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January 31, 2007

The Commonwealth of Massachusetts
Department of Revenue
Rulings and Regulations Bureau
P.O. Box 9566
Boston, MA 02114-9566
ATTN: Mr. Michael Fatale

RE: Proposed revisions to 830 CMR 62C.3.1: Department of Revenue Public Written Statements

Dear Mr. Fatale:

Pursuant to the Notice of Proposed Regulation issued by the Department of Revenue ("Department") the New England Power Generators Association, Inc. ("NEPGA") hereby files these comments in the above-captioned proceeding. NEPGA is the largest trade association representing competitive electric generating companies in New England. NEPGA's member companies represent approximately 20,000 megawatts of generating capacity in all six states of the region. NEPGA's mission is to promote sound energy policies which will further economic development, jobs, and balanced environmental policy. NEPGA requests that all further correspondence, communications and other documents relating to this matter be served upon the following:

Angela O'Connor, President
New England Power Generators Association
141 Tremont Street
Boston, MA 02111
(617) 902-2354

Of particular concern to NEPGA in this proceeding is the proposal for the revocation of certain materials as described in the proposed 830 CMR 62C.3.1 (11), which reads in part as follows:

...any document, letter, instruction, ruling or other public written statement that is not in the latest published version of the official MASSTAX Guide

and Supplements or Code of Massachusetts regulations **is obsolete and revoked**. (emphasis added)

In general, such an extensive revocation of substantive materials is contrary to the manner in which the Department has historically issued and revoked public statements. Furthermore, NEPGA disagrees with the general premise that all of this material is categorically obsolete in that many Massachusetts businesses rely on these rulings in the planning and execution of their ongoing business operations.

Specifically, NEPGA members operate in reliance on a 1966 letter ruling that sets forth the scope of sales and use tax exemptions under G.L. c. 64H, s. 6(r) and (s) for purchases of materials and machinery used in the furnishing of electricity and gas. The letter ruling expressly passes the sales and use exemption along to contractors of gas and electric utilities that purchase tangible personal property used in the production, transmission or distribution of electricity. Revocation of this letter ruling would alter the way the electric industry operates and would have detrimental effects on investment in necessary electrical infrastructure.

As a method of practice, the construction of electrical generation infrastructure is facilitated through the execution of a turnkey construction contract entered into between a project developer and an engineering and construction firm. Under the usual arrangements for this type of contract, the contracted entity carries out all the engineering, procurement and construction of the electric generating facility, ultimately providing a fully-equipped facility to the developer/owner, ready for operation. Such an arrangement is necessary to facilitate the financing of such an intensive project so that one entity takes total responsibility for the design and execution of an engineering project. Project financiers require that the risk is distributed away from the lender and developer and properly directed to firms with experience and expertise in procuring and installing this very specialized equipment.

Since 2000, approximately 10,000 MW of new power plant capacity has been constructed in New England, much of it in Massachusetts, using the well established business principles outlined above. Additional increases in generating infrastructure are critical to a region that recently experienced a record-setting peak electrical demand of 28,048 MW in August of 2006. Because of these new investments there has also been a significant decrease in emissions from power plants in the region. The ISO-NE estimates that carbon dioxide emissions have dropped by six percent, nitrogen oxide emissions have dropped by 32 percent and sulfur dioxide by 48 percent. The administration and legislature in Massachusetts have recently taken dramatic steps to incentivize private investment in new technology to accelerate these benefits in an effort to improve the environment.

These real and tangible economic, reliability and environmental benefits have been made possible through regulatory and financial policies that appropriately reflect common project

development practice and therefore facilitate private investment in energy infrastructure. Issues relating to siting new generating plants and increasing the necessary transmission infrastructure need careful consideration by the Massachusetts policy leaders. Such a drastic change in the application of the exemption of the sales and use tax for electrical generation as that proposed will have a detrimental effect to the developing electricity market and will negatively impact reliability and innovation. Such a chilling effect on electrical infrastructure investment undermines the regional planning efforts that have been undertaken to increase generation capacity in major load pockets, especially areas like northeastern Massachusetts.

NEPGA recognizes that there are subsequent letter rulings pertaining to the establishment of agency relationships with procuring vendors that retains the exemption on sales and use. However, the establishment of the requisite agency relationship is highly fact specific and, therefore it is unclear in what situations the exemptions apply. Such exemptions would be applied inconsistently and will be inequitable to non-receiving parties. Ultimately the reliance on such ambiguous rulings would create uncertainty in the industry and impede much needed development of electrical generating infrastructure.

For the foregoing reasons, NEPGA opposes the adoption of the proposed revisions to 830 CMR 62C.3.1. Thank you for your consideration of NEPGA's comments. If you have any questions, please don't hesitate to contact me.

Sincerely,

Angela O'Connor
President