CLF Settlement") that was included as a condition to a subsequent Siting Board proceeding involving the Footprint Facility. The CLF Settlement establishes a declining CO_2 emissions cap, including an annual cap limit in 2018-2020 of 2,279,530 metric tons. The CLF Settlement states that this cap "represents the type of threshold conditions that may permit new fossil fuel infrastructure, including generating facilities, to demonstrate compliance with the GWSA, including the GWSA's 2050 mandate." (RA2872).

emitting, natural-gas-fired facility. (RA2873); Amended Intervention Complaint of Footprint Power Salem Harbor Development LP ("Complaint"), ¶2.

As a very efficient and flexible fossil-fuel-fired electric generating facility, the Footprint Facility will likely be dispatched to operate more often than more highly emitting generating facilities because ISO New England, Inc. ("ISO-NE"), the operator of the New England electric system, dispatches electric generating facilities based on their marginal costs, and, all things being equal, more efficient power plants have lower marginal costs. Complaint, ¶4. By displacing the operation of higher-GHG-emitting power plants, the operation of the Footprint Facility will lead to overall reductions in GHG emissions, thereby furthering the central goal of the GWSA.

However, Section 7.74 disturbs ISO-NE's normal dispatch procedure by improperly imposing artificial limits on the operation of the Footprint Facility that will reduce the number of hours it would otherwise operate, notwithstanding the fact that the Footprint Facility has already demonstrated that it will reduce GHG emissions consistent with the GWSA. (RA2863); Complaint, ¶4. As described below, such artificial

curtailment will result in an *increase* in the very emissions the GWSA seeks to decrease and compels a result that is the complete opposite of the GWSA's stated goal.

I. The New England Energy Market

In order to analyze whether Section 7.74 is lawful and consistent with the clear mandate of the GWSA, the effects of Section 7.74 on GHG emissions must be assessed within the proper legal and analytical framework. Here, that framework is the manner in which ISO-NE operates the New England electricity market. Indeed, the GWSA provides that any limits on carbon emissions in the electric sector should be "based on consumption and purchases of electricity from the regional electric grid …" G.L. c. 21N, § 3(c). As set forth below, the manner in which ISO-NE operates the New England electricity market guarantees that Section 7.74 will increase, rather than decrease, GHG emissions.

A. Electricity Service Infrastructure

Electricity service relies on a complex system of infrastructure that falls into two general categories—generation and the delivery services of transmission and distribution. (RA1198). Generating facilities or

power plants produce electricity by converting primary sources of energy such as coal, oil, natural gas, uranium, wind and solar. (RA1152). Power plants have differing costs and operational characteristics which determine when, where and how such facilities are constructed and operated. (RA1198-1199).[4]

The electricity produced by power plants is carried long distances by high-voltage transmission lines that deliver the electricity to distribution facilities (wholesale transmission) and ultimately to retail customers through local wiring (retail distribution). (RA1198); Complaint, ¶15. The power generation and high-voltage transmission lines that deliver power to distribution facilities constitute the bulk power system. (RA1198).

B. Role of ISO-NE

ISO-NE is the independent, not-for-profit corporation responsible for the (i) day-to-day reliable operation of New England's bulk power system, (ii) development and operation of the region's wholesale competitive electricity markets, and

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[4] Power plant operating costs fall into two general categories—capital investment costs (the amount spent to build the plant) and operating costs (the amount spent to maintain and run the plant). (RA1199).

(iii) management of a comprehensive regional bulk power system planning process. (RA2370). ISO-NE is regulated by the Federal Energy Regulatory Commission ("FERC") and serves the entire New England region of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont. (RA2370). The competitive wholesale electricity markets ensure that electricity is constantly available from the bulk power grid to the region's households and businesses. (RA0567).

