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Statement by A.I.M. and NEPGA on Retaining the Sales Tax Exemption for Electricity

Boston, Mass. – Associated Industries of Massachusetts (A.I.M.), an employer association of more than 7,600 Bay State businesses and institutions and the New England Power Generators Association (NEPGA), the largest trade association representing competitive electric generators in New England issued the following statement in response to the Massachusetts Department of Revenue’s Directive 07-6 regulation that will allow utilities and other entities purchasing on their behalf to continue using the sales tax exemption for certain purchases

The Massachusetts Department of Revenue (“DOR”) reversed a tax policy decision that would have potentially increased electricity and natural gas prices for most residential and business customers across Massachusetts by discouraging industry investment.

In an announcement on June 29, 2007, DOR stated that it is modifying its policy with respect to the treatment of sales and use taxes for purchases of materials and machinery used in the furnishing of electricity and gas. This change will permit any person or entity, such as contractors, to purchase items covered by G.L. c. 64H, § 6(r) and § 6(s), including tangible personal property used in the production, transmission or distribution of electricity, without payment of tax provided that the property itself will be used in the manner specified by the statute. Of greatest importance to energy industry participants is that a showing of agency will no longer be required for exemption under § 6(r) and § 6(s).

The Department had issued a proposed regulation amending state tax administration and held a hearing on February 1, 2007. Representatives of the energy industry submitted written testimony and provided oral testimony at that hearing. Of particular concern was the proposal for the revocation of certain materials as described in the proposed 830 CMR 62C.3.1 (11), specifically

a 1966 letter ruling that set 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 1966 letter ruling had expressly passed the sales and use exemption along to contractors of gas and electric utilities that purchased tangible personal property used in the production, transmission or distribution of electricity. Revocation of that letter ruling without instituting a well structured and defined tax policy to replace it would have had detrimental effects on investment in necessary electrical infrastructure.

“By releasing this directive, the Massachusetts Department of Revenue has removed any uncertainty associated with the tax treatment pertaining to purchasing materials for the development, operations and maintenance of Massachusetts electrical generation. I applaud the Department for listening to our concerns and suggestions and promulgating a well structured tax policy that will assist in creating a positive investment climate for the development of desperately needed new energy infrastructure” said Angela O’Connor, President of the New England Power Generators.

“Energy has become such a high cost component of doing business in this Commonwealth that the employer community applauds any and all efforts by the state to reduce the cost of energy and retain existing tax incentives. DOR’s directive makes it clear that the sales tax exemption on materials tools and fuels used in furnishing power will be retained and administered by the DOR in a straightforward way, encouraging investment in much needed power generation in this state” commented Eileen McAnney, Senior Vice President of A.I.M.

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