C. Massachusetts is Part of an Interconnected Regional Electricity System

ISO-NE operates the competitive wholesale electricity markets utilizing a regional electricity dispatch system whereby electricity demand throughout New England is met by the entire fleet of generation resources located throughout the region. (RA2370, 2858). Thus, demand for electricity in Massachusetts is not met solely by generating plants located within the boundaries of the Commonwealth. Rather, since Massachusetts is part of a regional, interconnected electricity system operated by ISO-NE, demand for electricity in Massachusetts can be met by a generating facility anywhere in the six-state New England region. (RA2858); Complaint, ¶17. The region's

transition to wholesale competitive markets has spurred the development of cleaner, more efficient generation resources in New England leading to significant reductions in CO_2 emissions. (RA2370-2371).

D. Lower Greenhouse Gas Emitting Generating Facilities are Called into Service by ISO-NE to Meet Electric Demand Ahead of Higher Emitting Facilities

Grid operators dispatch power plants (*i.e.*, call them into service) with the simultaneous goals of providing reliable power at the lowest cost. (RA1199). ISO-NE operates the regional dispatch system on a least-cost basis. That is, as electric demand in New England increases, ISO-NE selects the least-cost generating facility available in New England to meet that demand. (RA2869-2870). Because ISO-NE bases its least-cost dispatch on marginal operating costs, the least cost unit is usually the unit with the lowest CO_2 emissions. This means that renewable resources, like wind and solar, are dispatched first because they have virtually no operating costs. For fossil-fired-fuel units, the dispatch is based primarily on the fuel costs, as best represented by the facility's heat rate (an efficiency measurement that calculates the amount of energy used to generate one kilowatt hour of

electricity). A facility with a low heat rate is more efficient (uses less fuel), has lower costs and emits less CO_2 emissions than a unit with a high heat rate. (RA2870). As a result, since lower heat rates correlate with lower costs and emissions, electricity generated by newer, highly efficient and lower-CO_2-emitting facilities will be dispatched by ISO-NE prior to older, less efficient and higher-CO_2-emitting facilities. (RA2870); Complaint, ¶18.

E. The Dispatch Stack

Electricity supplied through ISO-NE's least cost dispatch can be visualized as a tower or stack arranged from least cost to most cost. Accordingly, if a highly efficient low-CO_2-emitting facility is not available for dispatch because its operation has been curtailed for any reason, ISO-NE must replace the electricity that the curtailed facility would have generated with electricity from another generating facility since the demand for such electricity will still exist. Under ISO-NE's least cost dispatch, the replacement facility will, by definition, necessarily be the facility that (i) is above the curtailed facility on the stack, and (ii) has higher costs, and

therefore greater CO_2 emissions, than the curtailed facility.

Thus, if a facility that would otherwise have been dispatched by ISO-NE is curtailed due to the individual facility emissions limits imposed by Section 7.74, ISO-NE will be required to dispatch a facility higher up on the supply stack in its place notwithstanding the fact that the replacement facility will be less efficient and have higher CO_2 emissions. Accordingly, as discussed in more detail below, ISO-NE's regional system of dispatching generating facilities dooms to failure the ability of Section 7.74 to achieve reductions in GHG emissions.

ARGUMENT

I. Section 7.74 is Invalid Because it is Inconsistent with the Plain Language and Purpose of the GWSA

A. Standard of Review

Judicial review of an administrative action is limited to a determination of whether the state's action is arbitrary, capricious, or contrary to law. *Atlanticare Med. Ctr. v. Comm'r of Div. of Med. Assistance*, 439 Mass. 1, 5 (2003) (citations omitted). Due to principles of judicial deference to agency rulemaking, Footprint acknowledges that it carries a

heavy burden in establishing the invalidity of Section 7.74. *Biogen IDEC MA, Inc. v. Treasurer & Receiver Gen.*, 454 Mass. 174, 187 (2009) ("… a party challenging the validity of an agency's regulations has a formidable burden.") (citation omitted).

However, the Massachusetts Supreme Judicial Court has made clear that the principle of deference to a promulgated regulation "does not mean abdication" of the judicial role. *Ciampi v. Comm'r of Correction*, 452 Mass. 162, 166 (2008) (citation omitted). Judicial review of the meaning of a regulation's enabling statute is *de novo*. *Kain v. Dep't of Envtl. Prot.*, 474 Mass. 278, 286 (2016). In assessing the legality of an agency regulation, courts determine "whether the Legislature has spoken with certainty on the topic in question." *Goldberg v. Bd. of Health of Granby*, 444 Mass. 627, 632-633 (2005). If the Legislature has spoken with certainty, then an "agency regulation that is contrary to the plain language of the statute and its underlying purpose may be rejected by the courts." *Id. (citing Smith v. Comm'r of Transitional Assistance*, 431 Mass. 638, 646 (2000)). If the statutory language is not clear, then the Court looks "to the cause of [the statute's] enactment, the

mischief or imperfection to be remedied, and the main object to be accomplished, to the end that the purpose of its framers may be effectuated." *Kain*, 474 Mass. at 286 (citations omitted). Nevertheless, courts "will not hesitate to overrule agency interpretations of statutes or rules when those interpretations are arbitrary or unreasonable." *Id.* (citing *Moot v. Dep't of Envtl. Prot.*, 448 Mass. 340, 346 (2007)). Massachusetts courts "will declare an agency regulation void if 'its provisions cannot by any reasonable construction be interpreted in harmony with the legislative mandate.'" *Atlanticare*, 439 Mass at 5 (citations omitted).

B. The Administrative Record Overwhelmingly Demonstrates that Section 7.74 Will Lead to an Increase in Statewide Greenhouse Gas Emissions—the Very Emissions the GWSA Seeks to Reduce

As discussed above, once the logic of the ISO-NE dispatch is established, the fatal flaw in Section 7.74 is obvious. Because NE-ISO will always dispatch the least-cost generation unit, the limitations on Massachusetts' units imposed by Section 7.74 will necessarily result in the increased operation of higher cost and higher GHG emitting units outside Massachusetts. Increased GHG emissions from

out of state generation facilities that serve Massachusetts demand are not "regional in nature".[5] To the contrary, the GWSA defines "statewide greenhouse gas emissions" as including "all emissions of greenhouse gases from the generation of electricity delivered to and consumed in the commonwealth... whether the electricity is generated in the commonwealth or imported." G.L. c. 21N, § 1.

Thus if the Administrative Record shows that Section 7.74 will inevitably lead to the increased operation of higher GHG emitting generating units outside Massachusetts that serve Massachusetts' demand for electricity, the regulations must be deemed inconsistent with the policy objective of the GWSA, and, therefore, unlawful.

While the simple logic of the ISO-NE dispatch system offers compelling evidence that Section 7.74 is fatally flawed, the Administrative Record also contains four studies that demonstrate how Section 7.74 will increase GHG emissions in practice.

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[5] "Accordingly, we also reject the department's argument that regulations promulgated pursuant to §3 need not achieve greenhouse gas emissions specific to the Commonwealth, but may be regional in nature." *Kain*, 474 Mass. at 298 n. 25 (2016).

Each of these four studies uses a computer simulation to model the operation of the ISO-NE dispatch in a particular year. These complex models include multiple variables such as the operating characteristics of all generating units in New England, and then simulate how ISO-NE would dispatch this generation every day of the year to meet an assumed demand for electricity.[6] In these four studies, the authors ran a number of scenarios with different assumptions for the key variables. In general, the various scenarios sought to quantify the effects of Section 7.74's limits on GHG emissions and the wholesale price of electricity under different circumstances. (RA2368 -2405, 2811-2817, 2976-2987, 3119-3131). The studies were conducted by ISO-NE, Dynegy, NRG and Tabors. All four studies utilized the same methodology—a simulation of the process by which ISO-NE dispatches electric generation in New England (the least-cost dispatch described above).

Each of the four studies demonstrates that Section 7.74 will increase statewide GHG emissions and

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[6] These models include a host of other assumptions such as fuel costs and future penetrations of renewable generation.

raise wholesale electric prices. Such results are expected given ISO-NE's least cost dispatch approach. These complex computer simulations demonstrate with great specificity how limitations on efficient generating units in Massachusetts, such as the Footprint Facility, imposed by Section 7.74 require increased operation of less efficient, higher GHG emitting units in other states.[7] In effect, these studies translate the theory of ISO-NE dispatch into a realistic simulation of how Section 7.74 will work in the real world. Each of the four studies produce the same result: Section 7.74 will result in more GHG emissions and higher electricity prices.

As expected, the precise amount of increased GHG emissions and higher electricity prices vary among the four studies. This is a function of both different time frames utilized and differences in certain assumptions. For example, the ISO-NE's Study analysis "shows a modest increase in regional emissions in the year 2015, because electricity production is shifted from Massachusetts to less efficient plants and likely

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[7] ISO-NE calculates that the GHG emission rates of electric generating facilities outside Massachusetts are five (5) to sixteen (16) percent higher than those of Massachusetts units. RA2391.

higher emitting fuel sources in the region." (RA2368).[8] ISO-NE adds that in future years, both GHG emissions and electricity costs increase as the 7.74 Regulations impose increasingly more strict limits. (RA2372).

The Dynegy Study finds that "[b]ecause the generation shifts out of state as Massachusetts generators reduce production to meet CO_2 emission limits, the model predicts regional CO_2 emissions will remain flat or may increase slightly (~1%) by 2025." (RA2812). Likewise, the NRG Study confirms this conclusion "showing that total regional GHG emissions would increase under the proposed 310 CMR 7.74." (RA2980). In addition, "costs for all New England consumers would increase due to the less efficient out-of-state resources being substituted for more efficient, but constrained, resources in

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[8] ISO-NE asserts that "[U]nder this proposed regulation Massachusetts seeks to meet emissions goals by limiting in-state generation which in turn shifts generation to resources in other states to make up the energy shortfall. Our modeling results show that when this occurs, relatively efficient clean burning facilities in Massachusetts are operated less and less clean resources outside Massachusetts are operated more. When the additional emissions associated with the incremental non-Massachusetts generation are added back to Massachusetts, emissions totals attributable to Massachusetts under the regulation actually increase under the proposed policy." (RA2372).

Massachusetts." (RA2980). Finally, the Tabors Study determines that the impact of the Massachusetts cap produces additional emissions in the region (and is particularly negative on emissions in the specific states of Connecticut, Rhode Island and Maine). (RA3121).

In summary, the Administrative Record offers conclusive proof that Section 7.74 will produce results that are directly contrary to the explicit directives of the GWSA to reduce statewide greenhouse gas emissions. The intrinsic logic of the ISO-NE least-cost dispatch process affords no other conclusion. Section 7.74's limitations on efficient units in Massachusetts permits no other result than the greater use of less efficient, higher GHG emitting units outside Massachusetts. This compelling logic is affirmed and quantified by four separate studies in the Administrative Record by four reputable organizations, including ISO-NE itself, which has the responsibility for the administration of the wholesale electricity market.

As demonstrated below, MassDEP's response to this argument is unavailing and only confirms that Section 7.74 is fatally flawed.

C. MassDEP's Argument That Section 7.74 is a Necessary Complement to Section 7.75 is Not Supported by the Administrative Record

The gravamen of MassDEP's response to this argument is that the Court should not examine the effects of Section 7.74 in isolation. Rather, argues MassDEP, the efficacy of Section 7.74 can only be evaluated when examined in combination with another set of GWSA Regulations, Section 7.75. (RA3169, 3175, 3176, 3178). The purpose of Section 7.75 is to encourage increased penetration of renewable resources such as wind and solar. However, MassDEP's attempt to remedy the fatal flaw in Section 7.74 by recourse to the potential beneficial effects of Section 7.75 does not withstand scrutiny.

Footprint agrees with MassDEP that Section 7.75 has the potential to reduce GHG emissions if it results in higher amounts of renewable resources. Recall that ISO-NE dispatches generating units based on their operating costs. Because renewable resources like wind and solar have no operating costs, they will always be dispatched by ISO-NE before all fossil

generating plants.[9] Accordingly, to the extent that Section 7.75 results in the construction and operation of more renewable resources, it will produce lower GHG emissions.

MassDEP and the Executive Office of Energy and Environmental Affairs (collectively, the "Agencies") also performed an emissions modeling study similar to the four studies discussed above, The Electricity Bill and CO_2 Emissions Impact Study ("Agency Study"). (RA3178, 3195). While the Agency Study utilized the same type of ISO-NE simulation model, it included two critical assumptions that differed from the other four studies, namely, that Section 7.75 and other Massachusetts energy policy programs would produce amounts of renewable resources in excess of what was assumed in the other four studies and that demand for electricity would be lower[10]. (RA3209-3212). As expected, the Agency study showed significant decreases in GHG emissions, hardly surprising since

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[9] Renewable resources typically have higher capacity costs than fossil units, but such capacity costs are not reflected in the ISO-NE dispatch methodology.

[10] The ISO-NE Study did include one sensitivity analysis which assumed higher levels of renewable resources. (RA2371, 2382).

ISO-NE will always dispatch renewable resources first. Moreover, lower demand for electricity means less need for electric generation.

However, MassDEP erroneously attempts to use the results of the Agency Study to argue that Section 7.74 will also reduce GHG emissions. While the Agency Study does assume the limitations imposed by Section 7.74, the results make it clear that all the GHG reductions are a product of Section 7.75 alone with Section 7.74 making no contribution. MassDEP admits that this is the case, stating that the addition of a large number of renewable resources by itself will so limit the dispatch of fossil units such that the limitations in Section 7.74 never come into play. (RA3175-3176). That is, if Section 7.75 does, in fact, produce additional renewable resources, these resources will displace sufficient fossil units in the ISO-NE dispatch such that the Section 7.74 limitations are never imposed on Massachusetts generating facilities.[11] Thus, in the modeling scenarios included in the Agency Study,

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[11] The ISO-NE sensitivity analysis—which included a far more robust assumption about future renewable resources—reached the same conclusion: if enough new renewable resources are added, the limits in Section 7.74 have no effect on Massachusetts fossil fuel generation. (RA2372, 2378).

Section 7.74 is irrelevant and produces no GHG savings.

Given that conclusion, how does MassDEP support the efficacy of Section 7.74? MassDEP argues that the limitations on Massachusetts fossil generation in Section 7.74 represent a "backstop" to Section 7.75. RA3194. Presumably, that means that if Section 7.75 fails to produce the hoped for increase in renewable resources, the Section 7.74 limits will step in to produce similar GHG reductions.[12]

Indeed, there is no guarantee that Section 7.75 will result in additional renewable projects. Such projects must still meet numerous local, state and federal requirements and achieve sufficient financial viability to garner hundreds of millions of dollars in financing. The recent fate of the Cape Wind Project is an instructive lesson. Assuming new potential renewable resources do not appear, MassDEP argues that it can turn to Section 7.74 as an alternative means of achieving the necessary GHG reductions. (RA3175-3177).

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[12] MassDEP states that the 7.74 Regulations "will 'ensure' emissions reductions consistent with other clean energy policies by setting legally enforceable limits, but not cause additional reductions directly." (RA3178).

While facially appealing, the evidence in the Administrative Record is overwhelmingly to the contrary. If Section 7.75 is not successful in producing more renewable resources, Section 7.74 will only exacerbate the problem by limiting the operation of efficient Massachusetts plants, like Footprint, thereby increasing GHG emissions. How can we be sure that this is the case? Perhaps the most telling evidence is that the Agencies chose not to conduct a study that looked solely at the impacts of Section 7.74 on GHG emissions in isolation without the future potential addition of large amounts of renewable resources. "Because MassDEP is promulgating both regulations, the [Agency Study] did not attempt to replicate commenters' analyses of the impact of implementing 310 CMR 7.74 without 310 CMR 7.75." (RA3178).

The Agency Study could easily have performed such an analysis. The other four studies in the Administrative Record did exactly that. These studies included far less optimistic assumptions about renewable resources as well as higher growth in electric demand. By so doing, these four studies isolated the impacts of Section 7.74 alone on GHG

emissions. As discussed above, the results were the same in all four studies. The impact of Section 7.74 in isolation is to increase GHG emissions because it limits the operation of efficient fossil fuel-fired generating plants in Massachusetts. Had the Agency Study performed a similar analysis, it would have reached the exact same result. The logic of the ISO-NE Dispatch affords no other conclusion.

Accordingly, the evidence unanimously contradicts MassDEP's attempted justification of Section 7.74. The ISO-NE Dispatch and the four studies demonstrate conclusively that Section 7.74 is not a backstop for Section 7.75. Section 7.74 will never produce any GHG savings to assist in meeting the goals of the GWSA. If Section 7.75 is successful, Section 7.74 is irrelevant and has no impact on GHG emissions. If Section 7.75 is not successful in encouraging more renewable resources, Section 7.74 will increase, rather than decrease GHG emissions.

MassDEP's attempt to rely on Section 7.75 to support the validity of Section 7.74 unsuccessfully conflates the efficacy of Section 7.75 in reducing GHG emissions with Section 7.74's failure to achieve that same goal. For example, assume Company X has two

divisions: Division A and Division B. Further assume that in 2017, Division A made a profit of $100 and Division B had a loss of $50. If one combines the performance of Division A and Division B, Company X made a profit of $50, but that hardly means that Division B contributed to that profit. Likewise, MassDEP has adopted six regulations to help effectuate the policy of the GWSA to reduce statewide greenhouse gas emissions. One regulation, Section 7.75, has the potential to achieve that goal. Certainly, there is no scenario in which Section 7.75 will ever increase GHG emissions. The opposite is true for Section 7.74. There is no scenario in which it will decrease GHG emissions and many in which it will increase such emissions.

The conclusion is inescapable. Section 7.74 is fatally flawed and the superior merits of Section 7.75 do nothing to change that determination. As a result, Section 7.74 simply does not comport with the GWSA and is therefore invalid.

CONCLUSION

For all the foregoing reasons, Footprint respectfully requests that the Court invalidate Section 7.74.

Dated: February 27, 2018

John A. DeTore (BBO #121840)
Greenberg Traurig, LP
One International Place
Suite 2000
Boston, MA 02110
Telephone: (617) 310-6000
Facsimile: (617) 310-6001
detorej@gtlaw.com

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Addendum

Pursuant to Massachusetts Rule of Appellate Procedure 16(f), the relevant regulations have been reproduced in Volume IV of the administrative record.

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Certification of Compliance

I certify that this brief complies with the relevant rules of conduct of court pertaining to the preparation and filing of briefs. Those rules include Mass. R. App. P. 16(a)(6) (pertinent findings or memorandum of decision); Mass. R. App. P. 16(f) (reproduction of statutes, rules and regulations); Mass. R. App. P. 16(h) (length of briefs); Mass. R. App. P. 18 (appendix to the briefs); and Mass. R. App. P. 20 (form of briefs, appendices, and other papers).

John A. DeTore (BBO #121840)
Greenberg Traurig, LP
One International Place
Suite 2000
Boston, MA 02110
Telephone: (617) 310-6000
Facsimile: (617) 310-6001
detorej@gtlaw.com

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Certificate of Service

I certify that on February 27, 2018, I served the attached brief via First Class Mail upon all counsel of record.

John A. DeTore (BBO #121840)
Greenberg Traurig, LP
One International Place
Suite 2000
Boston, MA 02110
Telephone: (617) 310-6000
Facsimile: (617) 310-6001
detorej@gtlaw.com